

**Ordinance amending the Corpus Christi Code to amend Chapter 49 Streets and Sidewalks and Chapter 53 Traffic regarding requirements for performing work in the public right of way and placement of utilities; providing for penalty; providing for publication.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:**

**SECTION 1.** City Code of Ordinances, Chapter 49 Streets and Sidewalks, Article II Street, Sidewalk, Curb and Gutter and Driveway Construction, Division I Generally is revised to amend the City department responsible for supervising work done within the public right of way.

**“Sec. 49-20. Permission to make improvements.**

It shall be unlawful for any person to pave or improve or in any manner to change or disturb the surface or grade of any street, avenue or alley in the city, or attempt to do so, unless done under the direction and supervision of the director of ~~engineering and physical development~~ public works or unless done with the consent and permission of the city council, which consent or permission shall be in writing and signed by the mayor.”

**SECTION 2.** City Code of Ordinances, Chapter 49 Streets and Sidewalks, Article II Street, Sidewalk, Curb and Gutter and Driveway Construction, Division II Sidewalks, Curbs and Gutters is revised to amend the City department responsible for supervising work done within the public right of way and remove the permit fee language that conflicts with language in Chapter 49, Article III Cuts and Excavations.

**“DIVISION 2. – DRIVEWAYS, SIDEWALKS, CURBS AND GUTTERS**

**Sec. 49-30. Permit.**

All persons within the city desiring to build, construct or repair driveway approaches, sidewalks, and curbs and gutters in the city shall first secure from the director of ~~engineering and physical development~~ public works a permit to do such work, and the contractor doing such work or in charge of the same shall secure such permit from the director, including:

- (a) New construction driveways – Permit is required and is subsidiary to building permit. This applies to new single-family or two-family dwelling units/multifamily/commercial/industrial. New construction driveways for single-family or two-family residential units are subject to random inspections.
- (b) Repairs/modifications to existing driveway approaches – Permit is required.
- (c) New sidewalk/curb and gutter – Permit is required.
- (d) Repairs/modifications to existing sidewalk/curb and gutter - Permit is required.

All work shall be performed in accordance with the City's Construction standards. A permit shall not be issued for any tract or property where a final plat is required to obtain a building permit. This section shall not apply to public improvements required for new subdivisions where a final plat has not been recorded. The director shall charge for and receive from the contractor for issuing the permit 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.

Restrictions on driveway areas are designed to avoid the domination of front yards by large expanses of impervious surfaces which deaden the streetscape and discourage pedestrian

activity. Reducing the width of driveways can reduce total site imperviousness. For residential uses abutting local, residential streets, the driveway aprons shall not comprise more than 50% percent of the lot frontage (per roadway). Residential uses abutting collector or arterial streets shall be limited to no more than three driveways if the lot frontage exceeds 200 feet. "

**SECTION 3.** City Code of Ordinances, Chapter 49 Streets and Sidewalks, Article III Cuts and Excavations is hereby repealed and replaced in its entirety to amend the requirements and procedures for working in the public right of way.

**"DIVISION 1. GENERAL PROVISIONS**

**Sec. 49-39-1. Administration.**

The Director of Public Works is the principal city official responsible for the administration of the right-of-way, right-of-way permits, the regulation of same and ordinances related thereto. The director is authorized to administer and enforce the provisions of this article, and to promulgate regulations, including but not limited to engineering, technical, and other special criteria and standards, to aid in the administration and enforcement of this article that are not in conflict with this article, this code, or state or federal law. To further aid in the administration and enforcement of this article, the director is also authorized to promulgate regulations and operational standards governing the shared use of the public right-of-way by transportation uses and public service providers, so long as those regulations and standards are not in conflict with this article, this code, or state or federal law. The director may delegate any or all of the duties hereunder.

- (a) The Right of Way Manager, who shall be an Executive Manager overseeing the Right-of-Way Division in the Department of Public Works, shall have the same duties, responsibilities and authority as specified for the director stated herein except in granting variances and appeals.
- (b) 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. Words used in the present tense include the future, words in the plural number include the singular number and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

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

*Applicant* means an owner or authorized agent of an owner, who submits or receives a permit under these provisions of the City Code. The term includes:

- (a) any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the permittee; and
- (b) any contractor or subcontractor of the applicant, for purposes of compliance with the City of Corpus Christi Infrastructure Design Manual and the traffic control, construction, and maintenance requirements of this article.

Backfill means the placement of new dirt, fill or other material to refill an excavation; or the return of excavated dirt, fill or other material to an excavation.

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 Local Government Code Ch. 283 or "the Act."

Closure means a complete or partial closing of a sidewalk, parking space, or one or more lanes of traffic of a publicly maintained street for any period of time.

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

- (a) Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.
- (b) Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way.
- (c) Performance, restoration, or repair of pavement cuts or excavations.
- (d) Reconstruction of any of the work described in this article.
- (e) Network nodes and related infrastructure, as defined in Chapter 284 of the Texas Local Government Code.
- (f) Other similar construction work.

Construction standards means the City of Corpus Christi Infrastructure Design Manual (IDM), any manual, or standard specifications and details published by the City that contains engineering, technical, and other special criteria and standards established by the director for construction, as defined in this article, in the public right-of-way as they may be amended from time to time by the Department of Engineering Services and Department of Public Works and approved by the city engineer.

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

Day means business day unless otherwise specified.

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

Director means the director of the city department of public works or designated representative responsible for the administration of right-of-way, right-of-way permits, the regulation of same and ordinances related thereto.

Emergency operations means operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person due to 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 or prevent the loss of services. Written notice to the director is required 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 removes or otherwise disturbs pavement, driveways, curbs, sidewalks, soil, fill, or other material, in the right-of-way, including but not limited to the methods of open trenching, boring, tunneling, jacking, or backfilling. Excavation does not include routine homeowner maintenance and landscaping activity immediately adjacent to the

homeowner's property line unless the activity removes or disturbs the paved portion of the right-of-way.

Facility means the plant, equipment, buildings, structures, and property, including but not limited to lines, poles, mains, pipes, conduits, ducts, cables, micro network nodes, network nodes, node support poles, vaults, wire, and other appurtenances of a public service provider located under, on, or above the surface of the ground within the right-of-way and valves, and related facilities and equipment used or useful for the provision of utility services whether owned, operated, leased, licensed, controlled, or supplied for, by, or in connection with the business of the public service provider.

IDM means the City of Corpus Christi Infrastructure Design Manual.

Inspection means the inspection of construction by any person approved by the director to determine compliance with this article.

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

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes equipment associated with wireless communications, a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration, and coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation. The term does not include an electric generator, a pole, or a macro tower.

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

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 six years or any street with a pavement condition index greater than 80, as defined herein.

Owner means a person, company, partnership, agency or other public or private entity, 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.

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

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

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

Pole means a municipally owned service pole used to support traffic control functions, signage, lighting, operations or decoration; a municipally owned utility pole; node support pole; or a utility pole.

Public service provider means any energy delivery or transport company, wholesale or retail electric utility, gas utility, telecommunications company, cable company, water utility, storm water utility, or wastewater utility, regardless of whether the public service provider is publicly or privately owned or required to operate within the city pursuant to a franchise, including a network provider as that term is defined in Chapter 284 of the Texas Local Government Code, as amended.

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 or public way means the surface of, and the space above and below, any street, road, highway, freeway, lane, path, trail, drainage way, channel, bridge, tunnel, 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. The public right-of-way includes the entire area between the boundary lines of every right-of-way.

Right-of-way (ROW) user means a person that identifies as the Contractor on the permit application, 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, utilities, contractors and public service providers.

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

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

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

Supplementary application means an application made to excavate, construct within 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.

