

TITLE 11. TRANSPORTATION, STREETS AND PUBLIC WAYS.

CHAPTER 11-100. RESERVED.

CHAPTER 11-200. MOTORIZED DEVICES.

11-210. Motorized Devices.

(1) For the purposes of this Section, motorized device shall be defined as any device that is motorized and used or designed for transporting persons, and that is not governed by the provisions of State Code or other provisions of the City's ordinance.

(2) Any minor under sixteen (16) years of age is prohibited from riding such motorized devices unless ridden under the direct supervision of the minor's parent or guardian. For the purpose of this Section, parent or guardian shall be that person or persons having lawful custody or control of the minor child. Also, for the purpose of this Section, direct supervision shall mean under the immediate control of or in the direct line of sight of the parent or guardian of minor child.

(3) Any minor under sixteen (16) years of age shall not operate or ride on a motorized device on public land unless the person is wearing properly fitted and fastened United States Department of Transportation safety-rated protective headgear designed for motorized vehicle use.

- (4) A person may not operate a motorized device:
- (a) in a public parking structure;
 - (b) on public or private property posted as an area prohibiting such devices;
 - (c) on a public highway consisting of a total of four (4) or more lanes designed for regular vehicular traffic;
 - (d) on a public highway with a posted speed limit greater than 25 miles per hour;
 - (e) at a speed greater than the posted speed limit, but in no case, greater than 25 miles per hour;
 - (f) upon any public sidewalk or pedestrian way; or
 - (g) that has been structurally altered from the original manufacturer's design.

(5) A parent or guardian of any child may not authorize or knowingly permit the child to violate any of the provisions of this Section.

(6) A motorized device may cross a street or highway if the operator comes to a complete stop before crossing, proceeds only after yielding the right-of-way to oncoming traffic, and crosses at a right angle.

(7) A person operating a motorized device may do so as an exception to the provisions of this Section if an emergency exists, during any period of time and at those locations when the operation of a conventional

motor vehicle is impractical or when the operation is directed by a peace officer or other public authority.

(8) No motorized device shall be ridden after dusk or before dawn.

(9) The owner of a motorized device or any other person, may not give permission to a person under sixteen (16) years of age to operate or ride the motorized device in violation of this Section.

(10) Any person convicted of a violation of this ordinance shall be subject to the fine amount and severity of punishment contained in the City's Consolidated Bail Schedule, adopted by Resolution of the City Council, per offense.

CHAPTER 11-300. STREETS AND PUBLIC WAYS.

Part 11-310. Superintendent of Streets.

11-311. Department - Superintendent of Streets.

(1) There is hereby created a Department of Streets which shall have general supervision of streets, sidewalks, bridges, and other public ways.

(2) The Department shall be under the direction and control of the Superintendent of Streets.

11-312. Powers and Duties of Street Department. The Department shall:

(1) Have charge of the construction, maintenance and repair of streets, sidewalks, bridges, curbs, gutters, culverts, drains, waterways and other public ways. It shall have control of all waters flowing on the streets, sidewalks and public ways whether originating from storm, flood, drainage or irrigation waters.

(2) Keep a record of and promptly investigate all complaints of defective streets, culverts, drains, ditches, sidewalks, and other public ways and, when proper, repair, replace or take such action as deemed best, and record the action taken on each complaint.

(3) Enforce the provisions of this Chapter 11-300 and all other ordinances relating to the maintenance and use of streets, culverts, drains, ditches, waterways, curbs, gutters, sidewalks and other public ways.

(4) Repair, or cause to be repaired, all defects coming to the Department's attention and take responsible precautions to protect the public from injuries due to such defects pending their repair.

Part 11-320. Through 11-340. RESERVED.

Part 11-350. Construction and Repair of Streets and Sidewalks.

11-351. Construction by Persons. It shall be unlawful for any person either as owner, agent, servant, contractor, or employee to construct a street or sidewalk which does not conform to specifications established by the City Engineer or other authorized representative of the City, unless special permission to

deviate from such specifications is first obtained from the City Council.

11-352. Permit Require -Supervision.

