04/17/2016
04/20/2016

Ordinance No. 16-014

An ordinance amending the "Right-of-Way Management" Chapter of the Code of the City of Arlington, Texas, 1987, in its entirety, relative to the management of public right-of-way; providing for a fine of up to $2000 for each offense in violation of this ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Right-of-Way Management**" Chapter of the Code of the City of Arlington, Texas, 1987, shall be and read as follows:

ARTICLE I

PURPOSE

Section 1.01 Purpose

The purposes and findings of this ordinance are as follows:

A. To protect the health, safety, and welfare of the public during the installation, operation, and maintenance of facilities by public service providers;

B. To govern and monitor the orderly use of the public right-of-way;

C. To provide for enforcement;

D. To provide a penalty for violation of any provisions of this ordinance;

E. To provide for the registration of public service providers with facilities in the public right-of-way;

F. To provide insurance requirements for construction in the public right-of-way;

G. To provide permit requirements and procedures for construction in the public right-of-way;

H. To provide for maintenance and repair of the public right-of-way and of facilities located in the public right-of-way;

I. To provide for emergency activities in the public right-of-way;

J. To provide for coordination with public improvements;

K. To regulate the installation of utility structures; and

L. To provide an effective date.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

"**City**" means the City of Arlington and the City's officers and employees.

"City Manager" means the City Manager or any designated representative.

"**Conform**" means to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way in advance of proposed public improvements financed by the City.

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

A. Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.

B. Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way.

C. Performance, restoration, or repair of pavement cuts or excavations.

D. Other similar construction work.

"**Emergency Activity**" means circumstances requiring immediate construction or operations by a public service provider to:

A. prevent imminent damage or injury to the health or safety of any person or to the public right-of-way;

B. restore service; or

C. prevent the immediate loss of service.

"**Excavation**" means the removal of dirt, fill, or other material in the public right-of-way including, but not limited to, the methods of open trenching, boring, tunneling, vacuuming, or jacking.

"**Facilities**" includes, but is not limited to, the plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, and appurtenances of a public service provider located within the public right-of-way and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public service provider.

"**Pavement Cut**" means a cut made into the paved surface of the public right-of-way.

"**Permittee**" means the person applying for or receiving a permit to perform construction within the City's right-of-way under the terms and conditions of this ordinance. The term includes any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the public service provider.

"**Person**" means a natural person, a corporation, a public service provider or its representative, a permittee, a governmental entity or agency (excluding the City or the City's contractor), a limited liability company, a joint venture, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

"**Public Right-Of-Way**" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or public utility easement in which the municipality has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

"***Public Right-Of-Way Permitting and Construction Manual***" means the manual published by the City of Arlington that contains engineering, technical, and other special criteria and standards for permitting and construction within the public right-of-way.

"**Public Service Provider**" means any energy delivery or transport company, telecommunications company, cable company, water utility, storm water utility, or wastewater utility. The City of Arlington, or any person working under contract with the City, is not included in this definition.

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

"**Utility Structure**" means any above or below ground manhole, hand hole, vault, cabinet, or any other appurtenance other than a pole or device attached to a pole which is owned or used by a public service provider. The phrase does not include devices or structures used to control or direct pedestrian or vehicular traffic on an adjacent roadway.

"Visibility Triangle" means a triangle sight area at an intersection of two streets or driveways as shown in the City's Design Criteria Manual, as amended.

ARTICLE III

AUTHORITY, ENFORCEMENT AND OFFENSES, VARIANCE

Section 3.01 Authority

A. The City Manager is authorized to administer and enforce the provisions of this ordinance, and the *Public Right-of-Way Permitting and Construction Manual*.

B. The City Manager is authorized to enter a construction site for which a permit is granted under this ordinance for purposes of inspection to determine compliance with the permit and this ordinance.

C. The City Manager is authorized to request from the public service provider plans of record that show its facilities existing in the public right-of-way as of the date of the request. The public service provider shall provide the requested plans of record within 90 days of the request, or alternate schedule as agreed to by both parties, to the extent such records are available. Public release of such records shall be in accordance with the Public Information Act as found in V.T.C.A., Government Code, Chapter 552.

If the release of the location of any utility, including water and sewer, or of plans of record submitted under this subsection would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this subsection include information expressly designated by the public service provider as a trade secret or other confidential information protected from disclosure by state law, the City shall not disclose that information to the public without the consent of the public service provider, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a

public service provider to designate all matters in its plans of record as confidential or as trade secrets.

