

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 000-005

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 70 (STREETS, SIDEWALKS AND OTHER PUBLIC PLACES) OF THE CODE OF ORDINANCES OF THE CITY BY AMENDING ARTICLE III (USE OF PUBLIC RIGHTS-OF-WAY) AND ARTICLE IV (EXCAVATIONS) THEREOF RELATING TO AND GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING DEFINITIONS; PROVIDING CERTAIN CONSTRUCTION OBLIGATIONS; ESTABLISHING CERTAIN CONDITIONS OF OCCUPANCY OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING INSURANCE AND INDEMNITY REQUIREMENTS; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") seeks to facilitate an orderly use of the Public Rights-of-Way in a non-discriminatory and competitively neutral basis; and,

WHEREAS, in accordance with applicable federal law, including, but not limited to, 47 U.S.C. § 253(c) and State laws, including, but not limited to, Tex. Util. Code §§ 14.008, 54.205, and Tex. Rev. Civ. Stat. art. 1175(1), the City seeks to exercise its historical rights to control and manage its Public Rights-of-Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations in the use of those Public Rights-of-Way, in accordance with Local Gov. Code § 283.056.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:


Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. Chapter 70, "Streets, Sidewalks and Other Public Places", of the Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending Article III (Use of Public Rights-of-Way) and Article IV (Excavations) as set forth in Exhibit A attached hereto and incorporated herein, and all other chapters, sections, subsections, paragraphs, sentences, phrases and words of the Code are not amended but are hereby ratified, verified, approved and affirmed.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the use of the street and sidewalks and other public rights-of-way of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

Section 4. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective from and after its date of passage as provided by law.



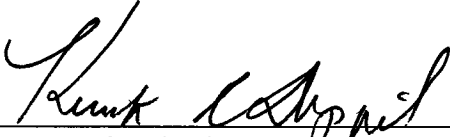
Mayor Scott Wheeler

ATTEST:

By: 

Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: 

Ken Dippel, City Attorney

EXHIBIT A

ARTICLE III. USE OF PUBLIC RIGHTS-OF-WAY

DIVISION 1. GENERALLY

SEC. 70-57. Findings and Purpose.

The purposes of this Article are to:

- (a) govern the use and occupancy of the Public Rights-of-Way;
- (b) assist in the management of Facilities placed in, on or over the Public Rights-of-Way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of facilities within the Public Rights-of-Way;
- (c) assist the town in its efforts to protect the public health, safety and welfare;
- (d) conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the town;
- (e) preserve the physical integrity of the streets and highways;
- (f) control the orderly flow of vehicles and pedestrians;
- (g) monitor and coordinate the activities of the different entities using the Public Rights-of-Way to prevent interference between them in the use of the Public Rights-of-Way;
- (h) assist with scheduling common trenching and street cuts; and
- (i) protect the safety, security, appearance, and condition of the Public Rights-of-Way.

Sec. 70-58. Process.

A Person to whom this article applies shall:

- (a) register with the town in accordance with Section 70-58(c) of this article (provided, however, that the holder of a franchise from the town or of a license described in Division 2 of this article shall not be required to register);
- (b) secure from the town a franchise, license or other authorization as may be required by the town to use the Public Rights-of-Way (provided, however, that such requirement shall not apply to a Certificated Telecommunications Provider);
- (c) obtain an excavation or other permit from the town prior to working on any Facilities which requires (i) the breaking of pavement within the Public Rights-of-Way, (ii) the interference

with any landscaping or any improvements located in the Public Rights-of-Way, or (iii) the partial or complete closure of any Public Rights-of-Way; and

- (d) prior to construction of or on any Facilities, obtain approval from the town of construction plans and maps in connection with such work and give the town notice of the initiation of such work.

Sec. 70-59. Scope; Registration.

- (a) This Article applies to all Persons that place Facilities in, on or over Public Rights-of-Way.
- (b) Any Person with a current, unexpired consent, franchise, agreement or other authorization from the town ("Grant") to use the Public Rights-of-Way that is in effect on January 1, 2000 shall continue to operate under and comply with that Grant until the Grant expires or until it is terminated by mutual agreement of the town and the Person, or terminated as otherwise provided for by law. To the extent that a Grant is inconsistent with the terms of this Article, the terms of the Grant shall control.
- (c) In order for the town to know which Persons own Facilities in the Public Rights-of-Way, each Person who owns Facilities shall register with the Director and provide the following information: (i) the Person's name, (ii) a phone number at which the Person may be reached 24 hours a day; (iii) the current name, address, and telephone number(s) of a contact employed by the Person with binding and decision-making authority for the Person and who shall be responsible for satisfying all information needs of the town (the "Contact"), and (iv) such other information as the Director may reasonably require. Each such Person shall update and keep current his/her registration with the town at all times.

Sec. 70-60. Definitions.

In this Article:

- (a) **Certificated Telecommunications Provider** means the same as in Local Government Code Section 283.002(2) [any entity that has been granted a certificate from the Texas Public Utility Commission under Chapter 54 of Tex. Utility Code authorizing that entity to provide local exchange telephone service].
- (b) **Director** means the Director of Public Works of the town or the Director's designee.
- (c) **Facilities** means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated physical equipment placed in, on or under the Public Rights-of-Way.
- (d) **Person** means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity who places, constructs, reconstructs, maintains, or repairs Facilities on, in, over, or under the Public Rights-of-Way.

- (e) **Public Rights-of-Way** means the same as the term is defined in Texas Local Government Code, § 283.002(6), and being the area within the town on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a Public Right-of-Way with regard to wireless telecommunications.
- (f) **Utility** means a publicly, privately, or cooperatively owned utility that provides telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer, or pipeline service.

Sec. 70-61. Construction and maintenance.