(1) No person, either as owner, agent, servant, contractor, or employee, shall construct any permanent sidewalk without first obtaining from the Recorder a permit so to do. The permit shall specify that the sidewalk is to be constructed of cement, the character and quality of the cement, the consistent parts of the mixture, and the thickness of the walk.

(2) It shall be unlawful to construct a sidewalk in violation of the specifications given by a proper City official.

(3) All sidewalks shall be constructed under the inspection of the Superintendent of Streets or his duly authorized representative.

11-353. Construction of Driveways or Changes of Construction. It shall be unlawful for any person to construct a driveway across a sidewalk, or cut or change the construction of sidewalk, curb, or gutter without first making written application and obtaining from the Recorder a permit to do so. The acceptance of such permit shall be deemed an agreement on the part of such person to construct said driveway in accordance with specifications furnished by the City.

11-354. Building Materials in Street - Permit. It shall be unlawful for any person to occupy or use any portion of the public streets when erecting or repairing any building upon land abutting thereon, without first making application to and receiving from the City Council a permit for the occupation or use of such portions of streets for such periods of time and under such limitations and restrictions as may be required by the City Council. Any such permit may be revoked by the City Council at any time when the holder thereof fails to comply with any rule or regulation under which it is granted, or when, in the opinion of the City Council, the public interest requires such revocation.

11-355. Placing or Mixing Sand or Gravel on Paved Street or Sidewalk. Unless a permit from the Superintendent has been obtained, it shall be unlawful to:

(1) Place or pile, or permit to be placed or piled, any sand, gravel, lime, cement, mortar, plaster, concrete, or any like substance or mixture, or allow the same to remain on any portion of any paved street or sidewalk.

(2) Make or mix or permit to be made or mixed any mortar, plaster, concrete or any like substance or mixture on any portion of any paved street or sidewalk.

11-356. Overflowing of Water on Public Property. It shall be unlawful for any person to allow water to overflow from any ditch, canal, well, or irrigation stream onto the streets, sidewalks or property of the City.

11-357. Irrigation Ditches Across Sidewalks. All owners or occupants of lots in this City who require water from a main ditch for irrigation or other purposes shall dig ditches, erect flumes, lay pipes and install culverts, as needed, and maintain the same to convey water under sidewalks to or from their respective lots. All culverts, ditches, pipes and flumes conveying water under sidewalks shall meet such reasonable standards and specifications as may be established by the Superintendent of Streets.

Part 11-360. Sidewalk Regulations.

11-361. Removal of Snow.

(1) It is the responsibility of the abutting property owner/resident to remove the snow from sidewalks and private driveway openings onto City roads. For reasons of public safety and convenience, sidewalks shall be cleared of snow within twenty-four (24) hours of the end of a snowstorm event.

(2) It shall be unlawful for any person removing snow from the sidewalk to deposit snow, dirt, leaves, or any other material in the gutter so as to clog or prevent the free flow of water therein.

11-362. Placing Trash or Other Obstruction in Streets, Gutters, Sidewalks. It shall be unlawful for any person owning, occupying or having control of any premise to place, or permit to be placed upon or in the sidewalk, parking area, gutter, or on the half of the street next to such premise:

(1) Any broken ware, glass, filth, rubbish, sweepings, refuse matter, ice, snow, water, garbage, ashes, tin cans or other like substances.

(2) Any wagons, lumber, wood boxes, fencing, building material, dead trees, tree stumps, merchandise or other thing which shall obstruct such public street, gutter, parking area or sidewalk, or any part thereof, except as expressly authorized by ordinance, without the permission of the City Council first had and obtained.

(3) Any permanent or temporary structure, mechanism, device, vehicle, or other thing of any kind or character except trees planted pursuant to the provisions of applicable ordinance.

(4) In clearing driveway openings, snow shall be placed on the same side of the street as the driveway opening and off the travel-way so as not to restrict traffic movement or create a hazardous condition. Snow from the length of private driveways shall not be pushed, or blown onto the city road travel-way but must remain on private property or on the parking strip or within the barrow area of the city road so as not to impede the travel-way traffic movement. Snow shall not be pushed across the city road and deposited on the roadside opposite the driveway. Snow shall not be pushed/blown onto or dumped within the city road travel-way with the expectation that it will be removed or pushed aside by snow plows as roads are cleared.