Section 3.02 <u>Enforcement and Offenses</u>

A. A person commits an offense if they:

1. perform, authorize, direct, or supervise construction without a valid permit issued under this ordinance;

2. fail to comply with restrictions or requirements of a permit issued under this ordinance;

3. fail to comply with a lawful order or regulation issued pursuant to this ordinance; or

4. violate any other provision of this ordinance.

B. A person commits an offense if, in connection with the performance of construction in the public right-of-way, they:

1. damage the public right-of-way beyond what is incidental or necessary to the performance of the construction;

2. damage public or private facilities within the public right-of-way;

3. fail to immediately clear debris associated with the construction from a public right-of-way after construction is completed; or

4. fail to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the City.

C. A culpable mental state is not required to prove an offense under this ordinance. A person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized or directed. An offense under Section 3.02(B)(3) is punishable by a fine of not less than $500 or more than $2000. Any other offense under this ordinance is punishable by a fine of $500.

D. This ordinance may be enforced by a civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the City has for a violation of this ordinance.

E. Prior to initiation of civil enforcement litigation, the permittee, or any other person who has violated a provision of this ordinance, shall be given the opportunity to correct the violation within a timeframe specified by the City. This subsection does not prohibit the City from taking enforcement action as to past or present violations of this ordinance, notwithstanding their correction.

F. If a permittee has been convicted of an offense under this ordinance in municipal court, additional permits from the public service provider may be denied until the offense has been corrected and any direct or indirect costs incurred by the City have been reimbursed. The permittee shall not be granted any additional permits until the offense has been corrected and any direct or indirect costs incurred by the City have been reimbursed unless an exception has been granted by the City due to special circumstances.

Section 3.03 Variance

Any variance from the requirements of this ordinance must be approved in advance by the City. The City may grant a variance only if an extreme hardship exists and the public health, safety, welfare, or convenience is not adversely affected by granting the variance. The City may not approve any variance that would give a competitive advantage to one public service provider over another public service provider providing the same or similar service. The City may not grant a variance from the indemnity requirements.

ARTICLE IV

PUBLIC SERVICE PROVIDER REGISTRATION REQUIREMENTS

Section 4.01 Public Service Provider Requirements

All public service providers with existing facilities within the public right-of-way who are not already registered with the city, must register with the City within 60 days of the effective date of this Ordinance. Any public service provider who does not have existing facilities within the public right-of-way and who wishes to install new facilities must first register with the City. Registration shall be in accordance with the following requirements:

A. Prior to registration, a public service provider must have authorization to place facilities within the public right-of-way through either a franchise, franchise ordinance approved by the City Council, or license agreement with the City; certification by the Texas Public Utilities Commission as a Certificated Telecommunications Provider under Chapter 283 of the Texas Local Government

Code; or a state issued cable franchise under Chapter 66 of the Texas Utilities Code. Registration shall otherwise be denied.

B. The registration must be on a form furnished by the City and made in the name of the public service provider that owns the facilities. The form must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the registration at the City's discretion.

C. If information provided as part of the registration changes, the public service provider must inform the City in writing not more than 30 days after the date the change occurs.

D. The public service provider shall include the following with the registration:

1. The name of the public service provider using the public right-of-way, including any business name, assumed name, or trade name the public service provider operates under, or has operated under within the past 5 years.

2. A copy of the document authorizing the public service provider to use the public right-of-way such as a franchise, a franchise ordinance issued by the City, or license issued by the City, or any state issued certification or franchise.

3. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider.

E. The public service provider must provide proof of insurance and appropriate bonds. The requirements for insurance and bonds are provided in Sections 4.02 and 4.03 below.

Section 4.02 <u>Insurance Requirements</u>

A. A public service provider shall obtain and maintain insurance throughout the time it has facilities in the public right-of-way. The City reserves the right to review the insurance requirements, and to reasonably adjust insurance coverage and limits. Pursuant to Section 53.064 of the Texas Utilities Code and for purposes of this subsection, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the public service provider in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City. For the City to accept such letters, the public service provider must demonstrate by written information that it has adequate financial

resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City. Proof of existing insurance shall comply with the following requirements:

Workers' Compensation and Employer's Liability Insurance	
Workers' Compensation	Statutory Limit
Employer's Liability	$1,000,000 Each Accident $1,000,000 Disease–Each Employee $1,000,000 Disease–Policy Limit

Liability Insurance	
Commercial General Liability (No standard coverages are to be excluded by endorsement. XCU and contractual liability are not to be excluded.)	$1,000,000 Per Occurrence/ $2,000,000 Aggregate

Automobile Liability Insurance	
Commercial Auto Liability (including coverage for owned, hired, and non-owned autos)	$1,000,000 Combined Single Limit

Umbrella Liability	
(Following Form and Drop Down Provisions Included)	$5,000,000 Each Occurrence

Any combination of underlying coverages providing equal or better liability limits is acceptable.