A Person is subject to reasonable police power regulation of the town to manage its Public Rights-of-Way in connection with the construction, expansion, reconstruction, maintenance or repair of Facilities in the Public Rights-of-Way, pursuant to the town's rights as a custodian of public property, based upon the town's historic rights under state and federal laws. Such regulations include, but are not limited to, the following:

- (a) Any Facilities installed or constructed on, in, over or under the Public Rights-of-Way shall:
 - (1) be constructed, reconstructed and maintained in accordance with plans approved by the town, and such approval shall not constitute a warranty that such plans conform with federal, state and/or local codes and regulations applicable thereto;
 - (2) comply with all applicable laws or ordinances of the town, including, but not limited to, construction and/or excavation permits;
 - (3) be done to the town's satisfaction at such times and in such manner as not to interfere with the use of the Public Rights-of-Way;
 - (4) be constructed, reconstructed, and maintained so that the Public Rights-of-Way are kept in a neat and safe condition and in good order and operating condition, failing which, the town may do so at the expense of the Person owning the Facilities.
- (b) In the event a Person proposes to perform open trenching within the Public Rights-of-Way, the Person may be required by the Town, prior to such performing open trenching, to conduct soil compaction testing if the town determines, in its sole judgement, that the open trenching may have an adverse effect on any facilities of the town. All costs incurred by the test, or any corrections thereof, shall be borne by the Person.
- (c) In connection with the construction, reconstruction, removal, maintenance, or repair of a Person's Facilities which requires the excavation of the Public Rights-of-Way, the alteration of the surface of or the interference with any landscaping or any improvements located in the Public Rights-of-Way, or the partial or complete closure of any Public Rights-of-Way, at the town's request the Person shall furnish the town accurate and complete information relating to the construction, reconstruction, removal, maintenance, or repair of Facilities performed by the Person in the Public Rights-of-Way.

- (d) A Person may be required to place certain Facilities within the Public Rights-of-Way underground according to the requirements of this Chapter 70 and any other applicable town requirements absent a compelling demonstration by the Person that, in any specific instance, this requirement is not reasonable, feasible or equally applicable to other similar users of the Public Rights-of-Way.
- (e) A Person shall perform operations, excavations and other construction in the Public Rights-of-Way in accordance with all applicable town requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-of-Way. The town shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the town by the Person. All excavations and other construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable construction directions given by the town in order to minimize any such interference.
- (f) A Person must obtain a construction or other applicable permit prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the Person's Facilities; provided, however, that such a permit is not required for routine maintenance (A) that does not (x) require excavation of the Public Rights-of-Way, (y) alter the surface or interfere with any landscaping or public improvements located in the Public Rights-of-Way, or (z) block traffic lanes or sidewalks, or (B) that requires the blocking of traffic lanes or sidewalks for less than two (2) hours if the Person has first given to the Director written notice of the date, time, location, general nature of the maintenance and such other information as may be required by the Director relating to such routine maintenance. Unless waived by the Director, an application for such a permit must be filed with the town at least five (5) business days prior to any work in connection with the Person's Facilities. In connection with such permit, a Person shall furnish, among other information as may be reasonably required by the town, construction plans and maps showing the location and proposed routing of new construction or reconstruction at least five (5) business days before beginning such construction or reconstruction. A Person may not begin construction until the location of new Facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the town, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the Facilities and routing. For a permit issued in connection with the excavation of any Public Rights-of-Way, the Person shall give to the town at least forty-eight (48) hours notice (which could be at the time of the issuance of the permit) prior to undertaking any of the above listed activities on its Facilities in, on , over or under the Public Rights-of-Way; provided, however that this notice requirement may be waived by the Director. The failure of the Person to request and obtain a permit from the town prior to performing any of the above listed activities in, on, under or over any Public Right-of-Way, except in an emergency as provided for in Section 70-139 of this Chapter, will subject the Person to a stop-work order from the town and enforcement action pursuant to the town's Code of Ordinances, other ordinances, rules or regulations. Unless otherwise provided in a regulation relating to a specific permit (i.e., excavation permit – 10 days), if a Person fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the Person will be required to obtain another permit or to obtain an extension as may be approved by the Director.

- (g) When a Person completes construction, expansion, reconstruction, removal, excavation or other work, the Person shall promptly restore the Public Rights-of-Way in accordance with applicable town requirements. A Person shall replace and properly re-lay and repair the surface, base, irrigation system and landscape treatment of any Public Rights-of-Way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Person's Facilities within thirty (30) calendar days (unless extended by the town for good cause) after completion of the work in accordance with existing standards of the town in effect at the time of the work; provided, however, that such timetable shall apply only to the extent the same is not addressed in another ordinance, rule or regulation of the town which requires a permit for any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of Facilities.
- (h) Upon failure of a Person to perform or to initiate the performance of any such repair or replacement work within five (5) days after written notice has been received by the Person (such notice having been sent by the Town to the to the Contact by either hand-delivery, by facsimile transmission, or by certified mail, return receipt requested), the Town may repair such portion of the Public Rights-of-Way as may have been disturbed by the Person, its contractors or agents. Such written notice may be provided by upon receipt of an invoice from the town, the Person will reimburse the town for the costs so incurred within thirty (30) calendar days from the date of the town invoice. Provided, however, that the provisions of this subsection (j) shall apply only to the extent the same is not addressed in another ordinance, rule or regulation of the town which requires a permit for any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of Facilities.
- (i) Should the town reasonably determine, within one (1) year from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to return the affected property to a condition at least equal to the condition of the property immediately prior to the construction, a Person shall perform such additional restoration work to the satisfaction of the town, subject to all town remedies as provided herein.
- (j) Notwithstanding the foregoing, if the town determines that the failure of a Person to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public and after emergency notice to the Person has been provided (to the extent reasonable under the circumstances), the Town may undertake emergency repairs and restoration efforts. A Person shall promptly reimburse the town for all costs incurred by the town within thirty (30) calendar days from the date of the town invoice; provided, however, that such timetable shall apply only to the extent the same is not addressed in another ordinance, rule or regulation of the town which requires a permit for any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of Facilities.
- (k) If the Director declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Person shall remove or abate the Person's Facilities by the deadline provided in the Director's request. The Person and the town shall cooperate to the extent possible to assure continuity of service. If the Person, after notice, fails or refuses to act, the town may remove or abate the facility, at the sole cost

and expense of the Person, without paying compensation to the Person and without the town incurring liability for damages.

