



ORDINANCE NO. 208

**“RIGHT-OF-WAY MANAGEMENT ORDINANCE”**

AN ORDINANCE PROVIDING FOR REGULATIONS FOR THE USE OF PUBLIC RIGHTS-OF-WAY; REQUIRING REGISTRATION, PERMITS AND FRANCHISE AGREEMENTS; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; PROVIDING FOR INSURANCE AND BOND REQUIREMENTS, RESTORATION OF PROPERTY, PERMIT DENIAL AND APPEAL; ESTABLISHING FEES; DECLARING A MISDEMEANOR OFFENSE AND FOR PENALTIES UP TO \$2,000 A DAY; AND PROVIDING FOR AN EFFECTIVE DATE

RECITALS

- WHEREAS, pursuant to state constitutional authority and statutory authority, the City of Umland, Texas (“City”) has control and jurisdiction of the public streets and other rights-of-way of the City, with the right to regulate the location of pipes, cables, lines, wires, or other facilities in the rights-of-way; and
- WHEREAS, without proper regulation, the placement of such facilities within the rights-of-way will conflict with the primary uses of the rights-of-way and will reduce the efficient use of limited space for facilities; and
- WHEREAS, in accordance with applicable federal law, including but not limited to, 47 U.S.C. §253(c) and state laws, including but not limited to Texas Utility Code Sections 14.008 and 54.205, and Local Government Code Section 283.056, the City seeks to exercise its statutory rights to control and manage its rights-of-way, and implement certain police power regulations in the use of those rights-of-way, in a competitively neutral and non-discriminatory basis; and
- WHEREAS, the City Council of the City deems it necessary to adopt this ordinance regulating the placement and maintenance of utility facilities within the public rights-of-way to promote public safety and convenience and to assure the efficient and orderly use of the rights-of-way by gas, electric, cable, water, wastewater, telecommunications and other utility providers so that the best interest of the public is served; and
- WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City Council finds that it is necessary and proper for the good government and order of the City to adopt regulations to manage public rights-of-way.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Umland, Texas, that:

**ARTICLE I. FINDINGS OF FACT**

The foregoing Recitals are hereby adopted as facts and are incorporated fully herein.

**ARTICLE II. ADOPTION AND ENACTMENT**

The City Council hereby adopts and enacts the *City of Umland Right-of-Way Management Ordinance*, attached hereto as *Attachment A* and incorporated fully herein.

**ARTICLE III. REPEALER AND SEVERABILITY**

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

**ARTICLE IV. EFFECTIVE DATE**

This Ordinance shall be effective immediately upon passage and publication in the paper.

PASSED AND APPROVED this, the 11 day of July 2018, by a vote of 4 (ayes) to 0 (nays) to 1 (abstentions) of the City Council of Umland, Texas.

**CITY OF UHLAND, TEXAS:**

Vicki Hunter  
Vicki Hunter, Mayor Pro-Tem

Attest:  
Karen Gallaher  
Karen Gallaher, City Administrator



## **CITY OF UHLAND**

# **RIGHT-OF-WAY MANAGEMENT ORDINANCE**

*Adopted* July 11, \_\_\_\_\_, 2018

# CITY OF UHLAND RIGHT-OF-WAY MANAGEMENT ORDINANCE

## ARTICLE I. GENERAL PROVISIONS

### Section 1. Purpose

- (a) This ordinance shall be cited as the City of Umland Right-of-Way Management Ordinance.
- (b) The purpose of this Ordinance is to standardize construction and inspection procedures to be used during construction activities in existing city right-of-way streets, alleys and easements and to establish minimum construction standards regarding street cuts in our public streets.
- (c) The purpose of the minimum requirements and specifications is to maintain the quality of our streets and pavement within the public right-of-way for the safety and convenience of the public and to minimize street deterioration and provide for street maintenance efficiency.

### Section 2. Definitions

For the purposes of this article, the following words, terms and phrases, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

*Business day* - a day of the week, excluding Saturday, Sunday or a holiday observed by the City.

*Certificated telecommunications provider* - as defined in Texas Local Government Code Section 283.002(2): any entity that has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission to offer local exchange telephone service or a person that provides voice service, as defined in Texas Local Government Code Section 283.002(2).