B. In addition to the above requirements, the insurance shall:

1. be written with the City of Arlington as an additional insured except on Workers Compensation and Employer's Liability Insurance.

2. provide for 30 days' notice of cancellation to the City, for nonpayment of premium, material change, or any other cause.

3. be written through companies duly authorized to transact that class of insurance in the State of Texas. Insurance is to be placed with insurers with a Best Rating of no less than A:VII.

4. waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of Arlington. It being the intention that the required insurance policies shall protect all parties and be primary coverage for all losses covered by the policies.

5. provide that notice of claims shall be provided to the City by certified mail.

C. The policy clause "Other Insurance" shall not apply to the City.

D. A certificate of insurance providing proof of coverage shall be provided to the City with the registration form.

Section 4.03 Bonding Requirements

A. Bonds. Each year, the public service provider shall, without cost to the City, provide Performance, Payment and Maintenance Bonds for the construction work anticipated to be performed in the public rights-of-way in the upcoming year. Each bond shall be in the amount of the estimated costs to restore the public rights-of-way for the work anticipated to be done in that year. The Performance Bond shall be conditioned upon the faithful performance of the work in the public rights-of-way. The Payment Bond shall be conditioned upon payment of all persons supplying labor or furnishing materials for said work. The Maintenance Bond shall guarantee the work for two years from the date of its completion. Each bond shall be executed by a surety company authorized to do business in the State of Texas and acceptable to the City.

B. Request for Waiver. A public service provider may submit a written request for a waiver from the above-referenced bonding requirements.

1. The request shall set forth in detail the public service provider's performance history in the City demonstrating a record of at least four year's performance of work in the public right-of-way free of currently unsatisfied claims for damage to the right-of-way.

2. Within 30 calendar days of receipt of a written request for a waiver, the City shall grant a waiver to the bonding requirements upon a finding that the public service provider has demonstrated a record of at least four year's performance of work in the public right-of-way free of currently unsatisfied claims for damage to the right-of-way.

C. The waiver for bonding requirements may be revoked by the City based upon the provider's or the provider's contractor's performance of work within the right-of-way.

Section 4.04 Existing Franchise or License

The requirements of Sections 4.02 and 4.03 may be met by public service providers with a current franchise, a franchise ordinance issued by the City, or license if their current franchise or license adequately provides for insurance and bonds and provides an indemnity in favor of the City.

ARTICLE V

CONSTRUCTION PERMIT REQUIREMENTS

Section 5.01 Construction Permit

A person shall not perform any construction, except for an emergency activity or for those activities described in Section 5.03 below, within a public right-of-way without first obtaining a permit from the City prior to the start of construction. A person who undertakes any work outside of the public right-of-way that will cut, break, or otherwise damage the public right-of-way shall also obtain a permit.

Section 5.02 Registration Required

Prior to obtaining a permit, the public service provider must be registered with the City in accordance with Article IV.

Section 5.03 Exception

A permit is not required under Section 5.01 if the activity in the public right-of-way consists exclusively of:

A. routine maintenance or repair of facilities that does not involve any of the following: the cutting or breaking of pavement; the closure of a traffic lane for longer than 24 hours; boring; or excavation greater than 100 cubic feet; or

B. a connection of real property to a utility service on the same side of the public right-of-way, if the connection does not require a pavement cut in the right-of-way; or

C. the replacement of a single damaged pole when all work is within ten feet of the damaged pole; or

D. installation of aerial lines on existing poles, or installation of aerial lines on not more than 10 new poles.

Section 5.04 Construction Permit Requirements

The following procedures and requirements govern the application for and issuance of a permit to perform construction within the public right-of-way:

A. Permit Application

1. A permit application must be made in writing on a form obtained from the City. The application must be signed and submitted by the permittee on behalf of the owner of the facility for which the permit is requested. The application for permit must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the permit at the City's discretion.

