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Chapter 14-04

Standards and Specifications

14-04-010 Standards and specifications adopted.

There is adopted, by reference, a code entitled the *Broomfield Standards and Specifications*, 2007 edition, to have the same force and effect as though set forth in this chapter in every particular. All references in *Broomfield Standards and Specifications*, 2007 edition, to the "Uniform Building Code" are hereby revised to refer to the "International Building Code and International Residential Code." (Ord. 569 §1, 1984; Ord. 912 §1, 1991; Ord. 1196 §9, 1996; Ord. 1568 §8, 2001; Ord. 1828 §1, 2007; Ord. 1858 §5, 2008)

14-04-020 Code described.

The *Broomfield Standards and Specifications*, 2007 edition, is published by the City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado, 80020. (Ord. 569 §1, 1984; Ord. 912 §1, 1991; Ord. 1196 §9, 1996; Ord. 1568 §8, 2001; Ord. 1828 §1, 2007)

14-04-030 Copy on file.

At least one copy of the *Broomfield Standards and Specifications*, 2007 edition, as adopted, is on file in the office of the city and county clerk and may be inspected during regular working business hours. In addition, electronic copies are available for purchase by the public at \$10.00 per copy and hard copies are available for purchase by the public at \$50.00 per copy. (Ord. 569 §1, 1984; Ord. 912 §1, 1991; Ord. 1013 §1, 1993; Ord. 1196 §9, 1996; Ord. 1568 §8, 2001; Ord. 1828 §1, 2007)

Chapter 14-06

Reimbursement Assessment Districts

14-06-010 Short title.

This chapter is known and may be cited as the "Broomfield Reimbursement Assessment Ordinance." (Ord. 936 §1, 1992)

14-06-020 Definitions.

As used in this chapter, unless the context otherwise requires:

(A) *Developer* is the owner of property within the city who constructs and dedicates public improvements to the city. The city or any other governmental entity may apply for a reimbursement assessment district as a developer.

(B) *Owner* means the person in whom the recorded fee title is vested, although subject to lien or encumbrance.

(C) *Property* means all land, whether platted or unplatted, regardless of improvements thereon and regardless of lot or land lines.

(D) *Reimbursement assessment district* means the geographical division of the city and, in accordance with the provisions of subsection 14-06-040(B) of this chapter, the county in which the city is situated, within which any public improvement made. One or more noncontiguous parts or sections of property may be included in one such district. (Ord. 936 §1, 1992; Ord. 1175 §1, 1996)

14-06-030 Type of improvements subject to reimbursement.

(A) A developer who constructs and dedicates to the city a street, sidewalk, water main, sewer main, bicycle trail, bridge, storm drainage facility, or other public improvement may apply to the city for the establishment of a reimbursement assessment district in order to be reimbursed for a portion of the cost of such public improvement from the owners of other property that is specially benefitted by the improvements.

(B) If the city constructs a public improvement that specially benefits property, it may establish a reimbursement assessment district as provided in this chapter. (Ord. 936 §1, 1992)

14-06-040 Property eligible for inclusion.

(A) Any property is eligible for inclusion in a reimbursement assessment district if it has been specially benefitted by a street, sidewalk, bicycle trail, storm drainage facility, bridge, water main, sewer main, or other improvement constructed by a developer and dedicated to the city.

(B) Property located outside the city limits may be included in a reimbursement assessment district upon the application by the developer. No assessment, however, may be collected on such property until it has been annexed to the city, which must occur prior to the last date to which the assessment may be deferred pursuant to subsection 14-06-060(A) or twenty years from the effective date of the ordinance establishing the reimbursement district, whichever date is later. (Ord. 936 §1, 1992)

14-06-050 Basis for assessment.

(A) Properties within a reimbursement assessment district shall be assessed in such a manner as equitably to apportion the cost among all properties specially benefitted by the improvement, but no property shall be assessed an amount greater than the special benefit received by it. The method of assessment may include but is not limited to frontage, zone, area, lot, taps, impervious area, or any equitable combination thereof.

(B) The cost to be apportioned within a reimbursement assessment district is the reasonable cost of constructing the improvement, together with any acquisition cost for any property, easements, or rights-of-way upon which any such improvements are constructed, and together with any incidental costs, but not including the cost of any part or portion that solely benefits the developer, such as curb cuts or main connections to serve the developer's property. Engineering costs not to exceed ten percent of construction costs and any application or hearing fees may be included for determining the cost. With respect to public improvements constructed after the effective date of this chapter, reimbursable construction costs will be based on the lowest responsible bid of three bids obtained by the developer.

(C) Except as hereinafter limited, the term *special benefit* means any benefit conferred upon property that is greater than or different from that conferred upon properties in the city as a whole by an improvement. Among the facts to be considered in determining the existence of a special benefit are:

- (1) Increased market value;
- (2) Improvement in safety or convenience of access;
- (3) Improved drainage;
- (4) Alleviation of health or sanitation hazards;
- (5) Adaptability of the property to a superior or more profitable use;
- (6) Improved availability of public water or sewer services to the property; and

(7) In the case of undeveloped property, the installation of an improvement which would otherwise be required for development of the property.

(D) When a developer must extend an improvement, such as a water or sewer main, in order to make lateral connection to the developer's property, the preexisting portion of the improvement shall not be deemed to specially benefit that portion of the property served by the extension. (Ord. 936 §1, 1992; Ord. 1175 §2, 1996)

14-06-060 Reimbursement terms.

(A) The assessment shall be due and payable upon the effective date of the ordinance imposing the assessment; provided, however, that if any property included within a reimbursement assessment district is unplatted, is undeveloped, or has not connected to the improvement at the time the assessment is imposed, the owner of such property may defer payment of the assessment until such time as the property is platted, a building permit is issued, or the property is connected to the improvement, whichever first occurs after the assessment is imposed.

(B) If the owner elects to defer payment of the assessment, the payment shall include interest at the rate provided by section 5-12-102(2), C.R.S. Such interest shall commence on the effective date of the ordinance imposing the assessment.

(C) A reimbursement assessment district shall terminate twenty years from the effective date of the ordinance establishing it, and any property which is platted or connected to the improvement thereafter shall not be subject to reimbursement assessment. (Ord. 936 §1, 1992)

14-06-070 Establishment of districts.

(A) Application.

(1) The developer of any property who, prior to August 27, 1992, constructs one or more public improvements may file with the city manager an application for a reimbursement assessment district on a form provided by the city. The application shall include the nature, location, and cost of the improvements, a description of the proposed district and individual properties within it, the names and addresses of the property owners within the district, accompanied by a written ownership and encumbrance report from a title company or similar document showing proof of ownership of all property to be included within the district, the proposed manner of assessment, and the amount proposed to be assessed against each property for each improvement.

(2) The developer of any property who subsequent to August 27, 1992, constructs one or more public improvements may file with the city manager an application for a reimbursement assessment district on a form provided by the city. The application shall include the nature, location, and cost of the improvements, a description of the proposed district and individual properties within it, the names and addresses of the property owners within the district, accompanied by a written ownership and encumbrance report from a title company or similar document showing proof of ownership of all property to be included within the district, the proposed manner of assessment and the amount proposed to be assessed against each property for each improvement, and three construction bids for the public improvement. No application for a reimbursement assessment district may be filed with the city manager until all improvements for which reimbursement is sought have been accepted by the city in accordance with the provisions of section 900 of the Standards and Specifications for Design and Construction of Public Improvements.

(3) Each application for a reimbursement assessment district shall be accompanied by an application fee in the amount of \$150.00 for each public improvement for which reimbursement is sought.

(4) The city engineer will review all applications for reimbursement assessment districts for accuracy and completeness before notice is sent to the other property owners.

(B) *Administrative denial.* The city manager, or a designee thereof, may, without notice or hearing to any other property owner than the developer who has applied for the reimbursement assessment district, deny any application that does not comply with the requirements of this chapter.

(C) *Notice.* The city manager, or a designee thereof, shall mail a notice to the owners of each property within the proposed reimbursement assessment district, together with a copy of the application. The notice shall state that any owner may file a written request for an administrative hearing to object to the proposal. The request for hearing shall state in general terms the grounds of objection. Failure by any owner to file a timely request for a hearing constitutes a waiver by the owner of any right to such a hearing.

(D) *Hearing.* Upon receiving a timely written request for a hearing, the city manager, or a designee thereof, shall set a hearing and notify the developer and all objecting parties. The city manager, or a designee thereof, shall conduct a quasi-judicial administrative hearing.

(E) *Advisory decision.* After the hearing, the hearing officer shall render an advisory decision summarizing the objections and making recommendations to the city council.