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

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, mobile services, telecommunications services, information services, cable services, video services, wireless services, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this Article.

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

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

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

### **Sec. 49-39-3. Field utility coordination.**

- (a) The ROW user shall notify the department at each of the following times during a project:
  - (1) 72 hours before the start of construction;
  - (2) Upon completion of the initial backfill; and
  - (3) Upon completion of the project.
- (b) The ROW user shall mark the site of the proposed excavation with white lining and/or flags prior to making a request for locates and actual excavation. White lining is not required for excavations of more than 60 feet long unless the excavation is located in pavers, cobblestone, pavements, sidewalks, or other public flatwork.
- (c) The ROW user shall make a request for a utility locate not more than 14 days and not less than 72 hours prior to the commencement of the proposed excavation. Such request shall be made to the state One-Call Center and the City of Corpus Christi. A request made using the One-Call Center (811) shall be made by telephone or facsimile and shall include the date, location, extent and reason for such proposed excavation. A request to City shall be in accordance with procedures established by the Director.
- (d) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of "non-washable" markers is prohibited.
- (e) The ROW user shall mark the proposed excavation site with paint and/or flags in colors established by the One-Call System. The markings shall be placed a distance of not less than 5 feet in all directions from the outside boundary of the site to be excavated.
- (f) All excavations shall commence within 14 days of the date of the utility locate. In the event that the excavator fails to commence work within 14 days or the utility locate marks are not visible at the time the excavation is scheduled to commence, the ROW user is required to request a new utility locate.

- (g) Compliance with the Texas Utilities Code is required at all times.
- (h) All barricades, plates, cones, traffic directional equipment, and all other traffic control devices owned by the ROW user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or ROW user, as applicable, at all times such equipment is used on or near the right-of-way. An exception to the marking requirement may be made in the event the traffic control equipment is not owned by the permittee or ROW user. Failure to mark equipment shall be a violation of this article.
- (i) 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. Failure to use a steel plate so marked shall be a violation of this article.
- (j) A network provider conducting routine maintenance on network nodes, including micro network nodes, or network support poles that do not require excavation or closing of sidewalks or vehicular lanes in the right-of-way as provided for in Local Government Code § 284.157, shall provide the Department notice not more than 14 days and not less than 48 hours prior to commencement of the planned routine maintenance.

#### **Sec. 49-39-4. Maps and records of registrants.**

Each ROW user must maintain accurate maps and records of its facilities. The information shall be made available to the Department within 5 days of request by the Department. The maps and records shall depict horizontal and vertical locations of all facilities in and near the right-of-way. The information shall be provided in electronic format compatible with city software or shall be subject to a conversion fee. Maps and records shall indicate horizontal location and a description of the facility for the area involved in the permit application and 2 block radius. The Department may have facilities located if the ROW user does not provide the requested information. In such event the ROW user shall reimburse the cost to the city to locate the facilities.

#### **Sec. 49-39-5. Notice.**

Notice for purposes of this article shall be made to city via electronic message (e-mail), overnight courier (generally used carrier with tracing available), or hand delivery with signed receipt, facsimile to the Department, or United States mail return receipt required.

#### **Sec. 49-39-6. Registration.**

All right-of-way users must register with the Public Works Department yearly. Registration, evidence of insurance, and performance/assurance bond and sureties, if applicable, shall be successfully performed on a one-time basis, and must be approved and on file with the city prior to commencement of any work. A certification shall be provided to each applicant that successfully completes the registration process. Annual registration updates shall be performed on the anniversary of the initial registration certification. No ROW user shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the director in accordance with the following requirements:

- (a) The registration must be on a form furnished by the director and made in the name of the public service provider that owns the facilities, person, or contractor working in the public right-of-way.



- (b) The names, telephone numbers, mailing address, e-mail address, of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider or person.
- (c) If the public service provider is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission shall be provided.
- (d) The ordinance number of any franchise or license issued by the city that authorizes the public service provider or person to use the public right-of-way.
- (e) The names, mailing addresses, e-mail addresses, and telephone numbers of at least two persons who will be general, day-to-day contacts for the Right-of-Way User. At least one of the users must be within the city and shall be available at all times to act on behalf of the ROW user in the event of an emergency. The telephone numbers should be accessible without the city having to pay a long distance telephone or toll charge.
- (f) Proof of existing insurance that complies with the requirements in this Article.
- (g) Employee safety certification information.

#### **Sec. 49-39-7. Employee safety certification.**

The ROW user operating facilities or constructing facilities in any public right-of-way is responsible for the safe movement of pedestrian and vehicular traffic through the construction area. The ROW user shall obtain certification through a city approved training organization for a sufficient number of employees working within the right-of-way such that a certified employee is present at the job site during construction activities. The ROW user shall meet all requirements for barricading and traffic control as specified in the TMUTCD. Alternative training programs may be submitted to the Director for city certification. Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, as evidenced by certification, shall place and maintain the traffic control devices in the construction area. Employee certificates shall be maintained current by ROW user at all times. An employee shall produce, upon request of an inspector or certified police officer, proof of a valid training certificate.

#### **Sec. 49-39-8. Reporting obligations.**

All ROW users shall provide on demand, proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the city, State or Federal Government, including a description of the ROW user's intended use of the right-of-way, information sufficient to determine whether the ROW user is subject to franchising or licensing by the city, and information to determine whether the ROW user has applied for and received any certificate of authority required by the PUC. The information provided shall be sufficient to determine that the ROW user has applied for and received any permit or other approvals required by the FCC. ROW users shall provide all such other information as may be reasonably required by the city to complete the registration statement.

#### **Sec. 49-39-9. Damage to and in Public Right-of-Way.**

- (a) A person commits an offense for the following:



- (1) Construction, excavation, cut, opening, or any activity in, or along any public street, alley, sidewalk, driveway, public easement or any portion of the right-of-way without a valid permit, license, or agreement.
- (2) Failure to comply with restrictions or requirements of a permit, license, or agreement issued by the City of Corpus Christi.
- (3) Damaging a public street, alley, sidewalk, driveway, or any portion of the right-of-way beyond what is incidental or necessary to the permitted activity.
- (4) Damaging the public or private facilities in, on, or along any public street, alley, sidewalk, driveway, or any portion of the right-of-way.
- (b) It is a defense to prosecution under subsection (a)(4) if the person complied with all of the requirements with a permit, license or agreement, City and State law and caused damage because the facilities in question:
  - (1) Were not shown or indicated in a construction plan, plan of record, record construction drawings, or field survey, or utility locate; and
  - (2) Could not otherwise be discovered in public street, alley, sidewalk, driveway, or any portion of the right-of-way.
- (c) A person who violates the provision of this article is subject to a Non-Compliance Fee for each day or portion of a day during which the violation is committed, continued, authorized, directed, or permitted.
- (d) The Director has the authority to enforce violations under this section.

#### **Sec. 49-40-1. Permit required.**

It is unlawful for any person, its agents, servants or employees to excavate or cut in or under any street, alley, sidewalk, or driveway within the right-of-way for any purpose without first having made application and obtained a permit as required in this article. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any right-of-way for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the Director a permit in compliance with this article.

- (a) 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 specifications.
- (b) At the time the permit is issued, the applicant shall pay a nonrefundable application fee in an amount as provided for in this article.
- (c) 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.
- (d) 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.

- (e) Combinations of permits shall be permitted at the discretion of the director. Fees shall be assessed based on the excavations permitted.
- (f) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this article.