Sec. 70-62. Additional obligations.

A Person shall maintain a complete set of engineering plans of any Facilities constructed or located in the Public Rights-of-Way and shall furnish copies of the engineering plans to the Director in a format used in the ordinary course of the Person's business and as reasonably prescribed by the town, and as allowed by law. Upon the completion of the constructing or locating of Facilities pursuant to such engineering plans and in the event that the Facilities were not constructed or located in accordance with the plans, such plans shall be modified to reflect the actual construction or installation of Facilities and such modified plans (excluding customer specific, proprietary or confidential information) shall be provided to the town within 30 days of such completion.

Sec. 70-63. Indemnity.

- (a) Except as to Certificated Telecommunications Providers, each Person shall agree to promptly defend, indemnify and hold the town, its officials, officers, agents and employees harmless from and against all damages liability, costs, losses or expenses (i) for the repair, replacement, or restoration of the town's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (A) damage to or loss of the property of any natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity (including, but not limited to the Person, its agents, officers, employees and subcontractors, town's agents, officers and employees, and third parties); and/or (B) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (individual) (including, but not limited to the agents, officers and employees of the Person, Person's subcontractors and town, and third parties), arising out of, incident to, concerning or resulting from any negligent or willful act or omission of the Person, its agents, employees, and/or subcontractors, in the performance of any activities in connection with the Facilities.
- (b) This indemnity provision shall not apply to any liability resulting from the negligence of the town, its officers, employees, agents, contractors, or subcontractors.
- (c) The provisions of this indemnity is solely for the benefit of the town and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity.
- (d) A Certificated Telecommunications Provider shall indemnify the Town in accordance with Section 283.057, Tex. Loc. Gov. Code.

Sec. 70-64. Insurance.

During the period of time during which a Person is performing any work as described herein within the Public Rights-of-Way and during which a Person's Facilities are located in the Public

Rights-of-Way, that Person shall obtain and maintain commercial general liability insurance, including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions set forth herein, with limits of liability for bodily injury, death and property damage or destruction of not less than \$1,000,000 and other insurance as may be reasonably prescribed by the town with an insurance company licensed to do business in the State of Texas acceptable to the Town. A Person shall furnish the town with proof of insurance at the time of the request for building, excavation, or other applicable permits or at such other time as the town may reasonably request. The town reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the Director determines that changes in statutory law, court decisions, or the claims history of the industry or the Person require adjustment of the coverage. For purposes of this section, the town will accept certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the town to accept such letters the Person must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the town, based on financial information requested by and furnished to the town.

A Person shall furnish, at no cost to the town, copies of certificates of insurance evidencing the coverage required by this Section to the town. The town may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless the policy provisions are established by a law or regulation binding the town, the Person, or the underwriter. If the town requests a deletion, revision or modification, a Person shall exercise reasonable efforts to pay for and to accomplish the change.

- (a) An insurance certificate shall contain the following required provisions:
 - (1) name the town of and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;
 - (2) provide for 30 days notice to the town for cancellation, non-renewal, or material change; and
 - (3) provide that notice of claims shall be provided to the Director by certified mail.
- (b) A Person shall file and maintain proof of insurance with the Director. An insurance certificate obtained in compliance with this section is subject to town approval. The town may require the certificate to be changed to reflect changing liability limits. A Person shall immediately advise the town Attorney of actual or potential litigation that may develop may affect an existing carrier's obligation to defend and indemnify.
- (c) An insurer has no right of recovery against the town. The required insurance policies shall protect the Person and the town. The insurance shall be primary coverage for losses covered by the policies.
- (d) The policy clause "Other Insurance" shall not apply to the town if the town is an insured under the policy.

- (e) The Person shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the town for payment of a premium or assessment. Insurance policies obtained by a Person must provide that the issuing company waives all right of recovery by way of subrogation against the town in connection with damage covered by the policy.

The above insurance requirements may be met by applicants with a current franchise or license and applicants governed by Chapter 283 of the Texas Local Government Code if the current franchise, license or statutory indemnity adequately provides for insurance or bonds or provides an indemnity in favor of the City.

Sec. 70-65. Conditions of Public Rights-of-Way Occupancy.

- (a) In the exercise of governmental functions, the town has first priority over all other uses of the Public Rights-of-Way. The town reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial Facilities in, across, along, over or under a public street, alley or Public Rights-of-Way occupied by a Person, and to change the curb, sidewalks or the grade of streets.
- (b) The town shall assign the location in or over the Public Rights-of-Way among competing users of the Public Rights-of-Way with due consideration to the public health and safety considerations of each user type, and to the extent the town can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law.
- (c) If the town authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the Public Rights-of-Way. If the town closes or abandons a Public Right-of-Way that contains a portion of a Person's Facilities, the town shall close or abandon such Public Right-of-Way subject to the rights of the Person.
- (d) If the town gives written notice, a Person shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of the Person's Facilities that are in the Public Rights-of-Way within 120 days, except in circumstances that require additional time as reasonably determined by the town based upon information provided by the Person. For projects expected to take longer than 120 days to remove, change or relocate, the town will confer with Person before determining the alterations to be required and the timing thereof. The town shall give notice whenever the town has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a town governmental public improvement in the Public Rights-of-Way. This section shall not be construed to prevent a Person's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with the Person.

If the Person fails to relocate Facilities in the time allowed by the town in this Section: (i) the Person may be subject to liability to the town for such delay and as set forth in the town Code

or ordinances, now or hereafter enacted, and (ii) the town has the right, to the extent allowed by law, to relocate or cause to be relocated the affected portion of the Facilities and the Person shall promptly reimburse the town for all costs of such relocation.

