

**ORDINANCE NO. 20170817-xxx**

**AN ORDINANCE AMENDING CHAPTER 14-11 AND 15-7 AND REPEALING CHAPTER 15-8 OF THE CITY CODE RELATING TO PERMITTING USE OF PUBLIC RIGHTS OF WAY AND AUTHORIZATION FOR ATTACHING TO CITY-OWNED POLES IN THE PUBLIC RIGHTS OF WAY; DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1. FINDINGS.**

The Council finds:

- (A) Public rights-of-way are specifically designed and constructed for the purpose of providing throughways for travel as well as public social space.
- (B) Public right-of-way is public space designed with a particular look and aesthetic pleasing to the public that allows safe travel, free of unsafe impediments, and engineered to minimize distractions that may cause an unsafe environment for the public.
- (C) City light poles and City signs set in the in public right-of-way are specifically designed to meet an aesthetic standard that contributes to the aesthetic qualities of the space in and around public rights-of-way and are designed solely to give light to the public space on and above the surface of the right-of-way.
- (D) It is the policy of the City to preserve the safety and appearance of the City's public right-of-way.
- (E) All City light poles existing as of, or to be installed after, September 1, 2017 in the public right-of-way are and will be designed and placed for aesthetic purposes.
- (F) The City of Austin, consistent with its adopted comprehensive plan, seeks to foster visually attractive, pedestrian-friendly, and active streetscapes for the enjoyment and utilization of City residents, tourists, and the businesses that serve them. As such, several design and historic districts established by ordinance exist throughout the City, including but not limited to:

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- (1) the Central Business District (CBD);
- (2) numerous Planned Unit Developments, Neighborhood Conservation Combining Districts, Planned Development Agreements, Master Development Agreements, and small-area Regulating Plans;
- (3) the Waterfront Overlay District;
- (4) neighborhoods subject to the Residential Design & Compatibility Standards and/or adopted neighborhood plans;
- (5) numerous historically significant districts, such as the East 6<sup>th</sup>/Pecan Street Overlay, Castle Hill Historic District, and general Historic District & Historic Area Combining Districts;
- (6) the University Neighborhood Overlay District;
- (7) the Lake Austin Overlay District;
- (8) the Traditional Neighborhood District; and
- (9) commercial and multi-family development subject to standards codified as “Design Standards and Mixed Use.”

Each of the City’s design and historic districts, whether or not specifically listed here, contains decorative poles that enhance and preserve the character, aesthetics, and economic vitality, including property values, of areas covered by the district.

- (G) The public rights of way are valuable rights in real property that have been acquired or dedicated to the City at great expense to the residents and visitors to the City through public debt, tax revenue, and other public consideration.
- (H) The cost to the City to acquire public right-of-way is by law the fair market value of real estate. The condition and appearance of public rights of way facilitates a strong local economy and are invaluable to a continued revenue stream generated for Austin and the State of Texas based business and commercial enterprises that depend on the safe and dependable flow of vehicle and pedestrian traffic.
- (I) The public rights of way and the City’s traffic signal infrastructure, street lighting, benches, bike racks, trees, and open space within the right-of-way

are proprietary to the City of Austin and managed in trust for the benefit of the public.

- (J) The public right-of-way is for the primary purpose of providing safe and unimpeded travel by the public.
- (K) The public right-of-way is used only secondarily for the delivery of public utilities, such as water, sewer collection, storm water collection, electricity, and gas, and the utilities are designed and engineered to be as discrete as possible, buried underground where possible, subordinate to the primary purpose of safe and dependable public travel.
- (L) The municipal discretionary authority over use of the public right-of-way for the placement of wireless network nodes has been circumscribed by Chapter 284 of the Texas Local Government Code to allow such placement subject to municipal authority to determine design requirements for the location and appearance of wireless network equipment.
- (M) The value and benefit provided by parks requires limited intrusion by non-park facilities along the right-of-way running adjacent and through public parks.
- (N) The value and benefit of open and aesthetically appealing public space within and adjacent to residential neighborhoods depend on safe, open, and appropriately designed right-of-way.
- (O) It is the policy of the City to prioritize the placement of wireless network equipment in a manner that least affects the public right-of-way such that the preference for design guidelines for right-of-way requires siting nodes and associated equipment in the following order:
  - (1) First, on or immediately adjacent to existing utility poles, subject to appropriate design specifications established in design manuals;
  - (2) Second, on, incorporated into, or immediately adjacent to traffic signal poles, subject to appropriate design specifications established in design manuals;
  - (3) Third, on or immediately adjacent to light poles, subject to appropriate design specification established in design manuals, and provided a light pole is identified and determined by the city manager or the city

manager's designated representative to not be a decorative pole; and finally

- (4) Fourth, on, incorporated into, or immediately adjacent to node support poles, subject to appropriate design specification established in design manuals.

**PART 2.** Article 2 (*Temporary Use of Right-of-Way*) of Chapter 14-11 (*Use of Right-of-Way*), of the City Code is amended as follows:

**ARTICLE 2. [TEMPORARY] USE OF RIGHT-OF-WAY FOR CONSTRUCTION, EXCAVATION, FACILITY INSTALLATION, OR TEMPORARY USE.**

Division 1. - General Provisions.

**§ 14-11-101 - APPLICABILITY; DIRECTOR; PERMIT REQUIRED**

- (A) This article does not apply to city-owned utilities.
- (B) In this division, "director" means the department director designated by the city manager.
- (C) Unless a person obtains a permit from the director under this article or demonstrates to the director that the person is exempt from obtaining a permit for use or occupation of public right-of-way, a person may not perform any activity in the public right-of-way that includes:
  - (1) construction;
  - (2) excavation;
  - (3) installation, maintenance, or placement of facilities intended for short or long-term occupancy of the public right-of-way; or
  - (4) temporary use.
- (D) A person claiming an exemption from permitting under this article must request and obtain a written exemption determination from the director 30 days prior to commencing any activity in the right-of-way by providing the

director evidence in a form determined by the director necessary to make a determination that the person is exempt

**§ 14-11-102 - INSURANCE REQUIRED.**

(A) Before the director grants a permit under this article, an applicant for a permit shall furnish to the director evidence that the applicant has obtained insurance coverage for bodily injury and property damage liability in the amount and under the terms and conditions required by the director.

(1) The policy must be issued by an insurance company licensed to operate in the State of Texas and by an agent licensed by the State of Texas.

(2) The applicant must furnish a copy of the policy to the director at the director's request.

(3) A permit holder must keep the insurance in effect during the period of time for which the director has issued a permit or the permit holder occupies right-of-way and provide a certificate of insurance to the director annually demonstrating the required insurance is current.

(B) The director may not require additional insurance of a City franchise holder if the franchise agreement authorizes installation of facilities in the right-of-way and requires the permit holder to maintain insurance coverage meeting or exceeding the requirements of Subsection (A) of this section.~~[(A) The director may not issue a permit under this article until an applicant furnishes proof of insurance for bodily injury and property damage liability in an amount required by the City.]~~

~~[(B) The insurance coverage described in Subsection (A) must be maintained throughout the term of a permit.]~~

~~[(C) A franchise holder is not required to provide insurance under this article if the franchise holder:]~~

~~[(1) has paid a franchise fee that includes the cost of using a City street; and~~

~~(2) executed an insurance or indemnification agreement with the City.]~~

**§ 14-11-103 - SECURITY REQUIRED.**

- (A) The director may not issue a permit under this article unless an applicant furnishes proof of fiscal security in accordance with the requirements of this section [a form approved by the director].
- (B) Fiscal security must be in the form of a surety bond, letter of credit, or cash deposit in the amount of \$10,000, unless a different form or amount is prescribed by the Utilities Criteria Manual or Transportation Criteria Manual [An applicant may furnish proof of fiscal security in the form of a surety bond, a letter of credit, or a cash deposit in the amount of \$5,000].
- (C) A surety bond must be issued by an insurance company licensed to operate in the State of Texas and with an agent or attorney in the City for service of process and contain an endorsement that no cancellation or restriction of the bond is effective unless the director receives advance written notice, by certified mail, return receipt requested, of the cancellation or restriction.
- (D) The permit holder must agree to remove equipment from the right-of-way and.
- (E) The permit holder must agree to perform and the fiscal security must cover the permit holder's performance of restoration activities, including:
- (1) removal of equipment and facilities from the public right-of-way;
  - (2) replacement and restoration of disturbed or damaged sidewalks, pavement, and other public property and public utilities;
  - (3) construction and removal of protective railing and other safeguards during the permit holder's occupancy of the right-of-way; and
  - (4) any restoration or facility removal necessary to restore the right-of-way to its original condition in the event the permit holder abandons its permitted activity.
- (F) The director may not require additional security of a City franchise if the franchise agreement authorizes installation of facilities in the right-of-way and requires the franchisee to furnish fiscal security meeting or exceeding the requirements of this section.
- (G) A permit holder who damages the City in an amount exceeding the amount of the security required by this section shall be liable to the City for actual damages in excess of the security provided.

~~[(C) The security required by this section must:]~~

~~[(1) protect, indemnify, and hold harmless the City from a claim for damage to a person or to property that may be brought against the City as a result of an applicant's activity conducted under a permit issued under this article;~~

~~(2) guarantee the replacement of a sidewalk, pavement, public utility, or other public property that is disturbed or removed during construction activity; and~~

~~(3) guarantee the construction of a rail or other safeguard around a construction site during the occupancy of the public right-of-way or if work is abandoned.~~

~~(D) A franchise holder is not required to provide security under this section if the franchise holder:~~

~~(1) has paid a franchise fee that includes the cost of using a City street; and~~

~~(2) executed an insurance or indemnification agreement with the City.]~~

#### **§ 14-11-104 - APPEAL.**

(A) An applicant may appeal the denial of an application filed under this article to the director by filing a written appeal that provides a reason and supporting evidence for reconsideration no later than the third business day after the applicant receives notice of the denial ~~[to the council].~~

(B) The director shall reconsider the denial based on reasons and evidence provided by the applicant. If the director determines that the application was correctly denied, the director shall forward the appeal to the city manager for final action with the director's recommendation to affirm the denial ~~[An appeal must be submitted in writing to the director].~~

(C) The city manager shall decide an appeal under this section not later than the tenth business day after receipt of the appeal from the director. The city manager's decision is final ~~[The director shall forward an appeal to the city clerk. The city clerk shall place the appeal on the next available Thursday council agenda].~~

(D) The director will not consider an appeal under this section until an available statutory right to cure a permit denial has been exhausted.

**§ 14-11-105 – CONDITIONS FOR PERMIT ISSUANCE.**

(A) An application for a permit under this article must:

- (1) be submitted in the manner required by this article and according to forms provided by the director; and
- (2) accompanied by a nonrefundable application fee established by separate ordinance.

(B) The director may not issue a permit under this article until:

- (1) the applicant pays the applicable fees for use of the right-of-way established by separate ordinance and provides the insurance and security required by Sections 14-11-102 (*Insurance Required*) and 14-11-103 (*Security Required*); and
- (2) the applicant agrees in writing to indemnify, defend, and hold the City harmless against any claims, causes of action, losses, liabilities or damages arising from, or in connection with, the applicant's permitted activity conducted under a permit issued under this article.

(C) In approving a permit under this article, the director may impose any of the following permit conditions that the director determines are necessary to protect the public health and safety:

- (1) require the use of barricades, signals, signs, or other traffic control or safety devices in addition to those proposed in the application;
- (2) designate hours of the day and days of the week to perform the permitted activity;
- (3) designate hours, day, and areas for street closure;
- (4) restrict the location of materials, equipment, and excavated materials; and
- (5) require coordination of construction activity in accordance with Sections 14-11-165 (*Utility Location and Coordination Committee*) and 14-11-166 (*Project Coordination*).



**§ 14-11-106[5] - PERMITS REQUIRED TO BE POSTED.**

A permittee under this article shall:

- (1) post a copy of the permit at an easily accessible location on or immediately adjacent to the affected sections of right-of-way~~[the construction site or business premises]~~ at all times until the construction, excavation, installation of facilities, or any other permitted activity that disrupts the right-of-way is complete~~[during the period for which the permit is valid]~~; and
- (2) present the permit for inspection on request by a City official.