#### **Sec. 49-40-2. Excavation permit application.**

Application for a permit shall be addressed to the Director and made on a form furnished for that purpose, stating the name, mailing address, email, and 24 hour emergency telephone number of the applicant and owner of the facility; extent, dimensions, character and purpose of the cut or excavation to be made; the location, by street and number, if possible, where the work is to be done; evidence of insurance as required in this Article; and the time in which it is to be completed. The application form shall be accompanied by the nonrefundable application fee, maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction; proposed start and completion dates.

- (a) 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 1 point of contact.
- (b) 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:
  - (1) Make application for a permit extension and pay any additional fees required thereby; and
  - (2) Receive a new right-of-way permit or permit extension.

Permits will be issued or denied within 30 working days of application. Unless granted for a longer period, an excavation permit shall be valid for 60 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.

An expedited permit may be requested and shall be issued within 10 working days of application upon a showing of good cause.

#### **Sec. 49-40-3. 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.

- (a) Upon receiving a written application for an excavation permit and a plan prepared in accordance with city specifications, the director's designee shall set forth all requirements, approve or disapprove the application, sign and return it to the applicant.

- (b) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- (c) Each permit shall state a time period for completion of all the work to be done thereunder. The director may grant extensions of time.
- (d) 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.
- (e) 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.

**Sec. 49-40-4. Excavation to be under supervision of the director.**

- (a) Any ROW user engaged in making or backfilling any excavation in any right-of-way shall at all times while such work is in progress keep at the job location the permit, or a copy thereof, and shall, on demand, exhibit the permit to the director or designee, or any police officer.
- (b) At all times while the work is in progress the ROW user shall also maintain at the job location, traffic control devices installed in accordance with an approved traffic control plan, signs bearing the contractor's name, the name of the utility that is having facilities installed, maintained, repaired, replaced, and/or removed under, on, or above the ROW, contact information for both the contractor and utility, and a brief description of the permitted work. Employees and contractors of the ROW user engaged in carrying out the permitted work shall also have on their person a conspicuous identifier of the utility for whom permitted work is being performed.
- (c) The ROW user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, or other property at, near or encountered during the course of work. The ROW user shall determine the boundary of the right-of-way.
- (d) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of rights-of-way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the city under the policy and regulatory powers of the city necessary to provide for public convenience. The ROW user shall reasonably protect from damage, utility facilities, sewer facilities, water facilities, lawns, shrubbery, trees, fences, structures, or other property encountered in his work. The ROW user shall not trespass upon private property. The ROW users shall determine the boundary between public right-of-way and private property.
- (e) All transmission and distribution structures, lines, equipment and facilities erected by a ROW user within the city shall be so located as to cause minimum interference with the proper use of the public rights-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets.
- (f) The city reserves the right to lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes and channels and streets and to perform, and allow to be performed, any underground and overhead

installation or improvement that may be deemed necessary or proper by the governing body of the city, in, across, along, over or under any right-of-way or public place occupied by a ROW user and to change any curb or sidewalk or the grade of any street and to maintain all of the city's facilities. In allowing such work to be performed by others, the city shall not be liable to a ROW user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW user by such third party.

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

#### **Sec. 49-40-5. Additional excavation permit.**

Subsequent to issuance of a permit, if it is necessary to excavate a larger area than originally estimated, the permittee shall at once pay to city the amount necessary to obtain the additional permit necessary.

#### **Sec. 49-40-6. Appeal.**

A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, or believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- (1) Appellant shall provide, within 5 days of denial, a written notice of appeal filed with the right-of-way manager of the Department. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The right-of-way manager shall provide a written decision within 5 days of receipt of the appeal. Failure to render a decision within 5 business days shall constitute a denial.
- (2) If a further denial is given, the appellant may thereafter file a written notice of appeal with the director within 5 days. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The director shall provide a written decision within 10 business days. Failure to render a decision within 10 days shall constitute a denial.
- (3) If a further denial is given, the appellant may thereafter file a written notice of appeal with the Assistant City Manager for the department within 5 business days of receipt of the director's written decision. The Assistant City Manager shall provide a written decision within 10 business days. Failure to render a decision within 10 days shall constitute a denial.
- (4) If a further denial is given, the appellant may thereafter file a written notice of appeal with the City Council within 5 business days of receipt of the Assistant City Manager's written decision. The appeal will be held at the City Council meeting within 20 business days of receipt of the written appeal.

#### **Sec. 49-40-7. 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 the Construction standards or in accordance with these provisions.
- (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 not authorized within the city.
- (10) The ROW user is in violation of this article relative to work in progress.

#### **DIVISION 2. TECHNICAL SPECIFICATIONS**

#### **Sec. 49-41. Energy, electric, gas, water, and sewer standards.**

Technical standards for energy, electric, gas, water, sewer and storm sewer are defined in the Construction standards.

#### **Sec. 49-42. Compliance with safety regulations.**

The permittee and ROW user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

#### **Sec. 49-43. Commencement and completion.**

After obtaining the permit and prior to commencing the work, the permittee shall notify the director, and shall commence and complete all work within the time specified in the permit unless an extension of time is granted by the director.

#### **Sec. 49-44. Safe conduct of work.**

Every permittee and ROW user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public using the street or right-of-way where the work is being performed from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings, and excavations. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and non-hazardous manner. All work must be performed only within the hours and days as set forth in the Construction standards and in accordance with the requirements of the permit. Work in residential areas may only occur during daylight hours. Certain commercial areas and hospital districts are subject to noise controls and other limitations. Details are available in the Construction standards and from the Department.

#### **Sec. 49-45. Emergency excavations.**

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit, or duct in or under any street, or right-of-way by virtue of any law, ordinance or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the director within 24 hours. Except as specifically provided otherwise in this article, excavations authorized by this section shall be subject to all fees and requirements of this article.

#### **Sec. 49-46-1. Traffic control safety.**

In the event of non-compliance with the TMUTCD, the ROW user shall be notified in writing of the violation. In the event of continued non-compliance, the director may revoke the permit, in addition to any other remedies available to the city.

#### **Sec. 49-46-2. Responsibility for signs, barricades and warning devices.**

The ROW user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.

- (1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, may place and maintain the traffic control devices in a construction area.
- (2) The ROW user must either subcontract the barricading to a firm specializing in traffic control or submit the qualifications and name(s) of employees to the director for approval prior to the work commencing. They must also submit a traffic control plan for review. All signs and barricades must conform to the requirements of the TMUTCD.
- (3) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and approved by the director if not provided by a traffic control firm.
- (4) All barricades, plates, and other traffic control equipment must display accurate and sufficient information including the name of the ROW user.
- (5) Non-compliance with the TMUTCD shall be cited in writing. In the event of non-compliance after citation, the director may place the necessary devices as required, and the ROW user shall pay all related charges. The ROW user shall reimburse the city for all such expenses as well as a non-compliance fee. Failure to comply with this provision may result in denial of application for future permits.
- (6) All traffic control devices must be removed immediately upon completion of work.

Prior to commencement of any excavation, or any work relative to a permit, the ROW user shall install at the work site an informational sign in conformance with the requirements of the Construction standards.

#### **Sec. 49-46-3. Duty to barricade.**

At all times during construction activity, the contractor and/or ROW user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

**Sec. 49-46-4. Duties of persons making excavations or creating obstructions.**

Any person who shall cause to be made any excavation or obstruction in any street or right-of-way may not suffer the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street, or right-of-way so as to restore the same to its condition previous to the making of such cut or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or right-of-way in as good condition as before the excavation.

**Sec. 49-47-1. Excavation in new or streets in good condition.**

The permittee shall complete pavement restoration of the excavated area within 30 days on arterial and collector streets and within 30 days on residential and alley streets after final backfill is completed and accepted by the director. The permittee shall conduct the work with a minimum disturbance to existing utilities and shall coordinate all work in or near the existing utilities with the utility owners.

