

ORDINANCE NO. O-2023-56

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING ARTICLE VI, SECTION 15, "RIGHTS-OF-WAY USE AND CONSTRUCTION" OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS BY DELETING THE CHAPTER IN IT'S ENTIRETY AND REPLACED; ADDING NEW PROVISIONS FOR THE PLACEMENT OF FACILITES IN PUBLIC RIGHTS-OF-WAY; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may regulate and control, for whatever purposes, public places; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, the state has delegated to each municipality the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public, subject to state law; and

WHEREAS, the City is charged with maintaining control of and access to the Rights-of-Way in order to protect the public health, safety, and welfare; and

WHEREAS, the City Council of the City of Tyler (the "City Council") has determined that excavations in City streets may significantly interfere with the public use of the streets and resulting in negative impact to public safety, air quality, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, the City Council finds excavations in paved streets significantly degrades and shortens the life of the surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance, and repair; and

WHEREAS, the City Council has determined that substantial public funds have been invested to build, maintain, and repair the City streets and utilities and the City holds these streets and utilities as an asset in trust for its citizens; and

WHEREAS, the City Council has determined that substantial public funds have been invested to improve the aesthetics and overall development scheme within the City, including but not limited to the undergrounding of utilities; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of City streets and safeguard the value of the public investment of the benefit of City residents by providing incentives to reduce the number of excavations in City streets, which will also reduce the number of service disruptions and excavations; and

WHEREAS, the City Council has determined that adoption of a right-of-way amendment will comply with and promote the regulations in Chapter 283 of the Texas Local Government Code pertaining to Certificated Telecommunications Providers as well as the Texas Utilities Code; and

WHEREAS, the Texas State Legislature has enacted S.B. No. 1004 relating to the deployment of network nodes in the public right-of-way and has amended Subtitle A, Title 9, Local Government Code by adding Chapter 284, to take effect on September 1, 2017; and

WHEREAS, municipalities retain the authority to manage the public right-of-way to ensure the health, safety, and welfare of the public; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of City streets and safeguard the value of public infrastructure; and

WHEREAS, as expressly allowed by Section 284.108 of Chapter 284 and pursuant to its police power authority reserved in Sec. 284.301 of Chapter 284, the City has drafted *Design Guidelines* in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Council desires to regulate the installation of network nodes and network support poles pursuant to Chapter 284 in a way that is fair, reasonable, and nondiscriminatory; and Right-of-Way Management Ordinance.

WHEREAS, the City Council having reviewed the regulations contained herein has determined that the adoption of this ordinance serves the public health, safety, and welfare.

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

PART 1. That the findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

PART 2. That Chapter 15, Article VI. Rights-of-Way Use and Construction of the City of Tyler, Texas, Code of Ordinances, is hereby deleted in its entirety and replaced to read as follows:

Article VI. Rights-of-Way Use and Construction

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Sec. 15-260. Findings and Purpose

The purpose of this Article is to:

a. Assist in the management of Facilities placed in, on or over the Public Rights-of-Way in order to minimize the congestion, inconvenience, deterioration, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of facilities within the Public Rights-of-Way. The city acknowledges the need to upgrade, maintain, replace, and install new utilities. The city also recognizes the disruptive impact these excavations have on the neighborhoods and traveling public. These rules and regulations are designed to balance these competing needs, and to preserve and maintain the public health, safety, welfare, and conveniences;

- b. Govern the use and occupancy of the Public Rights-of-Way;
- c. Assist the City in its efforts to protect the public health, safety and welfare;
- d. Conserve and manage the limited physical capacity of the Public Rights-of-Way held in public trust by the City;
- e. Preserve the physical integrity of the streets and highways and public utilities;
- f. Control the orderly flow of vehicles and pedestrians;
- g. Keep track of the different entities using the Public Rights-of-Way to prevent interference between them;
- h. Assist in scheduling common trenching and street cuts; and
- i. Protect the safety, security, appearance, and condition of the Public Rights-of-Way. (Ord. No. 0-2002-59, 12/11/02)

Sec. 15-261. Authority; Scope

This Article applies to all Persons that place Facilities in, on or over Public Rights-of-Way. (Ord. No. 0-2002-59, 12/11/02)

Sec. 15-262. Definitions

In this Article the following words, terms and phrases shall have the following meanings:

ADA shall mean the Americans with Disabilities Act.

Aerial work shall mean any installation or maintenance of utilities above ground within the ROW.

BMP shall mean best management practice.

Business day shall mean a day when the municipal building of the City of Tyler is open to the public for business.

Certificated Telecommunications Provider means the same as defined in Tex. Loc. Gov't Code § 283.002(2) [any entity that has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission to offer local exchange telephone service].

City means The City Of Tyler, Texas. As used throughout, the term City also includes the designated agent of the City.

City-dedicated easement shall mean any type of easement that has been dedicated to the city for city infrastructure only.

City Engineer shall mean the City of Tyler City Engineer or his or her designee.

City Property means all City buildings, infrastructure, bridges, parks, golf courses, parking lots and other real property that is not dedicated for utility or street transportation purposes.

Emergency shall mean operations and repairs necessary to respond to a situation that endangers life, health and safety, or property, or a situation in which the public's need for uninterrupted service and reestablishment of service, if the service is interrupted and compels immediate action. Upgrading of facilities, new service installation, and neighborhood improvement projects are not emergency operations.

Excavation shall mean activity that removes or otherwise disturbs soil in the ROW or easement, or disturbs any street or alley pavement of any depth.

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.

Flowfill shall mean a mix of sand and Portland cement, utilizing a ratio of 1.5 sacks of cement per cubic yard of material.

High profile project shall mean utility projects requiring installation or repair of facilities in the ROW deemed high profile by the City Engineer that would typically garner substantial public and/or political interest.

Life of the street shall mean such time as the street is reconstructed or the PCI (pavement condition index) of the street has a value of less than 50.

Minimum Design Standards and Specifications shall mean the City of Tyler, Design Guidelines for Subdivision Improvements, Standard Specifications, and Standard Details. The Minimum Design Standards and Specifications that are incorporated by reference into this article and the terms and conditions of the Minimum Design Standards and Specifications are binding upon any entity acting under any portion of this article. In the event of any discrepancy or ambiguity between this article, this code, or the Minimum Design Standards and Specifications, the Minimum Design Standards and Specifications will control.

Moratorium Street shall mean any street or block that has been constructed, reconstructed, or improvements by the City of Tyler or any other owner or persons in the preceding three (3) years.

New street shall mean the paved portion of the ROW that has been constructed, reconstructed, or resurfaced with an asphalt overlay, full-depth reclamation, reconstructed or other structural street maintenance treatment within the last three (3) years or a street having a PCI of 85 or higher.

Pavement Condition Index (PCI) shall mean a measure of the condition of the street, on a scale of 1 to 100. The PCI is available from the City's Engineering department.

PCC shall mean Portland cement concrete.

Permit shall mean a permit issued by the City Engineer to a person, partnership, corporation, utility, ROW user or any other legal entity authorizing construction work in the city's ROW or other public property.