**§ 14-11-107[6] - COMPLIANCE REVIEW COMMITTEE.**

- (A) A Compliance Review Committee is established to review permit violations and to make a recommendation on the suspension or revocation of a permit issued under this article at the request of the director.
- (B) The Compliance Review Committee is composed of the following five members:
  - (1) one Urban Transportation Commission representative appointed by the chair of the Urban Transportation Commission;
  - (2) one employee of the Public Works Department;
  - (3) one City employee appointed by the city manager; and
  - (4) two representatives of the building construction industry selected by the collective representatives of the industry.
- (C) The director may request the Compliance Review Committee to schedule a hearing if:
  - (1) three or more Class C misdemeanor complaints are filed against the permittee;
  - (2) five or more notices of violation are issued to the permittee; or
  - (3) the director determines that a violation committed by a permittee warrants revocation because of the serious nature of the violation.
- (D) The Compliance Review Committee may recommend that:

- (1) a permit be suspended for a period not to exceed 30 days if the committee finds that a hardship existed at the time of the violation which reasonable preliminary planning and due diligence could not have avoided;
  - (2) a permit be revoked; or
  - (3) no administrative sanction be imposed.
- (E) In taking administrative action regarding a permit under this article, the director may consider, but is not bound by, the recommendation of the Compliance Review Committee.

**§14-11-108 – PERMIT NOT ASSIGNABLE.**

Unless otherwise provided by state law, a permit is not assignable without the consent of the director. The director may establish such terms and conditions for assignment of a permit as may be consistent with state law.

**§14-11-109 – RECORDS; AUDITS.**

- (A) A permit holder shall keep complete and accurate books of accounts and records of business activity, operations, and facilities in the public right-of-way for as long as the permit holder has an interest in any facility in the public right-of-way. These records include all books, papers, accounts, maps, plans, and detailed equipment specifications. The director may require that a permit holder keep additional records and accounts that are reasonably necessary for purposes of identifying, accounting for, and reporting the number and description of facilities in the public right-of-way or for determining impact to public infrastructure and right-of-way and for calculation of fees. The City may examine these records, excluding those that are prohibited by law from public disclosure, to the extent reasonably necessary to verify payment and compliance with federal, state, and local law.
- (B) The director may audit a permit holder to ensure compliance with federal, state, or local law. The audit may begin no earlier than 30 days after an audit notice is mailed to the permit holder. The permit holder shall furnish information sufficient to demonstrate its compliance.

(C) A permit holder shall fully cooperate in making these records available to the City for examination, audit, review, and copying at the director's reasonable written request and location.

(D) The director may make reasonable inquiries pertaining to a permit holder's performance of terms and conditions of any permit and this article. A permit holder shall timely respond to a request.

## **Division 2. - Temporary Use of Right-of-Way.**

### **§ 14-11-131 - PERMIT REQUIRED.**

Unless a person obtains a temporary use of right-of-way permit from the director [~~city manager~~], a person may not:

- (1) block, direct, impede, or reroute pedestrian and vehicular traffic; or
- (2) place a barricade or other traffic control device in a right-of-way.[;]

### **§ 14-11-132 - APPLICATION REQUIRED.**

(A) Except as provided in Subsection (B), to obtain a temporary use of right-of-way permit or a renewal or extension of a temporary use of right-of-way permit, a person must make written application to the director [~~city manager~~] on a prescribed form not later than the ninth day before the person intends to use the right-of-way.

(B) The director[~~city manager~~] may accept an application after the deadline established in Subsection (A) for good cause as determined by the director[~~city manager~~].

(C) In an application, an applicant must:

- (1) state the reason that use of the public right-of-way is necessary; and
- (2) demonstrate that the applicant's proposed use of the right-of-way is the minimum necessary to perform the proposed activity.

(D) In an application, an applicant must agree to:

- (1) comply with permit conditions;

- (2) pay an investigation fee that the City assesses for investigations of work performed under a permit after a violation occurs; and
  - (3) accept service of a written notice of violation presented to the applicant, site manager, site supervisor, project superintendent, or prime contractor by a city [~~police officer, the building~~] official [~~, or a parking enforcement officer~~].
- (E) An applicant must attach proof of compliance with Sections 14-11-102 (*Insurance Required*) and 14-11-103 (*Security Required*).
- (F) If a temporary use of right-of-way permit is necessary to perform work under a building permit, demolition permit, [~~or~~] driveway approach permit, or other City permit, an application for the temporary use of right-of-way permit must accompany an application for the building, demolition, [~~or~~] driveway approach, or other City permit.
- (G) An application submitted under Subsection (A) must be accompanied by a nonrefundable application fee established by separate ordinance.

#### **§ 14-11-133 - ACTION BY THE DIRECTOR.**

- (A) Not later than the ninth day after receiving an application, the director [~~city manager~~] shall:
- (1) approve the application and issue the permit;
  - (2) request additional information from the applicant; or
  - (3) deny the permit.
- (B) If the director [~~city manager~~] requests that an applicant provide additional information, the director [~~city manager~~] shall approve or deny the permit not later than the ninth day after receiving the requested information.
- (C) In reviewing an application, the director [~~city manager~~] shall consider:
- (1) the reasonableness of the amount of right-of-way requested to be occupied given the extent and type of construction to be performed;
  - (2) the period of time that the applicant requests to occupy the right-of-way;

- (3) the safety of pedestrian and vehicle traffic in and adjacent to the right-of-way the applicant requests to occupy; and
  - (4) traffic congestion and vehicle parking requirements in the vicinity of the location specified in the application.
- (D) The director [~~city manager~~] may not approve an application for a temporary use of right-of-way permit if the applicant fails to demonstrate that the applicant will provide adequate protection of pedestrian and vehicle traffic at the location for which the temporary use of right-of-way permit is requested.
- (E) The director [~~city manager~~] may deny an application if:
- (1) a traffic control procedure or device proposed in the application does not comply with the requirements of the Manual on Uniform Traffic Control Devices or the Transportation Criteria Manual;
  - (2) the director[~~city manager~~] determines that it is unnecessary to impede traffic or to block or close a street to perform the activity proposed in the application;
  - (3) the activity proposed by the applicant or the manner in which the applicant proposes to perform the activity will violate a City requirement or a state law;
  - (4) the applicant fails to furnish information required by this article within the prescribed time period, unless the director[~~city manager~~] determines that the applicant has shown good cause for the failure;
  - (5) the applicant misrepresents or falsifies information in the application;
  - (6) the location on which the proposed activity is to occur is reserved for other activity and the director[~~city manager~~] determines that the projects cannot be conducted simultaneously; or
  - (7) the activity proposed in the application will cause a safety hazard or traffic congestion.
- (F) An application is automatically denied if an applicant does not provide additional information before the 31st day after the request is made.

#### **§ 14-11-134 - PERMIT CONDITIONS.**

As a condition of permit issuance, the director [~~city manager~~] may:

- (1) require the use of an additional traffic control or safety device;
- (2) require that an activity be performed during a certain time of day or on a certain day of the week;
- (3) limit the area or number of traffic lanes that a permittee may block or close at one time or at a certain time of the day;
- (4) prohibit the placement of material and equipment in a traffic lane;
- (5) unless an emergency conditions exists, require that a permittee coordinate the detouring of traffic with the director [~~city manager~~] before the permittee implements a detour; or
- (6) impose another condition considered necessary.

#### **§ 14-11-135 - PERMIT FEE.**

- (A) Except as provided in Subsections (B) and (C), the director[~~city manager~~] may not issue a permit under this division until the applicant pays the permit fee established by a separate ordinance.
- (B) A franchise holder is not required to pay a permit fee under this section if the franchise holder has paid a franchise fee that includes the cost of using a City street.
- (C) A person applying for a permit to conduct an emergency operation is not required to pay the fee required under this section.
- ~~[(D) If a permittee does not occupy a right-of-way for the full permit term, a permittee may apply for a refund of the portion of the permit fee associated with the period of time that the permittee does not occupy the right-of-way.~~
- ~~[(E) The portion of a permit term for which a refund may be requested begins after the permittee has restored the site to its original condition under Subsection 14-11-138 (*Restoration of Work Site*).]~~

#### **§ 14-11-136 - PERMIT TERM.**

A permit issued under this division may not be effective for more than 180 days. The expiration date of the permit shall be stated on the permit.

**§ 14-11-137 - TRAFFIC CONTROL DEVICES.**

- (A) Except as provided by Subsection (B), a permittee must comply with the procedures for erecting and maintaining a traffic control and warning device required by the Transportation Criteria Manual or the Texas Manual on Uniform Traffic Control Devices.
- (B) The director~~[city manager]~~ may approve the use of a traffic control or warning device that differs from the device required by the Transportation Criteria Manual or the Texas Manual on Uniform Traffic Control Devices on a determination that the alternative equipment is as effective as the equipment required by the Transportation Criteria Manual or the Texas Manual on Uniform Traffic Control Devices.
- (C) The City shall install a regulatory sign required by the Transportation Criteria Manual, the Texas Manual on Uniform Traffic Control Devices, or the director~~[city manager]~~.

**§ 14-11-138 - RESTORATION OF WORK SITE.**

- (A) After completing an activity that requires a permit under this division, the permittee shall restore the right-of-way to its original condition in accordance with the procedures in the Transportation Criteria Manual.
- (B) If the director~~[city manager]~~ revokes a permit issued under this division, the permittee shall restore the right-of-way to its original condition not later than 24 hours after the revocation.
- (C) If the director~~[city manager]~~ determines that a permittee has not complied with Subsections (A) or (B), the director~~[city manager]~~ may restore the area of activity to its original condition at the permit holder's expense including, if applicable, the cost of labor, material, overhead, equipment rental, and attorney's fees.
- (D) The City may recover the cost of restoring a work site from fiscal security filed under Section 14-11-103 (*Security Required*).

**Division 3. - Excavation and Installation of Facilities in Right-of-Way.**

**Subpart A. - General Provisions.**

## § 14-11-161 - DEFINITIONS.

In this division:

- (1) **APPLICANT** means an owner or authorized agent of an owner, who submits an application for a permit under this division.
- (2) **AS-BUILT DRAWING** means a drawing or plan that shows the horizontal and vertical alignment, facility dimensions, type of encasement, and any other information determined by the director to help identify and protect the facility installed in the right-of-way.
- (3) **CITY BUSINESS DAY** means a day on which city offices conduct business.
- (4) **DAMAGES** mean actual damages, whether direct or indirect, to the surface or subsurface of the right-of-way or adjacent area.
- (5) **DEPARTMENT** means the department designated by the city manager.
- (6) **DIRECTOR** means the department director designated by the city manager.
- (7) **DOWNTOWN AUSTIN PROJECT COORDINATION ZONE** means the area bounded by IH-35, from north shoreline of Town Lake to Oltorf Street; Oltorf Street from IH-35 to Lamar Boulevard (South); Lamar Boulevard (South) from Oltorf Street to Barton Skyway; Barton Skyway from Lamar Boulevard (South) to the west terminus of Barton Skyway; a straight line from the west terminus of Barton Skyway to the east terminus of Barton Skyway; Barton Skyway, from its east terminus to Loop 1 (MoPac Expressway); Loop 1 (MoPac Expressway) from Barton Skyway to Enfield Road; Enfield Road from Loop 1 (MoPac Expressway) to 15th Street (West); 15th Street (West) from Enfield Road to Lamar Boulevard (North); Lamar Boulevard (North) from 15th Street (West) to Martin Luther King, Jr. Boulevard; Martin Luther King, Jr. Boulevard from Lamar Boulevard (North) to Chicon Street; Chicon Street from Martin Luther King, Jr. Boulevard to Chicon Street's south terminus; a straight line from Chicon Street's south terminus to the north shoreline of Town Lake; the north shoreline of Town Lake, from the straight line extending from the south terminus of Chicon Street to IH-35, and including the boundary streets.