- (a) Excavation in new asphalt pavement streets and alleys. There shall be no excavation in new streets, as defined in this article, without a variance from the director. Any request for a permit to excavate a new street shall include a description of the proposed work and proposed restoration of the area, per requirements by the Director or defined in the Construction standards, as well as a statement as to why alternate procedures cannot or should not be used in lieu of excavating a new street.

- (1) The minimum width of restoration for excavations granted in new streets shall extend from the full width of impacted lane(s) up to curb to curb on any street.
- (2) Any street (0-6 Years and  $PCI \geq 80$ ). For excavations granted in new streets, the length of restoration shall extend a minimum of 25 feet beyond the edge of the excavation. The age is measured from the date of acceptance by the City. The overlay thickness shall match the existing pavement section at a minimum.
- (3) The final surface shall be in accordance with Construction standards.
- (4) The Director may require additional restoration limits, in addition to the minimum lengths defined in this article, for diagonal cuts or perpendicular cuts 10 feet or less apart.
- (5) Permittee shall be required to submit a Letter of Variance if restoration is proposed to vary from the Construction standards.

- (b) Permitted Excavation in streets and alleys.

- (1) A permit shall be granted in accordance with this article for streets and alleys with a pavement condition index less than 80 or greater than 6 years in age. The age is measured from the date of acceptance by the city.
- (2) Streets and alleys ( $> 6$  years or  $PCI < 80$ ). The width of restoration limits shall be the full lane, at minimum. The length of restoration shall extend a minimum of 10 feet beyond the outermost edge of excavation. The overlay thickness shall match the existing pavement section at a minimum. Trench requirements shall comply with the Construction standards.
- (3) The final surface shall be in accordance with Construction standards.



- (4) A permit holder shall perform jacking and boring operations in a manner that does not weaken or impair the right-of-way upon completion of restoration of the excavation.
  - (5) Excavation in all streets in good condition regardless of age should not occur without prior approval of the director. Streets assigned a PCI of 70 or above by the pavement management system are deemed to be in good condition and are subject to the review procedures of excavation of new streets.
  - (6) Restoration of the excavated area of streets in good condition shall be in accordance with this article.
  - (7) The Director may require additional restoration limits, in addition to the minimum lengths defined in this article, for diagonal cuts or perpendicular cuts 10 feet or less apart.
- (c) Excavation in Portland Cement Concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a minimum depth of half the thickness of the concrete which shall also cut the reinforcing steel. The concrete can then be broken out with an air chisel or pavement breaker. No more than 6 inches of PCC shall be broken back beneath the saw cut. Any street excavation/cut shall repair the impacted trench and replace full panels, at minimum. Further criteria is set forth in the Construction standards. The guidelines for jacking and boring are set forth in the Construction standards.

#### **Sec. 49-47-2. Variances/exemptions.**

A permittee or ROW user may request a variance from any of the requirements of this article by filing a written request with the director stating the requirement and the basis for the variance. Incomplete variance requests may be rejected. The applicant shall bear its own expenses of the application process.

- (1) Any request for a variance from any right-of-way restoration requirement shall be made in writing in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- (2) Any request for an exemption from any penalty or fee other than as provided in this article shall be made in writing and shall be accompanied by a written detailed request stating the reasons why a variance or exemption should be granted.
- (3) Any request for an exemption from any permit or any other requirement of this article shall be made in writing and shall be accompanied by a written detailed request stating the reasons why a variance or exemption should be granted
- (4) The Department shall grant or deny an application for a variance within 10 days of receipt of the application for variance.
- (5) Denial of the variance may be appealed in accordance with the appeal section of this article.

#### **Sec. 49-47-3. Exception for driveways, irrigation, sprinkler and residential purposes.**

- (a) This article shall not be applicable to excavations which are not in the pavement and are solely for the purpose listed below:
  - (1) Installing a sprinkler system for one or more single or two-family residential units.

- (2) Construction, reconstruction, alteration, removal, repair or replacement of driveway approaches, sidewalks or curb and gutter on local, residential streets for a single or two-family residential dwelling unit.
- (b) This article shall apply to construction of driveway approaches and curb and gutter on collector or arterial streets if excavation of the street is required for installation or repair.
- (c) Denied permits may be appealed as set forth in this article.

#### **Sec. 49-48-1. Lawful use of right-of-way.**

- (a) The use of the right-of-way in any manner which violates federal, state, or local laws, or city codes and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the city.
- (b) Permittee shall dispose of all material removed from the right-of-way and any waste created by permittee in compliance with all state, federal and local laws and requirements.
- (c) If a permittee discovers any contaminated, regulated, or hazardous materials in the right-of-way, permittee shall be responsible for environmental assessment, excavation, testing, transportation, and disposal of any such contaminated or regulated material in accordance with applicable law, or the permittee may elect to abandon the contaminated area of the right-of-way and reroute around the contaminated area. The permittee shall promptly notify the city in writing of the condition.

#### **Sec. 49-48-2. Tree trimming and graffiti abatement.**

Permission is granted to a ROW user, subject to the requirements of Chapter 53 Vision and Passage Obstructions, which may be amended from time to time, to trim trees upon and overhanging the public right-of-way, so as to prevent the branches of such trees from coming in contact with a ROW user's facilities. When so directed by the city, the tree trimming shall be done under the supervision and direction of the city. The city shall report damage or vandalism to the ROW user's facilities as soon as practicable after city discovers or learns of such event. The ROW user shall make the necessary repairs or restoration, including cleaning of graffiti, within 48 hours after the ROW user discovers or learns of any misuse, destruction, damage, or vandalism to its facilities.

#### **Sec. 49-48-3. Conformance with City Master Plans.**

A ROW user shall consult the city's master plans for transportation and utilities prior to the acquisition of any interest in real property in the city for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, right-of-way, thoroughfare, highway, or any proposed street, right-of-way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All ROW users are charged at all times with constructive notice of the master plans subsequent to the effective date of the ordinance from which this article derives. The city shall have no liability for the value of or loss by a ROW user of any improvements constructed in the area shown in the master plan subsequent to the effective date of the ordinance from which this article derives.

#### **Sec. 49-48-4. Rights in the event of abandonment.**

In the event the city closes, vacates, abandons or conveys any right-of-way containing facilities of the ROW user, any such closure, vacation, abandonment or conveyance of land shall be subject to the rights of the ROW user.

#### **Sec. 49-48-5. Supervision by city of location of poles and conduits.**

All poles in the rights-of-way shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with either vehicular nor pedestrian travel. The location and route of all conduits, fiber, cables, and utilities, and facilities placed and constructed by a ROW user in the construction and maintenance of its system in the city shall be subject to the reasonable and proper control, direction and approval of the city. Any "non-standard" placement of poles, stubs, guys and anchors is subject to all provisions of this article. Any "standard" placement of poles, stubs, guys, and anchors is exempt from this article. "Standard" is defined by the provisions of the Construction standards.

#### **Sec. 49-48-6. Attachments to poles.**

- (a) Nothing shall obligate or restrict a ROW user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the city.
- (b) A ROW user shall utilize existing poles, conduits, and other facilities whenever reasonably and/or economically possible. Prior to the utilization of any right-of-way for the placement of any of its facilities, the ROW user shall make available to the director any utility pole usage agreement with each utility within the city currently owning poles, conduits, and other facilities, whose poles, conduits and facilities are to be used.
- (c) Where anticipated construction activities will involve service pole re-enforcement or replacement, network providers shall notify the city right-of-way manager before submitting application materials. Replacement pole must comply with Texas Department of Transportation specifications and standards, Texas Manual on Uniform Traffic Control Devices requirements, and applicable federal or state standards. Prior to construction, network provider shall agree that all re-enforced or replaced service poles will be owned by the city. Where a traffic signal pole is reinforced or replaced, the traffic signal must remain operational throughout construction, and if necessary, network provider must provide a temporary signal trailer or other temporary pole during construction.

#### **Sec. 49-48-7. Temporary rearrangement of aerial wires.**

The ROW user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The ROW user may require payment in advance. The ROW user shall be given not less than 5 days advance notice to arrange for such temporary rearrangements. The ROW user shall remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the city. The ROW user may invoice third parties for the cost of this work where applicable.

#### **Sec. 49-49-1. Backfill of excavated area.**

- (a) Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. At least 48 hours prior to beginning permanent backfill operations, the permittee shall notify the director of the time the backfill will begin.

- (b) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. The new roadway base material shall be a minimum depth of 6 inches asphalt treated base or other approved roadway base material, as detailed in the Construction standards.

#### **Sec. 49-49-2. Restoration of pavement.**

Unless otherwise specified in the permit, restoration of the asphalt pavement of any street, alley right-of-way or other public place shall be performed by the permittee or by the city, upon request by the permittee. Nothing in this section shall relieve the ROW user from the responsibility to maintain the excavation or installation in a safe condition until it is repaved by city or otherwise restored. In addition to all other applicable fees or charges, if the ROW user or permittee making the excavation requests repaving by the city, the ROW user shall pay for repaving at a rate to be established by the city.

- (1) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 400 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the director.
- (2) All excavations shall comply with the standards and requirements established from time to time by the director for compaction, backfill and pavement restoration.
- (3) Any excavated pavement, debris and other rubble shall be removed, together with any surplus material, within 1 working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the ROW user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the director.
- (4) Whenever any caving occurs in the sidewalls of any excavation, the pavements above such caving shall be cut away, trench backfilled and pavement restored in accordance with the Construction standards. In no case shall any side or lateral tamping fill any void under a pavement.

#### **Sec. 49-49-3. Excavation specifications.**

All excavations shall be made in accordance with plans submitted with the permit application and in accordance with specifications set forth in the Construction standards. All plans shall be prepared in accordance with all city specifications and the Construction standards. All excavations shall be repaired in such a way so as not to become depressed, cracked, broken, or in any way fail during the remaining "life of the street." The remaining "life of the street" for this purpose shall be until the PCI index drops to below 80 or until the subject area is repaved by the city or other entity. Additional specifications may be contained in the Construction standards.

#### **Sec. 49-50. Cleanup of right-of-way.**

In every case and at all times, the work of removing from the right-of-way all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the excavation shall be the responsibility of the ROW user. The ROW user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the director, in the director's sole discretion, grants an extension of time.

**Sec. 49-51-1. Substandard repair of pavement or right-of-way.**

In case the pavement or the surface of the street, alley, or right-of-way in, over or near any excavation should become depressed, cracked, or broken any time or fails in any way at any time after the excavation has been made and during the remaining life of the street, the ROW user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to city of the cost to restore the street or right-of-way.

**Sec. 49-51-2. Failure to complete work within specified time.**

In the event any work governed by this article is not completed by the ROW user within the time required or in accordance within the specifications required herein or by the director, the director may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The ROW user shall reimburse the city for the costs of securing the site.

**Sec. 49-52. Permanent pavement repairs.**

All permanent pavement repairs shall be made under 1 of the following methods:

- (1) *Permanent pavement repairs by city.* If the city is to make the permanent pavement repairs, the ROW user shall maintain the excavated area for a period of 2 weeks after acceptance by the director. After the two-week period, the city will be responsible for maintaining the excavated area until final restoration is made. Backfill failures shall remain the responsibility of the ROW user. The ROW user shall reimburse the city for all costs of any backfill failure before and/or after permanent pavement repair.
- (2) *Permanent pavement repairs by ROW user.* If the ROW user is authorized to make permanent pavement repairs, the ROW user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW user shall make final repairs within 30 days on arterial and collector streets and within 30 days on residential, local and alley streets after the director makes final inspection. Backfill failures shall remain the responsibility of the ROW user.

**Sec. 49-53-1. Inspection.**

The permittee shall make the work-site accessible to the city, and others as authorized by law, for inspection at all reasonable times during performance of the work.

**Sec. 49-53-2. Materials testing.**

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.

**Sec. 49-54-1. Cease work.**

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. 49-54-2. Requirements.**

The director may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, or codes, or other applicable regulation. Within 10 days after issuance of written notice, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit. If the repairs are not timely made, the director shall at once make or cause the repairs to be made at the expense of the permittee.

#### **Sec. 49-54-3. Reporting.**

When the work under any permit hereunder is completed, the permittee shall furnish the director a completion certificate.

#### **Sec. 49-54-4. Revocation of permit.**

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

- (1) The violation of any provision of the permit;
- (2) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of any fact in the permit application;
- (4) The failure to meet insurance, surety bond, or indemnification requirements;
- (5) The failure to complete the work in a timely manner;
- (6) The failure to correct a condition indicated on an order issued pursuant to this article;
- (7) Repeated traffic control violations;
- (8) Failure to repair facilities damaged in the right-of-way; or
- (9) Violation of any part of this article.

If the director determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the director shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit, or legal action, or both. The director may revoke the permit, provide specifications to cure the breach, or both. Within 5 calendar days of receiving notification of the breach, permittee shall contact the director with a plan, acceptable to the director, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

#### **Sec. 49-54-5. Work done without a permit.**

No cut, excavation, grading or disturbing of the right-of-way in any way shall be made other than excavations necessary for emergency work without first securing a permit. No person or ROW user shall at any time open or encumber more of the right-of-way than shall be reasonably necessary to complete a project in the most expeditious manner.

#### **Sec. 49-54-6. Right-of-way restoration requirements.**

The work to be done pursuant to the permit and any repair and subsequent restoration of the right-of-way must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the director may extend the dates on receipt of a substantiated supplementary application, including the nonrefundable application fee established pursuant to this article and indicating the number of additional days needed for final completion, for a permit extension. All earth, materials, sidewalks, paving, crossing, or improvements of any kind which are owned or possessed by city and damaged, disturbed, or removed by a ROW user shall be fully repaired promptly by the ROW user at its sole expense, to the reasonable satisfaction of the director.

- (1) After any excavation, the ROW user shall, at its expense, restore the right-of-way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made in accordance with specifications set forth in the Construction standards and the repair shall endure without failure for the remaining life of the street, as such period is described in this article.
- (2) In the event the ROW user fails to restore the right-of-way in the manner and to the condition required herein, or fails to satisfactorily and timely complete all restoration, the city may, at its option, serve written notice upon the ROW user that, unless within 5 days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way by the ROW user, the city may take over the work and prosecute same to completion, by contract or otherwise, at the expense of the ROW user, and the ROW user and its surety shall be liable to the city for any and all cost incurred by the city by reason of such prosecution and completion, including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the city.
- (3) If any excavation cannot be back-filled immediately, the ROW user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
- (4) In all right-of-way restoration, the ROW user guarantees its work and shall maintain it for the remaining life of the street following completion of the restoration. During the period following completion, the ROW user shall, in the event of any failure of the restoration, upon notification from the director, reimburse the city for pavement restoration costs. Additionally, the ROW user, in the event of such failure, shall, within 48 hours of notice from the city, repair the subject trench envelope.
- (5) All repairs, for streets or right-of-way of any PCI, are guaranteed by the excavator making the repair, and the excavator causing the repair to be made, for the "life of the street." The "life of the street" for these purposes is defined to be until such time as that certain street or right-of-way is repaved by the city or another, in the same location as the excavation, or until such time as the PCI index of such street or right-of-way drops to below 80.
- (6) The "life of the street" guarantee period shall be applicable to failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by city, the ROW user retains repair responsibility at all times during the guaranty period for the trench envelope.
- (7) Excavations in streets and/or right-of-way on arterials and collectors with PCI values of 80 or higher and less than 2 years of age shall be deemed 100 percent loss of pavement life.



These excavations require i) Block to block and curb to curb pavement reconstruction, ii) Use of a hot mix asphalt repaving process, or iii) Such other method of repair as the director approves, for all cuts. Specifications are available in the Construction standards.

- (8) A right-of-way user whose work is completed by the city shall, on completion of the work and according to the certified bill of the cost thereof to be prepared by the director, pay to the city, on its order, the amount of the certified bill as reimbursement for such work.

**Sec. 49-54-7. Excavations not in accordance with permit declared unlawful.**

- (1) 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 begins make it impossible to comply with the permit, the director may grant a waiver to take the circumstances into account.
- (2) 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.

**Sec. 49-54-8. Removal and reconstruction where work defective.**

All construction work in the streets, right-of-way, sidewalks and public places of the city is declared to be subject to the exclusive control of the city, and whenever, in the opinion of the director, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specifications therefor given to him by the director, then upon written demand or notice from the director, such ROW user or contractor shall promptly remedy, complete or remove and reconstruct such incomplete or defective work all as the director may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or ROW user shall fail or refuse to do so within a reasonable time to be specified by the director, then, if the director shall so order, such work shall be completed or corrected or removed and wholly or partially reconstructed by the city, in such manner as in the opinion of the director may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the director.

**Sec. 49-55-1. Location and relocation of facilities.**

Subject to applicable federal, state, and local law, the ROW user shall, upon the request of the city, locate and/or relocate its facilities situated within any right-of-way, at no expense to the city, where reasonable and necessary to accommodate street construction, widening, or public improvement projects of the city. When relocation is necessitated by federal government requirements, and includes reimbursements, the city will reimburse applicant for its proportionate share from funds provided the city in such reimbursements.

**Sec. 49-55-2. Pre-excavation facilities location.**

The ROW user shall contact the One Call Center (811), so long as that center is in existence and utilized by the city, or such other center at the time utilized by city, at least 48 hours prior to excavation. The ROW user shall protect and support all utility facilities during construction. The

ROW user shall also contact the City of Corpus Christi per regulations provided in the Construction standards.

**Sec. 49-55-3. Relocation of facilities for city.**

In the event the city finds it necessary to move a ROW user's equipment to protect it, city shall notify the local representative of the ROW user. ROW user shall promptly move or facilitate the relocation of the subject facilities at ROW user's expense. Relocation must comply with Chapter 49, Article VIII. - Management of Rights-of-Way.

**Sec. 49-55-4. Right-of-way vacation and reservation of right.**

In the event of vacation of a right-of-way requiring the relocation of facilities, the ROW user being relocated shall pay the costs of the relocation where the ROW user does not own an easement or other real property interest.

**Sec. 49-55-5. Abandoned facilities.**

A ROW user owning abandoned facilities in the right-of-way shall:

- (1) Remove its facilities and repair, at its expense, any damage caused by the removal. The director may allow some or all facilities to remain if the director determines same is in the best interest of the public to do so; or
- (2) Provide information satisfactory to the city that the ROW user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW user.
- (3) Abandonment must comply with Chapter 49, Article VIII. - Management of Rights-of-Way.

**Sec. 49-55-6. Routing and spatial assignment.**

The city reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the right-of-way.

**DIVISION 3. COSTS, FEES AND ENFORCEMENT**

**Sec. 49-57-1. Fees.**

- (a) *Right-of-way (ROW) user registration fee.* There is a fee of \$45.00 per right-of-way user per year for processing registration information, which fee will be collected upon registration.
- (b) *Permit application fee.* There is a permit application fee of \$95.00 for each right-of-way application. Permits shall be issued or denied within 30 business days of complete application submittal. The fee is paid by an applicant upon application. The fee includes 1 inspection. Permit applications to modify and/or repair a driveway approach, sidewalk, and/or curb and gutter do not include an application fee.
- (c) *Emergency permit application fee.* There is a permit application fee of \$145.00 for emergency or expedited permits. The fee is paid by an applicant upon application. The fee includes 1 inspection.
- (d) *Planned right-of-way (ROW) fee.* Excavations in city right-of-way are subject to the ROW operator fee, permit application fee, and daily fee planned right-of-way fee per day per project permit. The planned right-of-way fee shall be subject to a tier rate that is based

on the number of days estimated by the applicant in the application. In the event the excavation takes longer than the days estimated, the applicable tier rate shall be applied to the total number of days required to complete the project. The fee is paid by an applicant prior to permit issuance.

- (1) Tier 1: \$60.00 per day, anticipated number of days to complete work zero to 60 days.
  - (2) Tier 2: \$90.00 per day; anticipated number of days to complete work 61 to 120 days.
  - (3) Tier 3: \$120.00 per day; anticipated number of days to complete work 121 to 180 days.
  - (4) Tier 4: \$150.00 per day; anticipated number of days to complete work greater than 180 days.
- (e) Barricade fees. Closure of city streets to install or repair sidewalks or driveway approaches, perform work above ground, or closure of right-of-way abutting buildings shall be assessed on a per square foot of closure per day \$0.0629. The fee is paid by an applicant prior to permit issuance.
- (f) Parking meter removal or bagging fee. There is a one-time fee for each parking meter removed or temporarily bagged of \$28.50. The fee is paid by an applicant prior to permit issuance.
- (g) Re-inspection fee. A re-inspection fee of \$75.00 per hour shall be assessed if repairs to the ROW do not pass initial inspection. Overtime inspection fees are incurred at a rate of \$100.00 per hour after business hours, on weekends, and holidays. The fee is paid by an applicant prior to inspection.
- (h) Non-compliance fee. A fee of \$1,500.00 per day shall be assessed to the violator for any work performed without a permit, for any permit that has not been extended before its expiration date, and for any permit wherein work has not been completed by the expiration date provided for in the permit. The fee shall be paid within timeframe provided on notice from the city.
- (i) Traffic plan review fee. Review of construction plans as part of a private development shall be assessed and paid by an applicant upon application based on the following tier system:
  - (1) Level 1: \$204.00 for developments less than 1 acre.
  - (2) Level 2: \$256.00 for developments between 1 and 5 acres.
  - (3) Level 3: \$459.00 for developments greater than 5 acres.
- (j) Traffic study fee. Review of traffic studies for private developments including traffic impact analyses, urban transportation plan amendments, and access management shall be assessed and paid by an applicant upon application based on the following tier system:
  - (1) Level 1: \$400.00 for developments less than 1 acre.
  - (2) Level 2: \$700.00 for developments between 1 and 5 acres.
  - (3) Level 3: \$900.00 for developments greater than 5 acres.

**Sec. 49-57-2. Penalty for violation of this article.**

Each violation of this article shall be punishable by a payment of the Non-Compliance Fee. Each day during which a violation continues shall be deemed a separate violation of this article. Any fees that are collected pursuant to this section shall be paid prior to permit issuance or continuation of work after notice of violation.

**Sec. 49-57-3. Clean up costs.**

The ROW user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work.

**DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING, AND LIABILITY**

**Sec. 49-58-1. Liability of right-of-way user.**

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 the excavation or construction, 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.