(F) *Adoption of ordinance.* After the hearing, or if no hearing is requested, the city council shall then consider the adoption of an ordinance establishing a reimbursement assessment district and imposing appropriate assessments on properties within the reimbursement assessment district, which shall be a lien upon each property assessed. A notice of the lien shall be filed in the office of the county clerk and recorder of the county in which the property is situated.

(G) *Judicial review.* Any reimbursement assessment ordinance adopted hereunder shall be subject to judicial review pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 936 §1, 1992)

14-06-080 Collection or assignment of lien.

(A) Upon adoption of an assessment ordinance, the city will invoice all owners of assessed property.

(B) If any owner elects to defer payment of the assessment, the city will assign its rights of collection under the notice of lien recorded pursuant to subsection 14-06-070(F) to the person entitled to reimbursement, unless the city council determines that it would be more appropriate for the city to collect the assessment.

(C) In the event that the city elects to collect the assessment pursuant to the notice of lien, the city and the developer entitled to reimbursement will enter into an agreement for collection and payment of the assessment, in a form approved by the city attorney, which agreement shall contain the following provisions:

(1) That the city specifically will not guarantee collection of the assessments;

(2) That in the event that any assessment becomes due and remains uncollected, the city will execute an assignment of the city's right to collect any such unpaid assessment to the developer entitled to reimbursement;

(3) That the city will agree to notify the developer entitled to reimbursement when the benefited property is platted, a building permit is issued, or the property connects to the improvement, whichever shall first occur after the assessment is imposed;

(4) That the developer entitled to reimbursement agrees to indemnify the city for, and hold the city harmless from, any suit or action for slander of title that is or may be brought against the city as a result of the filing of the assessment lien imposed pursuant to this article;

(5) That when the assessment is collected, the city will pay over the assessment, including accrued interest which is also collected, after first deducting therefrom a collection fee in the amount of \$50.00 per property assessed or one percent of the total assessment collected, whichever sum is greater; and

(6) That it shall be the responsibility of the developer entitled to reimbursement to keep the city apprised of the developer's current address. In the event of the recipient's death, it shall be the developer's personal representative's responsibility to notify the city of the name and address of the person entitled to receive future reimbursements. In the case of a corporate recipient, a successor shall be designated prior to dissolution.

(D) Failure of the developer entitled to reimbursement to comply with any of the provisions of the collection agreement shall constitute abandonment of all rights of reimbursement and shall be grounds for repeal of the reimbursement ordinance and refund of any assessments received by the city on behalf of the developer after the abandonment. (Ord. 936 §1, 1992)

14-06-090 Release.

Upon payment of assessment or expiration of the reimbursement term, whichever first occurs, the city will, upon request, issue a written release of lien to the owner of assessed property. (Ord. 936 §1, 1992)

14-06-100 Contracts.

(A) In lieu of the procedure set forth herein, a developer may contract with the owners of property for reimbursement for the construction of public improvements otherwise eligible for reimbursement under this chapter. At the request of the parties, the city will collect the reimbursement at the time of connection, platting or as otherwise provided in the contract.

(B) In the event that a developer contracts with the owner of a portion of the property that would otherwise be subject to a reimbursement assessment, such property may be excluded from the district; provided, however, that no property remaining within the reimbursement assessment district will be assessed in an amount proportionally greater than that provided in such contract. (Ord. 936 §1, 1992)

Chapter 14-07

Reimbursements for Public Improvements

14-07-010 Definitions.

As used in this chapter, unless the context otherwise requires:

(A) *Developer* is one who constructs and pays the costs of construction of public improvements and dedicates such public improvements to the city. *Developer* may be an owner, a statutory special district, or an entity developing property on behalf of an owner.

(B) *Owner* means the person in whom the recorded fee title is vested, although subject to lien or encumbrance. (Ord. 1920 §1, 2009)

14-07-020 Type of improvements subject to reimbursement.

(A) A developer who constructs and dedicates to the city a street, sidewalk, water main, sewer main, bicycle trail, bridge, storm drainage facility, or other public improvement may apply to the city for the establishment of a reimbursement obligation in order to be reimbursed for a portion of the cost of such public improvement from the owners of other property that is specially benefited by the improvements.

(B) If the city constructs a public improvement that specially benefits property, it may establish a reimbursement obligation as provided in this chapter. (Ord. 1920 §1, 2009)

14-07-030 Property subject to reimbursement.

Any property may be subject to a reimbursement obligation if it has been specially benefited by a street, sidewalk, bicycle trail, storm drainage facility, bridge, water main, sewer main, or other improvement constructed by a developer and dedicated to the city. (Ord. 1920 §1, 2009)

14-07-040 Basis for reimbursement.

(A) Properties subject to a reimbursement obligation shall be assessed in such a manner as equitable to apportion the cost among all properties specially benefited by the improvement, but no property shall be assessed an amount greater than the special benefit received by it. The method of assessment may include, but is not limited to, frontage, use area, lot, taps, impervious area, or any equitable combination thereof.

(B) The costs to be assessed against the benefited properties are the reasonable cost of constructing the improvement, together with any acquisition cost for any property, easements, or rights-of-way upon which any such improvements are constructed, and together with any incidental costs, but not including the cost of any part or portion that solely benefits the developer, such as curb cuts or main connections to serve the developer's property. Engineering costs not to exceed ten percent of construction costs and any application or hearing fees may be included for determining the cost. With respect to public improvements constructed after the effective date of this chapter, reimbursable construction costs will be based on the lowest responsible bid of three bids obtained by the developer.

(C) Except as hereinafter limited, the term *special benefit* means any benefit conferred upon property that is greater than or different from that conferred upon properties in the city as a whole by an improvement. Among the facts to be considered in determining the existence of a special benefit are:

- (1) Increased market value;
- (2) Improvement in safety or convenience of access;
- (3) Improved drainage;
- (4) Alleviation of health or sanitation hazards;
- (5) Adaptability of the property to a superior or more profitable use;
- (6) Improved availability of public water or sewer services to the property; and
- (7) The improvement would otherwise be required for development of the property.

(D) When a developer must extend an improvement, such as a water or sewer main, in order to make lateral connection to the developer's property, the preexisting portion of the improvement shall not be deemed to specially benefit that portion of the property served by the extension. (Ord. 1920 §1, 2009)

14-07-050 Reimbursement terms.

(A) The assessment shall be due and payable at such time as the undeveloped property is platted, a building permit is issued, or the property is connected to the improvement, whichever first occurs after completion of the acceptance and certification of the improvements as required in paragraph 14-07-070(A)(1) below.

(B) A reimbursement obligation shall terminate twenty years from the date of the acceptance and certification of the improvement, and any property which is platted or connected to the improvement thereafter shall not be subject to such reimbursement obligation. (Ord. 1920 §1, 2009)

14-07-060 Establishment of reimbursement obligation.

(A) Application.

(1) The developer of any property who, subsequent to the effective date of this chapter, constructs one or more public improvements may file with the city manager an application for reimbursement on a form provided by the city. The application shall include the nature, location, and cost of the improvements, a description of the individual properties to be subject to the reimbursement obligation, the names and addresses of the owners of such properties, accompanied by a written ownership and encumbrance report from a title company or similar document showing proof of ownership of all properties to be subject to the reimbursement obligation, the proposed manner of assessment and the amount proposed to be assessed against each property for each improvement, and three construction bids for the public improvement. No application for reimbursement may be filed with the city manager until all improvements for which reimbursement is sought have been designed and submitted to the city in accordance with the provisions of section 900 of the Standards and Specifications for Design and Construction of Public Improvements.

(2) Each application for reimbursement shall be accompanied by an application fee in the amount of \$150.00 for each public improvement for which reimbursement is sought.

(3) The city engineer will review all applications for reimbursement for accuracy and completeness before notice is sent to the other property owners.

(B) Administrative denial. The city manager, or a designee thereof, may, without notice or hearing to any owner other than the developer who has applied for the reimbursement, deny any application that does not comply with the requirements of this chapter or that does not fairly apportion the reimbursements.

(C) Notice. The city manager, or a designee thereof, shall mail a notice to the owners of each property proposed to be subject to the reimbursement obligation, together with a copy of the application. The notice shall state that any owner, no later than thirty calendar days after the date of mailing of such notice, may file a written request for an administrative hearing to object to the proposal. The request for hearing shall state in general terms the grounds of objection. Failure by any owner to file a timely request for a hearing constitutes a waiver by the owner of any right to such a hearing.

(D) Hearing. Upon receiving one or more timely written requests for a hearing, and no later than forty-five calendar days after the date of mailing of notice pursuant to subsection (C) above, the city manager, or a designee thereof, shall set a hearing to be held within thirty days thereafter and notify the developer and all objecting parties of such hearing and all objections may, in the discretion of the city manager, or a designee thereof, be consolidated into one hearing. The city manager, or a designee thereof, shall conduct a quasi-judicial administrative hearing to consider the validity of any such objections to the proposed reimbursement(s) as set forth in the application. After the hearing, the hearing officer shall render an advisory decision summarizing the objections and making recommendations to the city council on the proposed reimbursement(s) as set forth in the application.