- (8) EMERGENCY OPERATIONS means operations or repairs of facilities to prevent imminent harm to the health, safety, or welfare of persons or property.
- (9) EXCAVATION means an activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way. Excavation does not include routine homeowner maintenance and landscaping activity immediately adjacent to the homeowner's property line, unless the activity removes or disturbs the paved portion of the right-of-way.
- (10) EXCAVATION SEQUENCE means a document describing the order, estimated start and completion dates of all excavation projects approved during a six month period.
- (11) FACILITY means property or equipment permanently located in the right-of-way except equipment related to landscaping activity.
- (12) INSTALLATION means the placement or construction of a facility on-site, whether the placement of construction is on, below, or above the surface of the right-of-way, for a term longer than 180 days, and includes replacement or modification of the facility.
- (13~~2~~) NEW STREET means the paved portion of the right-of-way that:
- (a) has been constructed or reconstructed:
    - (i) for at least 300 feet with a minimum of one and a half inches of asphaltic pavement overlay or from joint to joint for concrete pavement;
    - (ii) during the preceding seven years for a collector or arterial street; or
    - (iii) during the preceding five years for a residential street or alley; or
  - (b) is a collector or arterial street at least seven years old with a riding comfort index greater than seven as defined in the City of Austin SuperPMS User's Manual, Chapter 4, "Riding Comfort Index."
- (14~~3~~) OWNER means a person or entity, other than the City, who owns or controls a facility in a right-of-way.
- (15~~4~~) PERMIT means a permit issued under this division to excavate or to install facilities in the right-of-way.

- (16[5]) PERMIT HOLDER means a person who receives a permit under this division and that person's agent.
- ~~[-(16) PROJECT means one or more permitted locations excavated for a common purpose by the same owner or permit holder.]~~
- (17) PROJECT DESCRIPTION means a document listing the proposed excavation route, the estimated length, width, and depth of the facilities installed along that route, and the projected date that the applicant will begin excavation on a project.
- (18) RESIDENTIAL STREET means a public street classified by the director as "local streets-general," "local streets-loop," and "collector-residential."
- (19) RIGHT-OF-WAY means the total surface area, and the area above and below the surface, between property lines that is dedicated, deeded, reserved by plat or otherwise owned or controlled by the City as a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest~~[, for use by the public for pedestrian or vehicular travel].~~
- (20) RIGHT-OF-WAY ASSIGNMENT means a specific portion of right-of-way designated by the director for the placement of a facility.
- (21) ROUTINE WORK means an excavation project of 300 linear feet or less.

#### **§ 14-11-162 - ADMINISTRATION.**

- (A) The director shall administer and enforce this division and may adopt rules to implement this division, including design standards and guidelines for right-of-way and owner facilities, and may without adopting or amending a rule, issue a statement of policy or procedure that clarifies or provides a non-substantive technical modification to a rule.
- (B) The director shall manage the use of, and activities in, the right-of-way in compliance with this division.
- (1) The director may require planning and coordination of excavation in the right-of-way.

- (2) The director by rule may establish a planning and coordination process including information systems to track excavation in the right-of-way.
  - (3) The director shall assign locations for facilities in the right-of-way.
  - (4) The director may require relocation or adjustment of facilities in the right-of-way.
- (C) In administering this division, the director shall:
- (1) establish procedures to collect the fees required under this division;
  - (2) maintain and distribute a list of new streets to owners;
  - (3) prepare a three-year paving plan and distribute to owners;
  - (4) prepare an annual paving plan and distribute to owners; and
  - (5) periodically revise the paving plan based on activities in the right-of-way and distribute to owners.

**§ 14-11-163 - INFORMATION REQUIRED.**

- (A) An owner shall:
- (1) provide to the director information concerning facilities located in the right-of-way, including:
    - (a) as-built drawings of all facilities installed in the right-of-way by the owner no later than the 35th day after the activity [~~excavation~~] described in the permit is complete, unless otherwise prescribed by the director; and
    - (b) the horizontal and vertical location [~~elevation~~] of all [~~underground~~] facilities previously unrecorded in an owner's drawings, plans or specifications that are discovered in the right-of-way five feet or less from the owner's excavation or facility installation;
  - (2) notify the director and other facility owners of proposed activities [~~excavation~~] in the right-of-way; and

- (3) meet with the director and other facility owners to schedule adjustment or relocation of facilities.
- (B) No later than the 14th day before the City begins excavating a City water, wastewater, stormwater, electric facility, and street project, an owner shall provide to the director:
- (1) the horizontal [~~location~~] and vertical location [~~elevation~~] of the owner's underground facilities in the right-of-way located five feet or less from the City's right-of-way assignment; and
  - (2) a condition survey of the owner's underground facilities.
- (C) Information concerning facilities located in the right-of-way shall be in a format designated by the director.
- (D) If an owner fails to provide information to the director on or before the 36th day following the director's request, the director may obtain the information and charge the information collection fee prescribed by separate ordinance except as otherwise provided by law.

**§ 14-11-164 - SEAL OF PROFESSIONAL ENGINEER REQUIRED.**

- (A) All drawings, plans, and specifications, including change requests, amendments, additions, deletions, and as-built drawings submitted to the director under this division shall bear the seal of a professional engineer licensed to practice in the State of Texas.
- (B) This section does not apply to:
- (1) a gas utility;
  - (2) an excavation project no more than five feet deep, 12 inches wide, and 300 feet long, provided that the trench line does not intersect or extend into the paved portion of another street or alleyway;
  - (3) a single-point excavation project not exceeding five feet in any dimension;
  - (4) boring or drilling underneath a driveway or an unpaved area of the right-of-way, if the bore is parallel to the right-of-way, and the bore is no greater than 12 inches in diameter;

- (5) excavation under engineered plans or details, produced by the owner and previously approved by the director;
  - (6) installation of poles, anchors, and utility service connections; and,
  - (7) an excavation project necessary to expose and repair facilities previously installed by the owner using drawings, plans, and specifications bearing the seal of a professional engineer.
- (C) An excavation project may intersect or extend into the paved portion of a residential street if approved by the director.

**§ 14-11-165 - UTILITY LOCATION AND COORDINATION COMMITTEE.**

- (A) A Utility Location and Coordination Committee is established to advise the director concerning:
- (1) planning of capital improvement, utility, and street projects;
  - (2) long range community development plans;
  - (3) standards for utility location in the right-of-way;
  - (4) possible improvements to permit and inspection procedures;
  - (5) pre-construction conferences;
  - (6) geographic information systems and other information technologies; and
  - (7) other matters as requested by the director.
- (B) The Committee is composed of public and private entities that are authorized by law, franchise, or license to construct and maintain facilities in the right-of-way. The director shall chair the Committee.
- (C) The director shall schedule regular Committee meetings to advise the director concerning:
- (1) identification of facilities in the right-of-way;
  - (2) resolution of conflicts in location of facilities; and
  - (3) coordination of plans for excavation in the right-of-way.

**§ 14-11-166 – PROJECT [~~EXCAVATION~~] COORDINATION.**

- (A) At the director's request, an owner shall coordinate excavation or facility installation plans with other excavation and installation and the department's paving and utility program in the right-of-way.
- (B) An owner shall follow facilities replacement schedules that avoid construction conflicts and prevent delays of proposed city utility and street projects.
- (C) The owner of a permitted facility that is installed in a right-of-way[~~paved area~~] shall identify the facility in a manner approved by the director.
- (D) The director shall prescribe rules for the identification of facilities in the right-of-way.

**§ 14-11-167 – [~~EXCAVATION~~] SCHEDULING AND COORDINATION IN THE DOWNTOWN AUSTIN PROJECT COORDINATION ZONE.**

- (A) A person who seeks to excavate or install a facility in the Downtown Austin Project Coordination Zone must submit a project description to the director:
  - (1) no later than January 1 for an excavation or installation to begin after January 30 and before July 1; or
  - (2) no later than July 1 for an excavation or installation to begin after July 30 and before January 1.
- (B) The director may issue a permit based on a project description received after a deadline described in Subsection (A), but a person may excavate or install a facility only during the time period listed in the permit.
- (C) The director shall review all project descriptions and identify opportunities for joint trenching or joint installation on shared facilities or other coordinated excavation activity between permit applicants.
- (D) The director may order two or more permit applicants to jointly excavate a specific site as a condition for receiving an excavation permit if, for the same excavation sequence:
  - (1) two or more project descriptions are received for excavation along a common route; and

- (2) traffic control and worksite restoration between two or more permit holders may be coordinated.
- (E) This section does not apply to a person who can install a facility by jointly trenching with a permit holder whose project is approved and listed in the sequence, if the additional work can be performed according to the excavation sequence.
- (F) The director may grant an exception to this section for routine work, or for good cause.
- (G) This section does not apply to emergency operations.

**§ 14-11-168 - PERMIT AMENDMENT, SUSPENSION, OR REVOCATION.**

- (A) A permit is subject to amendment, suspension, or revocation by the director for a violation of federal, state, or local law or if the permit holder does not meet the requirements under this division.
- (B) In addition to the grounds described in subsection (A) above, the director may also suspend or revoke a permit if:
  - (1) Owner or permit holder fails to maintain correct and current information with the director regarding the identity, authority, and contact information or the plans, specifications, and as-built drawings of facilities installed in the right-of-way;
  - (2) Owner or permit holder provides false or misleading information to the director or any officer, employee, or contractor of the City;
  - (3) Owner or permit holder files bankruptcy, is insolvent, or fails to meet financial obligations on a timely basis, or is unable to obtain or maintain the financial resources needed to properly maintain facilities or provide adequate service;
  - (4) Owner or permit holder fails to provide the director regular reports;
  - (5) Owner or permit holder engages in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination;

- (6) Owner or permit holder shows a pattern of not responding to inquiries by the director or customer complaints in a timely fashion;
- (7) A federal, state, or local registration, certification, or license of owner or permit holder is suspended; or
- (8) Owner or permit holder is convicted of a felony by the permit holder, a person controlling the permit holder, or principal employed by the permit holder, or any crime involving theft, fraud, or deceit related to the permit holder's service.

**§14-11-169 – NO WARRANTY OF TITLE; PROPERTY CLAIMS.**

- (A) The City disclaims any warranty, title, or use for a particular purpose. This includes any warranty that the City's title to public right-of-way is free and clear of any impairment or superior claim that may prohibit a permit holder from undertaking any activity for which a permit is issued. The City will not undertake an action to clear title on behalf of a permit holder necessary for the permit holder to undertake any permitted activity.
- (B) If a permit or application for a permit is challenged by a person, other than the City of Austin, claiming a superior right to the public right-of-way or claiming the activity conflicts with that person's property interests, the applicant or permit holder will be held entirely responsible, to the exclusion of any responsibility of the City and without contribution from the City, for defending against the claim until final resolution of the claim. If an applicant or permit holder receives notice of a claim, the applicant or permit holder shall cease all activity related to the permit and notify the City of the claim within 24 hours of receiving the claim. During the pendency of a claim and for as long as the claim remains unresolved, permitted activity or any activity for which a permit has been submitted but not granted is suspended.
- (C) A permit holder or applicant for a permit may not assert or imply in any response to a claim described by subsection (B) above that:
  - (1) the City claims a superior right, title, or interest to that claimed by the person;
  - (2) a permit issued by the City is an easement or other possessory interest in real property; or



- (3) a permit from the City entitles the permit holder to rights in the right-of-way that are superior to the rights claimed by the person.
- (D) A permit granted under this division is terminable at the director's sole discretion if the permit holder violates one or more of the conditions in subsection (C) above.
- (E) The area on, above, or below a utility easement or waterway is not public right-of-way that may be used for facility installation, or for which a permit may be requested for such installation, unless the terms by which the utility easement or waterway was acquired by the City or granted, deeded, or dedicated to the City expressly state that the rights granted to the City include the right to use the waterway or utility easement for the purpose, in the manner, and to the extent of the proposed activity.
- (F) A person claiming a right to use a public utility easement may not use that part of public right-of-way deeded, dedicated, reserved by plat, or restricted as a public utility easement unless the person is defined by state or federal law as a public utility and the person's use of the public utility easement is exclusively for the provision of public utilities such as water, sewer, power, or gas. The director is not authorized to issue a permit or an exemption from permitting for an activity that uses or occupies a public utility easement unless the requested permit is for use by a public utility to provide public utility services.

### **§14-11-170 – GRAFITTI ABATEMENT.**

The owner of a facility placed in the right-of-way is responsible for maintaining the facility's appearance. Upon notice by the director, the owner shall promptly and not later than 30 days following notice, remove graffiti from a facility.