2. A permit application must be submitted to the City in accordance with the timeframes specified in the *Public Right-of-Way Permitting and Construction Manual*.

3. The City shall state on the permit any reasonable additional restrictions or requirements determined necessary. These additional restrictions or requirements shall be considered a part of the permitted activity.

4. The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the *Public Right-of-Way Permitting and Construction Manual* and with all other City ordinances and state or federal laws or regulations affecting the permitted activity.

B. Construction Plan

The permit application on any project must include submittal of construction plans. The plans must conform to the standards set forth in the *Public Right-of-Way Permitting and Construction Manual*. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas.

C. Utility Structures

1. Above ground utility structures shall meet the following requirements:

a. Above ground utility structures exceeding two feet in height shall not be placed within any intersection visibility triangle, as defined in the City's Unified Development Code or Design Criteria Manual.

b. Above ground utility structures, not including poles, less than 60 cubic feet in volume, with no dimension greater than six feet, may be placed within the public right-of-way without screening.

c. Above ground utility structures, not including poles, equal to or greater than 60 cubic feet in volume, and less than 240 cubic feet in volume, and less than seven feet in height shall:

   i. Be placed within a public or private utility easement outside the street right-of-way; and

   ii. Be screened on all sides except for the sides containing openings for access to the structure.

d. Structures equal to or greater than 240 cubic feet in volume, or more than seven feet in height shall be located in a private utility easement or other private property and shall be screened on all sides except for the sides containing the openings for access to the structure, and shall be subject to requirements of the Unified Development Code.

e. The dimensions of the supporting foundation or pad shall allow for existing and proposed sidewalks.

f. Above ground utility structures shall comply with all requirements of other City ordinances and other state and federal laws and regulations. Public Service Provider shall be responsible for obtaining other permits, as required.

g. Screening as required in this Section shall consist of a barrier of stone, brick, pierced brick or block, uniformly colored wood or other permanent material of equal character, density and design, at least 6' in height, or combination of two or more materials. Screening shall not exceed six feet in height. No separate permit will be required for any approved screening wall. Screening shall be placed so that it does not interfere with visibility triangles or create other traffic-related visibility obstructions.

h. The exterior surfaces of all utility structures and screening shall be maintained free of graffiti and other defacements such as posters,

stickers, decals, and signs, except those placed on the structure by the utility company for identification. The exterior finish shall be maintained free of visible deterioration.

i. The utility structure shall be clearly marked with the owner's name and contact information.

2. Below ground utility structures may be allowed in the right-of-way if space is available.

3. In reviewing the utility structures the City will consider the following:

   a. Size, location, and impact of the proposed structure;

   b. The structure's coordination with existing and proposed public facilities; and

   c. Availability of remaining right-of-way.

4. Request for Waiver - A request for a waiver of the requirements of this Section 5.04(C) may be made to the City.

   a. The request for a waiver must include a detailed justification for the waiver, including the lack of existing sites not within the public right-of-way; alternative sites sought and reviewed; and proof that compliance with the requirement is impractical.

   b. Within 30 calendar days of receipt of a written request for a waiver, the City may, with sole discretion, grant a waiver for good cause.

   c. In making this decision, the City shall consider:

      i. the availability of alternate locations;

      ii. the size, location, and impact of the proposed facility in the right-of-way at the proposed site;

      iii. the need to provide services to a property or area to be served by the proposed facility;

      iv. the need for the proposed size of the proposed facility to provide services to a property or area to be served by the proposed facility; and

v. the public health, safety, welfare and convenience.

d. The City shall indicate in written communication the basis for granting or not granting any waiver pursuant to this subsection.

e. The City's decision regarding the waiver shall be final.

5. If the City determines that the proposed utility structure cannot be placed within the right-of-way without adversely affecting the integrity of an existing or future facility owned by the City, the City shall have the right to deny the location of a new or replacement utility structure within the said right-of-way.

D. Utility Structures on City Property Other Than Right-of-Way

In cases where utility structures, except those structures serving solely the City property, will be located on City property other than public right-of-way, the following requirements apply:

1. The application shall be made to the City for execution of a use privilege agreement through the City's Real Estate Services division.

2. Nothing contained herein, however, shall ever be held or construed to confer upon any person the right to place a utility structure upon City property. The City reserves the right, at its sole discretion, to enter into a Use Privilege Agreement to allow the placement of a utility structure on City property.

