

CHAPTER 11

Streets, Sidewalks and Public Property

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ARTICLE 1

Streets and Sidewalks

Sec. 11-1-10. Snow and ice removal from sidewalks.

The owner, occupant, lessee or person in possession or control of any premises or property shall maintain the sidewalks adjoining such premises or property, and shall remove and clear away, or cause to be removed or cleared away, snow and ice from sidewalks in all business districts within the City by four (4) business hours after the cessation of any fall of snow, sleet or freezing rain or by the beginning hours of the next business day following such fall, whichever period is shorter, and from all other sidewalks in the City within twenty-four (24) hours of the cessation of any fall of snow, sleet or freezing rain. (Ord. 2007-04 §1)

Sec. 11-1-20. Repair and maintenance of sidewalks.

(a) The owner, occupant, lessee or person in possession or control of any premises or property shall maintain the sidewalks adjoining such premises or property in good repair and in a safe, unobstructed condition, free of snow, weeds and debris.

(b) If the owner, occupant, lessee or person does not maintain the sidewalks as described in Subsection (a) above, the City Council, at any regular meeting thereof, by resolution to be passed by a majority of the members of the City Council, may, order that a sidewalk be constructed, removed, altered, renewed, maintained or repaired, on either side or both sides of any street within the boundaries of the City in such manner as the City Council may deem advisable. (Prior code 12.04.010; Ord. 2007-04 §1)

Sec. 11-1-30. Notice.

Whenever the City Council orders the construction, removal, alteration, renewal, maintenance or repair of any sidewalk within the boundaries of the City, Street Supervisor shall serve a written or printed notice upon the owner, occupant, lessee or person in possession or control of such premises or property fronting upon such sidewalk, requiring such person, within ten (10) days from the time of the service of such notice, to construct, remove, alter, renew, maintain or repair (as the case may be) so much thereof as may be in the front of the premises or property owned by him or her, and to proceed with such work with due diligence. In case any such person is not found within the City, such notice shall be served upon his or her agent in charge of the premises or property, if any such agent be found within the City, and if not, such notice shall be posted upon the premises and published in a newspaper published within the City for a period of five (5) days. Such publication shall have the same effect as if the same had been personally served upon the owner or his or her agent, and such shall be the case whether such owner or his or her agent was, or was not, within the boundaries of the City. (Prior code 12.04.020; Ord. 2007-04 §1)

Sec. 11-1-40. Repair by City; assessment of costs.

If, after the expiration of ten (10) days from the personal service of the notice or the first publication thereof as provided in Section 11-1-30 above, such owner or agent fails to comply with the terms and requirements thereof, the construction, removal, alteration, renewal, maintenance or

repair (as the case may be) of any such sidewalk shall be done by the City. The expenses thereof shall be charged to the respective owner of the premises or property abutting, fronting or bordering on that particular portion of the street where the construction, removal, alteration, renewal, maintenance or repair of any sidewalk has been made, in proportion to the number of feet owned by each. The Street Supervisor shall thereupon apportion the cost of constructing, removing, altering, renewing, maintaining or repairing among such owners or lands as aforesaid, shall make out a bill against each of such owners for the amount due from him or her under such apportionment, present such bill to the owners as aforesaid, and demand payment for the same, provided that such owners or their agents are found within the City limits. In case any owner or his or her agent fails or refuses to pay the bill upon presentation, or in case the owner or his or her agent is not found within the City limits, then the Street Supervisor shall file the bill with the City Clerk. The City Council, by resolution, shall assess the costs of constructing, removing, altering, renewing, maintaining or repairing such sidewalk upon each premises or property fronting upon the same, in proportion to the number of front feet of each such premises or property respectively. (Prior code 12.04.030; Ord. 2007-04 §1)

Sec. 11-1-50. Appeal.

(a) The City Council shall, at the request of any owner of any such premises or property, or his or her agent, fix a time and place at which such owner or agent may be heard before the City Council as to the justness and correctness of the amount so assessed.

(b) The City Council shall meet at the time and place designated, as provided in Subsection (a) above, and shall hear any complaint that is made by the owner or agent concerning the justness and correctness of the amount so assessed, and shall correct such assessment if the same is found incorrect. If such assessment is not paid within thirty (30) days after it has been corrected as aforesaid if found to be incorrect; or is not paid within thirty (30) days from the date fixed by the hearing if the same has been found correct; or if its correctness has not been questioned, the City Clerk shall certify such assessment to the County Treasurer, to be placed by him or her upon the tax list for the then-current year, to be collected in the same manner as other taxes are collected. (Prior code 12.04.040; Ord. 2007-04 §1)

Sec. 11-1-60. Penalty for violation.

If any person violates any of the provisions of this Article with respect to the construction, removal, alteration, renewal, maintenance or repair of any sidewalk or interferes with or obstructs any employee of the City or any contractor under contract with the City engaged in the construction, removal, alteration, renewal, maintenance or repair of any such sidewalk the person shall, upon conviction, be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 12.04.050; Ord. 2007-04 §1)

Sec. 11-1-70. Unrepaired sidewalk deemed nuisance.

Any defective or dangerous sidewalk which, by reason of its damage or which for any reason is, or is liable to become, dangerous and an impediment to travel, is deemed and declared to be a nuisance; and the owner or agent of the abutting property shall be deemed and held to be the author of such nuisance. If, after failure by the owner or agent to abate the same upon twenty-four (24) hours' notice by the Street Supervisor, Chief of Police or any police officer, said owner or agent, upon conviction, shall be fined in a sum not less than fifty dollars (\$50.00). (Prior code 12.04.060; Ord. 2007-04 §1)

ARTICLE 2

Excavations

Sec. 11-2-10. Definitions.

As used in this Article, the following words shall be defined as follows:

Alteration or change means any private construction, alteration, remodeling, change or damage which includes but is not limited to the following: constructing, installing, repairing, altering, changing, digging or damaging of a public street.

Drainage channels means all natural and man-made surface water drainage routes.

Excavation means removal of dirt and other material from its natural place of rest for building purposes.

Landfill means filling or leveling natural depressions for building purposes.

Public street means any public street, thoroughfare, way, alley and their curbs, gutters, drains, culverts and appurtenant parts, sidewalks and rights-of-way dedicated to the public and accepted by a duly authorized public agency or body as a public street. (Ord. 1986-7 §§1-1, 2-1; Ord. 2007-04 §1)

Sec. 11-2-20. Alteration permit required.

No alteration or change of any public street shall be allowed without a permit being issued from the City. (Ord. 1986-7 §1-2)

Sec. 11-2-30. Application form.

Application for permits required by Section 11-2-20 above shall be in writing on forms to be supplied by the City and shall include a statement as to the cost or value of the work to be performed. No permit shall be considered until such written application is filed in the City Clerk's office. There shall be no fee for the permit, and applications shall be made in duplicate. (Ord. 1986-7 §1-3)

Sec. 11-2-40. Information required.

Applications for permits for private alterations or changes to public streets, including the proposed installation of culverts or private driveways of any description, shall be accompanied by a statement on the application setting forth the alterations or changes contemplated and shall describe the general character, nature and extent of the same. On all applications for permits, such information shall be required as requested by the City as it deems necessary to inform it of the complete nature of the work contemplated. Each application shall give the street address or other location of the proposed alteration or change, the names and addresses of the owners of the properties adjoining on each side and the names and addresses of the person doing the work. Such application shall be accompanied by a written agreement of the applicant that he or she will observe all reasonable rules for the safety and protection of the adjoining properties and the general public as may be prescribed by law, and such other precautions as it is reasonably prudent to provide. (Ord. 1986-7 §1-4; Ord. 2007-04 §1)

Sec. 11-2-50. Issuance of permit.

Permit applications shall first be reviewed by the Street Supervisor, who shall either approve or disapprove the application and shall make any additional recommendations concerning said application as is necessary to ensure protection of the public streets. On review of the application by the Street Supervisor, the application shall then be submitted to the City Council. A majority vote of the City Council shall be required for issuance of the permit pursuant to this Article. No permit shall be issued in any case where the alteration or change proposed will, in any way, be a menace to a public street by threat of stoppage, overflow or other damage. (Ord. 1986-7 §1-5)

Sec. 11-2-60. Supervision.

The work shall be performed in accordance with the permit, and shall be subject to the supervision and inspection of the Street Supervisor. (Ord. 1986-7 §1-6)

Sec. 11-2-70. Street excavation and backfilling.

In making excavations in any public street, the surface material and earth removed must be kept separate and deposited in a manner that will occasion the least inconvenience to the public with provision for proper surface drainage and a safe passageway for travel. The backfilling of all trenches made in any public street shall be done immediately upon completion of the work, and shall be in accordance with the backfilling specifications and regulations of the building code adopted by the City. In case the refilling is not done to the satisfaction of the Street Supervisor, the Street Supervisor shall have the right to take out all backfill from the excavation and have the same refilled at the cost and expense of the party who made the excavation, and charge the cost thereof to said person. The surface of the public street, after refilling, shall be placed in as good shape and condition as it was before the excavations were made. (Ord. 1986-7 §1-7; Ord. 2007-04 §1)

Sec. 11-2-80. Barricades.

No person shall make any excavation or dig any hole, drain or ditch in any public street without providing, during the night, a temporary fence, lights or suitable obstruction around or in front of the same in order to prevent persons, animals or vehicles from falling into the same. (Ord. 1986-7 §1-7)

Sec. 11-2-90. Excavation or landfill permit required.

(a) No person shall commence any excavation or shall alter the natural configuration of land for building or any other purposes without first having obtained a permit from the City Council. Application for such permit shall be submitted to the City Clerk, and shall recite specifically the exact location, size, nature and extent of such proposed excavation or landfill.

(b) Excavation or filling for the purposes of building will be granted with the building permit. The permit must be secured prior to the start of any excavation or landfilling. Excavation or land filling not specifically covered by a building permit must be approved under a separate permit. Instances where such excavation or filling will adversely affect adjacent property, drainage or the general character of the area will be subject to disapproval. An excavation permit, which is not specifically covered by a building permit, must be submitted in duplicate on forms established by the City Council. The application for an excavation permit shall be reviewed by the Building Inspector,

who shall either approve or disapprove of the application and who shall make any additional recommendations concerning said application as is necessary to ensure the protection of adjacent properties, drainage or the general character of the area. Upon review of the application by the Building Inspector, the application shall be submitted to the City Council, and a majority vote of the City Council shall be required for issuance of the excavation permit. No fee shall be charged by the City for issuance of an excavation permit. (Ord. 1986-7 §2-2)

ARTICLE 3

Construction and Concrete Regulations

Division 1 Construction Activity

Sec. 11-3-10. Suppression of dust.

(a) All commercial construction site owners and operators and all trucking or hauling operators from commercial construction sites, as well as all public works projects undertaken by the City, must use some form of acceptable dust suppression technique during all phases of excavation, earth moving, demolition, construction and/or operation. The method of dust suppression, (the "dust suppression plan") shall be reviewed and approved by the Building Department before a building permit shall be issued. The building permit shall be contingent upon the owner or contractor complying with the dust suppression plan.

(b) This Section shall not apply to residential construction, additions, remodeling or landscaping, unless such residential construction is for multi-family dwellings, containing four (4) or more individual dwelling units. In such case, the provisions of this Article shall apply to such construction. (Ord. 1999-12 §1; Ord. 2007-04 §1)

Sec. 11-3-20. Requirements of plan.

(a) At a minimum, all dust suppression plans shall require the following:

(1) Particulate matter shall be suppressed during all phases of excavation, earth moving, demolition and construction.

(2) All dirt and mud deposited upon City-owned streets, ("track-out") shall be removed within two (2) hours after ceasing vehicular movement to and from the construction site each day that vehicles travel from the site onto City-owned streets. The removal of track-out shall be accomplished either by scraping, sweeping or high-pressure water washing. Any method used shall also provide for containment of the track-out during and after removal, and the method used shall cause no damage to City-owned streets or rights-of-way.

(b) Operators of construction or mining vehicles must control particulate (dust) emissions during all material handling operations, (i.e., loading, removal, unloading and hauling) by watering said materials at all times, except where natural moisture is sufficient to control emissions. All loads of

materials must be covered prior to and during transport, both on- and off-site, so as to prevent visible emissions of particulate matter.

(c) Vehicle speed on unpaved roads and unpaved areas of construction sites must not exceed twenty-five (25) miles per hour. Speed limit signs shall be posted on site, when necessary, by the site owner or operator. (Ord. 1999-12 §2)

Sec. 11-3-30. Responsibility for damages.

All owners and construction site operators shall be solely responsible for any and all damages caused to City-owned streets by the removal of track-out as required by this Division. (Ord. 1999-12 §3)

Sec. 11-3-40. Enforcement.

This Division shall be enforced by the Building Department and the Police Department. The Building Department shall be responsible for the enforcement of the on-site aspect of this Division, while the Police Department shall enforce the provisions of this Division as it affects the public right-of-way. The City shall administer one (1) written warning to construction or mining site operators or to the operators of motor vehicles determined to be in violation of the terms of this Division. Subsequent violations of the terms of the Division at the same construction location shall result in the issuance of a summons and complaint into the Municipal Court. Fines for violations may be imposed in accordance with the provisions of Section 1-4-20 of this Code. (Ord. 1999-12 §4; Ord. 2007-04 §1)

Sec. 11-3-50. Cease and desist order.

In addition to the fines set forth above, the City shall also have the right to issue a cease and desist order and revoke any building permit or business license, or otherwise cause the owner or operator to cease all activities on the site or on the public right-of-way in the event violations of this Division continue for more than one (1) week after issuance of the summons and complaint or if any fines or damages imposed upon the owner of operator are not paid within thirty (30) days after finding the party guilty in Municipal Court. The City Council shall be the revoking authority in the case of any business license revocation. The City shall not be responsible for any damages, excess costs, lost profits and/or delays caused by the enforcement of this Division in accordance with its terms. (Ord. 1999-12 §5)

Sec. 11-3-60. Maintenance of records.

As required by the Memorandum of Agreement entered into by the City and the Colorado Department of Public Health and Environment's Air Pollution Control Division, the City shall maintain records of all warnings, citations and associated collection of fines, and the City shall submit such records to the Air Pollution Control Division by September 30 of each year. (Ord. 1999-12 §6; Ord. 2007-04 §1)

Division 2
Concrete Regulations

Sec. 11-3-110. Conformance with specifications.

(a) All concrete placed in the City right-of-way, or used for public sidewalks in the City shall conform to the publication titled *City of Cripple Creek Public Works Design and Construction Specifications*, which is amended from time to time and available for purchase or review at the City Clerk's office.

(b) All concrete placed in the City right-of-way or used for public sidewalks in the City shall conform to all requirements of ACI 301-99, Specifications for Structural Concrete, published by the American Concrete Institute, Farmington Hills, Michigan, except as modified by City-approved contract documents. (Ord. 2004-07 §§1, 2)

Sec. 11-3-120. Compliance with ADA.

All concrete placed in the City right-of-way or used for public sidewalks in the City shall comply with the requirements of the Americans with Disabilities Act, Public Law 336 of the 101st Congress, enacted July 26, 1990, along with all subsequent amendments. (Ord. 2004-07 §3)

Sec. 11-3-130. Specifications.

(a) All concrete placed in the City right-of-way or used for public sidewalks in the City shall have a minimum ultimate compressive strength of four thousand (4,000) psi, unless specified greater by the City Engineer.

(b) All concrete placed in the City right-of-way or used for public sidewalks in the City shall be coated with a liquid membrane-forming curing compound complying with the requirements of ACI 301-99.

(c) All concrete curb and gutters in the City shall be sealed with a surface-sealing material conforming to the requirements of ACI 330R-16, Manual for Concrete Practice, published by the American Concrete Institute, Farmington Hills, Michigan, except as modified by City-approved contract documents.

(d) All concrete placed in the City right-of-way or used for public sidewalks in the City shall conform to ACI 306R-88, Cold Weather Concreting, if placed between October 15 and May 1, or during any period when the average of the highest and lowest temperature, from midnight to midnight, is expected to drop below forty (40) degrees Fahrenheit for more than three (3) successive days. (Ord. 2004-07 §§4, 5, 6, 10)

Sec. 11-3-140. Permit required.

All concrete placed in the City right-of-way or used for public sidewalks in the City shall be subject to a right-of-way alteration permit issued by the City Engineer. The fee for this permit shall be one hundred twenty-five dollars (\$125.00). The permit fee may be modified by the City Council at any time. (Ord. 2004-07 §7)

Sec. 11-3-150. Warranty.

All concrete placed in the City right-of-way or used for public sidewalks in the City shall be warranted against defects in workmanship and materials for a two-year period, which begins when the City Engineer approves the final inspection. (Ord. 2004-07 §8)

Sec. 11-3-160. Inspection, testing.

All concrete placed in the City right-of-way or used for public sidewalks in the City shall be tested and approved by the City, prior to placement, but not limited to testing for air entrapment, temperature, slump and compressive strength. The number and frequency of the test shall be at the discretion of the City Engineer. The cost of the tests, as published in the City's fee schedule, shall be borne by the permittee at the time of application. Fees may be waived for small projects, usually less than one (1) yard of concrete, at the discretion of the City Engineer. (Ord. 2004-07 §9)

Sec. 11-3-170. Bond requirements.

(a) All concrete placed in the City right-of-way or used for public sidewalks in the City shall be subject to a license and permit bond in a form acceptable to the City, in the amount of five thousand dollars (\$5,000.00).

(b) All concrete placed in the City right-of-way or used for public sidewalks in the City, shall be subject to a warranty bond, if placed during the period specified in Section 11-3-160 above, in a form acceptable to the City, based upon a rate equivalent to five hundred dollars (\$500.00) per cubic yard, or any fraction thereof, of concrete placed. (Ord. 2004-07 §§11, 12; Ord. 2007-04 §1)

ARTICLE 4

Public Rights-of-Way

Sec. 11-4-10. Purpose and objectives.

(a) Purpose. The purpose of this Article is to establish principles, standards and procedures for the placement of facilities, construction, excavation, encroachments and work activities within, under or upon any public right-of-way, and to protect the integrity of the City's street system.

(b) Objectives. Public and private uses of public rights-of-way should, in the interests of the general welfare, be accommodated; however, the City must ensure that the primary purpose of the public right-of-way, passage of pedestrian and vehicular traffic is protected. The use of the public rights-of-way by private users is secondary to these public objectives. This Article has several objectives:

- (1) To minimize public inconvenience;
- (2) To protect the City's infrastructure investment by establishing repair standards for the pavement, facilities and property in the public rights-of-way;
- (3) To standardize regulations and thereby facilitate work within the rights-of-way;

- (4) To maintain an efficient permit process;
- (5) To conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the City;
- (6) To establish a public policy for enabling the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- (7) To promote cooperation among permittees and the City in the occupation of the public rights-of-way and work therein, in order to: eliminate duplication of facilities that is wasteful, unnecessary or unsightly; lower the permittees' and the City's costs of providing services to the public; and minimize street cuts; and
- (8) To protect the public health, safety, and welfare. (Ord. 2005-01 §1)

Sec. 11-4-20. Definitions.

For purposes of this Article, the following words shall have the following meanings:

Access structure means any structure providing access to facilities in the public right-of-way.

Approved alignment means the designed horizontal and vertical alignment of facilities to be installed in the public right-of-way which is approved by the City at the time the permit is issued, plus any alignment variance tolerances set forth in the *City of Cripple Creek Public Works Design and Construction Specifications*, plus any alignment variances approved by the City in accordance with said Public Works Design and Construction Specifications.

City means the City of Cripple Creek, Colorado.

City Engineer means and includes the City Engineer of the City, an officer within the Department of Public Works and any employee of the Department of Public Works to whom the authority provided by this article shall be delegated by the City Engineer.

Contractor means a person, partnership, corporation or other legal entity licensed in the City to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate, landscape or add to any improvements or facilities in the public right-of-way, that requires work, workers, equipment and/or materials to be in the public right-of-way in the process of performing the above-named activities.

Design and Construction Specifications means the document entitled the *City of Cripple Creek Public Works Design and Construction Specifications*, as adopted by resolution of the City Council and amended from time to time.

Developer means the person, partnership, corporation or other legal entity improving a parcel of land within the City and being legally responsible to the City for the construction of infrastructure within a subdivision or as a condition of a building permit.

Emergency means any event which may threaten public health or safety, or which results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, and damaged electrical and communications facilities.

Excavate or *excavation* means to dig into or in any way remove or penetrate any part of a public right-of-way, including trenchless excavation such as potholing, boring, tunneling and jacking.

Facilities means any pipe, conduit, wire, cable, amplifier, transformer, fiber optic cable, antenna, pole, street light, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering and providing utility and other services, whether above or below ground.

Fee schedule means the document entitled the *City of Cripple Creek Engineering Fee Schedule*, as adopted by resolution of the City Council and amended from time to time.

Infrastructure means any public facility, system or improvement, including water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, parks, bike paths, trails, sidewalks and public safety equipment.

Landscaping means grass, ground cover, shrubs, vines, hedges, trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

Major installation means work in the public right-of-way involving an excavation exceeding five hundred (500) feet in length.

Permit means an authorization for use of the public rights-of-way granted pursuant to this Article.

Permittee means the holder of a valid permit issued pursuant to this Article.

Public right-of-way means any public street, way, place, alley, sidewalk, trail, path, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

Restricted rights-of-way means any portion of the public right-of-way on the streets listed in the *Design and Construction Specifications* that is dedicated to public use.

Routine maintenance means maintenance of facilities or landscaping in the public right-of-way which does not involve excavation, installation of new facilities, lane closures, sidewalk closures or damage to any portion of the public right-of-way.

Subcontractor means a person, partnership, corporation or other legal entity licensed in the City to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate, landscape or add to any improvements or facilities in the public right-of-way, or that requires work, workers, equipment and materials to be in the public right-of-way in the process of performing the above-named activities on behalf of the contractor.

Work means any labor performed within a public right-of-way and/or any use or storage of equipment or materials within a public right-of-way, including but not limited to: placement or installation of traffic control devices; excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights and traffic signal devices; construction, maintenance and repair of all underground facilities such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire or any other similar structure; maintenance of facilities; and installation of overhead poles used for any purpose. Notwithstanding the foregoing, *work* shall not include routine maintenance. (Ord. 2005-01 §2; Ord. 2007-04 §1)

Sec. 11-4-30. Police power.

(a) A permittee's rights hereunder shall at all times be subject to the police power of the City, which includes the power to adopt and enforce ordinances, including amendments to this Article, necessary for the safety, health and welfare of the public.

(b) The City reserves the right to exercise its police power, notwithstanding anything in this Article or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter. (Ord. 2005-01 §3)

Sec. 11-4-40. Permit required.

(a) 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 work in a public right-of-way without first obtaining a permit from the City as set forth in this Article. Permits shall be valid only for the person or company listed on the permit. No person or company, including sub-contractors, shall work under another person's or company's permit. Copies of the permit and associated documents shall be maintained on the work site and available for inspection upon request of any officer or employee of the City.

(b) No permittee shall perform work in an area larger than, at a location different from or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and, within twenty-four (24) hours, shall file a supplementary application for the additional work.

(c) Permits shall not be transferable or assignable without the prior written approval of the City.

(d) Any person conducting any work within the public right-of-way without having first obtained the required permit shall immediately cease all activity and obtain a permit before work may be resumed, except for emergency operations performed pursuant to Section 11-4-260 of this Article. (Ord. 2005-01 §4; Ord. 2007-04 §1)

Sec. 11-4-50. Developer ownership of infrastructure.

In the City, the construction of infrastructure in new developments is the responsibility of the developer. Once a public right-of-way has been dedicated to the City, all work in that public right-of-

way, including the installation of new infrastructure by a developer, shall be subject to this Article. (Ord. 2005-01 §5)

Sec. 11-4-60. Permit application.

(a) An applicant for a public right-of-way permit shall file a written application on a form furnished by the City which includes the following information:

- (1) The date of application.
- (2) The name, address and telephone number of the applicant and any contractor or subcontractor who will perform any of the work.
- (3) Construction plans showing the work site, the public right-of-way boundaries, and all infrastructure landscaping in the area.
- (4) The purpose of the proposed work.
- (5) A traffic and pedestrian control plan in accordance with the Design and Construction Specifications.
- (6) The dates for beginning and ending the proposed work and proposed hours of work, and the number of actual work days required to complete the project. Right-of-way permits shall be valid for a maximum of ninety (90) days from date of issuance and shall be allowed one (1) extension of ninety (90) days.
- (7) A copy of each contractor's and subcontractor's license.
- (8) A certificate of insurance as required by Section 11-4-100 below.
- (9) A performance, payment, maintenance and warranty bond or license and permit bond as required by Subsection 11-4-120(a) below.
- (10) Concrete, asphalt and controlled low-strength material (CLSM) mix designs.
- (11) If applicable, material submittals in accordance with the Design and Construction Specifications.
- (12) All permits required by federal, state, county and local laws and regulations, such as a State of Colorado Stormwater Discharge Permit, Section 401 (water quality) and 404 (dredge and fill) permits and driveway access permits, as appropriate.
- (13) If applicable, a City construction water meter application.
- (14) The applicable permit fees as set by the Fee Schedule.

(b) For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection (a) above, the application shall include the following information:

(1) An itemization of the total cost of construction, including labor and materials but excluding the cost of any privately owned facilities being installed which will not be dedicated to the City.

(2) Copies of all permits and licenses (including required insurance, deposits, bonds and warranties) required to do the proposed work, whether required by federal or state law or City resolution, ordinance or regulation.

(c) An applicant for a public right-of-way permit for a major installation shall, in addition to the information required by Subsections (a) and (b) above, submit the following information:

(1) Field-verified locates of all existing facilities required to be located by the Design and Construction Specifications, which locates shall be compiled and submitted according to the Design and Construction Specifications and Section 11-4-170 of this Article.

(2) Engineering construction drawings or site plans for the proposed work in a format acceptable to the City and signed by a professional engineer licensed in the State, except that an applicant expressly exempt from the signature requirement pursuant to Section 12-25-103, C.R.S., need not include the signature of a licensed professional engineer.

(d) An applicant shall update a permit application within ten (10) calendar days after any material change occurs.

(e) 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 fees. Applicants must agree among themselves as to the portion each shall pay and, if no agreement is reached, payment in full shall be required of all applicants.

(f) The applicant for a public right-of-way permit shall be the contractor performing the work.

(g) By signing an application, the applicant is certifying to the City that the applicant is in compliance with all other permits issued by the City, that the applicant will not allow any other applicants to work under the permit and that the applicant is not delinquent in any payment due to the City for prior work. This certification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant, if the applicant and the City are negotiating in good faith to resolve the dispute. (Ord. 2005-01 §6; Ord. 2007-04 §1)

Sec. 11-4-70. Blanket maintenance permits.

(a) A public right-of-way permit shall not be required for routine maintenance in the public right-of-way, as the term *routine maintenance* is defined in Section 11-4-20 above. However, other maintenance operations within the public right-of-way which involve traffic lane closures or sidewalk closures shall require a public right-of-way permit. To expedite the process for ongoing maintenance operations, owners of facilities within the public right-of-way for which the City has a valid franchise agreement may, at their sole option and in the alternative to obtaining individual public right-of-way permits, obtain a blanket maintenance permit pursuant to this Section.

(b) A blanket maintenance permit shall be valid from the date of issuance of the permit through December 31 of the same year. Under no circumstances shall a blanket maintenance permit be valid for more than one (1) year.

(c) A blanket maintenance permit shall not, under any circumstances, authorize any pavement disturbance, excavation or installation of new facilities. Notwithstanding the foregoing, existing facilities may be removed and replaced with new facilities, if no excavation or pavement disturbance is required.

(d) Any person seeking a blanket maintenance permit shall file an application on a form provided by the City, which includes the following information:

(1) The date of application.

(2) The name, address and telephone number of the applicant.

(3) A general description of the maintenance operations.

(4) Any location of maintenance operations known at the time of application.

(5) Traffic and pedestrian control plans as required by this Article and the Design and Construction Specifications.

(6) The applicable permit fee as set by the Fee Schedule.

(e) Blanket maintenance permits shall be subject to applicable provisions of the Design and Construction Specifications.

(f) A blanket maintenance permit shall not require a performance bond, letter of credit or warranty. Work performed pursuant to a blanket maintenance permit shall not be subject to the specific inspections set forth in Section 11-4-140 below, but may be subject to random inspection by the City to ensure compliance with the terms of the blanket maintenance permit and applicable provisions of the Design and Construction Specifications.

(g) Blanket maintenance permits shall be valid for the applicant only. Blanket maintenance permits shall not be transferable to contractors or subcontractors of the applicant. (Ord. 2005-01 §7)

Sec. 11-4-80. City review and approval.

(a) An application for a public right-of way permit shall be reviewed by the City for completeness within five (5) working days of submission. If the application is not complete, the City shall notify the applicant of all missing information within the five-day time period.

(b) Once an application is deemed complete by the City, the City shall review the application to determine whether the application complies with this Article and the Design and Construction Specifications. The time for such review shall be as follows:

(1) For a public right-of-way permit which does not include excavation, within five (5) working days.

(2) For a public right-of-way permit which includes excavation but is not a major installation, within ten (10) working days.

(3) For a public right-of-way permit for a major installation, within fifteen (15) working days.

(c) At the conclusion of the review period, the City shall either approve the permit, approve the permit with conditions or deny the permit. If the permit is denied, the City shall send a written notice of denial to the permittee at the address listed on the application, via first-class mail, postage prepaid. The notice shall include the reasons for denial. (Ord. 2005-01 §8)

Sec. 11-4-90. Permit fees.

Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined in accordance with the Fee Schedule. Permit fees shall be reasonably related to the costs of managing the public rights-of-way. These costs include, but are not limited to, the costs of issuing rights-of-way permits, verifying rights-of-way occupation, mapping rights-of-way occupation, inspecting work, administering this Article and, if applicable, costs relating to restoration of the public right-of-way to remedy degradation of that public right-of-way caused by the permittee. (Ord. 2005-01 §9; Ord. 2007-04 §1)

Sec. 11-4-100. Insurance.

(a) Unless otherwise specified in a franchise agreement or other maintenance agreement between a permittee and the City, prior to the granting of any permit, the permittee shall carry and maintain in full effect at all times the following insurance coverage:

(1) Workers' compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this permit, and employer's liability insurance with minimum limits of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) disease each employee, and five hundred thousand dollars (\$500,000.00) disease policy limit. Evidence of qualified self-insured status may be substituted for the workers' compensation insurance requirements of this Paragraph.

(2) General liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including independent contractors), products and completed operations. The policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interest provision.

(3) Comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of the permittee's owned, hired or nonowned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

(b) The policy shall be endorsed to include the City of Cripple Creek and the City's officers, volunteers and employees as additional insureds. Every policy shall be primary insurance, and any insurance carried by the City, its officers or its employees or carried by or provided through any insurance pool of the City shall be excess and not contributory insurance to that provided by the permittee. No additional insured endorsement to the policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The permittee shall be solely responsible for any deductible losses under any policy required above.

(c) The certificate of insurance, with an original signature, shall be provided to the City and shall be completed by the permittee's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to issuance of the permit. No other form of certificate shall be used. The certificate shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the City. (Ord. 2005-01 §10; Ord. 2007-04 §1)

Sec. 11-4-110. Indemnification.

(a) Each permittee, for itself and its related entities, agents, employees and subcontractors, and the agents and employees of said subcontractors, shall hold the City harmless and 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, and reimburse the City for all its reasonable expenses, as incurred, arising out of any work or activity in the public right-of-way, including but not limited to the actions or omissions of the permittee, its employees, representatives, agents, contractors, related entities, successors and assigns; or the securing of and the exercise by the permittee of any 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 Article or other applicable law. A permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence or willful and wanton acts of the City or any of its officers, employees or agents.

(b) Following the receipt of written notification of any claim, the permittee shall have the right to defend the City with regard to all third party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, a permittee refuses to defend the City, and the City elects to defend itself with regard to such matters, the permittee shall pay all expenses incurred by the City related to its defense, including reasonable attorney fees and costs.

(c) If a permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act.

(d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Ord. 2005-01 §11)

Sec. 11-4-120. Performance bonds and letters of credit.

(a) Before a public right-of-way permit is issued, the applicant shall file with the City a bond or letter of credit, at the applicant's choice, in favor of the City in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any private facilities being installed, or five thousand dollars (\$5,000.00), whichever is greater. The bond or letter of credit shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the State. The bond shall be on the form provided by the City. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of City ordinances, resolutions and regulations, and upon payment of all judgments and costs rendered against the applicant for any violation of any City resolution, regulation or ordinance or state law arising out of any negligent or wrongful acts of the applicant in the performance of work pursuant to the permit.

(b) The City may bring an action on the bond or letter of credit on its own behalf or on behalf of any person so aggrieved as beneficiary.

(c) The bond or letter of credit, with an original signature, in a form acceptable to the City, shall be approved by the City prior to the issuance of the permit.

(d) A letter of responsibility, in a form acceptable to the City, shall be accepted from special districts and governmental agencies in lieu of a performance bond or letter of credit.

(e) A blanket bond of sufficient amount to cover all proposed work during the upcoming year may be filed with the City on an annual basis in lieu of the project-specific performance bonds or letters of credit required by Subsection (a) above. The form and amount of the blanket bond shall be subject to the prior review and approval of the City. Should the blanket bond be deemed insufficient by the City based on the work to date, the City may require additional project-specific performance bonds or letters of credit pursuant to Subsection (a) above.

(f) The performance bond, blanket bond or letter of credit shall remain in force and effect for a minimum of two (2) years after completion and written acceptance by the City of the street cut, excavation or lane closure.

(g) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.

(h) If any provision of this Section conflicts with any provision of any valid, effective agreement between a special district or other public entity and the City, the conflicting provision of this Section shall not apply, and the special district or other public entity shall instead honor the provision of the agreement. (Ord. 2005-01 §12)

Sec. 11-4-130. Warranty.

(a) A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and in accordance with this Article, the Design and Construction Specifications, and warrants and guarantees all work done for a period of two (2) years after the date of probationary written acceptance.

(b) Under the warranty, the permittee shall, at its own expense, repair or replace, at the discretion of the City, any portion of the work that fails, is defective, is unsound or is unsatisfactory because of design, engineering, materials or workmanship.

(c) The warranty period shall begin on the date of the City's probationary acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the initial two-year period starting with the date of probationary written acceptance.

(d) At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. If the defects are determined by the City to be an imminent danger to the public health, safety and welfare, the permittee shall begin repairs within twenty-four (24) hours of receipt of the written notice and continue the repairs until completion. Nonemergency repairs shall be completed within fourteen (14) days after notice.

(e) The warranty shall cover only those areas of work performed by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the City. If a portion of work warranted by a permittee is subsequently impacted by work of another permittee, another user of the right-of-way or the City during the warranty period, the other permittee or the City, as applicable, shall assume responsibility for repair to the subsequently impacted portion of the public right-of-way. (Ord. 2005-01 §13)

Sec. 11-4-140. Inspections.

(a) The following four (4) inspections shall take place, at a minimum:

(1) Preconstruction inspection. The permittee shall request that the City conduct a preconstruction inspection, to determine any necessary conditions for the permit.

(2) Construction inspection. The permittee shall notify the City forty-eight (48) hours in advance of the start of work, and shall notify the City of inspection requests with twenty-four (24) hours' advance notice. All work performed in the City right-of-way shall be subject to inspection.

(3) Completed work inspection. The permittee shall notify the City immediately after completion of work. The City shall inspect the work within twenty-one (21) days of the permittee's notification. Probationary acceptance shall be made if all work complies with this Article, the Design and Construction Specifications and any other applicable City regulation, ordinance or resolution. Written notice of probationary acceptance shall be mailed by first-class mail, postage prepaid, to the permittee's address as listed on the permit application.

(4) Warranty inspection. Approximately thirty (30) days prior to the expiration of the two-year warranty period, the City shall conduct a final inspection of the work. If the work is still satisfactory, the bond or letter of credit shall be returned or allowed to expire and the City shall issue a letter of final acceptance.

(b) Upon review of the application for a permit, the City shall determine how many additional inspections, if any, may be required. The total number of required inspections shall be listed on the permit. For a permit which does not include excavation, the City may waive any or all of the above-listed inspections. (Ord. 2005-01 §14)

Sec. 11-4-150. Time of completion.

(a) All work covered by the permit shall be completed within the time period stated on the permit, unless an extension has been granted by the City in writing, in which case all work shall be completed within the time period stated in the written extension.

(b) Permits shall be void if work has not commenced within thirty (30) days after issuance, unless an extension has been granted by the City in writing. The permittee shall request such an extension in writing, and the City shall either grant or deny the request within five (5) working days of receipt of the request. (Ord. 2005-01 §15)

Sec. 11-4-160. Joint planning and construction.

(a) The permittees shall make reasonable efforts to attend and participate in meetings of the City, of which the permittee is notified, regarding public right-of-way issues that may impact its facilities, including planning meetings to anticipate joint trenching and boring.

(b) Each permittee owning, operating or installing facilities in public rights-of-way shall meet annually in January with the City, at the City's request, to discuss the permittee's planned major excavations in the City. As used in this Subsection, the term *planned major excavations* means any major excavations planned by the permittee that will affect any public right-of-way for more than five (5) days per year during the next three (3) years. Between the annual meetings to discuss planned major excavations, the permittee shall use its best efforts to inform the City of any substantial changes in the planned major excavations discussed at the annual meeting.

(c) Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, a permittee shall meet and cooperate with other providers, licensees, permittees and franchisees so as to reduce so far as possible the number of street cuts and bores within the City and the amount of pedestrian and vehicular traffic that is obstructed or impeded. Should two (2) permittees refuse to joint trench or share bores or street cuts, the City may require each permittee to submit written evidence detailing why such joint trenching or sharing would be impossible or impractical. Such evidence may include the potential impact of joint trenching or sharing on the timing of the initiation and/or completion of the work. The City shall consider the evidence submitted. Should the permittee fail to provide evidence satisfactory to the City that joint trenching or sharing is impossible or impractical, the City may deny a permit on that basis. (Ord. 2005-01 §16)

Sec. 11-4-170. Locate information.

(a) Any person owning facilities in the public right-of-way shall provide field locate information to the City and any other permittee with a valid public right-of-way permit which authorizes locate pothole excavation or other excavation work. Within seven (7) days of receipt of a written request from the City or such a permittee, the facility owner shall field locate facilities in the public right-of-way in which the work will be performed.

(b) A permittee shall obtain a public right-of-way permit to locate other existing facilities as provided in the Design and Construction Specifications. The location of such facilities shall be field-verified in a manner approved by the City.

(c) Before beginning excavation in any public right-of-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 governments and other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work. (Ord. 2005-01 §17)

Sec. 11-4-180. Minimal interference with other property.

(a) Work in the public right-of-way or on or near other public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be located, constructed and maintained in such a manner as not to interfere with sewers, water pipes or any City property, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the public rights-of-way by the City on its authority.

(b) Facilities shall not unnecessarily hinder or obstruct the free use of the public rights-of-way or other public property, interfere with the travel and use of the public rights-of-way by the public during the construction, repair, operation or removal thereof, or obstruct or impede traffic. (Ord. 2005-01 §18; Ord. 2007-04 §1)

Sec. 11-4-190. Underground construction and use of poles.

(a) When required by City ordinance, resolution or regulation or applicable state or federal law, and in locations where all existing facilities are located underground, all of a permittee's facilities shall be installed underground at no cost to the City.

(b) In areas where existing facilities are above ground, the permittee may install aboveground facilities.

(c) For aboveground facilities, a permittee shall use existing poles wherever possible. (Ord. 2005-01 §19)

Sec. 11-4-200. Use of trenches and bores by City.

Should the City desire to place its own facilities in trenches or bores opened by a 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 writing 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 that: the City incurs any incremental increase in cost of the trenching and boring; the City's installation does not unreasonably delay the permittee's work; and the City's facilities are used solely for noncommercial, City purposes. The City shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores. If requested by the permittee, the City shall have separate access structures and shall not use the permittee's access structures. (Ord. 2005-01 §20)

Sec. 11-4-210. Design and Construction Specifications.

(a) Each permittee shall comply with the Design and Construction Specifications for all work in the public right-of-way, including the location of the work and facilities within the public right-of-way.

(b) Except as otherwise provided in this Article, the permittee shall be fully responsible for the cost and actual performance of all of its work in the public rights-of-way.

(c) All restoration shall result in a work site condition equal to or better than that which existed prior to the work and in compliance with the provisions of the Design and Construction Specifications. (Ord. 2005-01 §21)

Sec. 11-4-220. Restricted rights-of-way.

(a) To reduce the impact of work within the public right-of-way in and around certain heavily traveled arterial and collector streets within the City between the hours of 6:00 a.m. and 10:00 p.m. (*business hours*), the City shall restrict the hours of work in such public rights-of-way to 8:30 a.m. through 3:30 p.m., Monday through Friday, and 10:00 p.m. through 5:30 a.m., Sunday through Thursday.

(b) Those public rights-of-way in and around the streets listed in the Design and Construction Specifications as restricted rights-of-way shall be subject to this Section.

(c) If a restricted right-of-way is subject to excavation or construction as part of a City, state or other public improvement project, public right-of-way permits for major installations during business hours may be issued by the City during such improvement project, notwithstanding the restrictions set forth in this Section.

(d) In rare circumstances, the City may grant an exemption from the restrictions for restricted rights-of-way in accordance with the following procedures:

(1) A request to be exempted from the restrictions shall be in writing on a form acceptable to the City, and shall contain the following information, at a minimum:

a. A detailed and dimensional engineering plan that identifies and accurately represents all public rights-of-way and other property that will be impacted by the proposed work, and the method of construction; and

b. The location, width, length and depth of the proposed excavation.

(2) In determining whether an exemption should be granted, the City shall consider the following criteria, at a minimum:

a. Whether alternative alignments that do not involve excavating in the restricted public right-of-way are available, and the relative costs of any such alternative alignments;

b. Whether duct, conduit or other facilities are reasonably available from another user of the public right-of-way;

- c. Whether the proposed work involves joint trenching or joint use, and the number of users to share in the trenching or use;
- d. Whether the proposed work is to be by horizontal boring, tunneling or open trenching;
- e. Whether applicable law requires the applicant to provide service to a particular customer, and whether denial of the exemption would prevent the applicant from providing such service;
- f. Whether the purpose of the proposed work is to provide service to a particular building or to a customer within a building who has requested such service, and whether denial of the exemption would prevent the applicant from providing such service; and
- g. Whether the proposed work can reasonably be performed outside of business hours.

(f) Emergency operations in restricted rights-of-way shall be permitted pursuant to Section 11-4-260 below. (Ord. 2005-01 §22; Ord. 2007-04 §1)

Sec. 11-4-230. Newly resurfaced and constructed streets.

(a) Time limit. For newly resurfaced and constructed streets, no excavation in the pavement shall be permitted within five (5) years of the completion of the resurfacing or construction.

(b) Exemption. In rare circumstances, the City may grant an exemption from this Section in accordance with the following procedures:

(1) A request for exemption shall be in writing on a form acceptable to the City and shall contain the following information, at a minimum:

- a. A detailed and dimensional engineering plan that identifies and accurately represents all public rights-of-way and other property that will be impacted by the proposed work, and the method of construction;
- b. The location, width, length and depth of the proposed excavation; and
- c. A statement as to how any of the criteria set forth in Paragraph (2) below apply to the proposed work.

(2) In determining whether an exemption should be granted, the City shall consider the following criteria, at a minimum:

- a. Whether alternative alignments that do not involve excavating in the street are available;
- b. Whether the proposed excavation can reasonably be delayed until after the five-year period has elapsed;
- c. Whether duct, conduit or other facilities are reasonably available from another user of the public right-of-way;

d. Whether the proposed work involves joint trenching or joint use, and the number of users to share in the trenching or use;

e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching;

f. Whether applicable law requires the applicant to provide service to a particular customer, and whether denial of the exemption would prevent the applicant from providing such service;

g. Whether the purpose of the proposed work is to provide service to a particular building or a customer within a building who has requested such service, and whether denial of the exemption would prevent the applicant from providing such service; and

h. Whether the work is limited to locate potholing to provide locate information required by Section 11-4-170 above.

(c) Exemptions for emergency operations. Emergency operations in newly resurfaced or constructed streets shall be permitted pursuant to Section 11-4-260 below. (Ord. 2005-01 §23; Ord. 2007-04 §1)

Sec. 11-4-240. Relocation of facilities.