Permit holder shall mean any person, partnership, corporation, utility, ROW user or any other legal entity that has been granted a permit for construction work in the city's ROW or other public property.

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.

Project large shall mean utility projects requiring installation or replacement of utility facilities in the ROW for a distance greater than one thousand (1,000) feet in length or any size excavation within the ROW of a Principal Arterial or Minor Arterial.

Project medium shall mean utility projects requiring installation or repair of facilities in the ROW for a distance of greater than twenty-five (25) feet in length and less than one thousand (1,000) feet in length and not in a Principal Arterial or Minor Arterial.

Project small shall mean utility projects requiring installation or repair of facilities in the ROW for a distance of less than twenty-five (25) feet in length and not in a Principal and Minor Arterial.

Rights-of-Way (ROW) means the same as defined in Tex. Loc. Gov't Code § 283.002(6), the area 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 a private easement, private property, publicly owned property. The term does not include the airwaves above a Public Right-of-Way with regard to wireless telecommunications. The term does not include City Property. (Ord. No. 0-2002-59, 12/11/02)

ROW Bond shall mean the type of license and permit bond that guarantees the performance of work in a publicly owned ROW.

ROW User shall mean a franchise utility, a certified telecommunications company, or any other privately, publicly owned utility authorized to conduct business in order to install, construct, maintain, or repair their facilities in the city right-of-way. The term "ROW user" shall also include any contractor or other agent or person engaged by a ROW user to work on facilities located in city's right-of-way. The granting of a permit to a contractor or agent of a ROW user shall be deemed to be the granting of a permit to the ROW user for purposes of this article.

Sanitary sewer service line shall mean a service line that is a privately owned underground gravity pipe that extends from the city's municipal sewer main to the residential/commercial/industrial structure receiving service. The service line conveys the wastewater generated by customers to the municipal wastewater collection system.

Sanitary sewer main line shall mean a municipally owned and maintained underground gravity or forced main pipeline located within public ROW or easement that collects wastewater from sewer service lines via sewer taps and conveys wastewater toward sewer trunk lines and interceptors.

Street in good condition shall mean the paved portion of the street ROW that has a PCI of eighty-five (85) or above.

Temporary use of ROW shall mean use of the ROW for less than two (2) hours.

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

Traffic control shall mean the planning and installation of all signs, signals, markings, and other devices used to regulate, warn, or guide traffic placed on, over, or adjacent to a street, highway, pedestrian facility, bikeway, or private road open to public travel. The purpose of which is to promote roadway safety and efficiency by providing for the orderly movement of all road users on streets, highways, bikeways, and private roads open to public travel.

Trenchless technology shall mean the type of subsurface construction work, utilizing various methods, materials, and equipment for the installation of underground infrastructure with minimal disruption to surface traffic, business, and other activities.

Utility shall mean any privately or publicly owned entity which uses public ROW to furnish the public any general public service, including, without limitation, sanitary sewer, storm sewer, gas, electricity, water, telephone, telecommunications, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within the ROW. All underground power and communication lines shall be in conduit and may not be direct buried.

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

Sec. 15-263. Administration and Enforcement

- (a) The City Engineer shall administer and enforce compliance with this Article.
- (b) A Person shall report information related to the use of the Public Rights-of-Way that the City Engineer requires in the form and manner reasonably prescribed by the City Engineer.
- (c) The City Engineer shall report to the City Council upon the determination that a Person has failed to comply with this Chapter. (Ord. No. 0-2002-59, 12/11/02)

Sec. 15-264. Conditions of Public Rights-of-Way Occupancy

- (a) In the exercise of governmental functions, the City has first priority over all other uses of the Public Rights-of-Way. The City reserves the right to lay sewer, gas, water facilities, and any

other pipelines or cables and conduits, and to do underground and overhead work in, across, along, over or under a public street, alley or Public Rights-of-Way occupied by a Person, and to change the curb, route or grade of sidewalks and streets.

- (b) The City 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 City 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 City 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 City closes or abandons a Public Right-of-Way that contains a portion of a Person's Facilities, the City shall close or abandon such Public Right-of-Way subject to the rights of the Person.

Sec. 15-265. Permit Required

- (a) Any persons conducting any activity within the city's ROW is required to apply for a permit prior to work commencing, unless said work is an emergency as authorized by section 15-275 of this article.
- (b) Notwithstanding the requirements of subsection (a), no permit shall be required for the installation and connections necessary to initiate service to a customer's property or routine repair and maintenance of existing facilities that will interfere with traffic for less than one hour or excavate less than sixteen (16) inches in depth, unless such activity requires the breaking of pavement, boring, or excavating with equipment greater than hand tools or a vibrating plow designed to install lines up to a three-inch diameter.
- (c) Utility construction in a city-dedicated easement shall require a ROW utility construction permit.

Sec. 15-266. Permit Application

- (a) A ROW permit must be obtained by the persons, contractor, or ROW user performing the work. Applications for a ROW permit shall be made on forms provided by the city and, if required by City Engineer, be accompanied by drawings, plans and specifications as necessary that provide sufficient detail of work being performed. The City Engineer may require additional information.
- (b) All permit applications shall be accompanied with drawings of the intended route and depth of construction.
- (c) Permit applicant shall have a valid One-Call ticket under excavator's name and located within the permitted area.

Sec. 15-267. Permit Fees

- (a) There is a permit application fee of twenty-five dollars (\$25.00).
- (b) Roadway usage fee of fifty dollars (\$50.00) per day shall be applied to any permit that exceeds the completion date established on the permit or fails to meet any established timeline as defined in this article, Section 15-286.

Sec. 15-268. Issuance of Permit

- (a) The City Engineer shall issue a permit under this section by the following criteria. Once all of the registration and permit requirements are met and assurance that the health, welfare, and safety of the public will not be unreasonably impaired:
 - (1) Within five (5) business days for projects deemed small/medium.
 - (2) Within ten (10) business days for projects deemed large.
- (b) The City Engineer may require more than ten (10) days for large projects that require interdepartmental coordination.

Sec. 15-269. Bulk Permit

The City Engineer may issue a "Bulk permit" for routine maintenance or repair of existing and/or new service line(s) or utility work in the ROW for excavations that are repetitive in nature within a continued section of ROW and not one continuous excavation. Updates shall be given to the city on a daily, weekly, or other schedule as requested by the City Engineer.

Sec. 15-270. Permit Information

- (a) A permit issued under this article is personal to the permitted person, contractor, or ROW user and may not be transferred to another person, contractor, or ROW user or used by other persons, contractors, or ROW users to perform the excavation authorized in the permit.
- (b) The permit does not grant access rights to private property. Any access needed by the permit holder to private property will require permission and/or coordination of any construction activities with the developer or property owner.
- (c) In the event of a joint trench with multiple utilities, the contractor excavating the trench will be responsible for securing the permit.
- (d) Excavations done in the ROW or in any manner pursuant to a Street, Alley, City dedicated easement, or other Right-of Way Use License with a private citizen or landowner shall require a ROW permit and be subject to all the rules and guidelines of this article.