#### **Subpart B. - Excavation and Facility Installation Permits.**

### **§ 14-11-17[8]1 - PERMIT REQUIRED.**

- (A) Except as provided in Section 14-11-17[8]2 (*Emergency Operations*), before excavating or installing a facility in a right-of-way a person or that person's agent shall obtain a permit under this division.
- (B) A person who obtains a permit under this division is not required to obtain a temporary use of right-of-way permit required by Section 14-11-131 (*Permit Required*-).

**§ 14-11-17[8]2 - EMERGENCY OPERATIONS.**

- (A) An owner may begin emergency operations without a permit, provided the owner notifies the director of the location and nature of the emergency condition prior to or at the time the emergency operation commences, and provided the emergency operation is necessary to prevent an imminent threat to public health or safety.
- (B) An owner who begins emergency operations shall apply for a permit not later than noon of the next city business day.
- (C) An owner must comply with the procedures prescribed in the Utility Criteria Manual and the Transportation Criteria Manual in performing an emergency operation.

**§ 14-11-17[8]3 - APPLICATION FOR A PERMIT.**

- (A) An applicant for a permit to excavate or install a facility in the right-of-way shall submit an application on a form and in the manner prescribed by the director.
- (B) An application must include:
  - (1) the name, address, telephone, and facsimile telephone number, if any, of the applicant or applicant's agent;
  - (2) an emergency telephone number at which the applicant, or person who intends to excavate may be contacted on a 24 hour basis;
  - (3) the proposed beginning and ending dates of any activity requiring use or occupation of public right-of-way~~[the excavation]~~;
  - (4) a schedule for restoration of the ~~[excavated portion of the]~~right-of-way;
  - (5) the proposed area ~~[of excavation]~~, method ~~[of excavation]~~, and location, including street address, cross streets, or other applicable description of the excavation or facility installation~~[location]~~;
  - (6) proof of insurance and security as required by Sections 14-11-102~~[14-11-194]~~ (*Insurance Required*) and 14-11-103~~[14-11-195]~~ (*Security Required*);

- (7) proof that the owner has a franchise, [~~consent,~~]license, or other legal right to install facilities in a right-of-way, if the proposed activity is installation of a facility;
  - (8) proof that the applicant or its contractor is licensed under Section 25-6-231 (*License Required*) of the City Code, if applicable;
  - (9) for excavation within 100 feet of a moonlight tower or within 100 feet of a guy wire supporting a moonlight tower, excavation or construction plans and sequencing information that demonstrates that the moonlight tower will be adequately protected from damage during the excavation or construction;
  - (10) a quality assurance and damage mitigation plan, if required;
  - (11) a certification from the applicant that a pre-application site assessment for a facility installation has been completed and that the application being submitted addresses all comments received and issues raised during the site assessment, if applicable;
  - (12~~[1]~~) a statement that the applicant has complied with applicable state and federal laws and regulations; and
  - (13~~[2]~~) any other information required by the director to evaluate and process the application.
- (C) In addition to the requirements of Section 14-11-164 (*Seal of Professional Engineer Required*), the application must be accompanied by drawings, plans, and specifications, as applicable, bearing the seal of a professional engineer licensed to practice in the State of Texas. The suggested format for documents is 11 inches by 17 inches at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view. Each document must include:
- (1) horizontal alignment of all proposed facilities in relation to all existing public and private facilities in plan view;
  - (2) representation of the vertical alignment of the facilities in profile view; and
  - (3) a note instructing the contractor to verify the location of the underground utilities at least 100 feet in advance of all proposed

utility crossings, and also at locations where the proposed facilities are depicted to run parallel to and within five feet of existing facilities.

- (D) Except as otherwise provided by law, an applicant for a permit shall pay the permit fee and street damage restoration fee prescribed by separate ordinance.
- (E) An applicant may consolidate its request for consideration of multiple permits into one or more applications for its permits, provided that no more than 30 permits are under consideration by the director at any one time. The director may not accept an application for a permit if at the time an application is filed the applicant has 30 or more permits pending with the director for approval.

**§ 14-11-17[8]4 - QUALITY ASSURANCE AND DAMAGE MITIGATION PLAN.**

- (A) This section applies to an excavation project of 2,500 linear feet or more.
- (B) An applicant must prepare and obtain the director's approval of a quality assurance and damage mitigation plan.
- (C) A quality assurance and damage mitigation plan must include:
  - (1) a description of the applicant's procedures for:
    - (a) inspecting the project;
    - (b) locating and safeguarding utility facilities adjacent to the excavation site; and
    - (c) repairing damage to infrastructure and right-of-way.
  - (2) the names of and contact numbers for employees authorized to make decisions over construction activity at the excavation site who may be contacted at anytime during the day or night;
  - (3) for an excavation within five feet of a utility, a description of the procedures for avoiding damage to the utility;

- (4) procedures for responding to damage to an existing utility, including emergency traffic control and the name and contact number of the engineer and contractor who will repair the damage; and
  - (5) other information related to applicant use of the rights-of way requested by the director.
- (D) A single quality assurance and damage mitigation plan is required for a project. A copy of the plan must be submitted with each excavation project description.
- (E) A permit holder shall update the quality assurance and damage mitigation plan not less than once each year for excavation projects that are not completed within one year of the initial permit application date.

**§ 14-11-17[8]5 - REVIEW OF APPLICATION.**

In reviewing an application for a permit, the director shall consider the following:

- (1) the size of surface and subsurface area to be affected[~~, considering the type of excavation the applicant proposes~~];
- (2) the period of time the applicant proposes to occupy the area;
- (3) the safety of the pedestrian and vehicular traffic in and adjacent to the occupied area; and
- (4) the traffic congestion and the vehicular parking requirements at the location.

**§ 14-11-17[8]6 - NEW STREET EXCAVATION.**

- (A) The director may not issue a permit for excavation in a new street except as provided in this section.
- (B) The director may approve a permit to excavate a new street under this section only if the director determines that an economical alternative route is not available to the applicant.
- (C) The director shall make a determination under this section promptly[~~within two city business days~~] after receipt of an application.

- (D) A permit holder under this section must pay damages for the loss of street use and reduction in street life, calculated in accordance with the Utility Criteria Manual.
- (E) The director's determination under this section may be appealed as provided in Section 14-11-~~104~~[188] (*Appeal*).

**§ 14-11-~~17~~[8]7 - ACTION ON PERMIT APPLICATION.**

- (A) The director shall review an application promptly~~[not later than the second city business day]~~ after it is filed.
- (B) If the director denies an application the director shall provide the applicant a written reason for the denial.
- (C) The director shall deny an application if:
  - (1) the proposed traffic control procedures or equipment do not comply with the requirements of the Manual on Uniform Traffic Control Devices and the Transportation Criteria Manual;
  - (2) the director determines that the applicant can perform the excavation or installation without blocking or closing the street or without excavation in a right-of-way;
  - (3) the proposed activity violates a city ordinance, applicable criteria manual, or a state law;
  - (4) the applicant fails to furnish the information required by this division;
  - (5) the application contains misleading or false information;
  - (6) the proposed activity~~[excavation]~~ conflicts with a permit previously approved by the director;
  - (7) the proposed activity~~[excavation]~~ would cause a safety hazard or impede traffic flow unless the application provides adequate protection for pedestrian or vehicular traffic at the location of the proposed activity;
  - (8) the owner does not have a franchise,~~[consent,~~] license, or other legal right to place facilities in the right-of-way, if applicable;

- (9) the applicant for an excavation or installation project or its contractor is not licensed under Section 25-6-231 (*License Required*) of the Code, if applicable;:-
- (10) the applicant's proposed restoration method and schedule do not meet the requirements of the Utility Criteria Manual;
- (11) the applicant failed to restore the right-of-way~~[an excavation site]~~ as required;~~[-or]~~
- (12) the applicant owes the City unpaid fees imposed by this division;
- (13) the director determines that the applicant has failed to demonstrate that an excavation or facility installation is necessary considering any unused capacity of facilities existing in the right-of-way or permitted or pending permit approval for installation in the right-of-way; or
- (14) the applicant does not have an agreement with a pole owner allowing the applicant to attach the facilities for which the applicant is seeking a permit for facility installation.

**§ 14-11-178 – FACILITY INSTALLATION PERMIT TERM.**

- (A) Unless a permit expires sooner for non-performance or is terminated before expiration, a permit issued for installation of a facility in the public right-of-way expires at midnight on the fifth anniversary of the date of its issuance.
- (B) The director may extend the expiration date for successive periods of up to five years each if the permit holder requests an extension not later than 30 days before the expiration of the then-current permit term.
- (C) A permit is not eligible for an extension if, on the date the extension request is made:
  - (1) the owner has been notified that it is not in compliance with applicable federal, state, or local law and has not, in the opinion of the director, diligently pursued action to comply with the law;
  - (2) the permitted facility is attached to a pole in the public right-of-way and the facility owner has not provided to the director a valid and

binding agreement with the pole owner granting the facility owner a right to attach to the pole for a period that extends beyond the requested extension period; or

(3) the then-current permit expires in less than 30 days.

**~~[\S 14-11-188 - APPEAL.~~**

~~(A) — An applicant may appeal the denial of a permit.~~

~~(B) — An applicant must appeal in writing to the director no later than the third city business day after the applicant receives notice of the denial.~~

~~(C) — An applicant must provide a reason for reconsideration.~~

~~(D) — The director shall reconsider the denial. If the director affirms the denial, the director shall forward the appeal to the city manager for review and action.~~

~~(E) — The city manager shall make a decision under this section not later than the tenth city business day after receipt of the appeal from the director. The city manager's decision is final.]~~

**~~[\S 14-11-189 - CONDITIONS FOR PERMIT ISSUANCE.~~**

~~(A) — The director may not issue a permit until:~~

~~(1) — the applicant pays the applicable fees and provides the insurance and security required by Sections 14-11-194 (*Insurance*) and 14-11-195 (*Security Required*); and~~

~~(2) — the applicant agrees in writing to indemnify, defend, and hold the City harmless against any claims, causes of action, losses, liabilities or damages arising from, or in connection with, the applicant's excavation.~~

~~(B) — The permit may:~~

~~(1) — require the use of barricades, signals, signs, or other traffic control or safety devices in addition to those proposed in the application;~~



- ~~(2) designate hours of the day and days of the week to perform the excavation;~~
- ~~(3) designate hours, day, and areas for street closure;~~
- ~~(4) restrict the location of materials, equipment, and excavated materials; and~~
- ~~(5) require coordination of construction activity in accordance with Sections 14-11-165 (*Utility Location and Coordination Committee*) and 14-11-166 (*Excavation Coordination*).~~

**§ 14-11-179[0] - EXCAVATION SEQUENCE AND PERMIT TERM.**

- (A) The director will publish an excavation sequence no later than the 30th day following the project description deadline described in Section 14-11-167(A) (~~[*Excavation*]~~*Scheduling and Coordination in the Downtown Austin Project Coordination Zone* ).
- (B) An excavation permit is valid during the period prescribed by the director.
- (C) If a permit holder does not begin excavation according to the excavation sequence, the director may reschedule the excavation activity for the end of the excavation sequence and permit the next scheduled excavation to begin.
- (D) If the director determines that an excavation activity is 14 or more days behind the approved schedule in the excavation sequence, the director may order that all work on the excavation activity be stopped. The director may discontinue the project until a later time period in the excavation sequence or until a later excavation sequence.
- (E) The director may extend the finish date if the extension does not interfere with the coordination of projects within the excavation sequence.

**§ 14-11-180[91] - EXCAVATION OR INSTALLATION PERFORMED UNDER PERMIT.**

- (A) A permit holder shall comply [~~conduct the excavation in the right-of-way in compliance~~] with the terms and conditions of the permit, the applicable criteria manuals, including the Utility Criteria Manual and the Transportation Criteria Manual, and applicable law.