(E) Adoption of ordinance. After the hearing, or if no hearing is requested, the city council shall then consider the adoption of an ordinance establishing reimbursement obligations and imposing appropriate assessments on properties subject to the reimbursement obligation, which shall be a lien upon each property assessed. A notice of the lien shall be filed in the office of the county clerk and recorder of the county in which the property is situated.

(F) Judicial review. Any reimbursement ordinance adopted hereunder shall be subject to judicial review pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 1920 §1, 2009)

14-07-070 Collection or assignment of lien.

(A) Upon the approval by the city council of an application for reimbursement, the city and the developer entitled to reimbursement shall thereupon enter into an agreement for collection and payment of the assessment, in a form approved by the city attorney, which agreement shall contain the following provisions:

(1) No reimbursement shall be collected by the city from a third party until after the improvement subject to reimbursement has been accepted by the city and upon the city's receipt of a certification of accurate costs signed by the developer, all in accordance with the city's policies and practices with regard to the same "Acceptance and Certification";

(2) That the city will make a collection effort as set forth in paragraph (A)(3) below, but specifically will not guarantee collection of the assessments;

(3) That the city will agree to require payment of the reimbursement, as a development condition, when each benefited property is platted, a building permit is issued, or the property connects to the improvement, whichever shall first occur after the reimbursement obligation has been approved by city council;

(4) That the developer entitled to reimbursement agrees to indemnify the city for, and hold the city harmless from, any suit or action for slander of title that is or may be brought against the city as a result of the filing of the lien imposed pursuant to this chapter;

(5) That when the reimbursement is collected, the city will pay over the reimbursement, including accrued interest which is also collected, after first deducting therefrom a collection fee in the amount of \$50.00 per property assessed or one percent of the total reimbursement collected, whichever sum is greater;

(6) That it shall be the responsibility of the developer entitled to reimbursement to keep the city apprised of the developer's current address. In the event of the recipient's death, it shall be the developer's personal representative's responsibility to notify the city of the name and address of the person entitled to receive future reimbursements. In the case of a corporate recipient, a successor shall be designated prior to dissolution; and

(7) That in the event that any reimbursement is owing and remains uncollected, the city will execute an assignment of the city's right to collect any such unpaid reimbursement to the developer entitled to reimbursement (including lien rights).

(B) Failure of the developer entitled to reimbursement to comply with any of the provisions of the collection agreement shall constitute abandonment of all rights of reimbursement and shall be grounds for repeal of the reimbursement ordinance and refund of any reimbursements received by the city on behalf of the developer after the abandonment. (Ord. 1920 §1, 2009)

14-07-080 Release.

Upon payment of an assessment or expiration of the reimbursement term, whichever first occurs, the city will, upon request, issue a written release of lien to the owner of assessed property. (Ord. 1920 §1, 2009)

14-07-090 Contracts.

(A) In lieu of the procedure set forth herein, a developer may contract with the owners of property for reimbursement for the construction of public improvements otherwise eligible for reimbursement under this chapter. At the request of the parties, the city will collect the reimbursement at the time of connection, platting or as otherwise provided in the contract.

(B) In the event that a developer contracts with the owner of a portion of the property that would otherwise be subject to a reimbursement obligation, such property may be excluded from the list of properties to be subject to the reimbursement obligation; provided, however, that no property remaining subject to the reimbursement obligation will be assessed in an amount proportionally greater than that provided in such contract. (Ord. 1920 §1, 2009)

14-07-100 Alternative provisions.

A developer, at its option, may utilize either the provisions of the Broomfield Reimbursement Assessment Ordinance set forth in Chapter 14-06 of this Title or the provisions set forth in this Chapter. (Ord. 1920 §1, 2009)

Chapter 14-08

Improvement Districts

14-08-010 Short title.

This chapter is known and may be cited as the Broomfield Improvement District Ordinance. (Ord. 1461 §1, 2000)

14-08-020 Definitions.

(A) *Act* means the enabling act for improvement districts in counties as set forth in part 6 of article 20 of title 30, C.R.S.

(B) *Board* means the city council or an independent board of directors as authorized in the Act and as hereinafter provided in section 14-08-040, B.M.C.

(C) *City* means the City of Broomfield, Colorado.

(D) *Elector* means an "elector of the district" as defined in the Act, except as otherwise provided in this chapter.

(E) *Improvement district* means an improvement district organized in accordance with the Act and this chapter. (Ord. 1461 §1, 2000)

14-08-030 Establishing improvement districts.

Improvement districts organized to provide public improvements or services within an area of the city shall be established and administered by the city council or an independent board of directors in accordance with the provisions of the Act and shall have all powers set forth thereunder, except as otherwise specified in this chapter. (Ord. 1461 §1, 2000)

14-08-040 Independent board of directors.

(A) If a petition initiating the organization of an improvement district to provide transportation services so specifies, there shall be an independent board of directors. The members of the independent board of directors of the district shall be appointed by a majority vote of a quorum of the members of the city council present at any regular or special meeting. In such event, the independent board of directors shall consist of an odd number of not fewer than three members initially, including the city's voting member, and may be enlarged to not more than seven members as determined by the board with the consent of the city council. Each member, except the city's voting member, shall be either an elector of the improvement district or an elector of the State of Colorado who is the designated representative of any owner of taxable real or personal property in the district.

(B) The city council shall appoint a voting member to the independent board of directors who shall represent the interests of the city and who shall serve at the pleasure of the city council.

(C) Except for the city's voting member, the term of office for members shall be four-year overlapping terms or until a successor takes office, provided that any appointment made to fill an unexpired term shall be for the balance of such term. One-half of the members of the independent board of directors shall initially be appointed for two-year terms of office, which term thereafter shall be four years. Within forty-five days after any vacancy occurs, the independent board of directors shall nominate a qualified applicant whose name shall be submitted to the city council for appointment to the independent board of directors. Any member of the independent board of directors may be removed from office by the city council pursuant to the provisions of section 11.2 of the Charter.

(D) A majority of the members shall constitute a quorum of the independent board of directors. The independent board of directors shall elect one of its members as presiding officer, one of its members as secretary, and one of its members as treasurer. The office of both secretary and treasurer may be filled by one person. The independent board of directors shall adopt bylaws and conduct its meetings in accordance therewith or according to *Robert's Rules of Order Newly Revised*. All meetings of the independent board of directors are subject to the provisions of Part 4 of the Colorado Sunshine Act of 1972, as amended. The public records of the independent board of directors are subject to part 2 of article 72 of title 24, C.R.S., as amended. (Ord. 1461 §1, 2000; Ord. 1815 §1, 2005)

14-08-050 Sales tax for transportation services.

(A) In accordance with the provisions of the Act, the board may impose a sales tax throughout the improvement district for the purpose of funding transportation services or improvements, except that (1) such tax may be levied only upon those transactions specified in chapter 3-04 and (2) shall be subject to any limitation set forth in this section.

(B) In no event shall the sales tax authorized in this chapter exceed two-tenths of one percent.

(C) Any proposal for such sales tax shall be submitted to the electors of the improvement district at the next city general election or a special election held on the first Tuesday after the first Monday of November in any year. The election shall be conducted by the city clerk in accordance with the provisions of articles 1 to 13 of title 1, C.R.S., or article 10 of title 31, C.R.S., as determined by the board, and section 20 of Article X of the Colorado Constitution.

(D) No improvement district shall levy a sales tax under the provisions of this section unless the city council has previously approved an operating plan and budget for the district prepared by the board. The operating plan and budget shall specifically identify the services or improvements to be provided by the district; the taxes, fees, or assessments to be imposed by the district; the estimated principal amount of bonds to be issued by the district, and such additional information as the city may require. The improvement district shall file its operating plan and budget for the next fiscal year with the city clerk no later than September 30 of each year. The city may require the improvement district to supplement the operating plan and budget when necessary. The city council shall approve

or disapprove the operating plan and budget within thirty days after receipt of such operating plan and budget but not later than December 5 of the year in which such documents are filed. Thereafter, the services, improvements, and financial arrangements of the improvement district shall conform so far as practicable to the operating plan and budget. The operating plan and budget may, from time to time, be amended by the board with the approval of the city council in substantially the same manner as the process for formulating the operating plan and budget for each year. (Ord. 1461 §1, 2000)

14-08-060 Intergovernmental contracts.

An improvement district organized to provide transportation services or improvements may enter into intergovernmental contracts with the city or other governmental entities to implement its powers in accordance with statutory authority. (Ord. 1461 §1, 2000)

14-08-070 Inclusion of property.