11-363. Openings in Street.

(1) It shall be unlawful for the owner or occupant of any building having a cellar which opens upon any street or sidewalk to fail to keep the door or other covering in good repair and safe for the passage of the customary traffic on the street or sidewalk. If the owner or occupant of any such building shall neglect or refuse to repair properly any such door or covering within twenty-four (24) hours after notice for the Superintendent of Streets to do so, the Superintendent shall forthwith cause such repairs to be made at the expense of the owner or occupant.

(2) It shall be unlawful to construct or maintain coal holes or other openings in streets or sidewalks, except with the special permission of the City Council, and under the direction and supervision of the Superintendent of Streets.

11-364. Doors Opening into Streets. It shall be unlawful for any person, firm, or corporation owning or having the control or Management of any alley, road, or passageway to construct or hang gates or doors to such alley, or passageway so that the gates or doors thereto, when open, shall project outwardly more than two feet (2') over or upon the sidewalk or beyond the property line.

11-365. Discharge of Water on Street. It shall be unlawful for any person owning, occupying, or having control of any premise to fail, refuse or neglect to prevent water from the roof or eaves of any house, building, or other structure, or from any other source under the control of such person to be discharged upon the surface of any sidewalk.

11-366. Crossing at Intersections. It shall be unlawful for any person to drive or park a self-propelled vehicle or lead, drive, or ride any animal upon any sidewalk except across a sidewalk at established crossings.

11-367. Business to Keep Sidewalk Clean. It shall be unlawful for any owners or occupants of any place of business to refuse, neglect or fail to cause the sidewalk abutting thereon to be swept or cleaned each morning before the hour of 9:00 a.m.

11-368. Placing Goods on Sidewalks for Sale or Show. Goods or products for sale may be placed on any sidewalk or right-of-way provided that a four foot (4') passageway is maintained.

11-369. Placing Goods on Sidewalks for Receipt or Delivery. It shall be unlawful for any person to place, or suffer to be placed or kept upon any sidewalk, any goods, wares or merchandise which he may be receiving or delivering, without leaving a foot passageway upon such sidewalk. It shall be unlawful for any person receiving or delivering such goods, wares or merchandise to suffer the same to be or remain

on such sidewalk for a longer period than three hours.

11-370. Playing on Sidewalks. Every person who obstructs the sidewalk or street by playing any game or engaging in any activity which obstructs the free travel thereon shall be subject to the fine amount and severity of punishment contained in the City's Consolidated Bail Schedule, adopted by Resolution of the City Council.

11-371. Obstructing Free Passage of Sidewalks. It is unlawful for any person to commit in or upon any public street, public highway, public sidewalk or any other public place or building, any act or thing which is in obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone or in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted, ingress, egress and regress, therein, thereon and thereto. Violators shall be subject to the fine amount and severity of punishment contained in the City's Consolidated Bail Schedule, adopted by Resolution of the City Council.

Part 11-380. Excavations. REPEALED
(See Title III General Public Works Construction Standards and Specifications of the Land Use Code)
(Repealed by Ord. No. 13-07)

11-381. Permit Franchise Required. REPEALED

11-382. Excluded Excavation. REPEALED

11-383. Subject Excavations. REPEALED

11-384. Preparation. REPEALED

11-385. Backfill. REPEALED

11-386. Restoration of Surfaces. REPEALED

11-387. Restoring Bituminous Concrete or Asphalt Street Surfaces. REPEALED

11-388. Concrete Surfaces. REPEALED

11-389. Concrete Base, Bituminous Wearing Surfaces. REPEALED

11-390. Gravel Surfaces. REPEALED

11-391. Protection of Public During Excavation Project. REPEALED

11-392. Relocation and Protection of Utilities. REPEALED

11-393. Jetting Pipe. REPEALED

11-394. Inspection and Acceptance. REPEALED**11-395. Application for Street Excavation Permit. REPEALED****Part 11-400. Excavation Permit Ordinance.****11-401. Definitions.**

(1) "Applicant" means any Person who makes application for a permit.

(2) "Business" means any place in the City in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.

(3) "City" means Tremonton, Utah, a municipal corporation of the State of Utah.