- (B) A permit holder shall install [~~place~~] facilities in the right-of-way assignment determined by the Utility Location and Coordination Committee.
- (C) A facility may not be installed 24 inches or more from an approved right-of-way assignment, or 24 inches or less from an existing facility in the right-of-way, without first submitting a project description for and obtaining approval of a right-of-way assignment change by the Utility Location and Coordination Committee.
- (D) A permit holder shall provide and maintain traffic control devices required by the Manual on Uniform Traffic Control Devices, the Transportation Criteria Manual, or the permit. The devices must be in good condition, clean, and legible.
- (E) A permit holder shall perform permitted [~~excavation~~] activities, including protection of moonlight towers, in accordance with the plans and specifications approved by the director.
- (F) A permit holder engaged in construction or excavation within 100 feet of a moonlight tower shall provide a protective barrier around the moonlight tower and supporting guy wires.
- (G) A permit holder shall perform jacking and boring operations in a manner that does not weaken or impair the right-of-way.
- (H) A permit holder shall post a sign at each entrance to an excavation site that is clearly visible to motorists and pedestrians traveling near the excavation site. The sign must be at least 36 inches by 36 inches, with black lettering at least two inches in height on a white high intensity reflective background. The sign must contain the name of the owner, the permit holder, and an emergency contact name, address, and telephone number.

**§ 14-11-181[92] - RELOCATION OF FACILITIES.**

- (A) A facility owner shall remove, relocate, or alter a facility in a public right-of-way if the director determines that removal, relocation, or alteration of the facility is [~~reasonably~~]-necessary for the construction, operation, repair, maintenance, or installation of a City or other governmental entity's facility.
- (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 120th day after the director sends written notice.

- (C) An owner shall remove, relocate, or alter a facility in a public right-of-way by no later than the deadline assigned by the director:
  - (1) if the facility is located outside of the approved right-of-way assignment; or
  - (2) if the director determines the action is [reasonably] necessary to abate a[~~n obstruction that poses an unreasonable~~] risk to public health, safety or welfare.
- (D) If an 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.
- (E) The owner shall pay all relocation and alteration expenses, including consequential damage that results from locating a facility outside the assigned area.
- (F) This section does not prevent an 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.
- (G) The owner shall provide the director with documentation and field location records for a relocated facility.

**§ 14-11-182[93] - MAINTENANCE OF EXCAVATION REPAIRS.**

- (A) A permit holder shall maintain repairs in the right-of-way. The director may require a permit holder to enter a maintenance agreement for a period not to exceed two years and provide a surety bond in the amount of \$10,000 for maintenance of the repair.
- (B) A permit holder shall warrant, and by acceptance of a permit, does warrant for a period not to exceed two years, pavement repairs made by the permit holder until the City or another permit holder reconstructs the street or overlays the repair. An owner shall warrant backfill for the lifetime of the facility.
  - (1) The director shall notify a permit holder of repairs required under this subsection.

- (a) A permit holder shall make the repairs within one week of notification.
  - (b) If repairs are not made by the permit holder within one week of notification, the City may repair the street and the permit holder, by accepting the permit, agrees to pay the City's actual cost of making the repair.
- (C) An owner shall adjust and maintain adjustments of utilities in advance of City capital improvements for a period of six weeks following the adjustment or until the City begins construction of the improvement, whichever period is less.

**~~§ 14-11-194 - INSURANCE.~~**

- ~~(A) Before the director grants a permit under this division, an applicant for a permit shall furnish to the director evidence that the applicant has obtained insurance coverage for bodily injury and property damage liability in the amount and under the terms and conditions required by the director.~~
- ~~(1) The policy must be issued by an insurance company licensed to operate in the State of Texas and by an agent licensed by the State of Texas.~~
  - ~~(2) The applicant must furnish a copy of the policy to the director. A permit holder must keep the insurance in effect during the period of time for which the director has issued a permit or the permit holder occupies a right of way.~~
  - ~~(3) If the permit holder's activity includes construction activity within 100 feet of a moonlight tower or within 100 feet of a guy wire supporting a moonlight tower, the director shall require insurance coverage of not less than \$100,000.~~
- ~~(B) The director may not require additional insurance of a City franchise or consent holder if the franchise or consent agreement authorizes installation of facilities in the right of way and requires the permit holder to maintain insurance coverage meeting or exceeding the requirements of Subsection (A) of this section.~~

**~~§ 14-11-195 - SECURITY REQUIRED.~~**

- ~~(A) Before beginning construction or excavation, a permit holder must furnish fiscal security in the amount of \$10,000 in the form of a restoration bond, letter of credit, or cash deposit.~~
- ~~(B) The director shall review and approve or disapprove the form of security.~~
- ~~(1) A surety bond must be issued by an insurance company licensed to operate in the State of Texas and with an agent or attorney in the city for service of process.~~
- ~~(2) A surety bond must contain an endorsement that no cancellation or restriction of the bond is effective until the 30th day after the day the director receives written notice, by certified mail, return receipt requested, of the cancellation or restriction.~~
- ~~(3) The permit holder must furnish security in the amount specified in the Utility Criteria Manual, for excavation in the right of way, or in the Transportation Criteria Manual, for blocking a portion of a right of way.~~
- ~~(C) The permit holder must agree to replace sidewalks, pavement, and other public property and public utilities which the permit holder disturbs or removes during excavation.~~
- ~~(D) The permit holder must agree to construct protective railing and other safeguards during the permit holder's occupancy of the right of way and in the event that the permit holder abandons the excavation.~~
- ~~(E) The director may not require additional security of a City franchise or consent holder if the franchise or consent agreement authorizes installation of facilities in the right of way and requires the permit holder to furnish security meeting or exceeding the requirements of Subsection (A) of this section.~~
- ~~(F) A permit holder who damages the City in an amount exceeding the amount of the security required by this section shall be liable to the City for actual damages in excess of the security provided.]~~

**§ 14-11-183[96] - RESTORATION OF EXCAVATION SITE.**

- (A) Except as otherwise provided by law, a person who excavates a street, sidewalk or driveway shall pay the City's cost to inspect and restore the pavement.
- (1) On completion of a permitted activity, a permit holder shall restore and maintain the right-of-way to its original condition in accordance with the procedures and time period prescribed in the Utility Criteria Manual, the Standards Criteria Manual, or the Transportation Criteria Manual, as determined by the director.
- (2) The director shall inspect the excavation and may finish the excavation and bill the owner or the permit holder, or apply the security, for the entire cost, if the permit holder does not finish the excavation within four weeks after the director makes a final inspection.
- (B) If the director revokes a permit under Section 14-11-201 (*Permit Required*), the permit holder shall immediately restore the affected areas to their original condition. The permit holder must complete the restoration within 24 hours after the revocation and shall remove equipment, persons, materials, and debris from the right-of-way. The permit holder shall restore the area in compliance with the procedures contained in the Transportation Criteria Manual or the Utility Criteria Manual.
- (C) If the director determines that the owner has not restored the right-of-way as required by this division or that the restoration is not complete, the director may restore the area to the condition that existed before the permitted activity. The City may recover from the permit holder and the owner, jointly and severally, the actual expenses incurred in the restoration including, the cost of labor, materials, overhead, rental of equipment used in restoring the site, and attorney's fees. The City may institute procedures to forfeit bonds or other security furnished in connection with the permit.

**Subpart C. Excavation and Installation Permits for Wireless  
Communication Facilities in the Right-of-Way**

**§14-11-191 - APPLICABILITY OF SUBPART.**

- (A) Activities associated with installing and maintaining wireless network facility equipment in the public right-of-way pursuant to Chapter 284 of the Texas Local Government Code, in addition to being subject to Subparts A

(General Provisions) and B (Excavation and Installation Permits) above, are subject to and required to comply with this subpart. Terms used in this subpart have the meaning provided in Section 284.002 of the Texas Local Government Code unless specified otherwise.

(B) This subpart is adopted to comply with Chapter 284 of the Texas Local Government Code as enacted by the passage of Texas Senate Bill 1004 during the 85<sup>th</sup> Texas Legislature. This chapter and any right granted to a network provider by its application, including any by an administrative rule, policy, or agreement in furtherance of a rule or policy authorized by the adoption of this subchapter, are only effective for so long as the City is obligated pursuant to Chapter 284 of the Texas Local Government Code to grant permits in the manner prescribed by that chapter. Upon the effective date of any state legislation or upon the effective date of any judicial order or decree that modifies or invalidates in whole or in part Chapter 284 of the Texas Local Government Code, this subpart and any permitted right granted to a network provider by the application of this subpart is modified or invalidated and any conflicting permit, contract, or contract term granted or executed in furtherance of the modified or invalidated statute is void, except to the extent that the director determines that rights may still exist under state law, in which case the permit, contract, or contract term is voidable by the director.

#### **§14-11-192 - PERMIT ELIGIBILITY AND APPLICATION.**

(A) Before filing an application for a permit for installing a network node, node support pole, or transport facility, a network provider proposing to apply for a permit shall:

(1) provide the director copies of:

(a) all of the owner's valid federal licenses and authorizations necessary to install, operate, or maintain facilities as a wireless service provider; or

(b) if the owner is not a wireless service provider, an agreement between the owner as agent and a wireless service provider as principal showing that the owner is an authorized agent of the principal for building or installing facilities on behalf of the

principle along with a copy of the principal's valid federal licenses and authorizations;

- (2) provide the director a schedule of projected facility installations and a network node deployment plan for the coming calendar year, and for as long as the owner holds a permit, update every calendar quarter a schedule previously provided, stating the number, type and estimated date for projected installations;
- (3) provide and maintain accurate contact information of the owner's designated primary authorized representative and, at a minimum, a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address, or any other contact information that the director determines is necessary submitted in a form and manner established by the director;
- (4) obtain from the City a pre-application site-specific assessment for suitability, safety, and conflicts from the City that includes a site walk and interview with the director's representative and review of preliminary architectural and engineering design drawings;
- (5) demonstrate to the director that the network provider has given written notice adequate to inform the affected public of the impact to public right-of-way related to installation of a network node or node support pole. Notice is presumed to be adequate public notice if at a minimum it:

  - (a) includes a description of the location, dimensions, and types of facilities proposed for installation;
  - (b) states the estimated duration of the facility installation in the public right-of-way; and
  - (c) is provided in writing to all owners of real property within 300 feet of a proposed network node or node support pole;



- (6) obtain advance approval from the director for a network node or node support pole proposed to be sited in a design district or a historic district; and
- (7) obtain a certificate of appropriateness from the Historic Landmark Commission for a network node or node support pole that is proposed to be located in a public right-of-way adjacent to:
- (a) a National Register Historic District;
  - (b) a historic structure approved by the City's historic preservation officer;
  - (c) a building, structure or site individually listed in the National Register of Historic Places;
  - (d) a building, structure, or site designated as a Recorded Texas Historic Landmark, a State Archeological Landmark, or a National Historic Landmark;
  - (e) a building, structure, or site designated as a historic landmark (H) combining district;
  - (f) a historic area (HD) combining district; or
  - (g) a building, structure, or site determined by the historic preservation officer to have potential for designation as a historic landmark.
- (B) In accordance with Section 14-11-173(E) of this code, a network provider may file permit applications for multiple network nodes, provided the network provider has no more than 30 network node permits under consideration by the director at any one time. If the network nodes have similar design and specifications, a network provider may consolidate its request for up to 30 network node permits into a single application.
- (C) If a network provider proposes to perform an activity for which the network provider intends to claim an exception from permitting under Section 284.157 of the Texas Local Government Code, the network provider shall comply with the pre-application requirements of Subsection (A) of this section and provide written proof in a form satisfactory to the director that

the activity qualifies for the permitting exception at least 30 days prior to performing the activity.

**§14-11-193 – PLACEMENT REQUIREMENTS.**

- (A) Unless otherwise stated, requirements or prohibitions on network nodes, node support poles, or transport facilities in the public right-of-way under this subpart apply regardless of whether a network node, node support pole, or transport facility located in the public right-of-way is permitted by the City.
- (B) All network nodes, node support poles, and transport facilities shall comply with design standards established by the director and in no event are they allowed to exceed the limits on size and placement established by Section 284.002(9), Subsection (a), (c), and (d) of Section 284.003, and Section 284.103 of the Texas Local Government Code, unless the director establishes a design standard in a design manual that allows an exception.
- (C) All network nodes, node support poles, and transport facilities must comply with applicable design, aesthetic, and concealment requirements, including undergrounding requirements, established by the City in a design manual or criteria manual. All network nodes, node support poles, and transport facilities must comply with applicable design, aesthetic, and concealment requirements, including undergrounding requirements, established by the City for a design district adjacent to the public right-of-way within which a network node, node support pole, or transport facility is installed.
- (D) The initial charge for the public right-of-way rate for a network node, node support pole, or transport facility will be due and payable before the issuance of a permit and is a condition for permit approval. The initial charge is the sum of the initial year's prorated public right-of-way rate due through the end of the initial calendar year plus the public right-of-way rate due for the first full calendar year, following permit approval.
- (E) Unless otherwise provided by state law, a network provider claiming an exemption from permitting is nonetheless obligated to compensate the City for the network provider's use of public right-of-way. The initial charge under this subsection for the public right-of-way rate for a network node, node support pole, or transport facility will be due and payable before the network provider occupies public right-of-way. The initial charge is the sum of the initial year's prorated public right-of-way rate due through the end of

the initial calendar year plus the public right-of-way rate due for the first full calendar year, following occupation of the public right-of-way.