Sec. 15-271. Insurance Requirements

- (a) The applicant for permit shall furnish a certificate of insurance evidencing general liability provided by an insurance company that carries an AM Best Rating A or better. The

company, or companies, must be authorized to do business in this state, or evidence of self-insurance satisfactory to the city evidencing that the city is adequately protected from any liability or damages resulting by virtue of applicant's construction. The certificate of insurance shall be filed with each application for a permit. The general liability required herein shall have a minimum limit of one million dollars (\$1,000,000.00) per occurrence and a two million dollars (\$2,000,000.00) general aggregate limit. The general liability will also extend additional insured status to the city.

(b) The insurance certificate required under shall:

- (1) name the City and its past and present officers, employees, board members and elected representatives as additional insureds for all applicable coverage;
- (2) provide for 30 days' notice to the City for cancellation, non-renewal, or material change; and
- (3) provide that notice of claims shall be provided to the City Engineer by certified mail, or by fax or e-mail so long as Person can verify City received notice; and
- (4) provide a waiver of subrogation.

(c) A Person shall furnish to the City Engineer, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this Section. The City 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 City, the Person, or the underwriter. If the City requests a deletion, revision or modification, a Person shall exercise reasonable efforts to pay for and to accomplish the change.

(d) The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Engineer determines that changes in statutory law, court decisions, or the claims history of the industry or the Person require adjustment of the coverage.

(e) A person, entity, or owner shall immediately advise the City Attorney of actual or potential litigation that may develop and/or affect an existing carrier's obligation to defend and indemnify.

(f) An insurer has no right of indemnification nor recovery against the City. The required insurance policies shall protect the person and the City. The insurance shall be primary coverage for losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.

(h) A Person shall pay premiums and assessments for the insurance required under this section. A company which issues an insurance policy has no recourse against the City 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 and/or indemnity against the City in connection with damage covered by the policy. (Ord. No. 0-2002-59, 12/11/02)

- (i) By acceptance of a permit, the applicant agrees to indemnify and hold harmless the city, its officers, agents, servants, and employees from any and all claims, damages, suits, attorneys' fees, causes of action, and judgments which may result in any manner from the construction or laying of any improvements upon any public street, alley, or ROW in the city.
- (j) By acceptance of a ROW permit, the applicant agrees to, during the period of construction and prior to the acceptance of such improvements by the city, maintain such public street, alley, or ROW in a safe condition and issue all necessary instructions, and take all precautions as may be reasonably required, to maintain such public streets, alleys, or ROW in a safe condition for all public use.
- (k) Permits for utility work performed by city crews within the public ROW or on public property shall not require insurance. (Ord. No. 0-2002-59, 12/11/02)

Sec. 15-272. Indemnity

(a) Except as to Certificated Telecommunications Providers, each Person placing Facilities in the Public Rights-of-Way shall agree to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses, expenses, and reasonable and necessary attorney's fees and other related costs, (i) for the repair, replacement, or restoration of City'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 omission; (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 Person (including, but not limited to the Person, its agents, officers, employees and subcontractors, City'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 (including, but not limited to the agents, officers and employees of the Person, Person's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to or authorized under this Article.

(b) This indemnity provision shall not apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

(c) The provisions of this indemnity are solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other Person or entity. (Ord. No. 0-2002-59, 12/11/02)

Sec. 15-273. Work Done Without Permit

- (a) Except for emergency excavations identified in section 15-275 of this article, no ROW user or contractor shall disturb the ROW without first securing a permit. Any individual performing construction in the ROW, without a valid permit who refuses to vacate the ROW after notification from the city could be subject to:
 - (1) Civil penalty; and

- (2) Removal of all equipment, material, vehicles, and traffic control devices at permit holder expense; and
- (3) Payment of expenses to restore the ROW to original condition; and
- (4) Denial of future permits.

Sec. 15-274. Coordination with the City

- (a) ROW users should consult the City of Tyler Master Street Plan to ensure installation of facilities will not conflict with future city roadway projects.
- (b) All newly constructed roadways shall have a three (3) year moratorium. No excavation shall be allowed during moratorium without the City Engineer's approval. Additional fees and requirements may apply to permits issued in Moratorium Streets.
- (c) Permit holder shall coordinate with city departments, to allow the city to maintain city services to customers within the ROW affected by construction throughout duration of the project. Failure to coordinate as described herein may result in suspension or revocation of a validly issued permit.

Sec. 15-275. Utility Emergency Excavation and Damage to ROW User Facility

- (a) When a ROW user suddenly and unexpectedly finds it necessary to make an excavation to preserve life or property and/or to restore interrupted essential services, the excavator may begin work before obtaining a ROW permit and notify the city within 2 hours of being aware of the necessity of the emergency operation. Additionally, the person excavating, or ROW user shall apply for a ROW permit no later than the following business day.
- (b) If a permit holder in the course of an excavation cuts or damages another ROW user's facilities, the ROW user whose facility that was damaged may perform the work necessary to repair their facility without obtaining a permit if no further excavation is needed.
- (c) Cleanup of ROW due to emergency repair of utility is the responsibility of the original permit holder.
- (d) The original permit holder for an excavation is responsible for meeting all the requirements of this article, including backfilling and paving repairs, for all extended excavation attached to the original excavation.

Sec. 15-276. Facility Abandonment and Removal

- (a) A facility and/or utility support pole, box, or transport facility is abandoned if: it ceases providing or supporting the provision of wireless services for a period of 60 consecutive days or, if the permit for a utility support pole, box, or transport facility expires or is terminated.

- (b) If on the 60th day after a support pole, box, or transport facility is abandoned, the responsible network provider or its contractor has not removed the facility and/or utility from the public right-of-way, the City Engineer may remove the facility at the network provider's cost and, at the City Engineer's option, invoice the network provider for the removal and storage costs. The right of the City Engineer to remove facilities is in addition to the right set out in Section 15 – 277.

Sec. 15-277. Relocation of Existing Facilities

ROW users shall relocate any utility or facility within the ROW upon written request by the city for the purpose of city infrastructure improvements or abandonment, within thirty (30) days of request, this shall be at no cost to the city, unless the utility or facility is contained within a dedicated easement.

- (a) If the City engineer deems it necessary to remove, relocate, alter, change, adapt, repair, maintain, install, or conform the underground or overhead facilities of a public right-of-way user in order to allow the City to widen, straighten, change the grade, or otherwise alter any street, alley or public right-of-way or install or improve City owned storm drains, water lines, sewer lines, such facilities shall be relocated at the expense of the facility owner.
- (b) Except as provided by Subsection (c), a facility owner shall remove, relocate, or alter the location of its facility in a public right-of-way not later than the 45th day after the City Engineer sends written notice.
- (c) A facility owner shall remove, relocate, or alter a facility in a public right-of-way by no later than the deadline assigned by the City Engineer or designee:
1. if the facility is located outside of the approved right-of-way assignment; or
 2. if the City Engineer determines the action is necessary to abate an obstruction that poses a risk to public health, safety, or welfare.
- (d) The facility owner shall promptly repair or replace at its sole expense any damage to the public right-of-way or City real or personal property caused in the removal, relocation, or alteration of its facilities in accordance with this Ordinance.
- (e) If a facility owner fails to remove, relocate, or alter a facility by the deadline described in Subsections (b) or (c), the City may remove or relocate the facility at the owner's sole expense. The facility owner shall promptly pay all relocation and alteration expenses, including consequential damage that results from locating a facility outside the assigned area.
- (f) A facilities owner shall reimburse the City the costs of removal, relocation, or alteration and the costs of repair or replacement for any damages to the Public Rights-of-Way or City real or personal property provided in this Section within 30 days of written notice of or demand for the amounts due.