**Sec. 49-58-2. Insurance.**

- (a) Right-of-way users shall furnish an original completed certificate of insurance or the city's standard certificate of insurance form to the city's public works department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number. The city shall have no duty to pay or perform under this article until such certificate shall have been delivered to the city's public works Department, and no officer or employee, other than the city's risk manager, shall have authority to waive this requirement.
- (b) The city reserves the right to review the insurance requirements of this section to modify insurance coverage and their limits when deemed necessary and prudent by the city's risk manager based upon changes in statutory law, court decisions, or circumstances surrounding this article, but in no instance will the city allow modification whereupon the city may incur increased risk.
- (c) Subject to the right-of-way user's right to maintain reasonable deductibles in such amounts as are approved by the city, right-of-way users shall obtain and maintain in full force and effect for the duration of the permit, and any extension thereof, and/or duration of time it maintains facilities in the public right-of-way, at the right-of-way user's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and acceptable to the city.

- (d) 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.
- (e) The city shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the city, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon either of the parties hereto or the underwriter of an such policies). Upon such request by the city, the rights-of-way user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (f) Right-of-way users shall ensure that all insurance contracts and certificate(s) of insurance contain the following required provisions:
  - (1) Name the city and its officers, employees, volunteers, agents, and elected representatives as additional insureds with respect to the operations and activities of, or on behalf of, the named insured performed in the right-of-way under provision of this article, with the exception of the professional liability, workers' compensation and liability policy; and
  - (2) Right-of-way user's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the city; and
  - (3) Provide for an endorsement that the "other insurance" clause shall not apply to the city where the city is an additional insured shown on the policy; and
  - (4) Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the city.
- (g) Right-of-way user shall notify the city in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than 30 days prior to the change or 10 days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement certificate of insurance.
- (h) Nothing herein contained shall be construed as limiting in any way the extent to which the right-of-way user may be held responsible for payments of damages to persons or property resulting from the right-of-way user's or its subcontractors' performance of the work performed in the public right-of-way.
- (i) The city owned utilities and facilities shall not be required to provide the insurance specified herein.
- (j) With respect to the right-of-way user's obligation to comply with the requirements for Commercial General (public) Liability Insurance coverage to include pollution coverage, the city may allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to the city's risk manager. With respect to the right-of-way user's obligation to comply with the requirements for automobile liability insurance and for workers' compensation insurance, a right-of-way user may self-insure, provided the right-of-way user tenders satisfactory evidence of self-insurance as contemplated by the State motor vehicle financial responsibility law, Tex. Transp. Code § 601.124, and the Texas Workers' Compensation Act, Tex. Labor Code § 407.001 et seq.h)

## DIVISION 5. CERTIFICATED TELECOMMUNICATION PROVIDERS

### **Sec. 49-59-1. Certificated telecommunications providers authority required/non-exclusive use.**

A CTP must provide evidence that the CTP has acquired authorization from the Texas Public Utility Commission pursuant to state law, prior to obtaining a permit to use public rights-of-way. The CTP's right to use and occupy the public rights-of-way shall not be exclusive and CTP recognizes the city's right to exercise its police powers and manage its public rights-of-way, based on the Act and all other State or Federal laws.

### **Sec. 49-59-2. Additional authority required.**

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

### **Sec. 49-59-3. Transfer and notice.**

A CTP shall notify the director and the city's supervisor of public utilities of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within at least thirty (30) days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the director and the city's supervisor of public utilities at all times during which the CTP uses the right-of-way.

### **Sec. 49-59-4. Exemption from fees.**

Certificated telecommunications providers are exempted from the following fees provided for in this article:

- (1) Permit application fee, including expedited application fee, and permit expiration fee.
- (2) Additional excavation permit fee.
- (3) Inspection fee.

### **Sec. 49-59-5. CTP indemnity.**

A CTP shall indemnify the city as specified by § 283.057 of the Texas Local Government Code, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with § 283.057."

**SECTION 4.** City Code of Ordinances, Chapter 53 Traffic, Article VI Standing and Parking, Division 4 Parking Meters is revised to repeal Section 53-195 as it conflicts with Chapter 49 Article III of the City Code.

**~~"Sec. 53-195. Procedures for occupancy of public right-of-way (covering of parking meters and rendering of curb space unusable) and establishing charges during construction or repair of buildings.~~**

- ~~(a) When coverage of parking meters is required or public right-of-way is rendered unusable for the express use of contractors for the erection, construction, repair, or remodeling of buildings, or for the temporary placement of a dumpster on those arterial and collector through streets as defined in section 53-251 of the City Code and upon all streets in the central business district, the following procedure and charges shall apply:~~
- ~~(1) There shall be a permit fee/service charge of eighty-five dollars (\$85.00) for use of parking lanes and loading zones and ninety-five dollars (\$95.00) for use of traffic lanes, sidewalks and alleys levied against the contractor. Such charge will be used to offset the cost in preparation of street closure or meter rental permits, the covering of parking meters, preparation of a traffic handling plan, and secretarial time for processing of billings.~~
  - ~~(2) For occupancy of parking lanes and curbside loading zones, assessment of charges of one and one-half cents (\$0.015) a square foot per day (minimum charge of two dollars and twenty-five cents (\$2.25) per day) for occupancy of metered parking spaces, one and one-half cents (\$0.015) a square foot per day (minimum charge of one dollar (\$1.00) per day) for occupancy of unmetered parking spaces, and two and nine-tenths cents (\$0.029) a square foot per day (minimum charge of two dollars and twenty-five cents (\$2.25) per day) for occupancy of commercial loading zones. Charges would be based on the width of right-of-way occupied from the barricading equipment or barriers in the roadway to the face of curb or edge of pavement (in the case of curbless streets). For temporary restrictions and reservation of parking at meter spaces which are to be hooded, no more than five (5) metered spaces would be permitted to be hooded at any one (1) time by an applicant. Such parking reservation would be expressly limited to bulk loading/unloading activities and parking of construction vehicles integral to the construction activities. "Parking lane" as used in this section shall be defined as any portion of the paved street totally dedicated for curbside parking, measured from the face of curb to a point eight (8) feet into the street from the face of the curb.~~
  - ~~(3) For occupancy of traffic lane and sidewalk/alley space, there would be an assessed charge of three and two-tenths cents (\$0.032) a square foot per day (minimum charge of five dollars and twenty-five cents (\$5.25) per day) and three and two-tenths cents (\$0.032) a square foot per day (minimum charge of two dollars and twenty-five cents (\$2.25) a day), respectively. Charges would be based on the width of right-of-way occupied in the traffic lane or between the face of the curb (or edge of pavement) and right-of-way line (property line). In the case of alley space, if all or part of the alleyway is blocked such as to prevent any vehicle access, the contractor would be assessed for the full right-of-way of the alleyway. "Sidewalk" as used in this section shall be defined as any portion of the street between the curb or the lateral line of the roadway and the adjacent property line, all or a part of which is intended for the use of pedestrians.~~
  - ~~(4) A contractor shall be limited to no greater than one-third ( $\frac{1}{3}$ ) of the paved width of any street adjacent to the building for which a construction permit has been issued, in accordance with the provisions of section 2101.1 of the building code. Requests for full closure of the street for any period of time exceeding eight (8) continuous hours of~~



occupancy of the street in excess of the one-third ( $\frac{1}{3}$ ) width maximum limit shall be directed to the city council for consideration of approval.