- (F) A network provider may not install a network node or node support pole in a public right-of-way in or adjacent to a municipal park. For the purposes of this subsection, any area held, maintained, or managed by the City as a public park for the purpose of recreational activity is a municipal park. The City's municipal parks are identified on an inventory list and depicted on a map, as may be updated from time to time, made available to the public by the director of the City's Parks and Recreation Department, such inventory and map being incorporated into this code by reference. Any area within the City that the state or other political subdivision of the state holds, maintains, or manages as a public park for the purpose of recreation is a municipal park.
- (G) A network provider may not install a node support pole in a public right-of-way that is adjacent to a street or thoroughfare that is not more than 50 feet wide running adjacent to residential lots or structures. For the purposes of this subsection, the width of a street or thoroughfare is measured to exclude that portion designated for bicycle or pedestrian traffic.

#### **§14-11-194 – PERMIT EXPIRATION FOR NON-PERFORMANCE.**

- (A) A permit for a network node, node support pole, or transport facility expires due to non-performance:
- (1) on midnight of the 183<sup>rd</sup> day following the date the permit is approved if installation has not commenced by that date;
  - (2) on midnight of the 90th day following the date installation of the permitted node, node support pole, or transport facility commenced if installation is not completed by that date; and
  - (3) on midnight of the 65<sup>th</sup> day following the date installation is complete if the node, node support pole, or transport facility is not in providing or supporting the provision of wireless services as of that date.
- (B) The director may grant a one-time extension for up to 30-days to an expiration date in this section, provided the director determines in his sole discretion that the network provider has shown good cause for granting the extension. Good cause is determined in the director's sole discretion and, in

any event, must be due to circumstances entirely outside of the network provider's control and may not in any way be the result of a business decision or market forces.

**§14-11-195 – FACILITY ABANDONMENT AND REMOVAL.**

- (A) A network node, node support pole, or transport facility is abandoned if: it ceases providing or supporting the provision of wireless services for a period of 60 continuous days or, if the permit for a network node, node support pole, or transport facility expires or is terminated.
- (B) If on the on the 30<sup>th</sup> day after a network node, node support pole, or transport facility is abandoned the responsible network provider or its contractor has not removed the facility from the public right-of-way, the director may remove the facility at the network provider's cost and, at the director's option, invoice the network provider for the removal and storage costs or draw on the fiscal security required by section 14-11-103 (*Fiscal Security*) and invoice the network provider for any difference. The right of the director to remove facilities is in addition to the right set out in Section 14-11-181 (*Relocation of Facilities*).

**§14-11-196 – INTERFERENCE.**

- (A) If a network node or the operation of a network node causes interference with the radio frequency, wireless network, or communications operations of a governmental entity, the network provider or the responsible wireless service provider, shall promptly cease operation of the network node causing the interference and refrain from operating the network node, except for intermittent testing to be coordinated with the governmental entity as part of the remedial process, until the network provider or responsible wireless service provider has eliminated the interference. If the network provider or the responsible wireless service provider continues to operate the network node that causes interference with the governmental entity's radio frequency, wireless network, or communications operations, the director may deem the use unauthorized, revoke the network node's permit remove the network node in accordance with section 14-11-181 (*Relocation of Facilities*) of this code.

- (B) Following installation of a network node, the director may require the network provider or responsible wireless service provider to test the network node's radio frequency and other functions to confirm it does not interfere with the City's radio frequency, wireless network, or communications operations.
- (C) A network provider or responsible wireless service provider is responsible for interference with the wireless network, communications operations, or equipment used by another network provider or wireless service provider. The City is not responsible for interference among permitted facilities.
- (D) A network provider or responsible wireless service provider shall comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the permitted location, including without limitation, all applicable standards adopted by the Federal Communications Commission, whether such RF or EMF presence or exposure results from network provider's or wireless service provider's facilities alone or from the cumulative effect of network provider's or wireless service provider's facilities added to all other sources at a permitted location. Network nodes that would cause an increase in RF or EMF levels such that the cumulative levels exceed allowable levels are prohibited, subject to permit revocation, and facility removal or relocation in accordance with section 14-11-181 (*Relocation of Facilities*) of this code. If the cumulative effect of RF or EMF levels exceed allowable levels director may suspend or revoke applicable permits and notify network providers or wireless service providers to take remedial action within 24 hours. The City may from time to time require network providers or wireless service providers to document RF or EMF levels.

Division 4. - Construction Near Moonlight Towers.

**§ 14-11-201 - PERMIT REQUIRED.**

A person may not engage in construction activity that is 100 feet or less from a moonlight tower or 100 feet or less from a guy wire supporting a moonlight tower unless the person obtains a permit under this division.

**§ 14-11-202 - APPLICATION.**

- (A) To obtain a permit under this division, a person must submit a written application to:
  - (1) the building official for construction on private property; and
  - (2) the director[~~city manager~~] for construction in the right-of-way.
- (B) An application filed under this section must contain construction plans and sequencing information that demonstrates that a moonlight tower will be adequately protected from damage during construction.

**§ 14-11-203 - PERMIT TERM.**

- (A) Except as provided in Subsection (B), a permit issued under this division is valid for the period of time estimated to complete the proposed construction activity.
- (B) A permit issued under this division expires if:
  - (1) construction does not begin before the 91st day after the permit is issued; or
  - (2) construction stops for more than 30 consecutive days.

**§ 14-11-204 – ~~INSURANCE.~~**

~~The amount of property damage insurance established under Section 14-11-194 (*Insurance*) for activity under this division must be at least \$100,000.~~

**~~§ 14-11-205 – ]BARRIERS REQUIRED; CONSTRUCTION STANDARDS.~~**

- (A) A permittee must maintain a protective barrier around the moonlight tower while engaging in excavation or construction 100 feet or less from a moonlight tower.
- (B) A permittee must comply with the construction plans submitted under Section 14-11-202 (*Application*).

**§ 14-11-205[6] - USE OF RIGHT-OF-WAY.**

No facility may be installed in the public right-of-way on or within 25 feet of a moonlight tower. A permittee under this division must obtain a temporary use of right-of-way permit to occupy the right-of-way.

**PART 3.** Section 14-11-221 (*Offenses and Penalties*) of the City Code is amended as follows:

**§ 14-11-221 - OFFENSES AND PENALTIES.**

- (A) A person commits an offense if the person:
- (1) performs an activity in the public right-of-way prohibited by this chapter;
  - (2[4]) performs an activity [~~excavation~~] for which a permit is required under this chapter without first obtaining a permit;
  - (3[2]) fails to comply with Sections 14-11-102 (*Insurance Required*), 14-11-103 (*Security Required*), 14-11-163 (*Information Required*), 14-11-171 [~~14-11-181~~] (*Permit Required*), 14-11-172 [~~14-11-182~~] (*Emergency Operations*), or 14-11-180 [~~14-11-191~~] (*Excavation or Installation Performed Under Permit*)[, ~~14-11-194 (*Insurance*), or 14-11-195 (*Security Required*)~~];
  - (4[3]) performs an activity in a right-of-way in violation of a permit issued under this chapter; or
  - (5[4]) except as provided by Section 14-11-172 [~~14-11-182~~] (*Emergency Operations*), performs an activity in a right-of-way after a permit has been suspended or revoked.
- (B) An owner commits an offense if the owner fails to:
- (1) provide the director with the information required by this chapter; or
  - (2) relocate a permitted facility as required by Sections 14-11-162 (*Administration*) and 14-11-166 (*Project* [~~Excavation~~] *Coordination*).
- (C) A person commits an offense if the person, without lawful authority, alters, damages, removes, or otherwise interferes with an official traffic-control device, including a temporary traffic-control device installed according to a permit issued under this chapter;
- (D) A person commits and offense if the person, without lawful authority, damages, disables, or otherwise interferes with the traffic signal system or a

component of the traffic signal system, to include a traffic light, control box, detector, or communication or power cable.

(E[C]) An offense under this chapter is a Class C misdemeanor punishable by a fine not to exceed \$500. However, an offense under this chapter that breaches or endangers the integrity of a water line, waste water line, or other public utility or a traffic control device or traffic signal is a threat to public health and sanitation and is punishable by a fine not to exceed \$2,000.

(F[D]) Each instance of a violation of this chapter is a separate offense.

(G[E]) A person commits an offense once in every 24-hour period that a violation of this chapter exists.

(H[F]) A culpable mental state is not required for commission of an offense under this chapter.

**PART 4.** City Code Chapter 15 (*Use of City-Owned Utility Infrastructure*) is amended to read as follows:

**§ 15-7-1 - DEFINITIONS.**

(A) Except as provided in Subsection (B), in this chapter:

- (1) APPLICANT means a person who applies to use utility infrastructure.
- (2) ATTACHMENT [~~includes~~] means:

- (a) on a pole, each aerial cable, together with its associated messenger cable, guy wire, anchors and other appurtenant and incidental facilities;

- (b) in a conduit, each linear foot of occupancy of a City-owned conduit or duct by each cable or other attachment; and

- (c) each antenna, transceiver, amplifier, repeater or other device or equipment of a user supported by, affixed to, contained in, or placed on or in a unit of utility infrastructure, including a network node.

- (3) ATTACHMENT RIGHT means the right of a user to place, install, construct, replace, move, remove, keep, maintain, operate, or use an attachment on or in City-owned utility infrastructure under this chapter or a permit or contract issued under this chapter.

- (4) CABLE means a wire rope or a bound or sheathed assembly of conductors, wires, or fibers, including fiber optic cable, coaxial cable,



and twisted pair copper cable. Each cable that is lashed to another cable or to a common messenger cable is a separate attachment.

- (5) DESIGN OR HISTORIC DISTRICT has the meaning given by Chapter 284 of the Texas Local Government Code.
- (6) DESIGN STANDARD means a standard or requirement for a network node contained in the Utilities Criteria Manual, Transportation Criteria Manual, or other design manual adopted by the City, or specified in Section 284.003 of the Texas Local Government Code.
- ([5]7) DIRECTOR means the director of the Austin Electric Utility, except with respect to a traffic pole “director” means the director of the Transportation Department.
- (8) NETWORK NODE has the meaning given by Section 284.002(12), Texas Local Government Code.
- (9) STREETLIGHT POLE means a pole, other than a utility pole or traffic pole, located in the public right-of-way and that supports street lighting.
- (10) TRAFFIC POLE means a pole, other than a utility pole or streetlight pole, located in the public right-of-way that supports traffic control functions, including signage.
- ([6]11) USER means a person who has been granted the right to install an attachment under this chapter.
- ([7]12) UTILITY means the Austin Electric Utility.
- ([8]13) UTILITY INFRASTRUCTURE includes utility [~~distribution~~] poles, transmission structures, ducts, transmission and distribution conduit, building entry conduit, utility tunnels, manholes, vaults, radio towers, other radio equipment, fiber optic cable capacity and active communications capacity, streetlight poles, other poles managed by the utility that support wireless communications facilities [~~poles and horizontal arms for street lights, poles and horizontal arms for traffic signals~~], traffic poles, and appurtenant facilities.
- (14) UTILITY POLE means a pole supporting electric distribution lines with a nominal voltage of not more than 34.5 kilovolts.
- (B) If a federal or state law governing attachments to city-owned utility infrastructure provides a definition of an [“]attachment[“] in conflict with

and preemptive of the definition in this section, the state or federal law definition controls.