(g) This section does not prevent a facilities owner from recovering the cost of relocating or removing a facility in the public right-of-way from a non-governmental third party that initiates a request for relocation or removal, or from a governmental entity that has authorized payment for relocation or removal costs.

(h) A facilities owner shall provide the City Engineer with documentation and field location records for a relocated facility.

Sec. 15-278. Completion of Construction

The permit holder shall complete all construction activities within established timelines of this article and permit to minimize disruption of the public ROW and other public and private property.

Sec. 15-279. Revocation or Suspension of Registration and/or Permit

(a) The city reserves its right, as provided herein, to revoke or suspend any permit without refund of any fees, in the event of a breach by the permit holder of the terms and/or conditions of the permit or of this chapter or any city ordinance.

(b) The city may revoke or suspend the registration and/or permit of any ROW user with a history of violation of city ordinances, standards and specifications, or egregious safety violations.

(c) The city may revoke or suspend a registration and/or permit of any ROW user if the ROW user fails to disclose damage to any utility.

Sec. 15-280. Permits and Construction in Downtown or Historical Districts

(a) It shall be the ROW user or permit holder's responsibility to know whether they are working in a downtown or a historical district. The ROW user or permit holder shall follow all codes, standard and specifications adopted by such district.

(b) Any brick streets shall be repaired in accordance with standards identified in City of Tyler standard details.

(c) Brick street pavement may only be removed under written approval by city engineer.

Sec. 15-281. Street, Alley, Utility, or Access Easement Use

(a) Any person, contractor, or ROW user must obtain a ROW permit from the City Engineer prior to beginning any work pursuant to a Street, Alley, or other Right-of-Way Use License. This includes but is not limited to privately owned grease traps, sewer manholes, or cable pull boxes.

(b) Any structure installed in the ROW shall have an H-20 traffic rating and shall be submitted to the City Engineer's office for approval.

(c) Any excavation smaller than one (1) square foot or any excavation too small to backfill described in section 15-292 of this article shall be backfilled in its entirety using flowfill.

- (d) All grease trap excavations shall be backfilled in its entirety using flowfill regardless of excavation size.
- (e) The City of Tyler Engineering Department is not responsible for the installation, connection or internal piping of grease traps.
- (f) All work schedules, notifications, and inspections shall be followed as indicated in this article

Sec. 15 -282. Responsibilities of Permit Holder or ROW User

- (a) The permit holder or ROW user shall be responsible for performance of and compliance with all provisions of this article. The permit holder or ROW user shall perform all work, whether done in ROW, private property, or utility easement in accordance with all federal and state laws, rules and regulations, city codes, or applicable standards and specifications.
- (b) Permit holder shall be responsible for maintaining the excavation site in a reasonably clean and litter-free condition. Any debris found at the excavation site, regardless of the source, must be removed immediately at no cost to the city. Gutters shall not be obstructed, and storm drain inlets must be protected.
- (c) Equipment outrigger shall be fitted with pads to avoid damage whenever outriggers are placed on any paved surface. Steel tracked vehicles are not permitted on paved surfaces unless effective precautions approved by City Engineer are taken to protect the surface.
- (d) Permit holder or ROW user shall establish and maintain storm water BMP's.
- (e) Permit holder or ROW user shall be responsible for any damage caused to the pavement by the operation of any equipment and shall repair such damages.
- (f) The permit holder or ROW user shall be fully responsible for safeguarding persons and property from damage or injury.
- (g) A permit holder or ROW user is responsible for maintenance of all excavated areas. A permit holder or ROW user guarantees its work and shall maintain it for a period of one (1) year after acceptance by the City.
- (h) Any utility owner and/or their contractor performing construction in any city ROW shall have a representative at the site at all times while work is in progress, who shall be able to clearly communicate with the city staff and the citizens of Tyler.
- (i) The permit holder, utility, or ROW user shall make the work site accessible to the city, and others as authorized by law, for inspection at all reasonable times during performance of the work.

- (j) The permit holder shall be responsible for documentation of pre-construction and post-construction conditions, including but not limited to, photos and videos of the site. The City Engineer may, at his discretion, use the post-construction photos and videos in lieu of site inspection.

Sec. 15-283. Safe and Accessible Path-of-Travel

- (a) The permit holder shall maintain a public walkway in accordance with the latest ADA rules regarding construction sites that block a public sidewalk or Shared use path.
- (b) It shall be the duty of the permit holder or ROW user to make provisions for the safe crossing of pedestrians and orderly movement of vehicular traffic.
- (c) ROW user or permit holder shall install safeguards around and over any open excavation:
 - (1) Permit holder shall install fencing around unattended excavation in a manner that withstands wind and rain, does not allow entry to the excavation by pedestrians or pets, and does not sag over time.
 - (2) The permit holder may be required to install additional or special safeguards if required by the City Engineer.
 - (3) Steel plates covering an excavation may be deemed as sufficient if approved by City Engineer.

Sec. 15-284. Display of Permit and Signage

- (a) Permit holder shall display required signs at all times of day and night for the duration of the construction project for Utility projects deemed small, medium, and large as defined in this article in section 15.262.
 - (1) The permit holder shall maintain a digital or paper copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Engineer or his or her city representative at all times when construction work is occurring.
 - (2) All permitted utility owner and contractor vehicles and equipment must be clearly marked with the company name while located at a construction or work site. Signage, with minimum dimensions of two (2) feet by two (2) feet, shall be displayed at the construction site.
 - (3) All signs shall display facility owner's name, permit holders name and contact information that is available twenty-four (24) hours per day, seven (7) days a week.
 - (4) All permitted utility owner and contractor vehicles and equipment must be clearly marked with the company name while located at a construction or worksite. Signage, with

minimum dimensions of four (4) feet by four (4) feet displayed at the beginning and the end of the traffic-control work zone on Major Arterial or within the construction site if not on a Major Arterial and clearly visible to motorists and pedestrians.

- (5) All signs shall display facility owner's name, permit holder's name, contact information that is available twenty-four (24) hours per day, seven (7) days a week, description of project, and project limits.
- (6) All signage shall be located outside of the corner visibility triangle at all intersections, future intersections, and all driveways.