3. The City shall not be liable for damages or losses of any kind whatsoever by reason of injury to property or person occasioned by the use of any City property. The City shall have no obligations in regard to the maintenance of any improvements within such City property. The City shall be defended at the cost and expense of the person placing improvements on City property from all claims and demands.

4. The public service provider shall pay City a use fee for use of the property based upon the fair market value as determined by the City's Real Estate Services Division. In addition to a use fee, the City may request the public service provider to provide network connectivity or conduit to the City.

5. The public service provider shall cooperate with other providers in connection with allowing collocation of facilities within the utility structure.

E. Storm Water Pollution Prevention Plan

The permittee shall submit with the permit application two sets of a Storm Water Pollution Prevention Plan (SWPPP) to the City in cases where stream crossings are open cut, unless the work is being performed under an SWPPP submitted by another entity. When working under the SWPPP of another entity, the plan shall identify the SWPPP under which the utility is performing the work. In all other cases, the permittee is required to implement erosion control measures for construction activities in accordance with the Storm Water Pollution Control Chapter of the City Code, as amended, and other City ordinances and State or Federal laws and regulations.

F. Traffic Control Plan

Any work that may impact traffic flow or result in lane closures in any street will require an approved site specific traffic control plan and the closures shall comply with the most current edition of the *Texas Manual on Uniform Traffic Control Devices*, as amended. The permittee shall submit a site specific traffic control plan, when applicable, to the Department of Public Works and Transportation Traffic Engineering Division and obtain approval prior to the lane closure.

G. Trench Safety Plan

Trench safety systems shall meet U.S. Occupational Safety and Health Administration Standards.

Section 5.05 Construction Permit Expiration

If no construction has commenced under a permit within 90 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public right-of-way. An extension to a permit may be granted by the City only before the permit expires.

Section 5.06 Trenchless Technology or Boring

A. The City may require the use of trenchless technology or boring based on the following criteria:

1. It is in the best interest of the City; and

2. It is technically, commercially, and economically feasible; and

3. It is not in violation of federal or state regulations or industry safety standards.

B. All concrete driveways and streets shall be bored rather than open cut. The length of the bore must be sufficient for meeting the fully improved (ultimate) roadway width as specified in the Thoroughfare Development Plan if sufficient right-of-way exists. If the concrete street is subject to reconstruction within 2 years, or for other good cause, the City may grant an exception upon request.

C. No pavement cuts in newly constructed, reconstructed, or resurfaced (greater than one inch) asphalt streets may be made for 60 months after the substantial completion of the street work. With sole discretion, the City may grant an exception based on the public service provider's written demonstration that the following criteria have been met:

1. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts; and

2. Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable; and

3. The proposed excavation cannot reasonably be delayed until the five year deferment period has lapsed.

Section 5.07 <u>Removal of Landscaping from Right-of-Way</u>

When trees or other landscaping are proposed to be removed from the right-of-way during construction, the permittee shall reimburse the City the value of the tree in accordance with the International Society of Arboriculture's *Guide for Plant Appraisal* prior to issuance of a permit.

Section 5.08 <u>Excavated Materials</u>

The permittee and any person responsible for construction shall protect the public right-of-way surface, and all existing facilities and improvements both above and below ground from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature, or floodplain.

Section 5.09 Emergency Activity

Construction in the public right-of-way may commence prior to obtaining a permit if the public service provider determines a valid need to perform emergency activity. Immediate notice, including the reasons for the emergency activity, must be given to the City. The public service provider shall provide a written description of the emergency activity required not later than the second business day following commencement of the emergency activity, and application for a permit must be made as soon as possible.

ARTICLE VI

PERMIT DENIAL AND REVOCATION

Section 6.01 Permit Denial

The City may refuse to issue a permit if:

A. the public service provider does not have a valid registration on file with the City;

B. the proposed construction will substantially interfere with vehicles or pedestrians and no procedures, or procedures inconsistent with this ordinance, have been identified to minimize the interference;

C. the proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing facilities already in the public right-of-way, or will conflict with proposed public facilities;

D. the proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the most current edition of the *Texas Manual on Uniform Traffic Control Devices*;

E. the proposed construction, incidental traffic control, or other permitted activity, or the manner in which it is to be performed, will violate a City ordinance or regulation or a state or federal statute or regulation; or

F. the permittee:

1. fails to furnish all the information required by this ordinance; or

2. knowingly or intentionally furnishes false or incorrect information to the City; or

3. fails, except for good cause shown, to file the application on the approved form within the time limits prescribed by the *Public Right-of-Way Permitting and Construction Manual*; or

4. has been convicted of an offense under this ordinance in municipal court and the offense has not been corrected and any direct or indirect costs incurred by the City have not been reimbursed;

5. is not in compliance with applicable requirements of an existing permit issued under this ordinance.