Notwithstanding anything in this subsection (d), the Director and a Person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

- (e) A Person may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its Facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and International Society of Arboriculture, and should be done in such a manner to preserve as much vegetation and natural shape of trees as reasonably possible, and still accomplish a safe and effective tree trimming program. Reasonable efforts shall be made to contact affected property owners prior to necessary tree trimming operations. Should the Person, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours (unless a longer period is required for extraordinary conditions and conditions beyond the control of the Person), the town may remove the trimmings or have them removed, and upon receipt of a bill from the town, the Person shall promptly reimburse the town for all costs incurred within thirty (30) working days.
- (f) Persons shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures, if the town gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. Person may require prepayment or prior posting of a bond from the party requesting temporary move.

Sec. 70-66. Governing Law.

This Article shall be construed in accordance with the town Code(s) and regulations in effect on January 1, 2000 to the extent that such Code(s) or regulations are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas, subject to the town's ongoing authority to adopt reasonable regulations to manage its Public Rights-of-Way, pursuant to the provisions of this Article or as otherwise provided by law.

Sec. 70-67. Unauthorized Use of Public Rights-of-Way

The town may institute all appropriate legal action to prohibit any Person from knowingly using the Public Rights-of-Way unless the Person has complied with the terms of this Article.

DIVISION 2. LICENSE

Sec. 70-81. Required for use of public right-of-way.

Any Person operating a utility (other than a Certificated Telecommunications Provider) and seeking to place Facilities on, in, under or over any portion of any Public Rights-of-Way, or any

other area under the control of the town now or hereafter existing, shall first have obtained from the town a license or other authorization from the town as may be required by the town to use such right-of-way. The issuance of a license shall not constitute a franchise and shall not replace any obligation to obtain a franchise, if applicable.

Sec. 70-82. Application.

Persons desiring a license as provided in section 70-81 shall apply in writing to the Director. The application must be accompanied by plans or drawings showing the area to be used, certified survey notes showing elevations of the area and a statement of the purpose for which the Public Rights-of-Way are to be used.

Sec. 70-83. Grant by city council.

If, in the sole judgement of the city council, the requested use is not inconsistent with and does not unreasonably impair the public use of the Public Rights-of-Way, the council may by ordinance grant the license.

Sec. 70-84. Terms and conditions; duration; right of termination reserved by town.

(a) The ordinance provided for in section 70-83 shall contain the terms and conditions of the license and shall state the time for which the license exists. Whether or not stated in the ordinance, the city council retains the right to terminate a license whenever in its judgement the purpose or use of the license is inconsistent with the public use of the Public Rights-of-Way or whenever the purpose or use of the license is likely to become a nuisance.

(b) If a private license does not state the time for expiration, it will expire ten years from the date of the passage of the ordinance granting the license.

(c) If a license to place and maintain the facilities of a utility operated by a governmental entity on Public Rights-of-Way does not state the time for expiration, it will expire upon expiration of the governmental entity's contract with the town providing for mutual granting of rights-of-way.

Sec. 70-85. Annual fee for use of public right-of-way.

The annual fee for a license to use the Public Rights-of-Way is \$2.00 per linear foot of Public Right-of-Way traversed and \$1,000.00 per public street crossing. All fees are payable in advance for each upcoming year until the license is terminated. The person to whom the license is granted, or licensee, shall bear the entire cost of constructing, reconstructing, maintaining and operating any Facilities constructed on the Public Rights-of-Way, and will not allow any mechanic's or materialman's liens to be enforced against the Public Right-of-Way by reason of any such work.

Secs. 70-86--70-110. Reserved.

ARTICLE IV. EXCAVATIONS

DIVISION 1. GENERALLY

Sec. 70-111. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person making written application to the public works director for an excavation permit under this article.

Excavation work means the excavation and other work permitted under an excavation permit and required to be performed under this article.

Permittee means any person who has been granted and has in full force and effect an excavation permit issued under this article.

Street means any street, highway, sidewalk, alley, avenue, or other public way or public grounds in the town.

Working day means any Monday, Tuesday, Wednesday, Thursday or Friday which is not a holiday observed by the town.

Sec. 70-112. Liability of town.

This article shall not be construed as imposing upon the town or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued under this article; nor shall the town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work.

Sec. 70-113. Routing of traffic.

(a) The permittee under this article shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public, provided that the public works director may permit the closing of streets to all traffic for a period of time prescribed by him if, in his opinion, it is necessary. No interference with traffic flow on town streets shall be permitted during the hours of 6:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:30 p.m., Mondays through Fridays; provided, however, that on Belt Line Road and Midway Road, no interference with traffic flow will be permitted during the hours of:

(1) 6:00 a.m. to 10:00 p.m. Mondays through Thursdays.

- (2) 6:00 a.m. Fridays through 3:00 a.m. Saturdays.
- (3) 9:00 a.m. Saturdays through 3:00 a.m. Sundays.
- (4) 9:00 a.m. Sundays through 10:00 p.m. Sundays.

Contractors working for the town on contracts awarded by the town prior to May 23, 1995, are exempt from the Belt Line Road and Midway Road time restrictions.

Emergency closures during these hours may be permitted with the approval of the public works director. The permittee shall route and control traffic including its own vehicles as directed by the police department.

(b) The following steps shall be taken before any street or part thereof may be closed or restricted to traffic:

(1) The permittee must receive the approval of the public works director and the police department therefor;

(2) The permittee must notify the chief of the fire department of any street so closed;

(3) Upon completion of construction work, the permittee shall notify the public works director, fire department and the police department before traffic is moved back to its normal flow so that any necessary adjustments may be made; and

(4) Where flagmen are deemed necessary by the public works director, they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the public works director will designate detours. The town shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee, but in case there are no existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the public works director. The permittee will be responsible for any unnecessary damage as may be determined in the public works director's sole discretion caused to any highways by the operation of its equipment.

Sec. 70-114. Clearance for fire equipment.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free of excavated material or other obstructions.

Sec. 70-115. Protection of traffic.