(4) "City Engineer" means the City Engineer, or other authorized representative of the City designated by the Mayor or City Council.

(5) "Emergency" means any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

(6) "Engineering Regulations, Regulations, Specifications, and/or Design Standards" mean the latest version of the Engineering Regulations, specifications, design standards or criteria published or adopted by the City.

(7) "Failure" means a Work Site Restoration which fails to meet City Specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or other surface irregularities. Measurement of Failure shall be further defined in the Engineering Regulations.

(8) "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication services to customers, all or part of the necessary System which uses the right-of-way.

(9) "Operator" means any Person who provides service over a Telecommunications System and directly or through one or more affiliates owns a controlling interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(10) "Permittee" means any Person which has been issued a permit and thereby has agreed to fulfill the requirements of this Chapter.

(11) "Person" means and includes any natural Person, partnership, firm, association, Provider, corporation, company, organization, or entity of any kind.

(12) "Pipe Driveway" means a driveway approach which causes a pipe or other means to bridge the gutter.

(13) "Property Owner" means Person or Persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.

(14) "Provider" means an Operator, Infrastructure Provider, Reseller, System Lessee, or Public Utility Company.

(15) "Public Utility Company" means any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility product or services for use by the general public.

(16) "Public Way" means and includes all public rights-of-way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways. It does not, however, include utility easements not within Public Ways of the City.

(17) "Private Drain Line" means a pipe installed solely for the transmission of water collected or generated on private property such as drainage, spring, or storm water, or condensate into the public drainage system.

(18) "Reseller" refers to any Person that provides service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission and does not install any System in the rights-of-way.

(19) "Resident" means the Person or Persons currently making their home at a particular dwelling.

(20) "Storm Drain" means a dedicated pipe, conduit, water way, or ditch installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include Private Drain Lines.

(21) "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide services.

(22) "Telecommunications System or System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and Appurtenances owned, leased, or used by a Provider located in the construction, ownership, operation, use or maintenance of a Telecommunications System.

(23) "Work Site Restoration" means and includes the restoring of the original ground or paved hard surface area to comply with Engineering Regulations, and includes but is not limited to repair, cleanup, backfilling, compaction, and stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

11-402. Permit Required; Basis for Issuance. Any Person desiring to perform work of any kind in a Public Way within the City, shall make application for a permit. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

(1) The capacity of the Public Way to accommodate the facilities or structures proposed to be installed in the Public Way;

(2) The capacity of the Public Way to accommodate multiple wire in addition to cables,

conduits, pipes or other facilities or structures of other users of the Public Way, such as electrical power, telephone, gas, sewer and water;

(3) The damage or disruption, if any of public or private facilities, improvements, or landscaping previously existing in the Public Way;

(4) The public interest in minimizing the cost and disruption of construction from numerous excavations of the Public Way.

11-403. Permit Application Requirements.

Application for a permit shall be filed with the City Engineer on a form or forms to be furnished by the City. Property owners and/or tenants for whom work is being done shall be responsible for obtaining the permits, provided, however, contractors may obtain the permit in the contractor's name.

(1) No Person shall be eligible to apply for or receive permits to do work within the Public Ways of the City, save and except the following:

(a) Contractors licensed by the state as general contractors;

(b) Providers;

(c) Property owners installing, replacing, or maintaining less than five hundred (500) square feet or one hundred (100) linear feet of sidewalk, curb, and gutter, or driveway approach, or other work approved by the City Engineer, upon a portion of the Public Way adjacent to their residence; or

(d) Persons offering a service which requires occupation of the Public Way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or sign boards or other structures.

(2) The City Engineer may deny the issuance of permits to contractors, utility companies, or other permit Applicants who have shown by past performance that in the opinion of the City Engineer they will not consistently conform to the Engineering Regulations, Specifications, Design Standards, or the requirements of this Chapter.

(3) When necessary, in the judgment of the City Engineer, to fully determine the relationship of the work proposed to existing or proposed facilities within the Public Ways, or to determine whether the work proposed complies with the Engineering Regulations, construction Specifications and Design Standards, the City Engineer may require the filing of engineering plans, Specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

(4) It shall be unlawful for any Person to commence work upon any Public Way until the City Engineer has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary in this Chapter.