- ~~(5) Charges for metered parking space occupancy are applicable to weekdays only. Assessments applicable to occupancy of unmetered parking spaces will be assessed for construction occupancy of metered parking spaces on weekends. Any fraction of a day shall be charged as a full day.~~
- ~~(6) Whenever parking meters and their support pipe must be removed, there will be a charge of twenty-six dollars and twenty-five cents (\$26.25) for the first meter removed and six dollars and seventy-five cents (\$6.75) for each additional meter.~~
- ~~(7) All of the above charges shall be collected by the department designated by the city manager and paid in full before the permit is issued or amended, based upon the planned duration of the construction project. At the discretion of the city manager, or such officers or employees of the city designated by the city manager, monthly payments may be paid by the contractor if the construction project is planned for duration beyond one (1) month. When the right-of-way space covered under the permit is not occupied for the full period of time for which the permit is issued and for which the fees have been paid, the city will refund a portion of the fees paid to cover the unoccupied period of time on the following basis:~~

  - ~~a. The city will refund to the applicant on a daily basis for the number of days the space covered by the permit was not occupied; provided the charge for the unoccupied days was paid in advance when the permit was issued or amended and that there are no other payments due the city.~~
  - ~~b. No refunds shall be made until the occupied space is totally cleared in full compliance with the conditions set in the permit.~~
- ~~(b) During the construction, demolition, remodeling, or repair of a structure, if there is insufficient space on the premises for a dumpster, the weight of a full dumpster will exceed the carrying capacity of the driveway, or the placement a dumpster on the adjoining property is impractical and the parking of vehicles is allowed in the street right-of-way adjoining the property, a property owner or contractor may obtain a dumpster parking permit that will allow a permitted solid waste hauler, who has a permit issued by the director, solid waste Management under Article VIII of Chapter 21, Code of Ordinances ("permitted hauler") under contract with the owner or contractor to place a dumpster upon local streets and neighborhood collectors in residential districts subject to the following procedures and charges:~~

  - ~~(1) The traffic engineer must determine, based on the standards used under subsection (c) of this section, if the size and location of the dumpster, in relation to any nearby intersections or driveways, will create an unreasonable visual obstruction or an unsafe condition. If the placement of a dumpster at a specific location will create an unreasonable visual obstruction or unsafe condition that cannot be mitigated by the use of barricades, installation of warning signage, channelization of traffic, installation of warning lights, the use of other traffic control procedures, or the use of other traffic control equipment, the traffic engineer may deny the applicant the right to place a dumpster in the right-of-way.~~
  - ~~(2) The dumpster shall be marked with red and white reflective high-intensity grade sheeting, with a minimum eight-inch width, placed along the full length of both ends' right and left edges, and along the full length of both sides' right and left edges, so as to be clearly visible from an approaching motorist. The alternating red/white stripes~~

~~shall be oriented on the respective ends to guide traffic to the appropriate direction of travel. In addition, at least two (2) traffic cones (twenty-eight (28) inches height) with two (2) bands of reflective sheeting shall be placed in front of each end of the dumpster while on the street.~~

- ~~(3) The dumpster may not be larger than twenty (20) cubic yards based on the external measurement of the dumpster.~~
- ~~(4) The property owner or contractor must submit a statement from the owner of the adjoining property that consents to the placement of the dumpster in front of the owner's property and affirmatively states that the placement of the dumpster in the city right-of-way is required because there is insufficient space for the dumpster on the premises, the weight of a full dumpster will exceed the carrying capacity of the driveway, or the placement a dumpster on the adjoining property is impractical and why it is impractical.~~
- ~~(5) The property owner, contractor, or permitted hauler must agree to indemnify and forever save harmless the city from any claims relating to the placement of the dumpster in the street right-of-way using a form approved by the city attorney.~~
- ~~(6) The property owner, contractor, or permitted hauler, who agrees to indemnify the city under subsection (b)(5) of this section, must obtain insurance policies, which name the city as an additional insured, in an amount the director of safety and risk management determines is needed to protect the interest of the city and its residents, as required by section 17-15 of the Code of Ordinances.~~
- ~~(7) The property owner or contractor must agree to pay the costs of repairing any damages to any public or private improvements in the right-of-way caused by the placement of the dumpster, including, but not limited to, damage to the street pavement, curbs and gutters, sidewalks, irrigation systems, ground cover, or utility piping located within the right-of-way, using a form approved by the city attorney.~~
- ~~(8) The property owner or contractor must post a bond in an amount determined by the director of finance to cover the cost of any repairs to the city's rights-of-way, including, but not limited to, damage to the street pavement, curbs and gutters, sidewalks, irrigation systems, ground cover, or utility piping located within the right-of-way.~~
- ~~(9) The property owner or contractor pays the required fees based on the following schedule:
  - ~~a. Application fee of forty dollars (\$40.00), which includes the first seven (7) days parking at a specific address. The application fee must be paid with the permit application.~~
  - ~~b. Parking fee of ten dollars (\$10.00) for each additional day or part of a day a parking space is occupied by a dumpster over the first seven (7) days. Parking fees must be paid in advance.~~~~
- ~~(10) A property owner or contractor may deposit moneys with the city's utility billing office from which application and parking fees may be automatically deducted.~~
- ~~(11) At the end of each business day, the property owner or contractor must remove any dirt, debris, or other substances that may have fallen into the street, sidewalk, gutter, or curb as the result of filling the container or removing materials from the container or that may wash out of the container due to the accumulation of water in the container.~~

- ~~(c) The city manager, or such officers or employees of the city designated by the city manager, shall publish standards that will be used to determine if the size and location of the dumpster, in relation to any nearby intersections or driveways, will create an unreasonable visual obstruction or an unsafe condition.~~
- ~~(1) The following factors must be considered in establishing the standards for the placement of dumpsters in the right-of-way:~~
- ~~a. The speed limit on the street where the dumpster will be placed.~~
  - ~~b. The speed limit on any intersecting streets if the dumpster will be placed within two hundred thirty (230) feet of the intersection.~~
  - ~~c. The outside dimensions of the dumpsters, particularly the height and length of the dumpster.~~
  - ~~d. Whether any special rules apply to the location, such as whether:~~
    - ~~1. There is one-way traffic,~~
    - ~~2. It is within or near a school zone, or~~
    - ~~3. It is located on a curve or in the circle of a cul-de-sac.~~
  - ~~e. The distance from the nearest intersection.~~
  - ~~f. The distance from the nearest driveway.~~
  - ~~g. Whether it will limit access to a driveway on the opposite side of a street~~
  - ~~h. Whether the location has curbs and gutters or open drainage ditches.~~
- ~~(2) The standards may require under appropriate circumstances barricading, signing, channelization, warning, or the use of other traffic control procedures or traffic control equipment.~~
- ~~(3) A copy of the standards and any amendments to the standards must be filed with the city secretary, and provided to the members of the city council at least two (2) weeks before they go into effect.~~
- ~~(d) The city manager, or such officers or employees of the city designated by the city manager, may revoke a permit issued hereunder if any of the permit holder's barricading, signing, channelization, warning or other traffic control procedures or the traffic control equipment used at the construction site do not comply with the requirements of the city's "Manual on Uniform Barricading Standards or Practices" or with those special requirements imposed by the city manager, or such officers or employees of the city designated by the city manager; provided, that the permit holder, or person named as responsible for the activity in the permit, shall first be notified of the failure or defect and be given a reasonable time, such length of time to be determined by the city manager, or such officers or employees of the city designated by the city manager, and not to exceed twenty-four (24) hours; to correct same before such permit is revoked.~~
- ~~(e) At least forty-eight (48) hours advance notice shall be provided to the department designated by the city manager before issuance of permit.~~

**SECTION 5.** Publication shall be made one time in the official publication of the City of Corpus Christi by publishing the caption stating the purpose of the ordinance. This ordinance to become effective upon such publication.

**SECTION 6.** A violation of this ordinance, or requirements implemented under this ordinance, constitutes an offense punishable as provided in Section 1-6 of the Corpus Christi Code of Ordinances.

**SECTION 5.** 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.

Introduced and voted on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PASSED and APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

\_\_\_\_\_  
Paulette Guajardo, Mayor

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