(A) The owner of any real property that is located within the city may submit to the board a verified petition for the inclusion of the property therein described into the improvement district. If such property will be included into an improvement district organized to provide transportation services or improvements, such property shall be zoned for commercial uses. The board shall hear such petition at a public meeting. If the inclusion of such property is determined to be in the best interests of the improvement district, the board may, by resolution, approve the inclusion of such property into the improvement district. Otherwise, the board shall deny such inclusion. If the improvement district is administered by an independent board of directors pursuant to section 14-08-040, the inclusion of such property into the improvement district shall also be approved by resolution of the city council adopted at a public meeting.

(B) The board and the owner of such property may enter into an inclusion agreement with respect to taxes, charges, assessments, terms and conditions upon which such property will be included into the improvement district. Any inclusion agreement shall be attached to and incorporated into the board's resolution of approval.

(C) Nothing in this section shall authorize the inclusion into the improvement district of any property which could not have been included in the improvement district at the time of its organization.

(D) The inclusion of property into an improvement district shall be effective as of the date of filing of the board's resolution of approval with the city clerk. The change of boundaries of an improvement district shall not impair or affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien or charge for which it is liable if such change of boundaries is not approved.

(E) After the date of its inclusion into an improvement district, such property shall be subject to all taxes, charges, and assessments imposed by the improvement district. (Ord. 1722 §1, 2003)

Chapter 14-10

Use of Public Rights-of-Way

14-10-010 Purpose; objectives.

(A) *Purpose.* This chapter provides principles, procedures, and associated funding for the placement of structures and facilities, construction excavation encroachments, and work activities within or upon any public right-of-way, and to protect the integrity of the road system and visual environment of the streets, easements, and public ways. To achieve these purposes, it is necessary to require permits of permanent private users of the public rights-of-way, to establish permit procedures to perform construction, excavation and work in the right-of-way, and to fix and collect fees and charges.

(B) *Objectives.* Public and private uses of public rights-of-way for location of facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the city must ensure that the primary purpose of the right-of-way, passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible, and that the process of placing modern facilities in the rights-of-way occurs in a fast, efficient manner with the least amount of disruption to businesses, citizens, and the environment. In addition, the value of other public and private installations, roadways, facilities, and properties should be protected, competing uses must be reconciled, and the public safety and aesthetics preserved. The use of the right-of-way corridors by permanent private users is secondary to these public objectives, the movement of traffic, and the safety of our citizens. This chapter is intended to strike a balance between the public need for efficient, aesthetically pleasing,

safe transportation routes and the use of rights-of-way for location of facilities by public and private entities. It thus has several objectives:

(1) To ensure that the public safety is maintained and that public inconvenience is minimized, by maintaining clean, safe, and passable work zones during and after facility placement in the public rights-of-way. To protect the city's infrastructure investment by establishing repair standards for the pavement, facilities, and property in the public rights-of-way, when work is accomplished.

(2) To facilitate work within the rights-of-way through the standardization of regulations.

(3) To maintain an efficient permit process. To fairly apportion the limited physical capacity of the public rights-of-way held in public trust by the city.

(4) To establish a public policy for enabling the city to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition, and technological development to ensure that basic services be available and affordable to all citizens and that universal access to advanced technological services be available to all consumers.

(5) To promote cooperation among the permittees and the city in the occupation of the public rights-of-way, and work therein, in order to (a) eliminate duplication that is wasteful, unnecessary, or unsightly, (b) lower the permittees' and the city's costs of providing services to the public, and (c) minimize street cuts.

(6) To assure that the city can continue to fairly and responsibly protect the public health, safety, and welfare. (Ord. 1515 §1, 2000)

14-10-020 Definitions.

For the purpose of this chapter, the following words shall have the following meanings:

(A) *Access vault* means any structure containing one or more ducts, conduits, manholes, handhole, or other such facilities in permittee's facilities.

(B) *Appurtenances* means transformers, switching boxes, gas regulator stations, terminal boxes, meter cabinets, pedestals, system amplifiers, power supplies, optical nodes, pump stations, valves and valve housings, and other devices necessary to the function of underground electric, communications, cable television wiring, coaxial, fiber optic, water, sewer, natural gas, other utility lines, and street lighting circuits.

(C) *City* means the City and/or City and County of Broomfield, Colorado.

(D) *Dark fiber* means inactive, bare fiber optic capacity not involving any of the electronics necessary to transmit or receive signals over that capacity.

(E) *Degradation* means a decrease in the useful life of the right-of-way or damage to any landscaping within the rights-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct the surface and/or subsurface structure of such right-of-way earlier than would be required if the excavation or disturbance did not occur.

(F) *Director* means the director of community development of the city or other designee of the city manager.

(G) *Duct* or *conduit* means a single enclosed raceway for cables, fiber optics, dark fiber, wires, or other use.

(H) *Emergency* means any event which may threaten public health or safety, or that results in an interruption in the provision of services, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, trench failure, or downed overhead pole structures.

(I) *Excavate* means to dig into or in any way remove or penetrate any part of a right-of-way.

(J) *Facilities* means, including, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, dark fiber, antennae, poles, ducts, and other like equipment, fixtures, and appurtenances used in connection with transmitting, receiving, distributing, offering, and providing utility and other services.

(K) *Fence* means any artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials erected to enclose, partition, beautify, mark, or screen areas of land.

(L) *Infrastructure* means any public facility, system, or improvement including, without limitation, water and sewer mains and appurtenances, storm drains and structures, streets and sidewalks, cross pans, traffic loops, and public safety equipment, markings, and crosswalks, etc.

(M) *Landscaping* means materials including, without limitation, grass, ground cover, shrubs, vines, hedges, or trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

(N) *Permit* means any authorization for use of the public rights-of-way granted in accordance with the terms of this chapter, and the laws and policies of the city.

(O) *Permittee* means the holder of a valid permit issued pursuant to this chapter who is the owner or joint owner of the facilities.

(P) *Person* means any person, firm, partnership, special, metropolitan, or general district, association, corporation, company, or organization of any kind.

(Q) *Probationary acceptance* means acceptance by the director following inspection after permittee has completed all work and a determination has been made that the work has met all city and permit standards and inspection conditions, stipulations, and provisions.

(R) *Public right-of-way* or *right-of-way* or *public way* means any public street, way, place, alley, sidewalk, park, square, plaza, and city-owned easement or right-of-way dedicated to public use.

(S) *Specifications* means engineering regulations, construction specifications, and design standards adopted by the city.

(T) *Structure* means anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, fences, retaining walls, awnings, balconies, and canopies.

(U) *Surplus ducts or conduits* are enclosed empty raceways for cables, fiber optics, dark fiber, wires, or other facilities which are held by permittee as emergency use spares or are otherwise not unused by permittee within three years of placement or purchase.

(V) *Telecommunications provider* means a person that provides telecommunications service, as defined in section 40-15-102(29), C.R.S.

(W) *Work* means any labor performed on, or any use or storage of equipment or materials, including but not limited to, construction of streets and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, traffic signal devices, and street cleaning. It shall also mean installation, construction, maintenance, and repair of all underground structures such as pipes, conduit, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below surface, and installation of overhead poles used for any purpose. (Ord. 1515 §1, 2000)

14-10-030 Police powers.

The permittee's rights hereunder are subject to the police powers of the city, which include the power to adopt and enforce ordinances, including amendments to this chapter, necessary to the safety, health, and welfare of the public. The permittee shall comply with all applicable laws and ordinances enacted, or hereafter enacted, by the city or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The city reserves the right to exercise its police powers, notwithstanding anything in this chapter and the permit to the contrary. Any conflict between the provisions of this chapter or the permit and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter. (Ord. 1515 §1, 2000)

14-10-040 Permit required.

(A) *Permit*. No person except an employee or official of the city or a person exempted by contract with the city shall undertake or permit to be undertaken any construction, excavation, or work in the public rights-of-way without first obtaining a permit from the city as set forth in this chapter, except as provided in Section 14-10-210. A copy of each permit obtained, along with associated documents, shall be maintained on the job site and available for inspection upon request by any officer or employee of the city. The permit will be in the name of the person who will own the facilities to be constructed. In the event of joint ownership or joint occupation, the permit will be in the name of all persons having an ownership interest in the facilities. The names of all subcontractors performing work in the work area must be on the permit as well.

(B) *Construction, excavation, or work area.* No permittee shall perform construction, excavation, or work in an area larger or at a location different, or for a longer period of time than that specified in the permit or permit application. If, after construction, excavation, or work is commenced under an approved permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application or for a longer period of time, the permittee shall notify the director immediately and within twenty-four hours shall file a supplementary application as designated by the director for the additional construction, excavation, or work.