Section 6.02 Permit Revocation

The City may suspend construction or revoke an issued permit on the same grounds on which a permit may be denied under Section 6.01 or if the permittee:

A. commences or performs construction in violation of an applicable requirement of this ordinance or the permit;

B. creates or is likely to create a public health or safety hazard by performance of the construction in question;

C. fails to comply with an order or regulation of the City applicable to the construction;

D. fails to comply with the restrictions or requirements of other City ordinances or state or federal laws or regulations applicable to the construction; or

E. commences or performs work without having prior knowledge and understanding of the applicable repair standards as specified in the *Public Right-of-Way Permitting and Construction Manual*.

Section 6.03 Notice

The City shall provide immediate verbal notice of a suspension or revocation to the permittee. Written notice of a suspension or revocation shall be provided within one business day of the verbal notice. Construction that is suspended may not resume until the City determines that the permittee has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been revoked may be reinstated by the City if the City determines that:

A. the permittee has corrected the violation, noncompliance, or hazard that caused the revocation; and

B. the health or safety of the public is not jeopardized by reinstating the permit.

ARTICLE VII

CONSTRUCTION REQUIREMENTS

Section 7.01 Construction Requirements

All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this ordinance, other City ordinances, and regulations promulgated by the City relating to construction within the public right-of-way. The permittee shall maintain the construction area in a manner that avoids health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way is permanently restored. Specific construction requirements are contained in the *Public Right-of-Way Permitting and Construction Manual*, as amended.

Section 7.02 Restoration of Right-of-Way

A permittee performing construction in the public right-of-way shall restore the public right-of-way to a condition that is equal to or better than the condition prescribed by the *Public Right-of-Way Permitting and Construction Manual*, as amended.

Section 7.03 Coordination

The permittee has the exclusive responsibility to coordinate with other public service providers to protect all existing facilities in the public right-of-way in which the construction occurs. Acceptance of the plans and issuance of a permit does not constitute liability on the City's part for any damage to existing facilities.

Section 7.04 Locate Extent of Right-of-Way

The permittee has the exclusive responsibility to locate the extent of the public right-of-way. Acceptance of the plans and issuance of a permit does not constitute liability on the City's part for any facilities placed on private property. If facilities are placed on private property, it is the public service provider's responsibility to contact property owners and acquire easements, or move the facilities.

Section 7.05 Barricades and Warning Signs

When making a pavement cut or excavation, or placing soils or excavated material in or along a public right-of-way, the permittee shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the open cut, excavation, spoils, or excavated material.

Section 7.06 Alternate Access for Blocked Sites

If a street or alley must be totally closed for any duration, the permittee shall provide for reasonable alternative access to the adjacent properties at all times. If a sidewalk is to be closed or blocked for longer than one day, the permittee shall provide a reasonable alternative for pedestrian access. Sidewalks designated as school routes shall be open at all times, or a reasonable alternative shall be provided before work commences. Reasonable alternatives for sidewalks shall provide 36 inches minimum surface width.

Section 7.07 Alteration to Landscape Material

A. Any alteration to landscape material located within any public right-of-way requires prior notification to the adjacent property owner and City. No person shall cut, deface or in any way injure any landscape material located within a public median without prior approval from the Parks and Recreation Department. Landscape material shall include, but is not limited to, canopy and ornamental trees, shrubs, ground cover, lawn, earthwork, and irrigation systems. Topping/trimming of trees for overhead utility service is excluded from this subsection.

B. If a tree within the right-of-way is removed or damaged during construction, the City shall determine the cost of damages to the tree in accordance with the International Society of Arboriculture's *Guide for Plant Appraisal* and the permittee shall reimburse the City the cost of the damages.

C. Shrubs damaged by the permittee shall be mitigated and offset by planting the same species and size of shrub.

Section 7.08 Temporary Restoration of Right-of-Way

Temporary restoration of the public right-of-way may not remain for more than 10 business days after the completion of a repair or installation of an underground structure or facility, unless a time extension has been granted by the City. The City may, at the expense of the permittee or other responsible person, remove any temporary

restoration remaining in the public right-of-way beyond the 10 day time limit and make permanent repairs. Any exception to the 10 day time limit, other than a relocation of a facility in advance of a City construction project in the public right-of-way, must be approved by the City prior to expiration of the time limit.