Sec. 15-285. Notice to Affected Property Owners and Emergency Services

- (a) The permit holder shall place door hangers on the front door of businesses and residences adjacent to the affected route. The door hangers must include:
 - (1) The name of the franchise utility for which the work is being performed.
 - (2) The type of work.
 - (3) Expected work schedule.
 - (4) Name and contact information, including daytime and emergency contact names and numbers, for both the permit holder and the franchise utility.
- (b) Such notification shall be provided at least three (3) business days and not more than five (5) business days prior to commencing the permitted work. Record of such notifications shall be retained by the permit holder.
- (c) The permit holder shall contact emergency response agencies, such as police, fire and ambulance services, and prior to commencement of any work that may impact access to a street or alley. City of Tyler Road closure shall be submitted for any work blocking lane traffic or closing any street.
- (d) The permit holder shall notify Tyler Fire and Rescue if a fire hydrant will be inaccessible due to construction.
- (e) The permit holder shall notify any service agencies that may be impacted, such as solid waste collection, to coordinate alternate service, if necessary, prior to the beginning of work that may impact these services. The notice shall specify the address, number of the facilities being relocated, and the duration of service interruption.

Sec. 15-286. Construction Schedule

- (a) The permit holder shall notify the city ROW coordinator forty-eight (48) hours before any work begins within the ROW. Contractor shall not place equipment, or traffic controls on ROW on a Friday the day before any City of Tyler recognized holiday, or during a permitted

activity on the street, including but not limited to, parades, festivals, prior permitted ROW use from other etc.

- (b) Work performed pursuant to a ROW permit must commence within fourteen (14) calendar days of the date of the permit, unless the City Engineer approves a later date.
- (c) If required by the permit, the permit holder shall submit a written construction schedule to the City Engineer two (2) business days before commencing any work in or about the public ROW. The permit holder may be required to submit weekly schedules as directed by the City Engineer.
- (d) Material and equipment may be stored at the excavation site only if they will be used within five (5) days.
- (e) At any time construction is stopped or a contractor is unable to continue work for more than three (3) days the contractor must make the site safe for use by the public and remove all traffic controls. The contractor shall not reoccupy the construction site with traffic controls, material, or equipment until the facility can be repaired or installed within twenty-four (24) hours of reoccupying the job site.
- (f) Backfill shall begin no later than twenty-four (24) hours after installation of facility or repair of utility. Backfill shall be completed within three (3) calendar days or covered with materials of sufficient strength and construction (H-20 load rated steel plate(s)) to permit vehicular traffic to pass over such excavation(s). Plates shall be installed and maintained in a way which will prevent the plates from bouncing and shifting. Plates must be flush with the roadway, or have the edges beveled from the top of the plate to the roadway, or be ramped to the elevation of the adjacent pavement. Temporary ramps shall be constructed of asphalt and shall have a gradual slope when necessary.
- (g) No adjacent parallel roadways or alleys shall be under construction simultaneously without approval by City Engineer.
- (h) Once a project begins, work must continue on a daily basis, except for weekends, and holidays.
- (i) No excavation shall begin on projects deemed medium or large unless installation or repair of the facility commences within twenty-four (24) hours from the time excavation starts.
- (j) Permitted excavation deemed small shall be backfilled within five (5) days of excavation.
- (k) Concrete and Asphalt (HMAC) pavement shall be restored in accordance with the latest City of Tyler Engineering Minimum Design Standards and Specifications. Placement of pavement shall begin no later than five (5) calendar days after the completion of backfill and flow fill cap.

Sec. 15-287. Standard Location of Facilities in ROW

- (a) No ROW user or permit holder may install a new facility under roadways unless approved by the City Engineer.
- (b) The installation of a utility that crosses the ROW shall be placed 90 degrees to the ROW. The City Engineer must approve any installation of a utility that does not cross the ROW at 90 degrees.

Sec. 15-288. Supervision by City of Poles and Facilities

- (a) All above ground facilities in the ROW shall:
 - (1) Be of sound material;
 - (2) Not interfere with the flow of water in any gutter or drain; and
 - (3) Be placed so as not to interfere with either vehicular or pedestrian travel.
- (b) Any aboveground facilities shall be placed in a manner that will comply with the latest ADA.
- (c) Any aboveground facilities shall not conflict with the existing or future pedestrian path of travel as identified on the Master Street Plan.
- (d) At no point during construction or installation of ground level facilities within walkways and/or crosswalks shall there be an elevation change greater than one-eighth (1/8) inch. Installation of ground level facilities within the roadway shall be in accordance with section 15-295. The City Engineer must approve any ground level facility that requires more than one-quarter (1/4) inch of elevation change.

Sec. 15-289. Excavation Under Supervision of City Engineer

- (a) No trench shall be opened in any ROW for laying pipes, conduits, or ducts more than four hundred (400) feet in advance of the pipe, conduit, or ducts being placed in the trench, other than with the prior written approval of the City Engineer.
- (b) A permit holder, utility, or ROW user shall perform boring operations in a manner that does not weaken or impair the ROW or pavement.
- (c) Streets assigned to a PCI of eighty-six (86) or above by the pavement management system are deemed to be in good condition and are subject to the same review procedures as excavation of new streets.
- (d) If at any point, the permit holder excavates or damages fifty (50) percent of a driving lane the permit holder shall replace the full width of the driving lane for the full length of the affected area.

- (e) If the existing pavement is PCC, the concrete shall be cut first with a saw to a minimum depth of half the thickness of the concrete, which shall also cut the reinforcing steel. The concrete can then be broken out with an air chisel or pavement breaker. No more than six (6) inches of PCC shall be broken back beneath the saw cut.
- (f) The permit holder, utility, or ROW user shall not enter upon private property without authorization from the property owner. The permit holders, utilities, or ROW users shall determine the boundary between public ROW and private property.
- (g) All transmission and distribution structures, lines, equipment and facilities erected by a permit holder, utility, or ROW user within the city shall be so located as to cause no interference with the proper use of the public ROW, and to cause no interference with the rights and reasonable convenience of any affected property owners.
- (h) All excavation work shall be performed during business hours of 7:00 a.m. to 5:00 p.m. Monday through Friday, unless written approval is granted by the City Engineer, or in the case of an emergency. No Excavation shall be allowed during city recognized Holidays.
- (i) All underground main line utilities shall be laid with the top of the pipe a minimum of three (3) feet below the surface of the ground
- (j) All excavation work shall comply with Occupational Safety and Health Administration standards and requirements.

Sec. 15-290. Repair of Utilities

- (a) Damages done by a permit holder to city utilities shall be repaired by the city. The city will issue a claim to the utility owner, contractor, ROW user or their insurance company for cost reimbursement. Permit Holder shall notify Tyler Water Utilities service center within one (1) hour of damage to any water or sewer service or main.
- (b) Restoration of the customer service shall be within four (4) hours of damage and the cost of repairs shall be borne by the ROW user or permit holder. Only a licensed plumber may perform repairs to customer sewer, water and/or gas service lines. The licensed shall certify in writing that repairs to these service line(s) were performed in accordance with the most recent version of City of Tyler Plumbing Ordinance.
- (c) Damage done by permit holder to private utilities including, but not limited to, irrigation lines, yard drains, etc. shall be repaired within 24 hours.
- (d) After repairs, the ROW shall be restored in accordance to section 15-294 of this article.
- (e) Cleanup of the affected site shall be in accordance to section 15-275.