*City* - the City of Umland, Texas. As used throughout, the term city also includes the designated city official or designee of the city administering this Ordinance.

*City property* - all buildings, infrastructure, bridges, parks, golf courses, parking lots and other real property owned by the city that is not dedicated for utility or street transportation purposes.

*Emergency* - a customer service interruption or a condition that threatens imminent harm to property or to health and safety.

*Facility or facilities* - wires, cables, fibers, duct spaces, manholes, poles, conduits, pipes underground and overhead passageways and other equipment, structures, plants and appurtenances and all associated physical equipment placed in, on or under the public rights-of-way.

*Person* - a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

*Public right-of-way, or public rights-of-way* - the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the city has an interest. The term does not include the airwaves above a public right-of-way with regard to wireless telecommunications or city property and rights-of-way owned by the State of Texas or agency thereof.

*Utility company or utility companies* - a person, as defined herein, that owns or operates facilities.  
*Utilities Criteria Manual – UCM* - the excavation design and construction standards of the City of Austin, Texas  
Utilities Criteria Manual, Section 5 – Working in Public Rights-of-Way; available at  
[https://library.municode.com/tx/austin/codes/utilities\\_criteria\\_manual?nodeId=S5WOPURI-W\\_5.1.0GEPR](https://library.municode.com/tx/austin/codes/utilities_criteria_manual?nodeId=S5WOPURI-W_5.1.0GEPR)

## ARTICLE II. FRANCHISE REQUIREMENT

### Section 3. Franchise Required

(a) Franchise Agreement.

A utility company or other rights-of-way user must obtain a franchise agreement from the city prior to placing, replacing, or altering facilities in, on, or over the public rights-of-way. A franchise agreement shall be negotiated in accordance with state law for use of the public rights-of-way. For use of the public rights-of-way, all users of the public rights-of-way shall compensate the City on the value of the rights-of-way used, being typically either on a gross receipts basis or on a linear foot basis, to the fullest extent allowed by law.

(b) Franchise Fee by Utility Company.

For use of the public rights-of-way, a utility company shall compensate the city with a franchise fee based on the gross receipts basis, as authorized by Texas Tax Code Section 182.025, as amended.

(c) Exclusions.

In accordance with state law, certificated telecommunications provider under and holders of a state-issued certificate of franchising authority to provide cable or video services are excluded from this franchise requirement.

(d) Existing Franchise Agreement.

A utility company or other rights-of-way user with a current and unexpired consent, franchise, agreement or other authorization from the city to use the public rights-of-way that is in effect at the time of enactment of this Ordinance, shall continue to operate under and comply with that grant (except to the extent the police power regulations in such grant are inconsistent with this Ordinance, in which event, this Ordinance will control) until the grant expires or until it is terminated by mutual agreement of the City and the utility company or other rights-of-way user, or is terminated as otherwise provided for in law.

## ARTICLE III. REGISTRATION REQUIREMENTS

### Section 4. Registration Required

All public rights-of-way users must register, or be registered with the City. All public rights-of-way users shall report all changes in its registration information within 30 days of such change. No public rights-of-way user shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.

### Section 5. Maps and Records of Registrants

Each public rights-of-way user must maintain accurate maps and records of its facilities. The information shall be made available to the City within five days of request by the City. The maps and records shall depict horizontal and vertical locations of all facilities in and near the right-of-way. Maps and records shall indicate horizontal location and a description of the facility for the area involved in the permit application and within a two-block radius. The City may have facilities relocated if the public rights-of-way user does not provide the requested information. In such event, the public rights-of-way user shall reimburse the cost to the City to locate the facilities.

## **Section 6. Registration Information**

A public rights-of-user shall submit the following information on a city-provided application form:

- (1) Identity and legal status of the public rights-of-way user and names of all operators of any facilities on the right-of-way;
- (2) Name, address, telephone number, fax number and email address of the officer, agent or employee responsible for the accuracy of the registration information;
- (3) Name, address, telephone number, fax number and email address of the local representative of the public rights-of-way user who shall be available at all times to act on behalf of the public rights-of-way user in the event of an emergency;
- (4) If applicable, certification number issued by the Public Utilities Commission ("PUC");
- (5) General description of services provided or to be provided;
- (6) Insurance and bonding information;
- (7) Employee safety certification information for traffic control during construction activities; and
- (8) Any other information requested by the city administrator or engineer.