### § 15-7-2 - PURPOSE.

- (A) This chapter establishes a uniform policy for use of utility infrastructure to enable the City to:
- (1) permit fair, reasonable, and non-discriminatory access to the available capacity on utility infrastructure;
  - (2) safeguard the reliability and integrity of the electric utility system;
  - (3) obtain fair compensation for the use of utility infrastructure through fees and usage and other charges;
  - (4) comply with applicable federal, state, and local regulation, including the National Electrical Code, the National Electrical Safety Code, and the utility's transmission and distribution standards;
  - (5) support cost-effective, optimal use of public resources and economic development through increased competition in telecommunications services delivery; and
  - (6) [avoid the] exercise control over the public right-of-way and minimize congestion, inconvenience, cost, visual impacts, and other adverse effects on the City's streets, highways, and right-of-way [which could result] from the construction, operation, and maintenance of [redundant] attachments on utility infrastructure[-];
  - (7) protect the health and safety of the public and persons working on or near utility infrastructure;
  - (8) protect the health and safety of pedestrians, drivers, and passengers in the public right-of-way and other public spaces; and
  - (9) protect the character of residential and historic areas and city parks with respect to the use of utility infrastructure in those areas.
- (B) This chapter applies to the use, and application for the use, of utility infrastructure to the extent not inconsistent with an applicable state law.

### § 15-7-3 - RESTRICTIONS ON UTILITY INFRASTRUCTURE.

- (A) The right to use utility infrastructure not granted by franchise. The right of a person to apply for or use utility infrastructure is governed by this chapter. The grant of a franchise or right under Article XI (*Franchises and Public Utilities*) of the City Charter or pursuant to state law is not a grant of

attachment rights or authorization for the use of utility infrastructure without compliance with this chapter [~~by a franchisee~~].

- (B) Authority of the Utility. The utility shall operate, maintain, and control the utility infrastructure, other than traffic poles, and administer this chapter. The utility shall [~~develop~~] adopt non-discriminatory policies, design standards, and regulations to implement, administer, and enforce this chapter. The utility may delegate the operation, maintenance, or control of specific types or units of utility infrastructure to another City department if the director determines it is in the best interests of the City. The rules adopted by the director shall include the form of a uniform, standard infrastructure usage contract that must be executed by a user before the user may be permitted to perform work or place an attachment on utility infrastructure. The director may establish a separate form infrastructure usage contract or addendum for wireless service providers and for the collocation of a network node on a street pole. The provisions of this chapter, and any rules adopted by the director to implement and enforce this chapter, shall be deemed incorporated into all infrastructure usage contracts. Any amendments or additions to this chapter, or to the rules adopted by the director, shall become incorporated into all infrastructure usage contracts immediately and without further action upon the effective date of the ordinance or rule adopting the amendment or addition. The director may, without adopting or amending a rule, issue a statement of policy or procedure that clarifies or provides a non-substantive technical modification to a rule.
- (C) Authority of Department of Transportation. The department of transportation shall administer this chapter with respect to traffic poles. The director shall adopt non-discriminatory policies, design standards, and regulations to implement, administer, and enforce this chapter. The rules adopted by the director shall include the form of a uniform, standard infrastructure usage contract that must be executed by a user before the user may be permitted to collocate a network node on a traffic pole. Any amendments or additions to this chapter, or to the rules adopted by the director, shall become incorporated into all infrastructure usage contracts immediately and without further action upon the effective date of the ordinance or rule adopting the amendment or addition. The director may, without adopting or amending a rule, issue a statement of policy or procedure that clarifies or provides a non-substantive technical modification to a rule.

(D) The director may adopt other rules or policies for the placement of holiday or special events signage, or temporary equipment associated with special events, on utility infrastructure.

~~([€]E)~~ Priority of usage. The City has priority of use over competing uses of utility infrastructure to ensure, among other things, the electric utility's safe and reliable transmission and distribution of electricity to its customers and safe operation of its municipal functions regarding traffic control and right-of-way management.

~~([Đ]F)~~ Reservation and restrictions.

- (1) The utility retains the exclusive use of transmission structures [~~the electric supply area on distribution poles,~~] and the conduit or conduit bank used for electric utility purposes or terminating in an electric service vault or manhole. The director may permit third party use of reserved utility infrastructure upon the terms and conditions determined by the director.
- (2) This chapter does not authorize a person to use utility's electric transmission and distribution lines, facilities, or electric grid to transport electricity under a wheeling or other arrangement.
- (3) The director may determine that certain classes of utility infrastructure or specific units of utility infrastructure are necessary for utility's exclusive use due to legal, mechanical, structural, safety, environmental, service, or other requirements, and are unavailable for use by another person.
- (4) Some utility infrastructure is located on dedicated electric utility easements, which by their terms, limit the use of the easement to the utility for the transmission and distribution of electricity and do not authorize other uses, including telecommunications service. This chapter does not grant a third party right to use a dedicated easement without the prior consent of the grantor of the easement or its successor. Additional cost or expense to obtain the use of a dedicated easement by a user or applicant shall be borne solely by the user or applicant.
- (5) Utility infrastructure is the property of the City and a payment made by a user does not create a right, title, or interest in utility infrastructure for the use.

- (6) This chapter does not require the utility to replace, upgrade, or alter existing utility infrastructure to create additional capacity for an attachment.
  - (7) An aerial attachment of cable to streetlight and traffic poles is prohibited.
  - (8) An attachment may not be placed on a moonlight tower.
  - (9) A network node may not be collocated on utility infrastructure in a design or historic district unless the applicant has obtained, prior to submitting an application, any necessary consent from the City pursuant to chapter 14-11 of this code.
  - (10) Except as provided by this subsection, no equipment or appurtenances may be placed on a non-wooden streetlight pole in a design or historic district other than specially designed informational or directional signage or temporary holiday or special event attachments. Unless otherwise provided by ordinance or resolution, the director may waive the prohibition in this subsection for not more than eighty percent of the streetlight poles in a design or historic district.
  - (11) No attachment is allowed on utility infrastructure in a design or historic district unless the director determines the attachment meets all applicable standards and measures for aesthetics, design, concealment, and camouflage.
- (~~E~~)G) Unauthorized use prohibited. An applicant, user, or other [~~party does not have the right to~~] person may not place an attachment on utility infrastructure except as authorized by the director and in accordance with an infrastructure usage contract. If an unauthorized attachment is discovered, the director may remove the unauthorized attachment from utility infrastructure without incurring liability to the owner, and at the owner's sole expense, if the owner of the unauthorized attachment does not:
- (1) remove the unauthorized attachment; or
  - (2) apply for approval of the attachment, including payment of applicable charges or penalties.

#### **§ 15-7-4 - FEES AND CHARGES.**

- (A) [~~The council shall establish the fees and charges under this chapter by separate ordinance based on the type and number of proposed attachments and the type of utility infrastructure on or in which the proposed attachments~~]

~~will be placed].~~ The director may establish fees to administer this chapter and for the use of utility infrastructure to the extent not otherwise established by ordinance and as may be consistent with state law.

~~(B) A fee or charge established under this chapter may not exceed the maximum amount permitted by applicable law.~~

~~(C)~~BFiling fees and usage charges shall be calculated and applied in a consistent manner for all similarly situated users. If federal or state law or regulation preempts a filing fee or usage charge under this chapter, the filing fee and usage charge collected by the City ~~[may not exceed]~~ shall be the lesser of:

(1) the maximum amount permitted by federal or state law or regulation,  
or

(2) the utility's cost to provide the service or value of the right granted as determined by the director.

~~(D)~~C~~[Any attachment that the city manager determines is used exclusively for the delivery of services to the public will not be subject to the established filing and usage fees so long as the services are non-discriminatory and provided free of charge.]~~ The director may waive the filing and usage fees for an attachment if the attachment is used exclusively for the provision of wireless service to the public free of charge on an open, non-discriminatory basis.

#### **§ 15-7-5 - APPLICATION TO USE UTILITY INFRASTRUCTURE.**

(A) Authorized user. Unless otherwise required by law, only a person who holds a valid franchise or license to use or cross a City street, highway, or right-of-way will be granted an attachment right on utility infrastructure. An applicant's use of utility infrastructure is limited to the purposes specified in the applicant's franchise, ~~[or]~~ license, or right to operate in the city right-of-way or attach to utility infrastructure under state or federal law. An attachment used for a purpose not authorized by an applicant's franchise, ~~[or]~~ license, or state or federal law is an unauthorized attachment. ~~[A person who applies to use utility infrastructure for a private purpose may not be granted an attachment right.]~~ Unless the person has a franchise, license, or right to operate in the city right-of-way or to be allowed access to utility infrastructure pursuant state or federal law, an infrastructure usage contract with a person seeking to place an attachment on utility infrastructure must be approved by council.

(B) Except to the extent provided otherwise by state law, the provisions of this section govern an application for an attachment right to utility infrastructure.

(~~[B]~~[C])Application process. An applicant must file an application with the utility to use utility infrastructure as prescribed by the director. This section is intended to supplement chapter 14-11 of this code. An applicant must also comply with chapter 14-11 of this code if a permit for the use of public right-of-way is required for an attachment, including but not limited to any advance consent from the City required to place an attachment in a design or historic district. Subject to the availability of utility infrastructure capacity, the director shall consider each application on a first come, first serve basis. If an application cannot be approved as presented, the director may approve a conditional application. The director shall incorporate the terms of a conditional approval into an infrastructure usage contract.

(~~[E]~~[D])Denial of an application.

- (1) The director may deny an application if:
  - (a) the applicant fails to submit a complete application;
  - (b) the applicant fails to supplement its application with additional information or otherwise cooperate with the utility as requested in the evaluation of the application;
  - (c) the applicant fails to pay [~~the filing~~] a required fee;
  - (d) the proposed attachments are of excessive size or weight or would otherwise subject utility infrastructure to unacceptable levels of additional stress;
  - (e) approval would jeopardize the reliability or integrity of the electric system or of individual units of utility infrastructure;
  - (f) approval would present a safety hazard to a City employee or the public;
  - (g) approval would impair the City's ability to operate or maintain utility infrastructure;
  - (h) approval would require an unacceptable change, upgrade, or addition to utility infrastructure; [ø]
  - (i) approval would expose the City, the utility, its ratepayers, or other users to increased liability or financial risk[-];
  - (j) the proposed attachment is a network node in a design or historic district and the applicant has (i) not obtained consent from the City prior to filing the application or (ii) the

attachment does not provide reasonable design or concealment measures;

(k) the applicant is in material default under its infrastructure usage contract;

(l) the proposed attachment would fail to meet a design standard;  
or

(m) the proposed attachment would otherwise fail to comply with this chapter.

(2) If an application is denied, the director shall notify the applicant in writing of the reason for the denial. If an application is denied, an applicant may file a new application that corrects the reason for the denial. If an application is denied, applicant may appeal the denial to the director no later than the 30th day after the date of the denial as prescribed by the director. If the director upholds an original decision which denies an applicant all or substantially all requested attachment rights, the applicant may appeal to the city council under Section 15-7-8 (*Appeal to the City Council*).

(3) The failure of the director to act upon an application may not be deemed to constitute approval or waiver of the right to approve an application, unless otherwise provided by state law.

~~[(D)]E~~Additional costs. The applicant or user is responsible for all costs as determined by the utility to replace, enlarge, or upgrade utility infrastructure to accommodate the applicant's or user's proposed attachment.

~~[(E)]~~Infrastructure usage contract.