Sec. 15-291. Materials Testing

- (a) The City Engineer may require testing of materials used in construction in or near the ROW to determine conformance to required specifications, including, but not limited to, compaction tests on backfill materials, subgrade, concrete, asphaltic concrete and other construction materials as deemed necessary.
- (b) The permit holder, utility, or ROW user is responsible for ensuring that all backfill and compaction requirements meet the requirements of this article or the Minimum Design Standards and Specifications.

Sec. 15-292. Field Utility Coordination

- (a) The permit holder, utility, or ROW user shall notify the engineering inspector as identified on ROW permit at each of the following times during a project:
 - (1) Twenty-four (24) hours before starting a permitted project or installing traffic control.
 - (2) Two (2) hours before beginning the initial backfill;
 - (3) Two (2) hours before beginning the paving of the street or alley; and
 - (4) When the work under any permit hereunder is completed, the permit holder shall contact the City of Tyler utility locator/ROW inspector for project close out inspection.
- (b) Prior to making a request for locates and actual excavation, the permit holder, utility, or ROW user shall mark the site of the proposed excavation with white lining and/or flags, in accordance with the one-call system. The markings shall be placed a distance of not less than five (5) feet in all directions from the outside boundary of the site to be excavated.
- (c) Permit holder shall only submit locate requests that can be completed in fifteen (15) days and shall not exceed one (1) linear mile.
- (d) Compliance with the latest Texas Utilities Code is required at all times.
- (e) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of nonpermanent or biodegradable markers is required.
- (f) All barricades, plates, traffic directional equipment, and all other traffic-control devices shall be clearly marked by the owner of said items with owner information as described in section 15-284 of this article.
- (g) If work is being performed that will block any lanes of traffic in a street or deny access to an alley or driveway and the work site will be left unattended for any length of time, the permit holder, utility, or ROW user shall place a sign at each end of the work site with the name and contact information of the permit holder, utility, or ROW user performing the work. Such

signs must conform to the latest TMUTCD standards. In any paved or unpaved area, all existing water, sewer, electric, gas mains and service lines shall be physically located prior to boring by way of potholing with a hydro excavation method. Sewer lines can be exempted if elevation and alignment can be determined by existing manholes.

Sec. 15- 293. Backfilling and Compaction

- (a) Final backfill shall follow timelines established in this article.
- (b) Requirements in this section shall apply to all parts of the excavation including, but not limited to, benching and sloping done in the course of the excavation.
- (c) Details related to trench excavation, backfill, compaction and pavement restoration are described in the Minimum Design Standards and Specifications.
- (d) Paving shall be repaired in accordance with this article and the Minimum Design Standards and Specifications.
- (e) The back fill material shall be clean, native material free of organic and deleterious material and rocks larger than two (2) inches. Backfill and compaction shall begin no later than twenty four (24) hours after the installation or repair of facilities.
- (f) Backfill in roadways shall be compacted to a relative compaction not less than 95% modified standard proctor $\pm 2\%$ moisture the depth of the excavation.
- (g) City Engineer may require third party testing for trenches greater than six (6) feet in depth in roadways to confirm backfill meets required density at no cost to the city.
- (h) Temporary backfill not meeting section 15-292 will not be permitted.
- (i) Water jetting, sand jetting, or rock/gravel backfill will not be permitted.
- (j) Native material used as backfill shall be mechanically compacted by means of equipment mounted rollers, vibrating rollers, whacker packers, or other method approved by City Engineer.
- (k) When possible all open excavations shall be backfilled and traffic controls removed prior to any extended holiday weekend.
- (l) Any excavation too small in size too compact by approved method shall be filled using flowfill.
- (m) Backfill not meeting 95% modified standard proctor, must be removed the full depth of the excavation and re-compacted to meet the compaction requirements.

- (n) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period, or at any other time where water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded.

Sec. 15-294. Restoration of ROW

- (a) Unless otherwise specified in the permit, restoration of the asphalt pavement of any street, alley, ROW, or other public place shall be performed by the permit holder or ROW user.
- (b) The City Engineer shall determine if longitudinal excavations within roadways, regardless of PCI, that parallel an existing excavation with a separation of four (4) feet or less require the ROW user or permit holder to repave the existing excavation making only one patch in the road.
- (c) Any removal of sidewalks, approaches, and/or ADA ramps must be brought into compliance with the latest ADA rules and regulations.
- (d) Any excavated pavement, debris and other rubble shall be removed during the same business day from the time such material is placed upon the street.
- (e) Any paving failures, including surface, base, or subgrade failures that occurred due to the ROW user's work in the street, alley, or ROW shall be repaired by the permit holder or ROW user, regardless of whether the damage is caused by equipment, construction methods, detour of traffic or any other reason. The permit holder or ROW user shall repair any damage done before moving to the next phase of construction.
- (f) Restoration of the ROW shall be as good as or better condition as before the start of construction. Unpaved portions of alley ROW shall be leveled, filled, bladed and worked in such a manner as to leave the ROW in a safe and usable condition and new driving surfaces shall match that of existing surfaces.
- (g) Trees or other vegetation in or over the Public Rights-of-Way may be trimmed, as needed for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with City standards.
- (h) Should the Person, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed, and upon receipt of an invoice from the City, the person shall promptly reimburse the City for all costs incurred within thirty (30) working days.
- (i) All landscaping trees, shrubs, and other vegetation damaged or disturbed within the ROW as a result of the construction, installation, maintenance, repair or replacement of utility facilities in the ROW shall be replaced or restored as nearly as may be practicable, to at least as good a

condition as prior to performance of work by the permit holder. Trees may be replaced with trees of similar size and the same or similar species up to four (4) inches in caliper. Trees larger than four (4) inches in caliper shall be replaced with trees of the same or similar species with a caliper of no less than three (3) inches and no more than four (4) inches. Notwithstanding this subsection, electric utilities need not replace or restore any vegetation surrounding overhead electric utility lines to the extent such vegetation interferes with the safety or reliability of the provision of electricity.

- (j) Complete preconstruction photographs or videos of the work site are required of all permit holders and shall be submitted to the City Engineer upon request.

Sec. 15-295. Restoration of Roadway Surface

- (a) Paving roadway surface shall follow timelines established in this article in section 15-286.
- (b) Upon completion of backfill in accordance with section 15-293 flowfill shall be placed over compacted backfill up to the bottom of the ride surface:
 - (1) Eighteen (18) inches of flowfill on Principal and Minor Arterials.
 - (2) Twelve (12) inches of flowfill cap on alleys and residential streets.
- (c) All cases where the roadway base material has become contaminated and 5 percent above optimum moisture and/or 2 percent or more deleterious the permit holder shall replace the existing base material with new or cement stabilized base in accordance with the latest version of the City of Tyler Minimum Design Standards and Specifications.
- (d) Finished surface, including asphalt and concrete, shall not have irregularities in excess of one eighth (1/8) inch when tested with a ten (10) foot straightedge. All roadway surfaces must match the existing roadway profiles.
- (e) Concrete mix paving restoration requirements:
 - (1) Concrete shall meet City of Tyler Standards and Specification and/or design specifications of the existing roadway, whichever is greater.
 - (2) Transverse concrete cuts shall be saw cut to the depth of the reinforcing steel eighteen (18) inches past excavation and the remaining depth of the concrete shall be broken free from the roadway. Leaving eighteen (18) inches of reinforcing steel protruding from the roadway into the re-compacted roadway.
 - (3) Longitudinal cuts shall be made at the edge if the affected lane or construction joint whichever comes first in accordance with City of Tyler Engineering Minimum Design Standards and Specifications.
 - (4) Reinforcing steel shall be tied using steel tie wire to the protruding reinforcing steel.
 - (5) Concrete placement shall be done in the manner indicated in the latest City of Tyler Standards and Specifications.