Section 7.09 Notification for Weekend Work

Except in an emergency, the permittee shall notify the City in writing at least 48 hours prior to any work requiring a permit being performed on a weekend or holiday.

Section 7.10 Contractor's Agent on Site

The contractor will maintain at all times on the job site a responsible person authorized and capable to receive and relay instructions from the City.

ARTICLE VIII

IMPROPERLY CONSTRUCTED FACILITIES

Section 8.01 Permittee's Responsibilities

A permittee shall:

A. properly construct, install, repair, relocate, or upgrade its existing facilities within the public right-of-way; and

B. repair or restore any damage to other facilities or the public right-of-way, except the City's fiber optic network, that occurs as a result of improper construction, installation, repair, relocation, or upgrade of the permittee's facilities, and

C. reimburse the City for the cost of repairing damage to the City's fiber optic network. Reimbursement shall be made within 10 working days of the receipt of the invoice from the City.

Section 8.02 Improperly Constructed Facilities

Facilities will be considered to be improperly constructed, installed, repaired, relocated, or upgraded if:

A. the construction, installation, repair, relocation, or upgrade endangers public health or safety or creates a public inconvenience;

B. the facilities encroach upon private property or extend outside the right-of-way location designated in the permit without authorization;

C. the construction, design, or configuration of the facilities does not comply with applicable local, state, or federal laws or regulations;

D. the construction, installation, repair, relocation, or upgrade is conducted in a manner that damages public property or another public service provider's facilities;

E. the facilities are not capable of being located or maintained using standard practices;

F. the facilities are placed in an area that interferes with another public service provider's existing facilities;

G. above-grade facilities are placed in an existing or proposed sidewalk; or

H. at-grade facilities are placed in an existing or proposed sidewalk when they can be reasonably placed outside the existing or proposed sidewalk.

ARTICLE IX

MAINTENANCE OF THE PUBLIC RIGHT-OF-WAY

Section 9.01 Two-Year Maintenance Period

All construction performed under any permit granted to a permittee by the City under this ordinance must be maintained to the satisfaction of the City for two years after substantial completion of construction or repair.

Section 9.02 Restoration Work

Work performed within the public right-of-way and outside the limits of the pavement, that includes, but is not limited to, the surface, underground infrastructure, irrigation system, landscaping, signage, or sidewalks is subject to the two-year maintenance period. Should the City reasonably determine, within two years from the date of the completion of work, that additional restoration work is required, the permittee shall perform such additional restoration work to the satisfaction of the City within 30

days after the City gives written notice to the permittee to correct the damage, defect, or other problem. If the restoration work is not completed within 30 days, the work may be performed by the City at the provider's expense. The permittee shall notify the City at least 48 hours before commencing any repair operations. If a construction or excavation site is subsequently disturbed by another party, including another permittee or the City, any continuing obligation to maintain the overlapping area shall cease. If the site is disturbed by another permittee, then that permittee shall be subject to the maintenance period for the overlapping area.

Section 9.03 Settling of Backfill

The City shall notify the permittee in writing if the backfill on a permitted pavement cut or excavation settles at any time during the two year maintenance period, causing subsidence in the pavement of one-half inch or more, vertically measured in any three foot horizontal direction. Upon notification, the permittee shall commence repair work within 10 days and notify the City 48 hours in advance of commencement of the repair work. If the repair work is not commenced within 10 days, the repair work may be performed by the City at the provider's expense.

Section 9.04 City's Decision Binding

The decision of the City as to the necessity of correcting any damage, defect or other problem is binding on all parties.

Section 9.05 Coverage Area

All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the construction area will be regarded as part of the construction and must be included in the total area repaired.

Section 9.06 Failure to Repair or Restore

Upon failure of the permittee to perform any such repair or restoration work described in this Article, the City may repair such portion of the public right-of-way as may be required. The permittee or public service provider shall reimburse the City for the actual direct and indirect costs of the repair work.