(5) The disapproval or denial of an application by the City Engineer may be appealed by the Applicant to the City Council by filing of a written notice of appeal within ten (10) days of the action of the City Engineer. The City Council shall hear such appeal, if written request therefor be timely filed, as soon as practicable, and render its decision within a reasonable time following notice of such appeal.

(6) In approving or disapproving work within any Public Way, or permits therefor, in the inspection of such work; in reviewing plans, sketches or Specifications; and generally in the exercise of the authority conferred upon him/her by this Chapter, the City Engineer shall act in such manner as to preserve and protect the Public Way and the use thereof, but shall have no authority to govern the actions or inaction of Permittees and Applicants or other Persons which have no relationship to the use, preservation or protection of the Public Way.

(7) It shall be lawful for a City, County, State, Federal or other government employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefor.

(8) A permit is not required from the City Engineer for hand digging excavations for installation or repair of sprinkler systems and landscaping within the non-paved areas of the Public Way. However, conformance to all City Specifications is required.

11-404. Emergency Work.

(1) Any Person maintaining pipes, lines, or facilities in the Public Way may proceed with work upon existing facilities without a permit when Emergency circumstances demand the work to be done immediately; provided a permit could not reasonably and practicably have been obtained beforehand.

(2) In the event that Emergency work is commenced on or within any Public Way of the City during regular business hours, the City Engineer shall be notified within one-half hour from the time the work is commenced. The Person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall insure that work is accomplished according to City Engineering Regulations, the Manual on Uniform Traffic Control Devices and other applicable laws, regulations, or generally recognized practices in the industry.

(3) Any Person commencing Emergency work in the Public Way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which City offices are open for business after such work is commenced. A permit for such Emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the City Engineer.

11-405. Permit Fees.

(1) The City shall charge and the Permittee shall

pay upon issuance of the permit, fees contained in the City's Consolidated Fee Schedule, adopted by Resolution of the City Council. Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the Public Way or diminution of the useful life of the Public Way, and other costs to the City associated with the work to be done under the permit. All costs shall be assessed in a non-discriminatory manner.

(2) The Public Works Director may waive permit fees or penalties or portion thereof provided for in this Chapter, when he/she determines that such permit fee or penalty:

- (a) pertains to construction or rehabilitation of housing for Persons whose income is below the median income level for the City; or
- (b) pertains to an encroachment on the Public Way involving a beautification project which furthers specific goals and objectives set forth in the City's strategic plan, master plans, or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping.
- (c) Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection, and Work Site Restoration associated with each undertaking may be charged by the City to each Permittee, in addition to the permit fee.

11-406. Permit - Contents - Duration and Extensions.

(1) Each permit application shall state the starting date and estimated completion date. Work shall be completed within five (5) days from the starting date or as determined by the City Engineer. Such determination shall be based upon factors reasonably related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed, the following:

- (a) The scope of work to be performed under the permit;
- (b) Maintaining the safe and effective flow of pedestrian and vehicular traffic on the Public Way affected by the work;
- (c) Protecting the existing improvements to the Public Way impacted by the work;
- (d) The season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the Public Way by the public;
- (e) Use of the Public Way for extraordinary events anticipated by the City.

The City Engineer shall be notified by the Permittee of commencement of the work within twenty-four hours prior to commencing work. The permit shall be valid for the time period specified in the permit.

(2) If the work is not completed during such period, prior to the expiration of the permit, the Permittee may apply to the City Engineer for an

additional permit or an extension, which may be granted by the City Engineer for good cause shown.

(3) The length of the extension requested by the Permittee shall be subject to the approval of the City Engineer. No extension shall be made that allows work to be completed in the winter period without payment of winter fees.

11-407. Permit - No Transfer or Assignment.

Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a Permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this Chapter and under said permit.

11-408. Compliance with Specifications, Standards, Traffic-Control Regulations; Site Permittee Identification.

(1) The work performed in the Public Way shall conform to the requirements of the Engineering Regulations, Design Standards, construction Specifications and traffic control regulations of the City, copies of which shall be available from the City Engineer, kept on file in the office of the City Recorder and be open to public inspection during office hours.

