

Ordinance amending Chapter 49 of the Code of Ordinances titled "Streets and Sidewalks" in order to: (a) provide requirements and prohibitions related to street cuts; (b) clarify duties and responsibilities related to sidewalks and the repair of defective and/or unsafe sidewalks; and (c) provide the authority for an optional sidewalk repair program.

SECTION 1. Chapter 49 of the Corpus Christi Code of Ordinances is amended by revising Division 2, "Sidewalks, Curb and Gutters," Sections 49-30 through 49-38 as shown:

DIVISION 2. SIDEWALKS, CURBS AND GUTTERS

Sec. 49-30-1. Definitions

Sec. 49-30-2. Permit.

Sec. 49-31. Notice to abutting property owners to construct, repair, or replace—~~G~~generally.

Sec. 49-32. Same—Failure to obey notice.

Sec. 49-33. Same—Filing of lien.

Sec. 49-34. Sidewalk ~~specifications~~ construction, repair or replacement—~~generally; repair.~~

Sec. 49-35. Liability of property owner for defective sidewalks.

Sec. 49-36 Duty of abutting property owner to repair defective sidewalks.

~~Sec. 49-35. Detailed specifications.~~

Secs. 49-36—49-389. Reserved.

Sec. 49-30-1. Definitions.

In this Division:

Director means the Director of Development Services.

Chief Code Enforcement Official (CCEO) means the City's chief code enforcement official.

Sec. 49-30-2. Permit.

All persons within the city desiring to build, construct or repair sidewalks in the city shall first secure from the ~~director of engineering and physical development~~ Director a permit to do such work, and the contractor doing such work or in charge of the same shall secure such permit from the ~~e~~ Director. For issuing the permit, the ~~e~~ Director shall charge for and receive from the contractor ~~for issuing the permit fees as provided in the official fee schedule of the Department of Development Services.~~ the sum of five cents (\$0.05) per running lineal foot of sidewalk to be constructed, but in no case shall the permit be issued by the director unless the director shall receive at least the sum of one dollar (\$1.00) for the issuance of the permit.

All work permitted shall be subject to inspection by the City and must conform to all city, state and federal requirements, including the Texas Accessibility Standards, the City's Design Standards, the City's Standard Specifications and Details, and the applicable provisions of the Unified

Development Code.

(Code 1958, § 34-16)

**Sec. 49-31. Notice to abutting property owners to construct, repair, or replace —
Ggenerally.**

~~In case any curb, or any gutter, or any sidewalk is not duly constructed in any sidewalk district hereafter so designated by city ordinance, the director of engineering and physical development shall notify the owners of all abutting or adjacent property on such street in writing by registered mail to construct such curb, gutter, and/or sidewalk. The notice shall~~ If the Director or the CCEO determines that a sidewalk, curb or gutter is not duly constructed, is defective, does not conform to the City's Standard Specifications and Details, or is hazardous or creates an unsafe condition to the public, the CCEO shall notify, in writing, the owner of the abutting or adjacent property of the duty to construct, repair, or replace such sidewalk, curb or gutter, and that the owner has 30 days from the date of the notice to begin the construction, repair, or replacement, replacement, and 60 days from the date of the notice to complete the construction, repair or replacement. The CCEO will state in the notice the kind of sidewalk, curb or gutter required to be constructed, repaired or replaced, together with its approximate location, and grade, and the name of the street along which sidewalk, curb or gutter is ordered to be constructed, repaired or replaced, and the number of lots or blocks, or both, belonging to the person along which the sidewalk, curb or gutter is required to be constructed, repaired or replaced. Notice shall be made by certified mail, return receipt requested, to the record owner of the property at the address of the record owner as shown in the appraisal district's records, or by personal service to the record owner of the property. Such notice shall be signed by the director of engineering and physical development. The notice hereby required may be served by sending such notice by registered mail to the property owner, or by personal service.

The CCEO may include in the notice, as an alternative, an agreement whereby the City will make the repairs and the owner will pay to the City the amount specified in the agreement within 12 months of completion of the repairs. The agreement shall include an interest rate equal to the rate payable by the City on its most recently issued general obligation bonds.