- (6) Tine marks shall match existing roadway.
- (f) Hot mix asphalt concrete (HMAC) placement requirements
 - (1) HMAC must meet the Minimum Design Standards and Specifications and/or design specifications for the existing roadway, whichever is greater.
 - (2) The tack coat shall be evenly and thoroughly applied to all exposed surfaces with an approved sprayer as directed by the City Engineer. Minimum thickness shall be not less than two (2) mil. Thick mopping or booming of tack coat is not allowed.

Sec. 15-296. Cleanup of ROW

- (a) ROW user or permit holder shall be responsible for removing from the ROW all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the excavation.
- (b) Streets shall be cleaned by a street sweeper or other acceptable means.
- (c) The permit holder shall remove all construction debris, brush and clean the surrounding area within one (1) business day of placement of materials.
- (d) As soon as franchise utility policy allows, all locate flags shall be removed during the cleanup process by contractor at the completion of the work.

Sec. 15-297. Non-Complying Work

- (a) Upon order of the City Engineer, all work that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this article, shall be removed and replaced no later than ten (10) days after notification of deficient work.
- (b) All noncomplying work or damage done to ROW, private property, or utility must be repaired in accordance with all state law, city code, or applicable standards and specifications before ROW user or permit holder continues construction procedures.

Sec. 15-298. Warranty Repair of Pavement or ROW Due to Utility Work

- (a) If any portion of the ROW over or near any excavation should fail in any way at any time after the excavation has been made during the remaining life of the street, the permit holder, utility, or ROW user shall be required to bring the work into compliance.
- (b) Failure to start the repair within fourteen (14) calendar days after notification may result in the permit holder, utility, or ROW user being required to reimburse the city for the cost to restore the street, ROW, or alley.

Sec. 15-299. Submission of Barricade Plan

- (a) All ROW users or permit holders shall submit a traffic control plan to the City Engineer for any lane closures or any work that encroaches on the roadway or in an area in which traffic will be disrupted.
- (b) All traffic control devices must conform to the latest TMUTCD.

Sec. 15-300. Additional requirements

The City Engineer may require that work be performed at non-peak hours, if deemed to be necessary in the interest of public safety and/or to avoid traffic congestion.

Sec. 15-301. Continuing Validity Permit

- (a) The City Engineer may revoke any traffic control permit if traffic control devices:
 - (1) Are not in compliance with the latest TMUTCD requirements.
 - (2) Are not maintained, clean, visible, and reflective to the traveling public.
 - (3) Are continually in disarray or unsafely arranged.

Sec. 15-302. Fees

All ROW fees paid to the city pursuant to this Chapter, excluding permit issuance and small cell fees, shall be deposited in a fund and shall be expended only for the repair, resurfacing, rehabilitation, reconstruction, or other improvement of city streets.

Sec. 15-303. Bonds

- (a) Upon registration, all ROW users shall provide the city a fifty thousand dollar (\$50,000) perpetual bond issued by an insurance company licensed to operate in the State of Texas, valid until released by City Engineer.
- (b) City Engineer will release bond twelve (12) months after last permit issued.

Sec. 15-304. Exemption of Fees and Bonds

- (a) Any contractor or city crews installing facilities that will ultimately be owned or managed by the city will be exempted for obtaining a bond or cash-equivalent.
- (b) Any contractor or city crews working within the ROW on behalf of the City of Tyler shall be exempt from Permit Application Fee.
- (c) Work conducted within the ROW done by a ROW user's own W-2 employees shall not require a bond or cash-equivalent.
- (d) Any excavation deemed an emergency as described by this article section 15-275 shall not require a bond or cash-equivalent.

Sec. 15-305. Inspection

There shall be no fee for inspection.

Sec. 15-306. Permit Denial

(a) A permit may be denied for any of the following reasons:

- (1) Failure to provide proof of liability insurance/bond acceptable to the city, to the extent required herein.
- (2) The excavation would be in a new street and not otherwise permitted by this article.
- (3) The proposed activity would violate a city ordinance, state or federal statute.
- (4) The permit application contains false or misleading information.
- (5) The activity would cause a public health or safety hazard or severe prolonged inconvenience.
- (6) The ROW user is in violation of this article relative to work in progress.
- (7) The ROW user or contractor applying for permit has a history of non-conformance of ordinance and/or outstanding unresolved compliance issues.
- (8) Permit applicant has unpaid fees as described in this article.
- (9) The proposed activity would conflict with a permit previously approved by the city.
- (10) ROW user has outstanding or unpaid claims with the city for infrastructure damages.
- (11) Row has not completed more than three (3) deficient items on prior permits.

Sec. 15-307. Appeal of Registration or Permit Denial

(a) A ROW user or other applicant that has been denied registration or a permit may appeal denial upon written request as follows:

- (1) Appellant shall provide, within five (5) business days of denial a written notice of appeal filed with the City Engineer. The notice must state the potential corrections for denial, alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The City Engineer shall provide a written decision within five (5) business days of receipt of the appeal. Failure to render a decision within five (5) business days shall constitute an approval.
- (2) If a denial is given by the City Engineer or designee, the appellant may thereafter file a written notice of appeal to the City Manager within five (5) business days of receipt of the City Engineer's written decision. The City Manager shall provide a written decision within

thirty (30) business days of receipt of an appeal in accordance with this section. Failure to render a decision within thirty (30) business days shall constitute a denial.

Sec. 15-308. Cessation of Work

At any time, the City Engineer may order the immediate cessation or revocation of any work that poses a threat to the health, safety or well-being of the public.

Sec. 15-309. Penalty

- (a) Any person, firm, corporation, or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine up to two thousand dollars (\$2,000.00) pursuant to State law and this Ordinance. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the City of Tyler from filing suit to enjoin the violation. The City of Tyler retains all legal rights and remedies available to it pursuant to local, state and federal law.
- (b) Any person or entity who by their negligent acts, omissions, or violation of this Article causes the City of Tyler any expenditures for staff time, shall be responsible to the City for any and all costs for resources expended. Upon receipt of the notice of fees due, that person or entity shall remit to the City of Tyler all fees within 30 days. No permit shall be issued for any person or entity with an outstanding fee balance owed to the City.

Sec. 15.310. Wireless Communication Facilities in the Public ROW Definitions

City shall mean the City of Tyler, Texas and its officers and employees.

City Engineer shall mean the City of Tyler City Engineer or his or her designee.