(2) Where a job site is left unattended, before completion of the work, signage with minimum two inch (2") high letters shall be attached to a barricade or otherwise posted at the site, indicating the Permittee's name, or company name, telephone number, and after hours telephone number.

(3) All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to Residents and Businesses fronting on the Public Way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or Persons. Barricades must be in place until all of the Permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the City; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the City. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The Police Department and Fire Department shall be notified at least twenty-four (24) hours in advance of any planned excavation requiring street closure or traffic detour.

11-409. Other Highway Permits.

(1) Holders of permits for work on highways

owned or under the jurisdiction of other government entities, but located within the City limits, shall not be required to obtain permits from the City under the provisions of this Chapter, unless the work extends beyond the back side of the curb, or beyond any other designated jurisdictional boundary. Any City permit shall not be construed to permit or allow work on a County road, or on a State highway within the City without an applicable County or State permit.

(2) The City Engineer, in his or her discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the Permittee of said governmental entity for the protection of traffic and safety of Persons and property. Notwithstanding the foregoing, nothing in this Chapter shall be construed to impose any duty, implied or express, on the City or its employees, officers, agents or assigns, relative to the protection of traffic and safety of Persons or property, arising out of the issuance of any permit issued by government entities other than the City, or arising out of any work performed on any Public Way owned or within the jurisdiction of the City.

11-410. Relocation of Structures in Public Ways.

(1) The City Engineer may direct any Person owning or maintaining facilities or structures in the Public Way to alter, modify or relocate such facilities or structures as the City Engineer may require as set forth herein. Sewers, pipes, drains, tunnels, conduits, Pipe Driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The Person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the City, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the City. In the event that such Person refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such Person. Such Person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including all design, engineering, construction, materials, insurance, court costs and attorneys fees.

(2) Any directive by the City Engineer shall be based upon one of the following:

- (a) The facility or structure was installed, erected or is being maintained contrary to law, or determined by the City Engineer to be structurally unsound or defective;
- (b) The facility or structure constitutes a nuisance as defined under State statute;
- (c) The permit under which the facility or structure was installed has expired or has been revoked;
- (d) The Public Way is about to be repaired or

improved and such facilities or structures may pose a hindrance to construction; or

(e) The grades or lines of the Public Way are to be altered or changed.

(3) Any directive of the City Engineer under this Section shall be under and consistent with the City's police power. Unless an emergency condition exists, the City Engineer shall make a good faith effort to consult with the Person regarding any condition that may result in a removal or relocation of facilities in the Public Way to consider possible avoidance or minimization of removal or relocation requirements and provide the directive as far enough in advance of the required removal or relocation to allow the Person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

(4) This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the Public Way, if that prior private easement grants a superior vested right.

(5) Any Person owning or maintaining facilities or structures in the Public Way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the City Engineer shall be subject to the fine amount and severity of punishment contained in the City's Consolidated Bail Schedule, adopted by Resolution of the City Council. All costs of alteration, modification or relocation shall be borne by the Person owning or maintaining the facilities or structures involved.

(6) The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Public Way, in which event the City shall not be liable therefor to a Person. The City shall notify a Person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

11-411. Impact of Excavation on Existing Improvements.

(1) If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with City standards for such.

(2) Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.

(3) At any time a Permittee disturbs the yard, residence or the real or Personal property of a private Property Owner or the City, such Permittee shall insure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.

(4) The costs associated with the disturbance and the return, replacement and/or restoration shall be borne

by the Permittee. Further, a Permittee shall reimburse a Property Owner or the City, for any actual damage caused by the Permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this Subsection shall require the Permittee to pay a subscriber or private Property Owner when that subscriber or private Property Owner requests that the Permittee remove, replace or relocate improvements associated with the service provided by the Permittee to the Property Owner and when the Permittee exercises due care in the performance of that service, or when the subscriber or private Property Owner provided false information to the Permittee on which the Permittee relied to its detriment.