The CCEO may include in the notice to a homeowner's association or commercial property owner that owns, controls, or maintains a sidewalk, as an alternative, an agreement whereby the City will make the repairs and the homeowner's association or commercial property owner will pay to the City the City's costs to make such repairs. The amount to be paid by the homeowner's association or commercial property owner will be the City's estimate of the needed repairs, and payment will be made by the homeowner's association or commercial property owner prior to the City's beginning any work to make the repairs.

(1966 Supp., § 34-17)

Sec. 49-32. Same—Failure to obey notice.

Should any person owning any property abutting or adjacent to any street along which any sidewalk, curb, or gutter is required to be constructed, repaired, or replaced, fail or refuse to construct, repair, or replace any such sidewalk, curb or gutter in front of or adjacent to his property in the manner required by this ~~d~~Division ~~within a period of thirty (30) days after notice as provided in section 49-31,~~ the City may shall, under the direction and supervision of its City Manager or designee director of engineering and physical development, proceed to have such sidewalk, curb or gutter constructed, repaired or replaced. The cost of such construction, repair or replacement, together with legal interest and the cost of collection, shall constitute a personal claim against such property owner and shall be secured by a lien on such property superior to all other liens, claims or titles, except lawful taxes, and such liability and lien may be enforced by the eCity against such owner by suit in any court having competent jurisdiction.

(1966 Supp., § 34-18)

Sec. 49-33. Same—Filing of lien.

The lien referred to in section 49-32 shall be fixed by the eCity ~~m~~Manager by filing an affidavit in the office of the county clerk before commencing the construction, repair or replacement of the sidewalk, curb or gutter showing the cost of construction, ~~and~~ the name of the abutting property owner, and the fact that at least ~~ten (10)~~ days prior to the filing of the ~~such~~ lien a personal demand has been made on such the property for payment of such the construction, repair or replacement costs, and that payment has been refused.

(1966 Supp., § 34-19)

Sec. 49-34. Sidewalk specifications- construction generally; repair.

All sidewalks in the city shall be constructed of concrete or such other material as required under the City's Standard Specifications and Details. ~~the director of engineering and physical development may specify at least four (4) inches in thickness or depth, and shall be at least an average of four (4) feet wide in the residential sections of the city and at least eight (8) feet wide in the business portions of the city.~~ ~~Such s~~ Sidewalks shall must be constructed, if not already constructed, and maintained, on all streets in front of, or adjacent to, all abutting property on the streets within city limits, the boundaries of sidewalk districts organized by ordinance of the city. ~~Such S~~ sidewalks shall must conform to the grade, specifications and requirements furnished by the director of engineering and physical development Director, and shall must be constructed, maintained and kept in good repair by the owner of the abutting or adjacent property.

(Code 1958, § 34-15)

Sec. 49-35. Liability of property owner for defective sidewalks.

The abutting property owner or person enjoying the use of any property abutting on a sidewalk that has become defective and resulted in causing damage or injury due to such defective conditions, shall be primarily liable in damages for any loss or damage sustained as a result of such defective condition.

Sec. 49-36 Duty of abutting property owner to repair defective sidewalks.

Any sidewalk that has become defective and unsafe and hazardous is declared a nuisance. It shall be the duty of the owner of property abutting any street, public alley, place or square or section or part thereof along which sidewalks are ordered to be reconstructed or repaired, within 30 days from receiving of notice as provided herein, to reconstruct, in accordance with the City's Standard Specifications and Details providing for the construction of sidewalks, the applicable provisions of the Unified Development Code, and the Texas Accessibility Standards. All expenses will be borne by the abutting property owner. The failure of any owner or agent of any owner to reconstruct or repair any such sidewalk ordered to be reconstructed or repaired by the CCEO shall be guilty of a misdemeanor and subject to a fine upon conviction as provided for in Section 1-6.

Sec. 49-35. Detailed specifications.