(C) *Permit transferability or assignability.* The applicant may subcontract the work to be performed under a permit and include such subcontractor as a named permittee, provided that the permittee shall be and remain responsible for the performance of the work under the permit and all insurance and financial security as required. Permits are not transferable nor assignable without the express consent of the city, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of the permittee to a parent, subsidiary, or financially viable affiliate during the period of the permit shall not be deemed an assignment or transfer for the purposes of this section.

(D) *New developments.* In the city, the physical construction of public infrastructure in new developments is the responsibility of the developer of the land. Ownership of that infrastructure remains with the developer of the land until acceptance by the city. Any person performing work on infrastructure which is within a public way, but prior to acceptance by the city, shall obtain a permit from the city and permission from the owner of the infrastructure in the public way. The permittee shall be financially responsible to the owner of the infrastructure to carry out all remedial work necessary to receive acceptance by the city of that infrastructure. This financial obligation shall apply only to the work in the public way done by the permittee. The city will not accept for dedication public rights-of-way, or other property where work not performed is not in accordance with applicable city specifications.

(E) *Failure to procure permit.* Except as provided in section 14-10-210 in the case of an emergency, any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted. A surcharge of \$250.00 shall be required in addition to all applicable permit fees. (Ord. 1515 §1, 2000)

14-10-050 Permit application; contents.

(A) Unless otherwise provided in an agreement between the permittee and the city, an applicant for a permit to allow construction, excavation, or work in the public right-of-way under this section shall:

- (1) File a written application on forms furnished by the city which include the following:
 - a. The date of application and the name and address of the applicant who is the owner or joint owner of the facilities involved;
 - b. The name, address, and telephone number of the developer, contractor, or subcontractor licensed to perform work in the public right-of-way, including the name and telephone number of an individual who will be available at all times during construction;
 - c. A description of the type of construction, excavation, or work to be done, and purpose for which it is being done;
 - d. A plan for storage of equipment and materials;
 - e. The type of existing public infrastructure (street pavement, curb and gutter, sidewalks, or utilities) impacted by the construction, excavation, or work;
 - f. The purpose of the proposed construction, excavation, or work, including specification of varieties and quantities of facilities to be placed in the right-of-way;
 - g. A description of the visual impact of the proposed construction, excavation, or work and the manner in which the applicant intends to minimize any negative visual impact;
 - h. The dates for beginning and ending the proposed construction, excavation, or work, including landscape restoration;
 - i. Proposed hours of work; and

j. Itemization of the estimated total cost of restoration of public rights-of-way and infrastructure to a condition equal to or better than that which existed prior to construction, excavation, or work, based upon R.S. Means Estimating Standards, if required to establish a letter of credit.

(2) Unless otherwise specified in an agreement between the permittee and the city, attach copies or otherwise show proof of all permits or licenses required under the laws of the United States, the State of Colorado, or the ordinances or regulations of the city to do the proposed work, and to work in the public rights-of-way (including required insurance, deposits, letters of credit, and warranties).

(3) Unless otherwise specified in an agreement between the permittee and the city, provide a plan of work satisfactory to the director showing protection of the subject property and adjacent properties.

(4) Unless otherwise specified in an agreement between the permittee and the city, upon request, provide a landscaping restoration plan satisfactory to the director for the protection of existing landscaping.

(5) Include written verification that all orders issued by the city to the applicant, requiring the applicant to correct deficiencies under previous permits issued under this chapter, have been satisfied.

(6) Include with the application stamped engineering construction drawings or site plans for the proposed construction, excavation, or work, including exact locations of all ground mounted appurtenances and manholes in and out associated with any underground facilities.

(7) Include with the application a satisfactory traffic control and erosion protection plan for the proposed construction, excavation, or work, if applicable.

(8) Include a statement indicating any proposed joint use or ownership of the facility; any existing facility or permit of the applicant at this location; any known existing facility or others with which the proposed installations might conflict; and the name, address, and telephone number of a representative of the applicant available to review proposed locations at the site.

(9) Pay all applicable fees prescribed by this chapter.

(10) Upon written request of the director, provide a notification plan for the notification of the public as to the nature and duration of the proposed work.

(B) Applicants shall update any new information on permit applications within ten days after any change occurs.

(C) *Joint applications.* Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.

(D) *Permit fee.* Before a permit is issued pursuant to this chapter, the applicant shall pay to the city a permit fee, which shall be determined in accordance with a fee schedule adopted by the city council by resolution. Fees will be reasonably related to the costs inherent in managing the public rights-of-way. As used in this chapter, these costs include, but are not necessarily limited to, verifying rights-of-way occupation, mapping rights-of-way occupations, inspecting job sites and rights-of-way restorations, administering this chapter, and costs relating to the degradation of the rights-of-way, i.e., the cost to achieve a level of restoration as determined by the city at the time the permit is issued.

(1) The portion of the permit fee relating to degradation costs shall be reduced by the city in cases where the applicant demonstrates to the satisfaction of the director that the excavation proposed will be used by two or more entities, legally and financially unrelated, for the installation, maintenance, or repair of facilities. The degradation cost portion of the permit fee shall be further reduced in cases where the applicant demonstrates to the satisfaction of the director that the excavation to be made will be commenced and completed during the twelve-month period immediately prior to the scheduled repaving or resurfacing of a street, as indicated in the most recent edition of the city's repaving schedule.

(2) Any permit for temporary use or occupation of the public rights-of-way, where there is no construction nor excavation involved, shall not require payment of a degradation fee as part of the permit fee.

(3) That portion of any permit fee relating to degradation costs shall be segregated by the city into an account to cover general street maintenance and construction. (Ord. 1515 §1, 2000)

14-10-060 Permission to occupy public right-of-way; application contents.

(A) *Permission to occupy right-of-way.* All persons desiring to place facilities within the public rights-of-way not already having permission to do so through agreement with the city or otherwise must obtain permission from the city council in order to occupy the city right-of-way. The application for permission to occupy the right-of-way shall include the following:

- (1) The name, address, and telephone number of the applicant owning the facilities to occupy city rights-of-way;
- (2) The name, address, and telephone number of a contact person;
- (3) The name and telephone number of an emergency contact who shall be available twenty-four hours per day;
- (4) A statement as to the purpose(s) of the facilities and a detailed description of all types and quantities of facilities to be placed in the right-of-way;
- (5) A statement as to whether installation will require a public right-of-way permit pursuant to this chapter and whether an application for such a permit has been filed with the city;
- (6) An application fee of \$500.00, which fee is directly related to the costs incurred by the city in processing and reviewing the initial license application. Such fee shall be nonrefundable, whether permission is granted or the application is denied.

(B) Within fourteen days of the receipt of the completed application, the city shall set a public hearing before the city council on the application for occupation of the public right-of-way. The hearing shall be no more than forty-five days after receipt of the completed application, and the application shall be approved if it meets the requirements of this section and payment of all applicable fees has been arranged.

(C) In addition to any fees charged as direct costs related to providing services relating to granting or administration of permits, the city reserves the right to charge reasonable rates of compensation for any person's occupation of the public rights-of-way as may be permitted by law. (Ord. 1515 §1, 2000)

14-10-070 Insurance and indemnification.

(A) Unless otherwise specified in an agreement between the permittee and the city, prior to the granting of any permit, the permittee shall file with the city comprehensive general liability, special hazards, and workers compensation insurance policies or certificates in a form and amounts satisfactory to the city listing the city and its officers and employees as additional named insureds. City departments shall be relieved of the obligation of submitting certificates of insurance.

(B) *Indemnification.* The permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall hold the city harmless, defend, and indemnify the city, its successors, assigns, officers, employees, agents, and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature unless caused by the negligent or intentional acts of city, and reimburse the city for all its reasonable expenses, as incurred, arising out of the installation, maintenance, operation or any other work or activity in the public right-of-way or by the permittee related to its use thereof, including, but not limited to, the actions of the permittee, its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, or the securing of and the exercise by the permittee of the permit rights granted in the permit, including any third party claims, administrative hearings, and litigation; whether or not any act or omission complained of is authorized, allowed, or prohibited by this chapter or other applicable law. (Ord. 1515 §1, 2000)

14-10-080 Letter of credit.

(A) Unless otherwise provided in an agreement between the permittee and the city, before any permit required by this chapter shall be issued to an applicant, the applicant shall file with the director a letter of credit in favor of the city in an amount equal to the total cost of restoration of all public and private infrastructure the applicant may disturb to a condition equal to or better than that existing before the project began. The cost of restoration may include, without limitation, removal of defective materials, recompaction of subgrade and base material, and construction of surface improvements, including labor and materials. The letter of credit shall be in a form acceptable to the city, and presentable to a local bank. The letter of credit shall be conditioned upon the applicant fully complying with all provisions of city ordinances, rules and regulations, and upon payment of all judgments and costs rendered against the applicant for any material violation of city ordinances or state statutes that may be

recovered against the applicant by any person for damages arising out of any negligent or wrongful acts of the applicant in the performance of work done pursuant to the permit. The city may bring an action on the letter of credit on its own behalf or on behalf of any person so aggrieved as beneficiary. The letter of credit must be approved by the city's finance director as to form prior to issuance of a permit under this chapter. However, the city may waive the requirements of any such letter of credit or may permit the applicant to provide a cash deposit or cash equivalent reasonably acceptable to the city in lieu of a letter of credit, upon finding that the applicant has financial stability and assets located in the state to satisfy any claims intended to be protected against the security required by this section.