~~(1) The city attorney and the utility shall develop an infrastructure usage contract under this chapter.~~

~~(2) An infrastructure usage contract must be approve and executed before an applicant or user may undertake work or make an attachment on utility infrastructure.~~

~~(3) An applicant or user must pay the usage charges for the initial contract year in advance when the applicant executes the contract.~~

~~(4) If the annual usage charges to be paid to the city under an infrastructure contract are within the city manager's authority granted by Section 15 ( *Purchase Procedure* ) of Article VII of the City Charter, the director may execute the contract. If the annual usage~~



~~charges exceed the amount specified in Section 15 (Purchase Procedure) of Article VII of the City Charter, the contract must be approved by the city council.~~

- ~~(5) A user may not change the number, kind, location of attachments, the method of construction or installation, or the use of the attachments authorized under an infrastructure usage contract without the prior written consent of the director, which shall not be unreasonably withheld. The director's denial or approval of an individual permit or attachment is governed exclusively by the terms of the infrastructure usage contract, and may not be appealed under Section 15-7-8 (Appeal to the City Council). An infrastructure usage contract shall:~~
- ~~(a) identify and establish procedures to permit the number, kind and location of attachments that the user may place on utility infrastructure;~~
  - ~~(b) the method of construction or installation of user's attachments; and~~
  - ~~(c) the authorized use of the attachments by user.~~
  - ~~(6) Termination, revocation, or expiration of a user's franchise or license to use a City street, highway, or right-of-way automatically terminates the user's attachment rights without further action by the City or notice to user.]~~

#### **§ 15-7-6 - USER'S DUTIES AND RESPONSIBILITIES.**

- (A) Compliance with law. A use shall comply with all applicable federal, state, and local laws, rules, and regulations, including the Utilities Criteria Manual, City policies, the National Electrical Code, the National Electrical Safety Code, the utility's transmission and distribution standards, and applicable industry standards.
- (B) Operational and maintenance requirements.
  - (1) A user shall install, and continuously operate and maintain an approved attachment to prevent interference with the utility's facilities, the City's use of utility infrastructure, or the facilities or operations of other users.
  - (2) A user may not construe a contract, permit, correspondence, or other communication as affecting a right, privilege or duty previously conferred or imposed by the City to or on another person under an

infrastructure usage contract or otherwise. The City reserves the right to continue or extend a right, privilege, or duty and to contract with additional users without regard to resulting economic competition.

- (3) A user shall trim trees only as necessary for the safe and reliable operation, use, and maintenance of the user's attachments, as prescribed by the standards promulgated by the Environmental Commission or the city arborist.
- (4) A user may not co-lash or co-locate attachments without the prior written consent of the [utility] director and subject to the conditions the [utility] director reasonably requires.
- (5) A user is solely responsible for the risk and expense of installation, operation, and maintenance of the user's attachments. Neither the utility nor the City warrants or represents that the utility infrastructure is suitable for placement of a user's attachments. A user shall inspect the utility infrastructure on which the user's attachments will be placed and shall base its determination of the suitability of the utility infrastructure for user's purposes exclusively on the inspection. A user must accept the City's utility infrastructure "as is" and "where is" and assume all related risks.
- (6) A user shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of an attachment whenever the director has determined that (1) such removal, relocation, change or alteration, is necessary for the construction, repair, maintenance, or installation of any utility or City improvement in or upon, or the operations of the utility City in or upon, the public right-of-way, or (2) [If the director determines that] a user's attachments impair the safety or structural integrity of utility infrastructure[, the director may require the user, at user's sole expense and risk, to change, move, remove, or rearrange the attachments]. The director may also require a user to move or rearrange its attachments to maximize the available useable infrastructure and accommodate the attachments of an additional user, unless the movement or rearrangement of attachments materially impairs the use or function of the existing user's system. ~~[An existing user is only required to comply with this paragraph if the additional user agrees to compensate the existing user for its actual costs to move or rearrange attachments.]~~ If a user fails or refuses to comply with the director's request to change, move, remove or rearrange any of its attachments, the

attachments become unauthorized. The utility may change, move, remove, or rearrange an unauthorized attachment without liability to user and at user's sole cost.

- (7) The director may inspect, at any time, the construction or installation of a user's attachments on utility infrastructure. If the director determines that a user's installation or construction may violate this chapter, the National Electric Code, the National Electric Safety Code, the utility's transmission and distribution standards, or the conditions of the user's application, permit or infrastructure usage contract, the director may immediately suspend the user's construction or installation activities. The director shall send written notice to the user not later than the third business day after a suspension identifying the alleged violation. A suspension under this paragraph is effective until the user corrects the alleged violation, at the user's sole expense. A user may appeal a suspension under this subsection to the director.
- (8) A user may not transfer, assign, convey, or sublet an attachment right without director's prior written consent. A transfer, assignment, conveyance, or subletting of an attachment right without the director's prior written consent is not binding on the City and is a material default of the user's infrastructure usage contract.
- (9) The utility may disconnect power to an attachment if necessary to safely reach or perform work on the city's electric or traffic facilities.

(C) Termination.

- (1) The City may immediately suspend the rights of a user to make new or additional attachments if the user materially fails to comply with the terms of its franchise, license, or the infrastructure usage contract if the City provides written notice to the user. If the user fails to cure the default on or before the 60th day after receipt of the notice, the City may terminate the user's attachment rights.
- (2) A user shall immediately begin removal of its attachments after termination of a user's attachment rights for violations of the terms of a franchise, permit, or infrastructure usage contract, a voluntary termination by a user, or a termination by the City for cause. Unless the director grants an extension of time, a user must remove all attachments not later than the 60th day after the effective date of termination.

- (3) After termination of a user's attachment rights, the user must comply with the terms of this chapter, the user's franchise, license, and infrastructure usage contract until all attachments are removed.
- (4) [~~A user may appeal the termination of its attachment rights in accordance with Sections 15-7-5(C)(2) (*Application to Use Utility Infrastructure*) and 15-7-8 (*Appeal to City Council*).~~] While an appeal under Section 15-7-7 is pending, a user may continue to use its existing attachments but may not make, change, move, rearrange, construct, or install an additional attachment.
- (5) The repeal or invalidity of a state law, or revocation of a franchise, under which a user has obtained the right to access City right-of-way or utility infrastructure to make an attachment shall result in immediate termination of a user's attachment right.

**[~~§ 15-7-7 - JOINT USE AGREEMENTS.~~**

- (A) ~~This section applies to a person who owns or controls a minimum of 1,000 utility poles who offers the joint use of its poles to the utility in exchange for use of the City's utility infrastructure, if the utility has a use for the user's utility poles.~~
- (B) ~~A person shall pay to the City the usage charges in accordance with Section 15-7-4 (*Fees and Charges*) on the difference between the number of jointly used utility poles owned by the City and the number of jointly used utility poles owned by the joint user.~~
- (C) ~~Each person who uses a jointly used utility pole is responsible to perform the person's work, including construction of a jointly used utility pole, and installation, operation, maintenance (including tree trimming), replacement, removal, rearrangement, or relocation of the person's attachments. If a joint user fails to perform required work on or related to a jointly used utility pole owned by the City, the utility may perform the work on behalf of the joint user. If the utility performs work under this section, it may elect to:~~
  - (1) ~~charge the joint user for the City's expenses under this section including the cost of labor, material, equipment, overhead, general and administrative expense, general fund transfer, and other charges and costs; or~~
  - (2) ~~own the utility infrastructure improvements installed or constructed by the utility.~~

- ~~(D) Before a joint user may occupy City owned utility infrastructure, the joint user must execute an infrastructure usage contract under this chapter.~~
- ~~(E) As a condition to a grant of the use of City owned utility infrastructure, a joint user must agree not to unreasonably deny other users the right to place attachments on the utility infrastructure of the joint user, to the extent of available capacity or space and under the terms of a usage agreement between the joint user and the other user, including payment of reasonable and non-discriminatory fees.]~~

### **§ 15-7-[8]7 - APPEAL TO CITY COUNCIL.**

- (A) If an applicant has been denied attachment rights substantially in their entirety under Section 15-7-5(~~(E)~~D) (*Application to Use Utility Infrastructure*), or if a user's attachment rights have been terminated substantially in their entirety under Section 15-7-6(C) (*User's Duties and Responsibilities*), the applicant or user may appeal the denial to the city council. A person must file a written notice of appeal to the city council with the director no later than the 14th day after the date of the director's denial of the applicant or user's appeal. The notice of appeal shall include:
- (1) the name, address, and telephone number of the appellant;
  - (2) the name, address and telephone number of all interested parties, if any, including existing users of the units of infrastructure occupied by, or proposed to be occupied by, the appellant;
  - (3) the decision being appealed;
  - (4) the date of the decision being appealed; and
  - (5) the basis of the appeal, including a concise statement describing the reasons the appellant believes it was wrongfully denied attachment rights or its attachment rights were wrongfully terminated.
- (B) Upon receipt of a notice of appeal, the director shall schedule a public hearing before the city council, and notify the appellant and all interested parties of the time and date of the hearing by first class mail at least ten days before the date of the hearing. [~~The director shall publish notice of the hearing in a newspaper of general circulation in the city before the 15th day before the date of the hearing.~~] A public hearing under this section may be postponed or continued in accordance with Sections 25-1-152 (*Postponement and Continuation of Public Hearings*) and 25-1-153 (*Change of Location of Public Hearing*) of the Code.

- (C) The appellant has the burden of proof to establish that the decision being appealed is incorrect.
- (D) The council shall decide preliminary issues raised by the parties, including a request for postponement or continuance, or questions of standing to bring an appeal, before the public hearing is opened. The public hearing shall proceed as follows:
  - (1) a report from the director or appropriate City staff;
  - (2) a presentation by the appellant;
  - (3) comment by any interested parties supporting the appeal; and
  - (4) comment by any interested parties opposing the appeal.
- (E) The city council may approve, modify, or overrule the director's decision. [~~Council shall consider the grounds for denial in Section 15-7-5(C) (Application to Use Utility Infrastructure) in its determination of an appeal of the denial of attachment rights. Council shall consider the grounds for termination in Sections 15-7-5(E)(6) (Application to Use Utility Infrastructure) and 15-7-6(C) (User's Duties and Responsibilities) in its determination of an appeal of the termination of attachment.~~]

**§ 15-7-[9]8 - UNAUTHORIZED ATTACHMENTS PROHIBITED; PENALTY.**

- (A) A person commits an offense if the person [~~knowingly~~] affixes, installs, places, attaches, or maintains an attachment or other object to or on City-owned utility infrastructure without authorization under this chapter, or fails to remove an unauthorized attachment to City-owned utility infrastructure on demand by the utility.
- (B) A person commits an offense if the person uses an attachment on a City-owned utility infrastructure to provide a service not authorized by a state franchise, federal or state law, or a City franchise, license, or contract.
- (C) Each unauthorized attachment or use is a separate offense. Each day a violation of this chapter continues is a separate offense.
- (D) A person who violates this chapter commits an offense. An offense under this chapter is a Class C misdemeanor punishable as provided in Section 1-1-99 (*Offenses; General Penalty*) of the Code, with a maximum fine of \$100 a day for each attachment plus court costs and fees. Proof of a culpable mental state is not required for a conviction under this chapter.

**§ 15-7-10 - USE OF ADJACENT CITY LAND.**

- (A) The city manager may grant a license to a user for the use of property owned, leased, or controlled by the City for the location of user's equipment, provided the city manager determines that the property is available and that:
  - (1) the property is adjacent to utility infrastructure upon which the user has an attachment right, and
  - (2) the property's use is for locating equipment functionally necessary for the user's adjacent attachment.
- (B) The term of the license granted under the authority of this section will run concurrently with the term of the related attachment right.
- (C) The discretion whether to grant a license under this section is not subject to appeal under Section 15-7-[8]7 (*Appeal to City Council*).

**PART 5.** Amend Title 15 (*Utility Regulations*) of City Code by repealing Chapter 15-8 (*Use of Right-of-Way by Telecommunications Providers*).

**PART 6.** The City anticipates numerous requests for use of the City's rights of way and utility infrastructure due to the adoption of state law obligating access by wireless network providers to City right-of-way and infrastructure effective September 1, 2017. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety. In order to allow the city manager and the affected City departments to implement administrative policies, rules, and guidance necessary to administer the changes in state law required by the passage of SB 1004, effective September 1, 2017:

- (A) for administrative rules adopted by the city manager to implement the changes in state law and the modifications to city code adopted by this ordinance, Subsection (B) of Section 1-2-17 (*Adoption of Emergency Rule*) of the City Code is waived for rules adopted after the effective date of this ordinance and before September 1, 2017;
- (B) no proposed use of City right-of-way or City infrastructure by a network provider, nor any request for review, City permission, or agreement by a network provider, will be accepted, reviewed, or considered by the City until on or after the effective date of Senate Bill 1004 adopted by the 85<sup>th</sup> Texas Legislature.

**PART 7.** This ordinance takes effect on August 17, 2017.

**PASSED AND APPROVED**

\_\_\_\_\_, 2017

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\_\_\_\_\_  
Steve Adler  
Mayor

APPROVED: \_\_\_\_\_

Anne L. Morgan  
City Attorney

ATTEST: \_\_\_\_\_

Jannette S. Goodall  
City Clerk

DRAFT