(a) If the relocation of any facilities in the public right-of-way becomes necessary to allow the City to make any public use of the public right-of-way, because of the improvement, repair, construction or maintenance of any public right-of-way, because of traffic conditions, public safety or installation of any type of public improvement by the City or other public agency or special district, or if the City implements any general program for the undergrounding of such facilities, the City may request the owner to relocate facilities within or adjacent to public rights-of-way, either temporarily or permanently. The City shall notify the affected owner at least ninety (90) days in advance, except in the case of emergencies, of the reason for the relocation and the projected start date of the project necessitating the relocation. The City shall provide the affected owner with such notice at least one hundred twenty (120) days in advance if the relocation will be considered a major installation under this Article. The owner shall thereupon, at its own cost, accomplish the necessary relocation within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date listed in the notice as the proposed start date, or immediately in the case of emergencies.

(b) Should the owner fail to perform the relocation, the City may perform such relocation at the owner's expense and the owner shall reimburse the City as provided in Section 11-4-270 below.

(c) Following relocation, the owner shall, at the owner's own expense, restore all affected property to, at a minimum, the condition which existed prior to the work. An owner may request additional time to complete a relocation project and the City may grant an extension if, in its sole discretion, the extension will not adversely affect the City's project or the public use of the affected public rights-of-way. (Ord. 2005-01 §24)

Sec. 11-4-250. Abandonment and removal of facilities.

(a) Notification. An owner who intends to discontinue use of any facility within the public right-of-way shall notify the City in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than fifteen (15) days from the date such notice is submitted to the City, and the method of removal and restoration. The owner may not remove, destroy or permanently disable any such facilities during said fifteen-day period without written approval of the City. After fifteen (15) days from the date of such notice, the owner may commence removal and disposal of such facilities as set forth in the notice, as the notice may be modified by the City. The owner shall complete such removal and disposal within one hundred eighty (180) days, unless additional time is requested from and granted by the City.

(b) Abandonment of facilities in place. Upon prior written approval of the City, an owner may either:

(1) Abandon the facilities in place, and immediately convey full title and ownership of such abandoned facilities to the City. The only consideration for the conveyance shall be the City's permission to abandon the facilities in place. The owner shall be responsible for all obligations and liabilities until the conveyance to the City is completed; or

(2) Abandon the facilities in place, but retain ownership and responsibility for all liabilities associated therewith.

(c) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Ord. 2005-01 §25)

Sec. 11-4-260. Emergency procedures.

(a) Any person maintaining facilities in the public right-of-way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. The person doing the work shall apply to the City for a permit on the first working day after such work has commenced. All emergency work shall require prior telephone notification to the Public Works Department, the Police Department and the Fire Department.

(b) If any damage occurs to an underground facility or its protective covering, the contractor or permittee responsible shall promptly notify the facility's owner. When the facility's owner receives a damage notice, the facility's owner shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic or corrosive gas or liquid or endangers life, health or property, the contractor or permittee responsible shall immediately notify the facility's owner and 911 and take immediate action to protect the public and nearby properties. (Ord. 2005-01 §26; Ord. 2007-04 §1)

Sec. 11-4-270. Reimbursement of City costs.

(a) The City may make any repairs necessary to eliminate any imminent danger to the public health or safety without notice to any permittee, at the responsible permittee's expense.

(b) For any work not performed by a permittee as directed by the City but not constituting imminent danger to the public health or safety, the City shall provide written notice to the permittee, ordering that the work be corrected within ten (10) days of the date of the notice. If the work is not corrected within the ten-day period, the City may correct the work at the permittee's expense.

(c) Costs of any work performed by the City pursuant to this Section shall be billed to the permittee. The permittee shall also be responsible for any direct costs incurred by the City. The permittee shall pay all such charges within thirty (30) 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 performance bond or letter of credit. Furthermore, the permittee may 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 (except those outstanding charges that are honestly and reasonably disputed by the permittee and being negotiated in good faith with the City) have been paid in full. (Ord. 2005-01 §27)

Sec. 11-4-280. Permit revocation and stop work orders.

(a) A public right-of-way permit may be revoked or suspended by the City for any of the following:

- (1) Violation of any condition of the permit or any provision of this Article or the Design and Construction Specifications.
- (2) Violation of any other City ordinance or state law relating to the work.
- (3) Existence of any condition or performance of any act which, in the City's determination, constitutes or causes a condition endangering life or property.

(b) A stop work order may be issued by the City to any person performing or causing any work to be performed in the public right-of-way for:

- (1) Performing work without a permit except for emergency repairs to existing facilities as provided for in this Article;
- (2) Performing work in violation of any provision of this Article, any other City resolution, ordinance or regulation, or state law relating to the work; or
- (3) Performing any act which, in the City's determination, endangers life or property.

(c) A suspension, revocation or stop work order shall take effect immediately upon delivery of written notice to the person performing the work or to the permittee. If neither the person performing the work nor the permittee can be located on the work site on the day of issuance of the suspension, revocation or stop work order, the suspension, revocation or stop work order shall take effect upon

mailing of the written notice via first-class mail, postage prepaid, to the permittee's last known address. (Ord. 2005-01 §28; Ord. 2007-04 §1)

Sec. 11-4-290. Penalties.

(a) If any person is found guilty of or pleads guilty to a violation of any of the provisions of this Article, he or she shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

(b) In addition to or in lieu of the penalties set forth in Subsection (a) above, the City may impose the following monetary penalties:

(1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the City:

a. In arterial and collector streets during the hours of 5:30 a.m. through 8:30 a.m. and 3:30 p.m. through 10:00 p.m., Monday through Friday, and all day Saturday and Sunday: one hundred dollars (\$100.00) for each fifteen (15) minutes, or portion thereof, for a maximum of three thousand dollars (\$3,000.00) per day; and

b. In arterial and collector streets during any time other than the times specified in Subparagraph a. above, or in local streets at any time: fifty dollars (\$50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of one thousand five hundred dollars (\$1,500.00) per day.

(2) For commencing work without a valid permit: one hundred dollars (\$100.00) or twice the applicable permit fee, whichever is greater, plus the cost of compliance testing for the first occurrence; one hundred dollars (\$100.00) or three (3) times the applicable permit fee, whichever is greater, plus the cost of compliance testing for the second and subsequent occurrences.

(3) For facilities installed outside of the approved alignment: ten dollars (\$10.00) per linear foot. This penalty shall not be imposed if the facilities are removed and/or relocated to comply with the approved alignment, or the facilities are abandoned pursuant to Subsection 11-4-250(b) above.

(4) For any other violation of a permit: a minimum of two hundred fifty dollars (\$250.00) per violation, with no maximum amount.

(c) The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Article, and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit, or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the exercise of one (1) penalty shall not preclude the City from exercising any other penalty. (Ord. 2005-01 §29; Ord. 2007-04 §1)