Collocation shall mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Design Guidelines shall mean the City of Tyler, Texas Design Guidelines for Subdivision Improvements. The Design Guidelines are incorporated by reference into this article and the terms and conditions of the Design Guidelines are binding upon any entity acting under any portion of this article. In the event of any discrepancy or ambiguity between this article, this code, or the Design Guidelines, the Design Guidelines will control.

Entity shall mean, but is not limited to, any person, business, company, agency, or other group or individual, whether or not formally established, that acts or affects any activity contemplated under this article

Network node shall mean equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes, but is not limited to: Equipment associated with wireless communications; a radio transceiver, an antenna, a battery-only backup power supply, or comparable equipment, regardless of technological configuration;

and Coaxial or Fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation. The term does not include: an electric generator; a pole; or a macro tower.

Node support pole shall mean a pole installed by a network provider for the primary purpose of supporting a network node.

Permit shall mean a new wireless communication facility permit issued by the city authorizing the installation, removal, modification, or other work in accordance with the Design Guidelines.

Pole shall mean a service pole, municipally owned utility pole, node support pole, or utility pole.

Right-of-way (ROW) shall mean the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or waterway. The term does not include a private easement, private property, publicly owned property, or the airwaves above the city's right-of-way with regard to wireless telecommunications.

Surface mounted marker means any sign, post, or other marker, which rises above the surface of the ground to show the location of an underground utility.

Sec. 15-311. Design Guidelines Incorporated

The Design Guidelines are incorporated by reference into this article, and the terms and conditions of the Design Guidelines are binding upon any entity acting under any portion of this article. In the event of any discrepancy or ambiguity between this article, this code, the Design Guidelines, or chapter 284 of the Texas Local Government Code, the later shall control.

Sec. 15-312. Permit Required

It shall be unlawful for any entity to engage in the installation, modification, or repair of a network node, node support pole, pole, or other wireless communication facility that will encroach upon or be located in, on, or within a street, alley, or other public ROW within the city without having first obtained a permit in order to perform the work, unless said work is commenced in an emergency situation as authorized by this article.

Sec. 15-313. Permit Application

- (a) Applications for a permit required under this article shall be made on forms provided by the city and such applications shall be accompanied by drawings, plans, and other responsive documents, with such application forms and documents being subject to the Design Guidelines, which is incorporated into this article by reference.
- (b) The City Engineer may, in his sole discretion, require additional information from the applicant of a permit required under this article before the director issues said permit.
- (c) All applications for a permit under this article shall be subject to an application fee, with such fee being listed in the Design Guidelines, which are incorporated into this article by reference. City departments and contractors hired by the city for work related to this article shall be exempted from payment of the application fee.

Sec. 15-314. Insurance

- (a) The applicant for a permit shall furnish a certificate of insurance for public liability and property damage, issued by a solvent insurance company or companies authorized to do business in the state, or evidence of self-insurance satisfactory to the city evidencing that the city is adequately protected from any liability or damage resulting by virtue of applicant's construction.
- (b) The insurance requirement of this article is subject to insurance requirements listed in the Design Guidelines which are incorporated into this article by reference and Section 15-271. Upon receipt of the permit, an applicant assumes the insurance and indemnity requirements provided in the Design Guidelines.

Sec. 15-315. Issuance

According to the Design Guidelines, the City Engineer shall issue a permit to an applicant upon the applicant's submission to the City Engineer of a complete application including any application documents required under the Design Guidelines and this Ordinance.

Sec. 15-316. Underground Warning

Underground utilities shall conform to the following requirements:

- (a) Warning. Contractors shall install one or more of the following devices for warning of the existence of underground facilities:
 - (1) Stamped Marker;
 - (2) Medallion;
 - (3) Conductive Trace Wire; or
 - (4) Conduit colors.

Sec. 15-317. Surface Mounted Markers and Location

- (a) Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible.
- (b) All medallions in the right-of-way shall be metal, shall be flush with the ground, shall state the name and contact information of the facility owner, and shall not interfere with the flow of water in any gutter or drain and shall be placed so as not to interfere with vehicular and pedestrian travel.
- (c) All stamped markers in the right-of-way shall be concrete, shall be flush with the ground, shall state the name and contact information of the facility owner, and shall not interfere with the flow of water in any gutter or drain and shall be placed so as not to interfere with vehicular and pedestrian travel.
- (d) The location and route of all conduits, fiber, cables, utilities, and facilities placed and constructed by a right-of-way user in the construction and maintenance of its system in the City shall be subject to the reasonable and proper control, direction, and approval of the City.
- (e) The placement of medallions, stamped markers, and anchor guides along curvilinear streets shall comply with the applicable provisions of all City ordinances and regulations.

- (f) When it is impossible to use curb mounted medallions, any above ground markers must be approved by the City Engineering department. Approval will be on a case-by-case basis.
- (g) Utility structures exceeding those dimensions shall not be located in the right of-way adjacent to streets, unless otherwise approved in writing by the City.
- (h) All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections, and all driveways.
- (i) No aboveground facilities may be placed in a parkway that is across from a median opening.
- (j) Aboveground facilities cannot conflict with the existing or future pedestrian path of travel as identified on the Master Street Plan, including any ADA accessible path.
- (k) The use of posts are prohibited.

Sec. 15-318. Facility Abandonment and Removal

- (a) A network node, node support pole, box, or transport facility is abandoned if: it ceases providing or supporting the provision of wireless services for a period of 60 consecutive days or, if the permit for a network node, node support pole, box, or transport facility expires or is terminated.
- (b) If on the 60th day after a network node, node support pole, box, or transport facility is abandoned, the responsible network provider or its contractor has not removed the facility from the public right-of-way, the City Engineer may remove the facility at the network provider's cost and, at the City Engineer's option, invoice the network provider for the removal and storage costs. The right of the City Engineer to remove facilities is in addition to the right set out in Section 15-277.
- (c) Facility abandonment and removal of wireless facilities is also subject to Section 17.236 of the Code of Ordinances.

Sec. 15-319. Conform Facilities

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

Sec. 15-320. Penalty and Corrections of Deficiencies

- (a) In accordance with Section 15-309, any person, firm, corporation, or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine up to two thousand dollars (\$2,000.00) pursuant to State law and

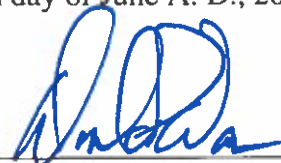
this Ordinance. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the City of Tyler from filing suit to enjoin the violation. The City of Tyler retains all legal rights and remedies available to it pursuant to local, state, and federal law.

- (b) Any person or entity who by their negligent acts, omissions, or violation of this Article causes the City of Tyler any expenditures for staff time, shall be responsible to the City for any and all costs for resources expended. Upon receipt of the notice of fees due, that person or entity shall remit to the City of Tyler all fees within 30 days. No permit shall be issued for any person or entity with an outstanding fee balance owed to the City.
- (c) Any entity who shall perform work on or about a public ROW and who shall violate any provision of this article shall cause said work to be subject to a cease work order and revocation of permit or civil legal remedies as provided by this article.

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be June 30, 2023.

PASSED AND APPROVED THIS the 28th day of June A. D., 2023.



DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS


ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:



DEBORAH G. PULLUM,
CITY ATTORNEY