~~The sidewalk, curb and gutter to be laid in the streets, alleys and public places of the city and all such construction hereafter put in, shall in all things conform to the following specifications:~~

~~(1) — *General.* The work shall in every respect be executed in a thorough and workmanlike manner and in the fulfillment of the intent and purpose of these specifications and in accordance to the plans, profiles and ordinances governing such work. All work and material shall be subject at all times to the inspection of the director of engineering and physical development, whose decision shall be final. The contractor will be required to preserve all stakes set by the director of engineering and physical development until authorized to remove the same and any expense of replacing stakes shall be paid for by the contractor. The contractor shall erect barriers and display lights and danger signals wherever and whenever necessary to properly guard the public from any danger due to his operations and he will be held responsible for all accidents and damages to life or property resulting from any neglect on his part to take the necessary precautions to guard openings and obstructions so as to make them safe at all times. At no time shall the contractor occupy more than one half (1/2) the width of any street or roadway with his material or equipment and he shall refrain from obstructing in any way reasonable access to any fire hydrant.~~

~~(2) — *Control of work.* Work shall be carried on in such a manner and~~

sequence of operations as may be directed by the director of engineering and physical development and at all times the director of engineering and physical development shall have the authority to stop work when in his judgment the contractor is violating any of the provisions of these specifications or otherwise proceeding contrary to the intent thereof, or for any reason is failing to produce satisfactory results.

- (3) ~~Skilled laborer.~~ All labor employed in sidewalk and curb construction shall be thoroughly competent and highly skilled in the various operations in which they are engaged. The foreman shall have intimate knowledge of the proper methods of concrete mixing and construction and be able to interpret plans, lay out work from stakes and instruction sheets and carry out the work properly in the absence of the contractor. Cement finishers shall be experienced men in their craft and laborers must be able to understand and follow out orders given them as to handling, mixing, preparing, placing and tampering concrete. No intoxicated workman or man under the influence of liquor shall be tolerated upon the work.
- (4) ~~Material platforms.~~ When concrete work is being carried on contiguous to paved streets, all sand and crushed stone may be dumped on the cleaned pavement. Where adjacent natural roadway surfaces are hard and compact and free from mud, dirt and litter, the roadway surface may be trimmed, leveled and swept broom clean and the sand and crushed stone deposited thereon; in all other cases, however, the contractor shall provide a wooden or metal platform upon which to receive materials and care shall be taken to keep such material free from street dirt and mud prior to its use in making concrete.
- (5) ~~Meter boxes, poles and obstructions.~~ Contractors shall see to it that all meter boxes, water boxes, gratings and covers to openings of all kinds are set flush with the top of the finished walks, and shall refuse to lay walks until such fixtures are properly located and set. Contractors shall give due notice to all public utility companies having poles or guy wires along the streets upon which curbing is to be constructed to move their poles so that they will come just inside of the curblines, before the curbing is built. Contractors shall refuse to construct all driveway approaches between curbing and sidewalks unless the gutters have been constructed or grades for them have been determined. Contractors shall also refuse to construct any steps or retaining walls adjoining sidewalks which project beyond the street lines. All such steps or walls shall be wholly upon private property.
- (6) ~~Lines and grades.~~ All lines and grades for sidewalk and curb construction shall be obtained from the director of engineering and physical development and requests for the same shall be made at least three (3) days in advance of the time the contractor expects

to start work. Stakes set by the director of engineering and physical development shall be carefully preserved and the written instruction sheets concerning them shall be carefully followed and then returned to the office upon the completion of the work. The contractor shall keep a careful watch on his men to see that the curb and sidewalk forms are laid out properly so that the work upon completion will accurately conform to the lines and grades given by the director of engineering and physical development. The contractor shall at no time make any changes in the stakes, grades or lines without first consulting the director of engineering and physical development and if at any time there should appear to be any discrepancy or error or any question as to the proper alignment or grade, it shall be the duty of the contractor to immediately refer the matter to the director of engineering and physical development for advice as to how to proceed.

- (7) — *Grading.* All excavation or filling necessary to bring the foundation level to a proper elevation and subgrade shall be made by the contractor. Where excavation is required, it shall be carried to such a depth that after thorough tamping, the subgrade will be at an elevation permitting the full depth of concrete required. If soft spongy spots are encountered for the subgrade, they shall be dug out and refilled with gravel, cinders, shell or other suitable material, which will form a hard foundation. Where filling is required, it shall be applied in layers not more than six (6) inches in thickness, each layer to be moistened and thoroughly tamped, and made sufficiently wide in the embankment to allow a berm at the sidewalk or curb level of one (1) foot on each side of the concrete with a slope of one and one half (1½) feet to every foot of rise. The contractor will be held responsible for all settlements of embankments, sidewalk or curbing and shall use the utmost precaution to make them solid, stable and unyielding. The city reserves the right to all surplus earth from excavations, which shall be delivered by the contractor to the city at such points (not to exceed two thousand five hundred (2,500) feet away) as the city may desire.
- (8) — *Description.* These specifications shall govern the materials for and the construction of concrete sidewalks and of concrete curb and gutter in accordance with details shown on the plans and in conformity with the lines and grades established by the director of engineering and physical development.
- (9) — *Concrete.* The concrete shall be composed of Portland cement, fine aggregate, coarse aggregate and water, proportioned and mixed as provided in these specifications.
- (10) — *Cement.* Cement shall be either Type I or Type III of a standard brand of Portland cement, which shall conform to A.A.S.H.O. Standard Specification M85.