(5) Examples of types of acts specifically included in this Section are the following:

- (a) Removal of sod, lawn, shrubbery, flowers, trees, driveways, or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other Appurtenances of the Permittee;
- (b) Installation or removal of equipment or other Appurtenances of the Permittee's System within a private Property Owner's property or residence which requires drilling, excavating, plastering, or the like on the part of the Permittee;
- (c) Temporarily relocating or moving a piece of personal property or a fixture of a private Property Owner (such as a motor vehicle, fence, air conditioning, heating unit, or the like) in order to perform some sort of construction, maintenance or repair by the Permittee; or
- (d) Permanently removing a Permittee's equipment or other Appurtenances due to the revocation, termination or non-renewal of the franchise (if applicable).
- (e) Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the City Engineer prior to the blockage of the channel.

(6) The requirements imposed upon the Permittee extend to any subcontractor or independent contractor that the Permittee might employ to perform the tasks pursuant to the permit.

(7) The requirements of this Section shall not apply to the removal by a Permittee, of a permanent structure placed by a Property Owner in a Public Way, unless such Property Owner has received prior written permission from the City granting the Property Owner the right to install a permanent structure on a Public Way, and such written permission has been recorded in the office of the County Recorder.

11-412. Restoration of Public Property.

(1) The Permittee shall, at its own expense, restore the surface of any Public Way to its original condition and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall conform to the Engineering Regulations, Design Standards and Specifications promulgated by the City and shall be accomplished within the time limits set forth in the permit, unless additional time is granted in writing by the Department.

(2) At its option, the Permittee doing the actual excavation work may request that the City restore the surface to its original condition. The amount charged for such resurfacing shall be determined by the City Engineer in accordance with its reasonable costs for such work and shall be charged to the Person, firm, or corporation making the excavation. Payment for said work shall be received by the City prior to the release of the bond.

11-413. Insurance Requirements.

(1) Before a permit is issued, the Applicant shall furnish to the City evidence that such Applicant has a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions or with such alternative limits and provisions as may be approved by the City:

- (a) A minimum of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than One Million Dollars (\$1,000,000) in the aggregate.

The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two times the required occurrence limit. The coverage shall be in the nature of Broad Form Commercial General Liability coverage. The City Attorney may increase or decrease minimum insurance limits, depending on the potential liability of any project.

- (b) All policies shall include the City, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the City shall include the City, its employees, officers, officials, agents, volunteers and assigns.

(c) The coverage shall be primary insurance as respects the City, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the Permittee's insurance and shall not contribute to or with it.

- (d) Any Failure to comply with reporting provisions of the policy shall not effect

coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

(e) Coverage shall state that the Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(f) Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

(g) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.

(h) Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested sent to the City.

(i) Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees against any claim or loss, damage or expense sustained on account of damages to Persons or property occurring by reason of permit work done by the Permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.

(j) Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees against any claim or loss, damage or expense sustained by any Person occurring by reason of doing any work pursuant to the permit including, but not limited to falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and right-of-way is opened for public use.

(2) Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of 7 or higher.

(3) The Permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the Permittee shall be prepared to provide such copies prior to the issuance of the permit.

(4) If any of the required policies are, or at any

time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the Permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this Chapter.

(5) The Permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(6) Any deductibles or self-insured retentions shall be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its employees, officers, officials, agents, volunteers or assigns, or the Permittee shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(7) A Property Owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this Section.

(8) A Provider may be relieved of the obligation of submitting certificates of insurance under the following circumstances:

(a) if such company shall submit satisfactory evidence in advance that:

(i) It is insured in the amounts set forth in this Chapter, or has complied with State requirements to become self insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and

(ii) Said coverage provides to the City the same scope of coverage that would otherwise be provided by a separate policy as required by this Chapter; or

(b) The work to be performed under the permit issued to the Applicant is to be performed by the City, in which case insurance or other risk transfer issues shall be negotiated between the City and the Applicant by separate agreement.

11-414. Bond - When Required, Conditions, Warranty.

(1) Except as noted in this Chapter, each Applicant, before being issued a permit, shall provide the City with an acceptable security (this may include a corporate surety bond, cash bond or letter of credit, as determined by the City) in the amount set by the City

Engineer and equal to One Hundred and Twenty-five percent (125%) of the reasonable value of the improvements authorized by the Permit issued hereunder, to guarantee faithful performance of the work authorized by a permit granted pursuant to this Chapter. The amount of the security required may be increased or decreased at the discretion of the City Engineer whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of security otherwise required under this Chapter. The form of the security and the entity issuing the security shall be subject to the approval of the City Attorney.