The permittee under this article shall erect and maintain suitable timber barriers to confine earth from trenches or other excavations in order to encroach upon streets as little as possible. The permittee shall construct and maintain adequate and safe crossings over excavations and across streets under improvement to accommodate vehicular and pedestrian traffic at all street

intersections. Vehicular crossings shall be constructed and maintained of plank, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples. Pedestrian crossings shall consist of planking three inches thick, 12 inches wide and of adequate length, together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing as required by the public works director.

Sec. 70-116. Barricades.

A permittee under this article shall be responsible for the placement of barricades, warning signals and signal lights sufficient to warn the public of hazard and which are in compliance with the town ordinances concerning barricading of public streets.

Sec. 70-117. Removal and protection of utilities.

The permittee under this article shall not interfere with any existing utility without the written consent of the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the town shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across such work. In case any of such pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them, and the expense of such repairs shall be charged to the permittee, and his bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility. The permittee shall inform itself as to the existence and location of all underground utilities and protect such utilities against damage.

Sec. 70-118. Protection of adjoining property.

The permittee under this article shall at all times and at his own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such purpose, and if he cannot obtain a license from such owner, the public works director may authorize him to enter the private premises solely for the purpose of making the property safe. The permittee shall, at his own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out such work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced with live sod after ditches have been backfilled as required in this division. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove, even temporarily, any trees or shrubs which exist in

streets without first having notified and obtained the consent of the appropriate town department or town official having control of such property.

Sec. 70-119. Sidewalk excavations

Any excavation made in any sidewalk or under a sidewalk shall be provided with a substantial and adequate footbridge over such excavation on the line of the sidewalk, which bridge shall be at least three feet wide and securely railed on each side so that foot passengers can pass over safely at all times.

Sec. 70-120. Protective measures.

The permittee under this article shall erect such fence, railing or barriers about the site of the excavation work as shall prevent danger to persons using the town streets or sidewalks, and such protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight, there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public.

Sec. 70-121. Industry standards to be followed in street and sidewalk excavations; indemnity.

(a) The plans by a permittee under this article for all trenches whose depth will equal or will exceed five feet shall include detailed plans and specifications showing a trench safety system which meets Occupational Safety and Health Administration standards.

(b) The permittee and a registered professional engineer shall certify that the trench safety system set forth on the submitted plan meets and complies with all Occupational Safety and Health Administration standards.

(c) The permittee and the engineer shall indemnify and hold the town harmless from any damages or injuries resulting from a failure of the plan or its implementation to meet Occupational Safety and Health Administration standards.

Sec. 70-122. Attractive nuisance.

It shall be unlawful for the permittee under this article to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and be hazardous to their safety or health.

Sec. 70-123. Care of excavated material.

All material excavated from or other materials stored next to trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area

being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the public works director shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

Sec. 70-124. Damage to existing improvements.

All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee under this article. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered, the permittee fails to furnish the necessary labor and materials for such repairs, the public works director shall have the authority to cause such necessary labor and materials to be furnished by the town and the cost shall be charged against the permittee, and the permittee shall also be liable on his or its bond therefor.

Sec. 70-125. Property lines and easements.

Property lines and limits of easements shall be indicated on the plan of excavation submitted with the application for the excavation permit and it shall be the permittee's responsibility to confine excavation work within these limits.

Sec. 70-126. Cleanup.

As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee under this article and shall be completed to the satisfaction of the public works director. From time to time as may be ordered by the public works director and in any event immediately after completion of such work, the permittee shall at his or its own expense clean up and remove all refuse and unused materials of any kind resulting from such work and upon failure to do so within 24 hours after having been notified to do so in writing by the public works director, such work may be done by the public works director and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided in this article.

Sec. 70-127. Protection of watercourses.

The permittee under this article shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace such watercourses, sewers or drains in as good condition as it found them or shall make such provisions for them as the public works director may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

Sec. 70-128. Breaking through pavement.

Whenever it is necessary to break through existing pavement for excavation purposes and where trenches are to be four feet or over in depth, the pavement and the base shall be removed to at least 12 inches beyond the outer limits of the subgrade that is to be disturbed in order to prevent settlement, and a 12-inch shoulder of undisturbed material shall be provided on each side of the excavated trench. The face of the remaining pavement shall be approximately vertical. A power-driven concrete saw shall be used so as to permit complete breakage of concrete pavement or base without ragged edges for the full depth of the pavement. Asphalt paving shall be scored or otherwise cut in a straight line. No pile driver may be used in breaking up the pavement.

Sec. 70-129. Jacking, boring or tunneling.

(a) *Description.* This section shall govern for the provision of the required opening for the installation of conduits by the methods of jacking, boring, or tunneling as shown on the plans and in conformity with the specifications in this section.

(b) *Construction requirements.* Where encasement or carrier pipe is required to be installed under railroad embankments or under highways, streets, or other facilities by jacking, boring or tunneling methods, construction shall be made in a manner that will not interfere with the operation of the railroad, highway or other facility, and will not weaken or damage any embankment or structure. The drilling or pilot holes for the alignment of pipe prior to its installation by jacking, boring or tunneling will be a requirement. The contractor shall take the proper precautions to avoid excavating earth or rock or shattering rock beyond the limits of excavation needed to install the conduit.

(c) *Construction by jacking.*

(1) If the grade of the pipe at the jacking end is below the ground surface, suitable pits or trenches shall be excavated for the purpose of conducting the jacking operations and for placing end joints of the pipe. This excavation shall not be carried to a greater depth than is required for placing of the guide and jacking timbers and no nearer the roadbed than two feet.

(2) At the other end of the pipe, an approach trench shall be excavated accurately to grade. All open trenches and pits shall be braced and shored in such a manner as will adequately prevent caving or sliding of the walls into the open trench or pit.

(3) Heavy duty jacks suitable for forcing the pipe through the embankment shall be provided. In operating jacks, even pressure shall be applied to all jacks used. A suitable jacking head not less than six inches larger than the outside diameter of the pipe, usually of timber, and suitable bracing between jacks and jacking head shall be provided so that pressure will be applied to the pipe uniformly around the ring of the pipe. The jacking head shall be of such weight and dimensions that it will not bend or deflect when full pressure is applied at the jack. The jacking head shall be provided with an opening for the removal of excavated material as the jacking proceeds. A suitable jacking frame or backstop shall be provided. The pipe to be jacked shall be set on guides which are straight and securely braced together in such a manner to support the section of the pipe and to direct it in the proper line and grade. All timber and other materials used in the construction of the jacking assembly will be of such quality and dimensions that they will withstand all stresses to which they are subjected in such a manner as to ensure even pressures on the pipe during jacking.

operations. The whole jacking assembly shall be placed so as to line up with the direction and grade of the pipe.

(4) As the jacking proceeds, the embankment material shall be excavated slightly in such a manner to avoid making the excavation larger than the outside diameter of the pipe, with the excavated material being removed through the pipe. The excavation for the underside of the pipe, for at least one-third of the circumference of the pipe, shall conform to the contour and grade of the pipe. The excavation for the top half of the pipe shall conform closely to the outside diameter of the pipe and a clearance greater than two inches will not be permitted. All voids between the pipe and the earth will be filled with grout proportioned 1:7 minimum mix grout with five percent to 40 percent air entrainment. Grout holes may be provided in the pipe or grouting may be made through drill holes from the ground surface if practical. The grouting shall follow immediately upon completion of the jacking operation.

(5) All carrier pipe installed by jacking shall be supported by quarter point cradle of 2,000 psi concrete across the jacking pit and to the first joint in the ditch section on each end.

(6) The distance that the excavation shall be extended beyond the end of the pipe depends on the character of the material, but it shall not exceed two feet in any case. The pipe, preferably, shall be jacked from the low or downstream end.

(7) When the jacking of pipe is once begun, the operation shall be carried on without interruption, insofar as practicable to prevent the pipe from becoming firmly set in the embankment.

(8) Any pipe damaged in jacking operations shall be repaired or removed and replaced by the contractor at his entire expense.

(9) The pits or trenches excavated to facilitate jacking operation shall be filled immediately after the jacking of the pipe has been completed unless an encasement only has been installed; in which case, the trenches and pits shall be left open until the carrier pipe has been laid through and manholes have been built if required.

(10) The pits or trenches will then be backfilled in accordance with the location and conditions as are covered elsewhere in these specifications.

(11) If a carrier pipe is laid through an encasement pipe, the bedding of crushed rock, concrete, grout or granular material, if any, will be considered a part of the jacking operation.

(d) *Construction by boring.* The hole shall be bored mechanically with a suitable boring assembly/ designed to produce a smooth, straight shaft and so operated that the completed shaft will be at the established line and grade. The size of the bored hole shall be of such diameter to provide ample clearance for bells or other joints. All carrier pipe installed by boring shall be supported by quarter point cradle of 2,000 psi concrete across the boring pit and to the first joint in the ditch section on each end. All voids will be grouted with a 1:7 minimum mix with five percent to 40 percent air entrainment, and will be considered a part of the unit price of the boring operation.

(e) *Construction by tunneling.*

(1) The tunnel shall be excavated in such a manner and to such dimensions which will permit placing of the proper supports necessary to protect the excavation.

(2) All equipment operated in the tunnel shall be powered by either air or electricity. No equipment will be permitted in the tunnel that uses a petroleum product for fuel. Electric lights shall be used for illumination of the tunnel construction, for illumination of completed portions of the tunnel used for passage, and wherever lighting is needed for inspection of the work. Sufficient number of lamps shall be used to properly illuminate the work, and all wiring for electric power and lights shall be installed and maintained in a safe and secure manner in accordance with the current electrical code of the town. The contractor shall maintain the tunnel air in a condition suitable for the health of the workmen and sufficiently clear for surveying operations. A sufficient supply of fresh air shall be provided to make for the quick and complete removal of gases and dust resulting from blasting or other tunnel operations. Except when unnecessary due to natural ventilation, artificial ventilation shall be maintained in the tunnel by ventilating plants of ample capacity operated when needed to meet the preceding requirements.

(3) If required by the plans or if required for safety, suitable steel or timber sheeting, shoring and bracing shall be used to support the sides and roof of the excavation. Supports may be left in place provided that they clear the encasement or carrier pipe.

(4) Nothing contained in this section shall prevent the contractor from placing such temporary or permanent supports as he shall deem necessary, nor shall it be construed as relieving the contractor from his full responsibility for the safety of the work, and for all damages to persons and property.

(5) If the tunnel is to be lined with concrete as a monolithic structure, then the overbreak, if any, or voids will be poured with concrete of the required strength as detailed on plan. If the strength is not indicated, the 28-day strength will be a minimum of 3,000 psi.

(6) Unless otherwise indicated or specified, the entire void between the outside of the pipe and the tunnel walls or the inside face of the tunnel lining shall be backfilled with concrete having a minimum compressive strength of 2,000 pounds per square inch at 28 days or 1:7 minimum mix grout with five percent to 40 percent air entrainment.

(7) No concrete or grout shall be placed around the pipe unless the permanent sheeting, bottom, sides and roof of the tunnel are in a condition satisfactory to the public works director. The minimum thickness of concrete or grout backfill shall be maintained throughout. Concrete required for backfill in excess of the minimum dimensions shown on plan will be at the entire expense of the contractor.

Sec. 70-130. Backfilling.

Unless waived by the public works director, backfilling in any street opened or excavated pursuant to an excavation permit issued under this article shall be compacted to a minimum dry density of 95 percent of standard proctor density, within three percent of optimum moisture. Compacting shall be done by mechanical tampers or vibrators by rolling in layers, as required by the soil in question and sound engineering practices generally recognized in the construction industry. The public works

director shall have the right to require testing to determine the compaction, and such testing shall be at the expense of permittee.

Sec. 70-131. Dry backfilling.

Backfilling up to the first 12 inches above the top of the utility pipes or similar installations shall be done in four-inch to six-inch layers. Each layer is to be tamped by manual or mechanical means. Layers that are hand tamped shall not exceed four inches in thickness. Layers that are power tamped shall not exceed six inches in thickness. The same requirements shall apply to the remainder of the backfilling if tamping is the method used for backfilling. Backfilling of all pipes of over 24 inches in diameter shall be carried up to the spring line of the pipe in three-inch layers, with each layer moistened and thoroughly tamped with suitable mechanical equipment. The backfill around all pipes 24 inches or less in diameter shall be tamped as specified in this section to a depth of 12 inches above the top of the pipe before any additional backfilling is placed thereon.

Sec. 70-132. Backfill material.

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

Sec. 70-133. Backfilling of the surface.

Backfilling shall be completed by placing the backfill material well up over the top of the trench. For dry backfilling, the material shall be compacted with a roller of an approved type or with the rear of a truck carrying at least five tons until the surface is unyielding. The surface shall then be graded as required.

Sec. 70-134. Restoration of surface.

(a) The permittee shall restore the surface of all streets, broken into or damaged as a result of the excavation work, to its original condition in accordance with the specifications of the public works director. The permittee may be required to place a temporary surface over openings made in paved traffic lanes. Except when the pavement is to be replaced before the opening of the cut to traffic, the fill above the bottom of the paving slab shall be made with suitable material well tamped into place and this fill shall be topped with a minimum thickness of bituminous mixture which is suitable to maintain the opening in good condition until permanent restoration can be made. The crown of the temporary restoration shall not exceed one inch above the adjoining pavement. The permittee shall exercise special care in making such temporary restorations and must maintain such restorations in safe traveling condition until such time as permanent restorations are made. The asphalt which is used shall be in accordance with the specifications of the public works director.

(b) Permanent restoration of the street shall be made by the permittee in strict accordance with the specifications prescribed by the public works director to restore the street to its original and proper condition, or as near as may be.

(c) Acceptance or approval of any excavation work by the public works director shall not prevent the town from asserting a claim against the permittee and his surety under the surety bond required hereunder for incomplete or defective work if discovered within 12 months from the completion of the excavation work. The public works director's presence during the performance of any excavation work shall not relieve the permittee of its responsibilities under this article.

Sec. 70-135. Town's right to restore surface.

(a) If the permittee shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the public works director, if he deems it advisable, shall have the right to do all work as necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof plus 25 percent of such cost for general overhead and administrative expenses. The town shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as provided in this article, and the town shall also enforce its rights under the permittee's surety bond provided pursuant to this article.

(b) It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for one year after restoring it to its original condition.

Sec. 70-136. Trenches in pipe laying.

Except by special permission from the public works director, no trench shall be excavated more than 250 feet in advance of pipe laying or left unfilled more than 500 feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by the public works director. No timber bracing, lagging, sheathing or other lumber shall be left in any trench.

Sec. 70-137. Prompt completion of work.

The permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit therefor.

Sec. 70-138. Urgent work.

If in his judgment, traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the public works director with the consent of the city manager, if the excavation is within 300 feet of a residence, shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee 24 hours a day to the end that such excavation work may be completed as soon as possible.

Sec. 70-139. Emergency action.

In the event of any emergency in which a sewer or water main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the second day following the day of such emergency during which the public works director's office is open for business, and shall not proceed with permanent repairs without first obtaining an excavation permit under this article.

Sec. 70-140. Noise, dust and debris.

Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and during the hours of 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the city manager, or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

Sec. 70-141. Preservation of monuments.

The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until approved to do so by the public works director.

Sec. 70-142. Inspections.

The public works director shall make such inspections as are reasonably necessary in the enforcement of this article. The public works director shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

Sec. 70-143. Drawings to be maintained.

Users of subsurface street space shall maintain accurate drawings and plans showing the location and character of all underground structures.

Sec. 70-144. Applicability of article to town work and utility companies.

The provisions of this article shall be applicable to any excavation work under the direction of a competent town authority by employees of the town. Any contractor of the town performing work for or in behalf of the town necessitating openings or excavations in streets shall comply with this article unless the public works director shall, in writing, waive compliance of the requirements of this article upon the terms and conditions he deems necessary. All provisions of this article shall be

applicable to public utility companies and their contractors, except the provision which requires the payment of a permit fee and the provision which requires a surety bond provided such utility company has agreed to indemnify the town against damage and losses covered by the bond.

Sec. 70-145. Insurance.

A permittee, prior to the commencement of excavation work under this article, shall furnish to the public works director satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than \$100,000.00 for any one person and \$300,000.00 for any one accident and property damage insurance of not less than \$100,000.00, duly issued by an insurance company authorized to do business in this state. However, if the public works director determines that the cost of the excavation to be performed by permittee exceeds \$100,000.00, then the public works director, at his discretion, may require the permittee to maintain in force during the performance of the excavation work and the period of excavation permit public insurance not less than \$1,000,000.00 for any one person and \$3,000,000.00 for any one accident and property damage insurance not less than \$500,000.00, duly executed by an insurance company authorized to do business in this state. For purposes of this section, the town will accept certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the town to accept such letters the Person must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the town, based on financial information requested by and furnished to the town.

The above insurance requirements may be met by applicants with a current franchise or license and applicants governed by Chapter 283 of the Texas Local Government Code if the current franchise, license or statutory indemnity adequately provides for insurance or bonds or provides an indemnity in favor of the City.

Secs. 70-146--70-160. Reserved.

DIVISION 2. PERMIT

Sec. 70-161. Required.

It shall be unlawful for any person to dig up, break, excavate, jack, bore, tunnel, undermine or in any manner break up any street or to make or cause to be made any excavation in or under the surface of any street for any purpose or to place, deposit or leave upon any street any earth or other excavated material or construction material obstructing or tending to interfere with the free use of the street, unless such person shall first have obtained an excavation permit therefor from the public works director.

Sec. 70-162. Application.

No excavation permit shall be issued unless a written application for the issuance of an excavation permit is submitted to the public works director. The written application shall state the name and address of the applicant, the nature, location and purpose of the excavation, the date of

commencement and date of completion of the excavation, and other data as may reasonably be required by the public works director. The application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to such excavation and of the proposed excavated surfaces, the location of the excavation work, and such other information as may be prescribed by the public works director. Furthermore, the application shall disclose the date on which the excavation work will be finished and the street restored to its original condition. An excavation permit issued pursuant to this section shall be automatically revoked if excavation work is not commenced within ten days from the issuance of such permit.

Sec. 70-163. Fees.

Except as provided by Section 70-144, a permit fee shall be charged by the public works director for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in an amount of \$10.00.

Sec. 70-164. Suspension and/or revocation.

- (a) Permits may be suspended by the public works director on the following grounds:
- (1) Failure of permittee to start excavation work on the commencement date provided for in the application or to diligently do such work after beginning.
 - (2) Violation of any terms or provisions of the street excavation ordinance of the town, as amended.
 - (3) Giving false information upon the application.
 - (4) Changing of subcontractors responsible for the excavation work.
 - (5) Failure of permittee to finish the work on or before the finish date set forth in the application.

Whenever a permit holder has failed to comply with any notice issued under the provision of this section, the permit holder shall be notified in writing that the permit is, upon the service of the notice, immediately suspended, and that an opportunity of hearing will be provided if a written request for a hearing is filed with the public works director by the permit holder. Notwithstanding the other provisions of this section, whenever the public works director finds the conditions of the excavation work, which in his judgment, constitutes a substantial hazard to the public, he may, without warning, notice or hearing, issue written or oral notice to the permit holder, citing such conditions, corrected actions to be taken; and if deemed necessary, such order shall state that the permit is immediately suspended, and all excavation work is to be immediately suspended except for returning the street to a usable condition. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the public works director, shall be afforded a hearing as soon as possible.

(b) Any person whose permit has been suspended may, within five days of the suspension, make application for reconsideration for the purpose of reinstatement of the permit. Within five days following receipt of a written request, including a statement signed by applicant that in his opinion the conditions causing suspension of the permit has been corrected, the public works director shall reconsider the alleged violation. If the applicant is complying with the requirements of this article, the permit shall be reinstated.

(c) For serious or repeated violations of any of the requirements of this article, including, but not limited to, the failure to timely complete the excavation work, or for interference with the public works director's performance of his duty, the permit may be permanently revoked after an opportunity for a hearing has been provided for by the public works director. Prior to such action, the public works director shall notify the permit holder, in writing, stating the reasons for which the permit shall be permanently revoked at the end of five days following service of such notice, unless a request for hearing is filed with the public works director, by the permit holder within such five-day period. As provided in this section, the permit may be suspended for cause pending its revocation or a hearing relative thereto. If no request for hearing is filed within the five-day period, the revocation of the permit becomes final.

(d) The notice provided for in this section is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the address shown upon the application required to be submitted under this division.

(e) The hearing provided for in this section shall be conducted by a committee at a time and place designated by the public works director. The committee shall be comprised of the public works director, building official, and street superintendent. Based upon the record of such hearing, the committee shall make a finding and shall sustain, modify or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the committee.

(f) The applicant shall not be entitled to refunding of a permit fee where a permit is revoked or suspended.

(g) If a permit is revoked pursuant to the provisions of this section, the public works director shall have the option to pursue any one or more of the following remedies without any notice or demand to the permit holder whatsoever:

(1) Direct the building official to revoke the building permit related to the excavation work, if any.

(2) Cause to be performed work necessary to correct and repair the street to its condition prior to the beginning of the excavation work and to charge the cost of such repair to the permittee or owner of the property for whom the excavation work was to be benefit.

(3) Shall not accept an application for additional or new excavation work from an applicant whose permit has been revoked within a three-year period.

Sec. 70-165. Excavation placard.

The public works director shall provide each permittee at the time a permit is issued under this article a suitable placard plainly written or printed in English letters at least one inch high with the following notice: "Town of Addison Permit No. _____ Expires _____" and in the first blank space there shall be inserted the number of such permit and after word "expires" shall be stated the date when such permit expires. It shall be the duty of any permittee under this article to keep the placard posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit, or to misrepresent the number of the permit or the date of expiration of the permit.

Sec. 70-166. Surety bond.

Before an excavation permit as provided in this division is issued and unless waived by the public works director, the applicant shall deposit with the public works director a surety bond in the amount of \$25,000.00 payable to the town. The public works director shall have the right to reduce the amount of the bond, if he determines in his sole discretion that the prescribed amount would be unreasonable in the light of the scope and cost of the work. The required surety bond must be:

- (1) With good and sufficient surety.
- (2) By a surety company authorized to transact business in the state.
- (3) Satisfactory to the city attorney in form and substance.
- (4) Conditioned upon the permittee's compliance with this division and to secure and hold the town and its officers harmless against any and all claims, judgments, or other costs arising from the excavation and other work covered by the excavation permit or for which the town, the city council or any town officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition, and to the satisfaction of the public works director, all openings and excavations made in streets, and to maintain any street where excavation is made in as good condition for the period of 12 months after such work shall have been done and accepted by town, usual wear and tear excepted, as it was in before such work shall have been done. Any settlement or upheaval of the surface within such 12-month period shall be deemed conclusive evidence of defective backfilling by the permittee. Nothing contained in this subsection shall be construed to require the permittee to maintain any repairs to pavement made by the town if such repairs should prove defective. Any owner of real estate repairing or engaging another to repair his own sidewalk shall not be required to give such bond. In the event of any suit or claim against the town by reason of the negligence or default of the permittee, upon the town's giving written notice to the permittee of such suit or claim, any final judgment against the town requiring it to pay for such damage shall be conclusive upon the permittee and his surety. An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above and in other respects as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from such date.

Secs. 70-167--70-190. Reserved.

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