~~(11) Water. Water for concrete shall be clean and free from injurious amounts of oil, acid, alkali, organic matter or other deleterious substances.~~

~~When subjected to the mortar strength test, the strength at twenty-eight (28) days of mortar specimens made with the water under examination and normal Portland cement, shall be at least ninety (90) per cent of the strength of similar specimens made with the same cement and with water of known satisfactory quality.~~

~~(12) Fine aggregate. Fine aggregate shall consist of natural sand, or sand prepared from the product obtained by crushing stone or gravel.~~

~~When tested by approved methods, the fine aggregate shall conform to the following grading requirements:~~

Retained on 3/8" screen...	0%
Retained on 1/4" screen...	0 to 5%
Retained on 20 mesh sieve...	15 to 50%
Retained on 100 mesh sieve...	85 to 100%

~~Deleterious substances shall not be present in excess of the following percentages by weight:~~

Material removed by decantation.....	3.0%
Clay lumps	0.5%
Other substances such as coal, shale and friable particles...	2.0%

~~The fine aggregate when tested in accordance with the method of test for organic impurities shall show a color not darker than the standard color.~~

~~Mortar specimens made with the fine aggregate when tested in accordance with the mortar strength test shall have an average compressive strength of at least ninety (90) per cent of the strength of similar specimens made with the same cement and Ottawa sand graded as specified in A.S.T.M. Tentative Method of Test for Compressive Strength of Portland Cement Mortars (A.S.T.M. Designation: C109-37T) when tested at an age of not less than seven (7) days when normal Portland cement is used and not less than three (3) days when high early strength cement is used.~~

~~(13) Coarse aggregate. Coarse aggregate shall consist of crushed stone or gravel and shall have a wear of not more than forty (40) per cent when tested according to A.A.S.H.O. Method T-96.~~

~~Coarse aggregate shall conform to the following grading~~

requirements:

Retained on 2" screen...	0%
Retained on 1½" screen...	0 to 5%
Retained on ¾" screen...	25 to 60%
Retained on ¼" screen...	95 to 100%

Deleterious substances shall not be present in excess of the following percentages by weight:

Material removed by decantation...	1.0%
Shale or slate...	1.0%
Clay lumps...	0.25%
Soft fragments...	3.0%

The sum of all deleterious ingredients, exclusive of material removed by decantation, shall not exceed four (4) per cent by weight.

(14) ~~Reinforcing steel.~~ All bar reinforcement shall be open hearth or Basic Bessemer process new-billet steel of structural, intermediate, hard grade or rail steel concrete reinforcement bars.

Steel shall conform to the requirements of the Standard Specifications for Concrete Reinforcement Bars, A.S.T.M. Designation A-15-39 or A.S.T.M. Designation A-16.

Unless otherwise shown on the plans, all reinforcing bars shall be deformed bars. Twisted bars are not considered as deformed and shall not be used. The form of deformed bars shall be such as to provide a net sectional area at all points equivalent to that of plain square or round bars of equal nominal size.

Wire for fabric reinforcement shall be cold-drawn from rods hot-rolled from open hearth billets. Wire shall conform to the requirements of the Standard Specifications for Cold-Drawn Wire for Concrete Reinforcement, A.S.T.M. Designation A-82-34.

(15) ~~Expansion joint filler.~~ Expansion joint filler shall be redwood board or premolded bituminous type. Redwood board filler shall be sound hardwood, free from sapwood, knots, clustered birds-eye, checks and splits. Premoulded bituminous type expansion joint filler shall conform to the requirements of A.S.T.M. Specification D-994, latest edition.

(16) ~~Sampling and testing.~~ Methods of sampling Portland cement and high early strength Portland cement shall be in accordance with A.S.T.M. Standard Methods of Sampling and Physical Testing of Portland Cement

~~(A.S.T.M. Designation C77-39)~~

~~Methods of sampling aggregates shall be in accordance with A.S.T.M. Tentative Methods of Sampling Stone, Slag, Gravel, Sand and Stone Block for Use as Highway Materials Including Some Material Survey Methods (A.S.T.M. Designation D75-39T).~~

~~Portland cement and high early strength Portland cement shall be tested in accordance with A.S.T.M. Standard Methods of Sampling and Physical Testing of Portland Cement (A.S.T.M. Designation C77-39).~~

~~Fine and coarse aggregate shall be tested in accordance with the following:~~

~~(a) Grading. A.S.T.M. Standard Method of Test for Sieve Analysis of Fine and Coarse Aggregate (A.S.T.M. Designation C136-39).~~

~~(b) Uniformity of grading; fineness modulus. The fineness modulus of the aggregate shall be determined by adding the total percentages retained on the following U.S. standard sieves and dividing by 100: 3-in., 1½-in., ¾-in., No. 4, No. 8, No. 16, No. 30, No. 50 and No. 100.~~

~~(c) Organic impurities. A.S.T.M. Standard Method of Test for Organic Impurities in Sands for Concrete (A.S.T.M. Designation C40-33).~~

~~(d) Coal and lignite. A.S.T.M. Standard Method of Test for Coal and lignite in Sand (A.S.T.M. Designation C123-39).~~

~~(e) Fineness. A.S.T.M. Standard Method of Test for Amount of Material Finer than No. 200 Sieve in Aggregates (A.S.T.M. Designation C117-37).~~

~~(f) Clay lumps. The percentages of clay lumps shall be determined by examining the various fractions which remain after the test for grading. Any particles that can be broken up with the fingers shall be classified as clay lumps and the total percentages by weight of all clay lumps shall be determined on the basis of the total original weight of the sample.~~

~~(g) Mortar strength. A.S.T.M. Standard Method of Test for Structural Strength of Fine Aggregate Using Constant Water-Cement-Ratio Mortar (A.S.T.M. Designation C87-39).~~

~~(17) Concrete proportioning. It is the intent of this specification to secure, for every part of the work, concrete of homogeneous structure which, when hardened, will have the required strength and resistance to weathering. To this end, the limiting strengths and water contents shown in Table A are specified. The values given in Table A are based on the use of normal Portland cement aggregates, and water which meets the requirements of this specification.~~

TABLE A

Minimum Allowable Strength Compressive at 28 Days p.s.i	Maximum Allowable Net Water Content Per Sack Content Per Sack of Cement; Gallons	Minimum Cement Content Sacks Per Cubic Yard
2500	6.75	4½

~~The maximum allowable net water content will be the amount added at the mixer, plus the free water in the aggregate and minus the absorption of the aggregate based on a thirty-minute absorption period. No allowance will be made for evaporation of water after batching.~~

~~The proportions of cement, aggregates and water necessary to produce concrete conforming to the requirements of Table A shall be determined by means of laboratory tests of concrete made with the cement and aggregates to be used on the work.~~

~~The director of engineering and physical development shall have the right to make check tests of concrete and to order such changes as may be necessary to meet the requirements of the specifications.~~

~~In the event that the contractor furnishes reliable test records of concrete made with materials from the same sources and of the same quality in connection with current work, all or a part of the strength tests specified hereinbefore may be waived by the director of engineering and physical development.~~

~~The concrete shall be of such consistency and composition that it can be worked readily into the corners and angles of the forms and around the reinforcement without permitting the materials to segregate or free water to collect on the surface. Subject to the limiting requirements of Table A, the contractor shall adjust the proportions of cement and aggregate as may be necessary to produce a mixture which will be easily placeable at all times, due consideration being given to the methods of placing and compacting used on the work.~~

~~When high frequency mechanical vibration is used for compacting concrete, the limiting consistencies in Table A may be modified, subject to the approval of the director of engineering and physical development. The proportions and consistencies, however, shall be such that with the vibratory equipment in use the full requirements of workability shall be satisfied.~~

(18) ~~Mixing.~~ The mixing equipment shall be capable of combining the aggregates, cement and water within the specified time into a thoroughly

mixed and uniform mass, and of discharging the mixture without segregation.