(2) Public utilities franchised by the City shall not be required to file any security if such requirement is expressly waived in the franchise documents.

(3) The security required by this Section shall be conditioned as follows:

(a) That the Permittee shall fully comply with the requirements of the City ordinances and Regulations, Specifications and standards promulgated by the City relative to work in the Public Way, and respond to the City in damages for failure to conform therewith;

(b) That after work is commenced, the Permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the Public Way to construction Specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

(c) That the Permittee shall guarantee the materials and workmanship for a period of two (2) years from completion of such work, with reasonable wear and tear excepted; and

(d) That unless authorized by the City Engineer on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven (7) calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to Engineering Regulations.

In winter, a temporary patch must be provided. In all excavations, restoration of pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the Permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

11-415. Hold Harmless Agreement; Limitations on City Liability.

(1) The Permittee agrees to save the City, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this Chapter shall constitute such an agreement by the Permittee to this Section.

(2) This Chapter shall neither be construed as imposing upon the City, its officers, employees and agents, any liability or responsibility for damages to any Person injured by or by reason of the performance of any work within the Public Way, or under a permit issued pursuant to this Chapter; nor shall the City, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

11-416. Work without Permit - Penalty.

(1) A stop order may be issued by the City Engineer directed to any Person or Persons doing or causing any work to be done in the public way without a permit.

(2) Any Person found to be doing work in the Public Way without having obtained a permit, as provided in this Chapter, shall be required to pay the fee amount contained in the City's Consolidated Fee Schedule, adopted by Resolution of the City Council.

11-417. Failure to Comply; Default in Performance.

(1) Any permit may be revoked or suspended and a stop order issued by the City Engineer, after notice to the Permittee for:

(a) Violation of any condition of the permit, the security, or of any provision of this Chapter;

(b) Violation of any provision of any other ordinance of the City or law relating to the work; or

(c) Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.

(2) A suspension or revocation by the City Engineer, and a stop order, shall take effect immediately upon entry thereof by the City Engineer and notice to the Person performing the work in the Public Way. Notice to the Person performing the work shall be accomplished when the City Engineer has posted a stop work order at the location of the work and written notice has been mailed, return receipt requested, to the address indicated by the Permittee on the permit.

(3) Whenever the City Engineer finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the City Engineer to be reasonably

necessary for the completion of the work.

(4) In the event that the surety (or principal), within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of Persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the City for the cost of doing the work, as set forth in the notice, the City may perform the work, at the discretion of the City Engineer, with City forces or contract forces or both, and suit may be commenced by the City Attorney against the contractor and bonding company and such other Persons as may be liable, to recover the entire amount due to the City, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

11-418. Failure to Conform to Design Standards - Penalty. For failure to conform to the Design Standards and Regulations, the City Engineer may:

- (1) Suspend or revoke the permit;
- (2) Issue a stop order;
- (3) Order removal and replacement of faulty work;
- (4) Require an extended warranty period; and/or
- (5) Negotiate a cash settlement to be applied toward future maintenance costs.

11-419. Appeal of Suspension, Revocation, or Stop Order. Any suspension, revocation or stop order by the City Engineer may be appealed by the Permittee to the City Council by filing a written notice of appeal within ten (10) days of the action of the City Engineer. The City Council shall hear such appeal, if written request therefor be timely filed, as soon as practicable, and render its decision within a reasonable time following filing of notice of appeal.

11-420. Tampering with Traffic Barricades. It shall be unlawful for any Person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

11-421. Conflict with Governing Provisions. Should there be a conflict between the provisions of this Part and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a Public Way, the more restrictive provisions of the aforesaid documents shall apply.

11-422. Violation - Penalty. Unless otherwise specified in this Chapter, a violation of any provision of this Chapter, or failure to comply with an order of suspension, revocation or stop work, shall be subject to

the fine amount and severity of punishment contained in the City's Consolidated Bail Schedule, adopted by Resolution of the City Council. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the Person from otherwise complying with the provisions of this Chapter. (Ord. No. 98-03)

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