ARTICLE X

MAINTENANCE OF PUBLIC SERVICE PROVIDER'S FACILITIES

Section 10.01 Maintenance of the Public Service Provider's Facilities

Public Service Provider's facilities located within the right-of-way shall be maintained in good repair. Good repair includes, but is not limited to, the following:

A. Location markers shall be no greater than five degrees from vertical.

B. Location markers shall not be rusty and shall be legible.

C. Ground-mounted utility boxes shall not be broken or have missing covers.

D. Temporary repairs shall not remain in place for more than 15 working days, unless otherwise agreed to by the City.

E. Screening fences, landscaping, and irrigation systems shall be maintained in accordance with the City's Unified Development Code.

F. Painted structures and facilities shall be maintained such that the paint is not peeling, chipping, or faded.

G. Damaged/replaced poles shall be removed completely from the right-of-way and repairs made to the area the poles are removed from. Repairs to the area around the damaged/replaced pole shall be of the same material as that of the area immediately surrounding the damaged/replaced pole.

H. Debris from construction or replacement of poles or other facilities shall be removed in a timely manner.

ARTICLE XI

EMERGENCY REPAIRS

Section 11.01 Emergency Repair During Construction in Right-of-Way

If the City determines during construction that an emergency repair to a public right-of-way is necessary to correct a situation that is hazardous to the public, the City shall immediately notify the permittee. If the permittee does not commence the emergency repair within 24 hours, the City may, with sole discretion, cause performance

of such emergency repair work as is necessary to correct the hazardous situation. The permittee, or public service provider, shall reimburse the City for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The permittee shall maintain the emergency repair until the permittee completes construction and final repairs.

Section 11.02 Emergency Repair for Existing Facility in Right-of-Way

If the City determines that a problem with a public service provider's existing facility in a public right-of-way requires an emergency repair to correct a situation that is hazardous to the public, the City shall immediately notify the public service provider. If the public service provider does not commence the emergency repair within 24 hours, the City may, with sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The public service provider shall reimburse the City for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The public service provider shall maintain the emergency repair until the public service provider completes construction and final repairs.

ARTICLE XII

PUBLIC IMPROVEMENT COORDINATION

Section 12.01 Public Improvement Coordination

Whenever the City deems it necessary to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way due to the City's reconstruction, widening, or straightening of streets; placement or replacement of water, wastewater, or storm water facilities; installation of traffic signals, traffic signs, and streetlights; or construction of any other City public improvement project, the public service provider that owns the facilities shall conform its facilities to the City's project.

Section 12.02 Relocation

The facilities must be conformed, at the public service provider's expense, within 120 days after the City issues notice to the public service provider, unless a different conformance schedule for the work is approved by the City.

Section 12.03 Abandonment

Facilities of a public service provider that are not conformed within the 120-day notice period or within the approved schedule will be deemed abandoned, and the City, and any person working under contract with the City, will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the City, or its contractors, described in this Article.

Section 12.04 Permit Required

A person performing construction within the public right-of-way for the purpose of conforming facilities at the request of the City in advance preparation for a public improvement project shall obtain a permit under this ordinance.

Section 12.05 Maintenance of Construction Area

The permittee shall maintain the construction area in accordance with Article IX or until the work order authorizing the construction of the public improvement project is issued by the City, whichever comes first.

ARTICLE XIII

EFFECTIVE DATE

Section 13.01 Effective Date

A. The effective date of this ordinance shall be ten days after enactment and publication.

B. Any permit issued prior to the effective date will remain subject to the terms and conditions of City procedures in effect at the time of issuance of the permit and is not affected by this ordinance, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this ordinance.

ARTICLE XIV

INDEMNITY

Section 14.01 Indemnity

A. EACH PERSON PLACING FACILITIES IN THE PUBLIC RIGHT-OF-WAY SHALL PROMPTLY DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL DAMAGES, COSTS, LOSSES OR EXPENSES:

1. 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 OMISSIONS; AND

2. FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, 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 THIS ORDINANCE.

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 ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY.**

D. **A PERMITTEE WHO IS A CERTIFICATED TELECOMMUNICATION PROVIDER AS DEFINED IN CHAPTER 283, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, SHALL GIVE THE CITY THE INDEMNITY PROVIDED IN SECTION 283.057, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED.**

E. This section is not applicable to certificated telecommunications providers. Certificated telecommunications providers shall indemnify the City pursuant to Chapter 283 of the Texas Local Government Code, as amended.

ARTICLE XV

SEVERABILITY

Section 15.01 Severability

The provisions of this ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new or revised provisions in compliance with the authority's decision or enactment.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2,000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be

inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 22nd day of March, 2016, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 12th

day of April, 2016, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY