

**ORDINANCE NO. O-2023-60**

**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 AMENDING PROVISIONS FOR THE PLACEMENT OF FACILITIES IN PUBLIC RIGHTS-OF-WAY AND CITY OWNED EASEMENTS; 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 rights-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 and City-owned easements 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 amended by amending the following provisions to read as follows:

## **Article VI. Rights-of-Way Use and Construction**

The following Table of Contents is hereby amended to read as follows, in the appropriate numerical location, with no other changes:

### **TABLE OF CONTENTS**

Section 15-283 – Certain Underground Requirements and Safe and Accessible Path-of-Travel (Ord. No.0-2023-60,7/12/23)

Section 15-294 –Restoration of ROW, Easements, and Access Route (Ord. No. 0-2023-60, 7/12/2023)

#### **Sec. 15-260. Findings and Purpose – No Changes**

#### **Sec. 15-261. Authority; Scope – No Changes**

#### **Sec. 15-262. Definitions**

The following definitions in Sec. 15-262 are hereby amended to read as follows, in the appropriate alphabetical location, with no other changes:

*Utility Cabinet (Cabinet)* shall mean a specialized enclosure or cabinet used to house, organize, and provide a secure and controlled environment for storing networking devices, such as routers, switches, patch panels, and other related infrastructure telecommunication equipment and components.

*Minimum Design Standards and Specifications* shall mean the latest edition of 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. (Ord. No. 0-2023-60, 7/12/2023)

*Moratorium Street* shall mean any street or block that has been constructed, reconstructed, or improvements made by the City of Tyler or any other owner or persons in the preceding three (3) years. (Ord. No. 0-2023-60, 7/12/2023)

*Utility line marker or identifier* shall mean a device or tool used to locate and to indicate the presence and approximate location of buried utility lines. Also, commonly referred to as a matchstick.

#### **Sec. 15-263. Administration and Enforcement – No Changes**

#### **Sec. 15-264. Conditions of Public Rights-of-Way Occupancy – No Changes**

**Sec. 15-265. Permit Required – No Changes**

**Sec. 15-266. Permit Application – No Changes**

**Sec. 15-267. Permit Fees – No Changes**

**Sec. 15-268. Issuance of Permit – No Changes**

**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 continuous 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. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-270. Permit Information – No Changes**

**Sec. 15-271. Insurance Requirements – No Changes**

**Sec. 15-272. Indemnity**

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. The City is not responsible for the acts or omissions of Utility Users in the public rights-of-way under this Article. Users shall be responsible and liable for the acts and omissions of their employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, and subcontractors in connection with the installations of facilities in the public rights-of-way.

**Sec. 15-273. Work Done Without Permit – No Changes**

**Sec. 15-274. Coordination with the City – No Changes**

**Sec. 15-275. Utility Emergency Excavation and Damage to ROW User Facility– No Changes**

**Sec. 15-276. Facility Abandonment and Removal**

- (a) A facility and/or utility support pole, box, or transport facility is abandoned by the owner if it ceases providing or supporting the provision of utility 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. Upon such abandonment, expiration, or termination of use by the facility owner, the facility owner shall provide notice to sublessees, and remove the abandoned facility within 60 days of abandonment. (Ord. No.0-2023-60,7/12/23)
- (b) If on the 60<sup>th</sup> day after a support pole, box, or transport facility is abandoned, the responsible utility provider or its contractor has not removed the facility and/or utility from the public rights-of-way, the City Engineer may remove the facility at the utility provider's cost, and at the City Engineer's option, invoice the utility provider for the removal and storage costs. The right of the City Engineer to remove facilities and/or utilities is in addition to the rights set out in Section 15 – 277. (Ord. No.0-2023-60,7/12/23)

**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 60 days of request, this shall be at no cost to the city, unless the utility or facility is contained within a dedicated easement. (Ord. No.0-2023-60,7/12/23)

(a) – No Changes

(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 60th day after the City Engineer sends written notice. (Ord. No.0-2023-60,7/12/23)

(c) – (g) – No Changes

**Sec. 15-278. Completion of Construction – No Changes**

**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. (Ord. No.0-2023-60,7/12/23)
- (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. (Ord. No.0-2023-60,7/12/23)
- (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 within 1 hour of occurrence(Ord. No.0-2023-60,7/12/23)

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

(a) – No Changes

(b) – No Changes

(c) Brick street pavement may only be removed under written approval of City Engineer, except for emergency repairs pursuant to Section 15-275. (Ord. No.0-2023-60,7/12/23)

**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 Rights-of-Way Use License. This includes but is not limited to privately owned grease traps, sewer manholes, or cable pull boxes. (Ord. No.0-2023-60,7/12/23)