Unless otherwise authorized by the director of engineering and physical development, the mixing of concrete shall be done in a batch mixer of approved type which will insure a uniform distribution of the material throughout the mass. The equipment at the mixing plant shall be so constructed that all materials (including the water) entering the drum can be accurately proportioned and be under control. The entire batch shall be discharged before recharging. The volume of the mixed material per batch shall not exceed the manufacturer's rated capacity of the mixer. Except as qualified hereinafter, mixing of each batch shall continue for the periods indicated below, during which time the drum shall rotate at a peripheral speed of about two hundred (200) feet per minute. The mixing periods shall be measured from the time when all of the solid materials are in the mixer drum; provided, that all of the mixing water shall be introduced before one-fourth ($\frac{1}{4}$) of the mixing time has elapsed.

Mixing time shall be as follows:

- (1) For mixers of a capacity of one (1) cubic yard or less, one minute.
- (2) For mixers of capacities larger than one (1) cubic yard, the time of mixing shall be increased fifteen (15) seconds for each additional half-cubic yard capacity, or fraction thereof.

Truck mixers, unless otherwise authorized by the director of engineering and physical development, shall be of the revolving drum type, watertight, and so constructed that the concrete can be mixed to insure a uniform distribution of materials throughout the mass. All solid materials for the concrete shall be accurately measured and charged into the drum at the proportioning plant. Except as subsequently provided, the truck mixer shall be equipped with a tank for carrying mixing water. Only the prescribed amount of water shall be placed in the tank, unless the tank is equipped with a device by which the quantity of water added can be readily verified. The mixing water may be added directly to the batch, in which case a tank shall not be required.

(19) *Construction methods.*

(a) Concrete curb and gutter. When curb and gutter are to be constructed in conjunction with pavement, it shall be placed directly on the prepared pavement subgrade. In other cases the subgrade shall be excavated and shaped to line, grade and cross-section and, if directed by the director of engineering and physical development, hand tamped and sprinkled. If dry, the subgrade shall be sprinkled lightly immediately before concrete is deposited thereon.

Outside forms shall be of wood or metal of a section approved by the director of engineering and physical development, straight, free of warp and of a depth equal to the depth of the curb. They shall be securely staked to line and grade and shall be maintained in a true position during the placing of the concrete. Inside curb face forms, if required, shall be of material and section approved

by the director of engineering and physical development and so designed as to provide the curb section required. They shall be rigidly attached to the outside forms.

Care shall be exercised to keep reinforcing steel in its proper position as shown in the typical sections. The curb and gutter shall be poured in sections of the length shown on the plans, and those sections shall be separated by premoulded expansion joint filler conforming to the cross-section specified for the curb and gutter and of the thickness shown on the plans. The curb and gutter shall be shaped by the use of a template or mule of a shape conforming to the curb and gutter details shown on the plans. Such template or mule may be made of wood or metal, but the "facing" or "shaping" face shall be of metal.

Curb and gutter shall be finished with one-half ($\frac{1}{2}$) inch mortar topping. The mortar shall consist of one (1) part of Portland cement to two (2) parts of sand. Not longer than three (3) hours after the concrete has taken its initial set, the inside curb face form shall be removed, if used, and the topping shall be applied immediately and thoroughly troweled, then brushed to remove trowel marks. The outside forms shall remain in place a minimum of twenty-four (24) hours.

(b) Sidewalks. Unless otherwise shown on the plans, all sidewalks shall be four (4) feet wide and four (4) inches thick.

The subgrade shall be excavated and shaped in conformity with the typical sections shown on the plans and to the lines and grades as established by the director of engineering and physical development. All soft and yielding or other unsuitable materials shall be removed and replaced with selected materials, and the subgrade shall be thoroughly compacted and finished to a firm smooth surface, all to the satisfaction of the director of engineering and physical development.

Expansion joints shall be placed as shown on the plans and shall be placed at all direction changes of the walk. The maximum spacing of expansion joints throughout the length of the sidewalk shall be forty (40) feet. Where sidewalk abuts a curb or pavement or structure, an expansion joint shall be placed along the entire length of the abutting edges. Sidewalks shall be marked with an appropriate transverse marking tool at intervals not to exceed the width of the sidewalk. Sidewalks shall be reinforced with six (6) inches by six (6) inches No. 6 wire mesh.

Forms for sidewalk construction, if of wood, shall be of not less than two (2) inches commercial lumber well staked and braced to maintain line and grade after concrete is deposited in the forms. Lumber shall be free of warps and defects, and the top surface of such forms shall be smooth enough to permit the use of a screed or

straight edge. If steel forms are used, they shall be true to line and grade and shall be cleaned and oiled before each use.

No concrete shall be placed until the subgrade and forms have been checked and approved by the director of engineering and physical development. Concrete shall be deposited on a moist subgrade. During placing, the concrete shall be thoroughly spaded next to the forms and shall be carefully tamped, using an approved tamper. Excess water, laitance or other inert materials shall be floated from the surface.

After the concrete has taken its initial set and is ready to receive a finish, it shall be dusted with an approved mixture of cement and sand and troweled smooth with a steel trowel, then brushed with a broom or stiff brush to leave a semismooth finish. All edges shall be rounded with an appropriate edging tool. The application of cement to the mortar surface in order to absorb excess water or to hasten the setting will not be permitted.

~~(20) — *Curing.* The curb and gutter and sidewalk shall be completely covered with wet burlap or canvas as soon as the concrete has set sufficiently to prevent being marred by curing operations. The covering shall remain in place not less than four (4) days and shall be kept wet continuously while in place. Under unfavorable weather conditions, the director of engineering and physical development may extend the curing period to a maximum of six (6) days. Other curing methods may be used; provided, that they have been approved by the director of engineering and physical development prior to use.~~

~~When completed, the sidewalks shall be covered with approved curing mats or two (2) thicknesses of ten (10) to twelve (12) ounce burlap and kept thoroughly wet for a period of four (4) days, at which time the covering may be removed. Other methods of curing may be used; provided, that they have been approved by the director of engineering and physical development prior to use.~~

~~(21) — *Backfill.* The area back of the curb and gutter shall be backfilled as soon as the forms have been removed and the required finishing completed. The backfill material shall be of earth satisfactory to the director of engineering and physical development, dampened if necessary and thoroughly compacted in layers not to exceed six (6) inches in depth, loose measurement, and neatly graded flush with the top of the curb or as otherwise shown on the plans or directed by the director of engineering and physical development.~~

~~After the curing is completed and before the walk is open for traffic, the contractor shall remove all surplus excavation, waste concrete, wood forms and braces, and any and all surplus materials used in construction or left over from such construction. It shall be his responsibility to dispose of any such materials away from the site of the work or as directed by the director of engineering and physical~~

development.

~~The contractor shall dress and finish the area immediately adjacent to each side of the completed walk and leave the surface in a condition that will not impede the natural drainage of surface water toward the curb or ditches. The contractor's attention is especially directed to the fact that excavated materials must not be placed in adjacent ditches, but shall be disposed of in a manner satisfactory to the director of engineering and physical development.~~

(Code 1958, § 34-20)

Secs. 49-36—49-389. Reserved.

SECTION 2. 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

Sec. 49-39-3. Application

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

Sec. 49-40. In General

(a) Prohibited activities

(b) Provisions cumulative

(c) Penalty

(d) No private rights in public way

(e) Appeals; hearing

(f) Public entities not exempt

(g) Rules and regulations

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

(a) Permit required

(b) Issuance of permit

(c) Denial of permit

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

(e) Record at excavation site; public notice

Sec. 49-42. Fees

Sec. 49-43. Removal or relocation of facilities

Sec. 49-44. Applicability of article to emergencies

Sec. 49-45. Work warranty.

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

Sec. 49-47. Newly constructed or reconstructed streets

- Sec. 49-48. Defaults; unauthorized excavations**
- Sec. 49-49. Liability of right of way user; insurance**
- Sec. 49-50. Extensions**
- Sec. 49-51. Access to fire hydrants; crossings; traffic control devices.**
- Sec. 49-52. Steel plate temporary surfaces.**
- 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 X 13.44 X 0.79 = \$956.86

Cost Recovery Fee for **Seal** = \$6.06 X 13.44 X 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 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