(B) A letter of responsibility will be accepted in lieu of a letter of credit, or cash deposit from all public utilities, all franchised entities, and all metropolitan, water, and sanitation districts operating within the city.

(C) The letter of credit, letter of responsibility, or cash deposit shall remain in force and effect for a minimum of three years after completion of the construction, excavation, or work. (Ord. 1515 §1, 2000)

14-10-090 Performance warranty; guarantee.

(A) Unless otherwise provided in an agreement between the permittee and the city, any warranty made hereunder shall serve as security for the performance of work necessary to repair the public right-of-way if the permittee fails to make the necessary repairs or restore the public rights-of-way in a manner acceptable to the city.

(B) The permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the city and warrants and guarantees all work done for a period of three years after the date of probationary acceptance, and agrees to maintain upon demand and to make all repairs necessitated by the permittee's work during the three-year period. This warranty shall include all repairs and actions needed as a result of:

- (1) Defects in workmanship.
- (2) Settling of fills or excavations.
- (3) Heaving or cracking.
- (4) Any unauthorized deviations from the approved plans and specifications.
- (5) Failure to barricade.
- (6) Failure to clean up during and after performance of the work, and comply with section 8-10-010, B.M.C., regarding control of construction materials and debris.
- (7) Failure to restore landscaping in accordance with landscaping restoration plan.
- (8) Failure to replace pavement markings or otherwise comply with repaving or reconstruction schedule.
- (9) Any other violation of this chapter or the ordinances of the city.

(C) The three-year warranty period shall run from the date of the city's probationary acceptance of the work. If repairs are required during the three-year warranty period, those repairs need only be warranted until the end of the initial three-year period starting with the date of probationary acceptance. It is not necessary that a new three-year warranty or new permit be provided for subsequent repairs after probationary acceptance.

(D) At any time prior to completion of the three-year warranty period, the city may notify the permittee in writing of any needed repairs. Such repairs shall be completed within twenty-four hours if the defects are determined by the city to be an imminent danger to the public health, safety, and welfare. Should the applicant fail to complete nonemergency warranty work in a timely manner, upon giving the applicant ten calendar days' written notice the city may perform the work at the applicant's expense. If the costs of the warranty work performed by the city exceeds the amount of the financial security, the applicant will be liable for the additional costs. If there is a dispute as to the amount owed, the applicant may provide financial security to the city to fully secure such payment until resolution of any appeal under this chapter. The city shall have final authority to determine which permittee is responsible for repairs in the case of more than one permittee, and in what amount.

(E) The warranty described in this section shall cover only those areas of work undertaken by a permittee. In the event that the work of another permittee subsequently impacts a portion of work of another permittee under warranty, the subsequent permittee shall assume responsibility for repairs. (Ord. 1515 §1, 2000)

14-10-100 Inspections.

(A) A minimum of three inspections shall take place, unless waived by the director. First, the permittee shall request that the city conduct a pre-construction inspection, to determine any necessary conditions for the permit. Second, the permittee shall notify the city immediately after completion of work operations. The city shall inspect the completed work within twenty-one days of the permittee's notification. Probationary acceptance will be made if all work meets city and permit standards. Third, approximately thirty days prior to the expiration of the three-year warranty period, the city shall conduct a final inspection of the completed work. If the work is still satisfactory, the letter of credit shall be returned or allowed to expire, with a letter of final acceptance, less any amounts needed to complete restoration work not done by the permittee. Upon review of the application for a permit, the director shall estimate how many additional inspections, if any, may be required. All inspections shall be made in a timely manner.

(B) The permittee shall pay to the city the reasonable costs and expenses of any engineering review and inspection, in addition to the permit fee. No permit shall be issued and no work shall be performed under any permit for which required fees and charges have not been paid. (Ord. 1515 §1, 2000)

14-10-110 Time of completion.

All work covered by the permit shall be completed by the date stated on the application. Permits shall be void if work has not commenced six months after issuance, unless an extension has been granted by the director. Letters of credit or letters of responsibility deposited as a performance/warranty guarantee for individual permits will be returned after voiding of the permit, with administrative and any other city costs deducted. (Ord. 1515 §1, 2000)

14-10-120 General rights-of-way use and construction standards.

(A) *Right-of-way meetings.* The permittee will make reasonable efforts to alert other similar providers of its intention to trench in the public rights-of-way and will attend and participate in meetings of the city, of which the permittee is made aware, regarding right-of-way issues that may impact its facilities, including planning meetings to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the permittee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of right-of-way cuts within the city. Nothing herein shall require the permittee to enter into an agreement with such other entities if such an agreement would compromise the integrity of the permittee's facilities, unless the entity proposing to use the facilities agrees, at its expense, to make such modifications to the facilities as would prevent such compromise of integrity.

(B) *Minimal interference.* Work in the right-of-way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. The permittee's facilities shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, traffic loops, drainage channels, or any other property of the city, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the rights-of-way by, or under, the city's authority. The permittee's facilities shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the city may deem proper to make or to unnecessarily hinder or obstruct the free use of the rights-of-way or other public property, and shall not unreasonably interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. The permittee's facilities shall be of sufficient capacity to avoid re-entering the rights-of-way for a period of five years for purposes of expansion.

(C) *Underground construction and use of poles.*

(1) When required by general ordinances, resolutions, regulations, or rules of the city or applicable state or federal law, the permittee's facilities shall be placed underground at the permittee's expense. Placing facilities underground does not preclude the use of above-ground appurtenances.

(2) Where all facilities are installed underground at the time of the permittee's construction, or when all such facilities are subsequently placed underground, all permittee facilities shall also be placed underground at no expense to the city unless funding is generally available for such relocation to all users of the rights-of-way. Related equipment, such as pedestals, must be placed in accordance with the city's applicable code requirements and rules.

(D) In areas where existing facilities are aerial, the permittee may install aerial facilities.

(E) For aboveground facilities, the permittee shall utilize existing poles and conduit wherever possible.

(F) Should the city desire to place its own facilities for city purposes in trenches or bores opened by the permittee, the permittee shall cooperate with the city in any construction by the permittee that involves trenching or boring, provided that the city has first notified the permittee in some manner that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The permittee shall allow the city to place its facilities in the permittee's trenches and bores, provided the city pays any incremental increase in cost of the trenching and boring. The city shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores under this paragraph. The city is solely responsible for obtaining any additional permits that may be needed in advance. If the city fails to obtain other applicable necessary permits, the permittee has no obligations under this subsection. The city shall be responsible for all damages related to its use of the right-of-way.

(G) *Use of conduits by the city.* The city may install or affix and maintain its own facilities for city purposes in or upon any and all of the permittee's ducts, conduits, or equipment in the rights-of-way and other public places, at a charge to be negotiated between the parties. For the purposes of this subsection, *city purposes* includes, but is not limited to, the use of the structures and installations for city fire, police, traffic, water, telephone, and/or signal systems not in competition with the permittee.

(H) *Common users.*

(1) Whenever the city determines it is impracticable, due to finite capacity of rights-of-way to contain facilities, to permit construction of an underground conduit system by any other entity which may at the time have authority to construct or maintain conduits or ducts in the rights-of-way, and unless otherwise prohibited by federal or state law or regulations, the city may require a prior permittee to afford to such entity the right to use a prior permittee's surplus ducts or conduits in common with a new permittee, pursuant to the terms and conditions of an agreement for use of surplus ducts or conduits entered into by a prior permittee and the other entity. Nothing herein shall require a prior permittee to enter into an agreement with such entity if, in the prior permittee's reasonable determination, such an agreement could compromise the integrity of the prior permittee's facilities.

(2) When two or more common users occupy a section of conduit facility, the last user to occupy the conduit facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting, space-saving technology, or construction of new conduit, all common users shall bear the increased cost.

(I) All facilities shall meet any applicable local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the permittee and the other common user. The permittee may, at its option, correct any attachment deficiencies and charge the common user for its costs. Each common user shall pay the permittee for any fines, fees, damages, or other costs the common user's attachments cause the permittee to incur. (Ord. 1515 §1, 2000)

14-10-130 Joint planning and construction; coordination of excavation.

(A) *Annual meetings.* Any permittee owning, operating, or installing facilities in city rights-of-way, providing water, sewer, gas, electric, communication, video, or other utility services, shall meet annually with the director at the director's request to discuss the permittee's excavation master plan.

(1) At such meeting, to the extent not already in possession of the city, the permittee shall submit documentation, in a form required by the director, including as-built drawings, digital and software compatible GIS, showing the exact location, including elevations of manholes in and out, of the permittee's existing facilities in the city rights-of-way.

(2) The permittee shall discuss with the director its excavation master plan, and identify planned major excavation work in the city known at that time.

(3) The director may make his or her own record on a map, drawing, or other documentation, of each permittee's planned major excavation work in the city; provided, however, that no such document prepared by the director shall identify a particular entity, or the planned major excavation work of that particular entity.

(B) The permittee shall meet with the director to discuss an initial excavation master plan no later than sixty (60) days after submitting its first permit application. Thereafter, each permittee shall submit annually, on the first regular business day of January, a revised and updated excavation master plan.

(C) As used in this subsection, the term *planned major excavation work* refers to any future excavations planned by the permittee when the excavation master plan or update is submitted that will affect any city right-of-way for more than five days at any given location, provided that the permittee shall not be required to identify future

major excavations planned to occur more than three years after the date that the permittee's master plan or update is discussed.

(D) Between the annual meetings to discuss planned major excavation work, the permittee shall use its best efforts to inform the director of any substantial changes in the planned major excavation work discussed at the annual meeting. (Ord. 1515 §1, 2000)

14-10-140 Repaving and reconstruction schedule.

(A) The city shall prepare a repaving and reconstruction schedule showing the street resurfacing planned by the city. The repaving and reconstruction schedule shall be revised and updated on an annual basis after meeting to discuss the permittee's and city departments' master plans and updates. The director shall make the city's repaving and reconstruction schedule available for public inspection. In addition, after determining the street resurfacing work that is proposed for each year, the director shall send a notice of the proposed work to all permittees that have had an annual meeting with the director.

(B) Prior to applying for a permit, any person planning to excavate in the city's rights-of-way shall review the city's repaving and reconstruction schedule on file with the director and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such rights-of-way.

(C) In performing location of facilities in the public rights-of-way in preparation for construction under a permit, the permittee shall compile all information obtained regarding its or any other facilities in the public rights-of-way related to a particular permit, and shall make that information available to the city in a written and verified format acceptable to the director in accordance with adopted standards and specifications, which includes software compatible GIS and digital form.

(D) Prior to undertaking any work in the rights-of-way or related landscaping, the city may notify all permittees of the city work to be performed. Upon such notification, all permittees shall, within seven days, locate their facilities in the rights-of-way in which the work will be performed, and provide documentation in a format acceptable to the director in accordance with adopted standards and specifications, of the permittee's facilities in that right-of-way. (Ord. 1515 §1, 2000)

14-10-150 Minimizing impacts of work in the rights-of-way.

(A) *Relocation and protection of utilities.* Before beginning excavation in any public way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by section 9-1.5-102 et seq., C.R.S., make inquiries of all ditch companies, utility companies, districts, local government departments, and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall, at its expense, promptly provide all design and field locates of the infrastructure in a manner acceptable to the director in accordance with adopted standards and specifications.

(B) Field locations shall be marked prior to commencing work. The permittee shall support and protect all pipes, conduits, poles, wires, or other apparatus which may be affected by the work from damage during construction or settlement of trenches subsequent to construction. If the permittee damages property of other users of the right-of-way, the permittee shall pay other user for such damages within thirty days

(C) *Safe work area.* The permittee shall maintain a safe work area, free of safety hazards. The city may make any repair necessary to eliminate any safety hazards not performed as directed after the permittee has been given an adequate opportunity to repair the hazard. Any such work performed by the city shall be completed and billed to the permittee at overtime rates. The permittee shall pay all such charges within thirty days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the city may, in addition to taking other collection remedies, seek reimbursement through the warranty guarantee. Furthermore, the permittee shall be barred from performing any work in the public right-of-way, and under no circumstances will the city issue any further permits of any kind to said permittee, until all outstanding charges have been paid in full.

(D) Each permittee shall maintain an adequate and safe unobstructed walkway around a construction site or blocked sidewalk in conformance with the city code.

(E) Each permittee shall clear all snow and ice hazards from public sidewalks at the work site by noon following a snowfall in conformance with the city code.

(F) *Noise, dust, debris, hours of work.* Each permittee shall conduct work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the

performance of the work, the permittee shall take all appropriate measures to reduce noise, dust, and unsightly debris.

(G) No work shall be done between the hours of 7:00 p.m. and 7:00 a.m. nor at any time on Saturday or Sunday, or any holiday, except with the written permission of the director in accordance with adopted standards and specifications, or in case of an emergency.

(H) *Trash and construction materials.* Each permittee shall maintain the work site so that:

(1) As the work progresses, all public rights-of-way and private property in the work area shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris resulting from the permittee's work. All clean-up operations shall be done at the expense of the permittee, and in compliance with standards set forth in section 8-10-010, B.M.C. In the event the city requests clean up to take place, the permittee shall complete such work within twenty-four hours from the time of the request.

(2) Trash is removed from a construction site often enough so that it does not become a health, fire, or safety hazard.

(3) Trash dumpsters and storage or construction trailers are not placed in the street without specific approval of the director.

(4) Each permittee shall prevent the tracking of mud or debris upon any street or sidewalk. Equipment and trucks used during construction, excavation, or work activity shall be cleaned of mud and debris prior to leaving any work site in compliance with section 9-48-020, B.M.C.

(I) *Protection of trees and landscaping.* Each permittee shall protect trees, landscape, and landscape features as required by the city. All protective measures shall be provided at the expense of the permittee. If the permittee causes damage to trees and landscape, the permittee shall be responsible for repairs and restoration.

(J) *Protection of paved surfaces from equipment damage.* Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. The permittee will be responsible for any damage caused to the infrastructure by the operation of such equipment and shall repair such surfaces. Failure to do so will result in the use of the applicant's performance/warranty guarantee by the city to repair any damage, refusal by the city to issue any further permits, discontinuance of scheduled work until repairs are complete, and, possibly, the requirement of additional warranties.

(K) *Protection of property.* Each permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the public way.

(L) *Preservation of monuments.* A permittee shall not disturb any surface monuments or survey hubs and points found on the line of work unless approval is obtained from the director in writing. Any monuments, hubs, and points disturbed will be replaced by a Colorado Registered Land Surveyor at the permittee's expense.

(M) Each permittee shall make provisions for employee and construction vehicle parking so that neighborhood parking adjacent to a work site is not prejudiced. (Ord. 1515 §1, 2000)

14-10-160 Traffic control.

When it is necessary to obstruct traffic, a traffic control plan shall be submitted to the city prior to starting construction. No permit will be issued until the plan is approved by the city, which approval shall not be unreasonably withheld or delayed. No permittee shall unreasonably block access to and from private property, sidewalks and trails, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital equipment unless the permittee provides the city with written verification of written notice delivered to the owner or occupant of the facility, equipment, or property at least forty-eight hours in advance. If a street closing is desired, the applicant will request the assistance and obtain the approval of the director. It shall be the responsibility of the permittee to notify and coordinate all work in the public way with police, fire, ambulance, other government entities, and transit organizations.

(A) *Flag persons.* All persons flagging traffic shall be CDOT certified. When necessary for public safety, the permittee shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the director.

(B) *Rush hour traffic.* Unless approved by the director or during an emergency, the permittee shall not impede rush hour traffic on arterial or collector streets during the morning or evening rush hours. No traffic lane shall be

closed to traffic during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:00 p.m. without the written approval of the director.

(C) *Traffic control devices.* Traffic control devices, as defined in Part VI of the Manual on Uniform Traffic Control Devices, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices are to be supplied by the permittee. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights.

(D) Oil flares or kerosene lanterns are not allowed as means of illumination.

(E) Part VI of the Manual on Uniform Traffic Control Devices or any successor publication thereto shall be used as a guide for all maintenance and construction signing. The permittee shall illustrate on the permit the warning and control devices proposed for use. At the direction of the director, such warning and control devices shall be modified. (Ord. 1515 §1, 2000)

14-10-170 Standards for repairs and restoration.

(A) *Permittee responsibility.* The permittee shall be fully responsible for the cost and actual performance of all work in the public way. The permittee shall do or cause to have all work done in conformance with any and all applicable engineering regulations, construction specifications, and design standards adopted by the city, as amended. These standards shall apply to all work in the public way unless otherwise indicated in the permit.

(B) *Restoration work.* All restoration shall result in a work site condition equal to or better than that which existed prior to construction. In addition to the regulations, specifications, and standards referred to in subsection (A) the following provisions shall apply to work in the public rights-of-way of the city.