(b) – No Changes

(c) – No Changes

(d) – No Changes

(e) – No Changes

(f) – No Changes

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

(a) – No Changes

(b) – No Changes

(c) – No Changes

(d) – No Changes

(e) – No Changes

(f) The permit holder or ROW user shall be fully responsible for safeguarding persons and property from damage or injury. Work in the rights-of-way shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. (Ord. No. 0-2023-60, 7/12/23)

(g) – No Changes

**(h) – No Changes**

- (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. (Ord. No.0-2023-60,7/12/23)
- (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/her discretion, use the post-construction photos and videos in lieu of site inspection. (Ord. No.0-2023-60,7/12/23)
- (k) A permit holder shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including City ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a right-of-way without first obtaining zoning or land use approval. (Ord. No.0-2023-60,7/12/23)
- (l) A requirement or restriction described by subsection (k) may not be interpreted to prohibit a utility provider from replacing an existing structure. (Ord. No.0-2023-60,7/12/23)
- (m) Work by Utility Users in the rights-of-way shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Citizen satisfaction must be a priority in using the right-of-way. Users are encouraged to train their employees to act in a polite, positive and customer service-oriented manner when dealing with issues pertaining to facilities in the right-of-way. Employees are encouraged to be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If the City Engineer is notified that an employee is not interacting in a positive and polite manner with citizens, the City Engineer shall request that the user take all remedial steps to conform to these standards. (Ord. No.0-2023-60,7/12/23)
- (n) Drug use in the City rights-of-way. It is the policy of the city to achieve a drug-free workforce and workplace in public rights-of-way to protect the public health, safety, and welfare. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by a Utility User's employees, contractors, subcontractors, or vendors while on city rights-of-way is prohibited. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-283. Certain Underground Requirements and Safe and Accessible Path-of-Travel**

- (a) All telecommunication facilities installed at grade or underground shall be identified with the utility owner's name.
- (b) Underground Facility Requirements
  - (1) Hand holes, pedestals, and utility markers shall be installed underground or flush mounted. (Ord. No.0-2023-60,7/12/23)

- (2) Cabinets and transformers may be installed above ground. (Ord. No.0-2023-60,7/12/23)
  - (3) All markers in the rights-of-way 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. (Ord. No.0-2023-60,7/12/23)
  - (4) The location and route of all conduits, fiber, cables, utilities, and facilities placed and constructed by a rights-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. (Ord. No.0-2023-60,7/12/23)
  - (5) The placement of flush mounted markers, stamped markers, and anchor guides along curvilinear streets shall comply with the applicable provisions of all City ordinances and regulations. (Ord. No.0-2023-60,7/12/23)
  - (6) All underground utility line markers or identifiers are required to be installed at grade, unless written approval is obtained from the City Engineer prior to installation. Approval will be on a case-by-case basis. (Ord. No.0-2023-60,7/12/23)
  - (7) All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections, and all driveways. (Ord. No.0-2023-60,7/12/23)
  - (8) No aboveground facilities may be placed in a parkway that is across from a median opening. (Ord. No.0-2023-60,7/12/23)
  - (9) 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. (Ord. No.0-2023-60,7/12/23)
- (c) 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. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-284. Display of Permit and Signage - No Changes**

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

(a) – No Changes

(1) -No Changes

(2) -No Changes



(3) - No Changes

(4) – No Changes

(b) Such notification shall be provided at least 3 business days and not more than 5 business days prior to commencing the permitted work. Record of such notifications shall be retained by the permit holder. (Ord. No.0-2023-60,7/12/23)

(c) – No Changes

(d) The permit holder shall notify Tyler Fire Department if a fire hydrant will be inaccessible due to construction.

(e) – No Changes

**Sec. 15-286. Construction Schedule**

(a) The permit holder shall notify the city ROW coordinator 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 others, etc. (Ord. No.0-2023-60,7/12/23)

(b) - No Changes

(c) - No Changes

(d) Material and equipment may be stored at the excavation site only if they will be used within 5 calendar days. (Ord. No.0-2023-60,7/12/23)

(e) At any time construction is stopped or a contractor is unable to continue work for more than 3 calendar 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. (Ord. No.0-2023-60,7/12/23)

(f) Backfill shall begin no later than 24 hours after installation of facility or repair of utility. Backfill shall be completed within 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. (Ord. No.0-2023-60,7/12/23)

(g) - No Changes

(h) - No Changes

(i) No excavation shall begin on projects deemed medium or large unless installation or repair of the facility commences within 24 hours from the time excavation starts. (Ord. No.0-2023-60,7/12/23)