(1) Pavement cuts shall be filled with compacted select material. Either concrete or asphalt patches will be placed to match the existing street cross section. Select material shall include select fill, stone (CDOT 26 or 57) or controlled density (flowable) fill. Select fill shall be placed in an excavation to the density required by city compaction specifications as set forth in adopted standards and specifications.

(2) Flowable fill backfill material, satisfying design and construction standards adopted the city, as amended, shall be used to restore all trenches that have been excavated in the paved portion of any public street, alley, or sidewalks. For trench excavations in excess of five feet in depth, the applicant may utilize granular backfill material in lieu of flowable fill backfill material, provided that all of the following conditions are satisfied.

a. Prior to the issuance of a permit for construction, excavation, or work activity, in the public right-of-way, the applicant must request and receive approval for the use of granular backfill material.

b. The type, gradation, placement, compaction, and testing of the granular backfill material shall meet or exceed all requirements specified in design and construction standards adopted the city.

c. In cases where it is impossible to achieve the compaction required by the local municipal/county building code on select fill, the city encourages the use of controlled density fill or flash fill material. When controlled density fill type material is used, steel plate will be placed to cover the opening for the time required to allow the material to set.

d. Once the compacted backfill has been placed, an asphalt cutback shall be made. The cutback will extend six inches minimum on each side of the opening and will be over undisturbed pavement material (1½ inch deep minimum). All edges of the opening shall be neatly cut with an asphalt saw at ninety degrees to traffic and uniformly tacked.

(3) The new asphalt will be placed in lifts (three inches maximum) and compacted upon placement. Asphalt depths will be governed by the existing cross section of the street, but not less than four inches of full deep asphalt shall be used to fill a street cut regardless of the existing cross section. Concrete meeting all construction standards of the city shall be used to replace concrete pavement wherever it occurs.

(4) All street striping, such as cross walks, turn arrows, centerline striping, loop detectors, etc., shall be replaced after new asphalt is placed. (Ord. 1515 §1, 2000)

14-10-180 Construction and restoration standards for newly constructed or overlaid streets.

(A) No person shall cause an open trench or excavation in any public right-of-way for a period of five years from the completion of work allowed by the permit, or other construction or resurfacing except in compliance with

the provisions of this section, and in accordance with standards and specifications adopted by the city, as amended. Potholing of utilities in the pavement will be allowed at the discretion of the director.

(B) *Application.* Any application for a permit to excavate in a public right-of-way subject to the requirements of this section shall contain the following information:

- (1) A detailed and dimensional engineering plan that identifies and accurately represents the city rights-of-way or property that will be impacted by the proposed excavation, as well as adjacent streets, and the method of construction.
- (2) The street width or alley width including curb and gutter over the total length of each city block that will be impacted by the proposed excavation.
- (3) The location, width, length, and depth of the proposed excavation, and description of materials to be placed within the right-of-way.
- (4) The total area of existing street or alley pavement in each individual city block that will be impacted by the proposed excavation.
- (5) A written statement addressing the criteria for approval.

(C) *Criteria for approval.* No permit for excavation in the right-of-way of new streets shall be approved unless the director finds that all of the following criteria have been met:

- (1) Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts.
- (2) Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable.
- (3) The proposed excavation cannot reasonably be delayed until after the five-year deferment period has lapsed.
- (4) Exemptions for emergency operations. Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer service. Persons with prior authorization from the city to perform emergency maintenance operations within the public rights-of-way shall be exempted from this section. Any person commencing operations under the laws of this section shall submit detailed engineering plans, construction methods, and remediation plans no later than three working days after initiating the emergency maintenance operation.

(D) *Construction and restoration for newly constructed or overlaid streets and alleys.* The streets shall be restored and repaired in accordance with design and construction standards adopted by the city, as amended, and guaranteed in accordance with section 14-10-090. (Ord. 1515 §1, 2000)

14-10-190 Relocation of facilities.

(A) The city may request the permittee to relocate, move, or change its facilities within or adjacent to rights-of-way, either temporarily or permanently, for the following purposes:

- (1) Change in the grade;
- (2) Improving, repairing, constructing, or maintaining of any rights-of-way;
- (3) Traffic conditions or other public safety concern;
- (4) For the installation of any type of structure or public improvement of the city or other public agency or special district;
- (5) As a result of any general program for the undergrounding of such facilities; or
- (6) Public health or safety concerns.

(B) The city shall notify the permittee, at least ninety days in advance, except in the case of emergencies, of the city's intention to change the permittee's facilities within or adjacent to rights-of-way in any manner, either temporarily or permanently, or have such work performed.

(C) The permittee shall thereupon, at its sole cost and expense, accomplish the necessary relocation, removal, or change within a reasonable time from the date of the notification, but in no event later than three working days

prior to the date the city has notified the permittee that it intends to commence its work, or, in the case of emergencies, immediately.

(D) Upon the permittee's failure to accomplish such work, the city or other public agencies or special district may perform such work at the permittee's expense, and the permittee shall reimburse the city or other agency within thirty days after receipt of a written invoice.

(E) Following relocation, all affected property shall be restored to, at a minimum, the condition which existed prior to relocation at the permittee's expense.

(F) Notwithstanding the requirements of this section, a permittee may request additional time to complete a relocation project. The director shall grant a reasonable extension if in his or her sole discretion, the extension will not adversely affect the city's project. (Ord. 1515 §1, 2000)

14-10-200 Abandonment and removal of facilities.

(A) *Notification of abandoned facilities.* Unless otherwise provided in an agreement between the permittee and the city, any permittee that intends to discontinue use of any facilities within the public rights-of-way shall notify the director in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, the method of removal and restoration, and provide a date of discontinuance of use, which date shall not be less than thirty days from the date such notice is submitted to the director. The permittee may not remove, destroy, or permanently disable any such facilities during said thirty-day period without written approval of the director. After thirty days from the date of such notice, the permittee shall remove and dispose of such facilities as set forth in the notice, as the same may be modified by the director, and shall complete such removal and disposal within six months, unless additional time is requested from and approved by the director, including repairs after removal.

(B) *Conveyance of facilities.* Unless otherwise provided in an agreement between the permittee and the city, at the discretion of the city, and upon written notice from the director within thirty (30) days of the notice of abandonment, the permittee may abandon the facilities in place, and shall further convey full title and ownership of such abandoned facilities to the city. The consideration for the conveyance is the city's permission to abandon the facilities in place. The permittee is responsible for all obligations as owner of the facilities, or other liabilities associated therewith, until the conveyance to the city is completed. (Ord. 1515 §1, 2000)

14-10-210 Emergency procedures.

Any person maintaining facilities in the public way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. If the emergency repairs involve disturbing any public right-of-way improvement, the person doing the work shall apply to the city for a permit on or before the third working day after such work has commenced. All emergency work repairs involving disturbance of any public right-of-way improvement or traffic will require prior telephone notification to the police and public works departments of the city. (Ord. 1515 §1, 2000)

14-10-220 Revocation of permit.

(A) Any permit may be revoked or suspended by the director, after written notice to the permittee for:

(1) Violation of any material condition of the permit or of any provision of this chapter.

(2) Violation of any provision of any other ordinance of the city or state law relating to the work.

(3) Existence of any condition or performance of any act which the city determines constitutes or causes a condition endangering life or damage to property.

(4) A suspension or revocation by the director, and a stop work order, shall take effect immediately upon written notice to the person performing the work in the public way, or to the permittee's last known address.

(B) A stop work order may be issued by the director to any person or persons doing or causing any work to be done in the public way without a permit, or in violation of any provision of this chapter, or any other ordinance of the city.

(C) Any suspension or revocation or stop work order may be appealed by the permittee to the city manager by filing a written notice of appeal within thirty days of the action. (Ord. 1515 §1, 2000)

14-10-230 Appeals procedure.

Any decision rendered by the director pursuant to this chapter may be appealed by the permittee to the city manager by filing a written notice of appeal within thirty days of the action. The city manager, or a designee thereof, shall conduct a quasi-judicial administrative hearing. (Ord. 1515 §1, 2000)

14-10-240 Penalty.

If any person, firm, or corporation shall violate or cause the violation of any of the provisions of this chapter, they shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, continues, or is permitted, and upon conviction of any such violation such person, firm, or corporation shall be punished as provided in chapter 1-12 of this code for each such violation. (Ord. 1515 §1, 2000)

14-10-250 Severability.

All sections, subsections, provisions, and parts of this chapter shall be severable, and if any section, subsection, provision, or portion of this chapter is declared or ruled invalid or otherwise invalidated by any court or agency of valid jurisdiction, such declaration or ruling shall not affect the validity of any other section, subsection, provision, or portion of this chapter, and all other sections, subsections, provisions, and portions of this chapter shall remain in full force and effect. (Ord. 1515 §1, 2000)