(j) Permitted excavation deemed small shall be backfilled within 5 days of excavation. (Ord. No.0-2023-60,7/12/23)

(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 5 calendar days after the completion of backfill and flow fill cap. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-287. Standard Location of Facilities in ROW - No Changes**

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

(a) - No Changes

(1) - No Changes

(2) - No Changes

(3) -No Changes

(b) – No Changes

(c) – No Changes

(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 1/8 inch. Installation of ground level facilities within the roadway shall be in accordance with section 15-295. Any ground level facility that requires more than 1/4 inch of elevation change is subject to City Engineer approval. (Ord. No.0-2023-60,7/12/23)

**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 400feet in advance of the pipe, conduit, or ducts being placed in the trench, other than with the prior written approval of the City Engineer. (Ord. No.0-2023-60,7/12/23)

(b) – No Changes

- (c) Streets assigned to a PCI of 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. (Ord. No.0-2023-60,7/12/23)
- (d) If at any point, the permit holder excavates or damages 50% of a driving lane the permit holder shall replace the full width of the driving lane for the full length of the affected area. (Ord. No.0-2023-60,7/12/23)
- (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 6 inches of PCC shall be broken back beneath the saw cut. (Ord. No.0-2023-60,7/12/23)
- (f) - No Changes
- (g) - No Changes
- (h) - No Changes
- (i) All underground main line utilities shall be laid with the top of the pipe a minimum of 3 feet below the surface of the ground. (Ord. No.0-2023-60,7/12/23)
- (j)

#### **Sec. 15-290. Repair of Utilities and Reimbursement for Repairs**

- (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 1 hour of damage to any water or sewer service or main. Utility Providers shall reimburse the City for any repairs completed by City employees resulting from damages caused by the permit holder and/or agents of the permit holder. Reimbursement rates shall be at standard overtime rates. (Ord. No.0-2023-60,7/12/23)
- (b) Restoration of the customer service shall be within 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 plumber 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. (Ord. No.0-2023-60,7/12/23)
- (c) - No Change
- (d) - No Changes
- (e) - No Changes

**Sec. 15-291. Materials Testing - No Changes**

**Sec. 15-292. Field Utility Coordination**

- (a) -- No Changes
  - (1) -- No Changes
  - (2) - No Changes
  - (3) - No Changes
  - (4) - No Changes
- (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 5 feet in all directions from the outside boundary of the site to be excavated. (Ord. No.0-2023-60,7/12/23)
- (c) Permit holder shall only submit locate requests that can be completed in 15 days and shall not exceed 1 linear mile. (Ord. No.0-2023-60,7/12/23)
- (d) - (g) - No Changes

**Sec. 15- 293. Backfilling and Compaction**

- (a) - No Changes
- (b) - No Changes
- (c) - No Changes
- (d) - No Changes
- (e) The back fill material shall be clean, native material free of organic and deleterious material and rocks larger than 2 inches. Backfill and compaction shall begin no later than 24 hours after the installation or repair of facilities. (Ord. No.0-2023-60,7/12/23)
- (f) - No Changes
- (g) City Engineer may require third party testing for trenches greater than 6 feet in depth in roadways to confirm backfill meets required density at no cost to the city. (Ord. No.0-2023-60,7/12/23)
- (h) - (n) - No Changes

**Sec. 15-294. Restoration of ROW, Easements, and Access Route**

- (a) - No Changes
- (b) The City Engineer shall determine if longitudinal excavations within roadways, regardless of PCI, that parallel an existing excavation with a separation of 4 feet or less require the ROW

user or permit holder to repave the existing excavation making only one patch in the road. (Ord. No.0-2023-60,7/12/23)

(c) – No Changes

(d) No Changes

(e) Any paving failures, including surface, base, or subgrade failures that occurred due to the ROW user's work in the street, alley, ROW, easement, or access route 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. (Ord. No.0-2023-60,7/12/23)

(f) Restoration of the ROW, easement, or access route shall be as good as or better condition as before the start of construction. Unpaved portions of alley, ROW, easement, or access route shall be leveled, filled, bladed and worked in such a manner as to leave the area in a safe and usable condition. New driving surfaces shall match that of existing surfaces. (Ord. No.0-2023-60,7/12/23)

(g) – No Changes

(h) Should the Person, its contractor or agent, fail to remove such trimmings within 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 30 working days. (Ord. No.0-2023-60,7/12/23)

(i) All landscaping trees, shrubs, and other vegetation damaged or disturbed within the ROW, easement, or access route as a result of the construction, installation, maintenance, repair or replacement of utility facilities in the ROW, easement, or access route 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 4 inches in caliper. Trees larger than 4 inches in caliper shall be replaced with trees of the same or similar species with a caliper of no less than 3 inches and no more than 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. (Ord. No.0-2023-60,7/12/23)

(j) – No Changes

#### **Sec. 15-295. Restoration of Roadway Surface**

(a) - No Changes

(b) - No Changes

- (c) All cases where the roadway base material has become contaminated and 5% above optimum moisture and/or 2% 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. (Ord. No.0-2023-60,7/12/23)
- (d) Finished surface, including asphalt and concrete, shall not have irregularities in excess of 1/8 inch when tested with a 10 foot straightedge. All roadway surfaces must match the existing roadway profiles. (Ord. No.0-2023-60,7/12/23)
- (e) – No Changes
  - (1) – No Changes
  - (2) Transverse concrete cuts shall be saw cut to the depth of the reinforcing steel 18 inches past excavation and the remaining depth of the concrete shall be broken free from the roadway. Leaving 18 inches of reinforcing steel protruding from the roadway into the re-compacted roadway. (Ord. No.0-2023-60,7/12/23)
  - (3) – (6) – No Changes
- (f) – No changes
  - (1) - No Changes
  - (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 2 mil. Thick mopping or booming of tack coat is not allowed. (Ord. No.0-2023-60,7/12/23)

#### **Sec. 15-296. Cleanup of ROW**

- (a) – No Changes
- (b) – No Changes
- (c) The permit holder shall remove all construction debris, brush and clean the surrounding area within 1 business day of placement of materials. (Ord. No.0-2023-60,7/12/23)
- (d) – No Changes

#### **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 10 days after notification of deficient work. (Ord. No.0-2023-60,7/12/23)

(b) – No Changes

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

(a) – No Changes

(b) Failure to start the repair within 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, alley, easement, or access route. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-299. Submission of Barricade Plan - No Changes**

**Sec. 15-300. Additional requirements - No Changes**

**Sec. 15-301. Continuing Validity Permit - No Changes**

**Sec. 15-302. Fees - No Changes**

**Sec. 15-303. Bonds**

(a) – No Changes

(b) City Engineer will release bond 12 months after last permit issued. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-304. Exemption of Fees and Bonds - No Changes**

**Sec. 15-305. Inspection - No Changes**

**Sec. 15-306. Permit Denial**

(a) (1) – (8) – No changes

(9)The proposed activity would conflict with a permit previously approved by the City. (Ord. No.0-2023-60,7/12/23)

(10) – No Changes

(11) Row has not completed more than 3 deficient items on prior permits. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-307. Appeal of Registration or Permit Denial - No Changes**

**Sec. 15-308. Cessation of Work – No Changes**

**Sec. 15-309. Penalty - No Changes**

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

*Utility line marker or identifier* shall mean a device or tool used to locate and to indicate the presence and approximate location of buried utility lines. Also, commonly referred to as a matchstick. (Ord. No.0-2023-60,7/12/23)

**Sec. 15-311. Design Guidelines Incorporated – No Changes**

**Sec. 15-312. Permit Required – No Changes**

**Sec. 15-313. Permit Application – No Changes**

**Sec. 15-314. Insurance – No Changes**

**Sec. 15-315. Issuance – No Changes**

**Sec. 15-316. Underground – No Changes**

**Sec. 15-317. Surface Mounted Markers and Location**

**(a) – No Changes**

- (b) All stamped markers in the rights-of-way shall be metal or 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.

(Ord. No.0-2023-60,7/12/23)

**(c) – No Changes**

**(d) – No Changes**

**(e) – No Changes**

- (d) All underground utility line markers or identifiers are required to be installed at grade, unless written approval is obtained from the City Engineer prior to installation. Approval will be on a case-by-case basis. (Ord. No.0-2023-60,7/12/23)

**(e) – No Changes**

**(f) – No Changes**

**(g) – No Changes**

**(h) – No Changes**

**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. Upon such abandonment, expiration, or termination of use by the facility



owner, the facility owner shall provide notice to sublessees, and remove the abandoned facility within 60 days of abandonment. (Ord. No.0-2023-60,7/12/23)

(b) – No Changes

(c) – No Changes

**Sec. 15-319. Conform Facilities – No Changes**

**Sec. 15-320. Penalty and Corrections of Deficiencies**

(a) – No Changes

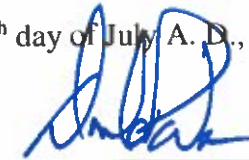
(b) – No Changes

(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. (Ord. No.0-2023-60,7/12/23)

**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 July 14, 2023.

**PASSED AND APPROVED THIS** the 12<sup>th</sup> day of July A. D., 2023.




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

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK



APPROVED:

  
DEBORAH G. PULLUM,  
CITY ATTORNEY