## **ARTICLE IV. PERMIT REQUIREMENTS**

### **Section 7. Permit Requirement**

A person who undertakes any work which will cut, break or otherwise damage a public street (right-of-way) must obtain a street cut construction permit from the city prior to construction in accordance with this Ordinance.

### **Section 8. Permit Application and Fee Requirement**

- (a) A person seeking to cut, break, place, replace, or alter facilities on, in, under or over the public rights-of-way, shall submit to the City a completed permit application provided by the City along with a nonrefundable permit application fee as set by the City.
- (b) A permit application fee is not required for city initiated or funded projects.
- (c) No permit fees shall be charged to utility companies operating under a franchise from the city. Additional fees for location of facilities, however, on city right-of-way may apply.
- (d) This requirement does not apply to street cuts made in valid emergencies provided that when an emergency cut is made, a permit must be obtained from the city not later than the morning of the following business day.
- (e) Along with a permit application, a person shall submit proof of insurance and bonding as described in this Ordinance herein.
- (f) If the permit holder fails to act upon any permit within 90 calendar days of issuance, the permit shall expire unless extended by the city upon a showing of good cause. Upon expiration of a permit, a permit holder shall be required to obtain another permit pursuant to the requirements of this Ordinance.
- (g) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any right-of-way to relocate the facilities at no cost to the city, subject to state law, if applicable, in the event that relocation is required by the city to accommodate a proper governmental use of the right-of-way.

## Section 9. Insurance and Bond Requirements

### (a) Insurance

- (1) A utility company shall obtain and maintain insurance in an amount as determined by the city administrator with an insurance company licensed to do business in the State of Texas, with an AM Best rating of at least A-. A utility company shall file and maintain proof of insurance with the city at the time of application for construction permits and prior to any commencement of work.
- (2) A utility company shall furnish, at no cost to the city, a certificate of insurance showing proof of liability insurance in the total amount of \$1,000,000.00.
- (3) The insurance certificate shall:
  - a. Include a cancellation provision in which the insurance company is required to provide the city a 30-day written notice before a cancellation, nonrenewal, reduction of policy limits, or other material change; and
  - b. Provide that notice of claims related to public rights-of-way construction shall be provided to the city administrator by certified mail.
- (4) The coverage must be on an occurrence basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.
- (5) An insurance certificate obtained in compliance with this section is subject to city approval. A utility company shall immediately advise the city of actual or potential litigation that may develop and may affect an existing carrier's obligation to defend and indemnify.
- (6) The policy clause "other insurance" shall not apply to the city if the city is an insured under the policy.
- (7) A utility company shall pay premiums and assessments for the insurance required under this article. The insurance shall be primary coverage for losses covered by the policies. A company that issues an insurance policy has no recourse against the city for payment of a premium or assessment. Insurance policies obtained by a utility company must provide that the issuing company waives all right of recovery by way of subrogation against the city in connection with damage covered by the policy.
- (8) The city will accept certificates of self-insurance issued by the State of Texas, or letters written by the utility company in those instances where the state does not issue such certificates, which provide the same coverage as required herein. The city has the right to require proof of financial stability prior to accepting the proof of self-insurance, provided that defense of the city shall be comparable as provided by an insurance carrier. The defense and claims processing required of holders of a state-issued certificate of franchising authority to provide cable or video services shall be in accordance with state law.

### (b) Bonds

- (1) Unless otherwise provided for by a utility company's valid franchise, the director shall require reasonable bonding requirements of a utility company, as are required of other entities that place facilities in the public rights-of-way. Such bonding amounts will be reasonably determined by the director depending on several factors as to public safety and risk of harm to persons and property. Such factors include, but are not limited to:
  - a. The nature of the construction project;
  - b. The type of facility; and
  - c. Past construction history of the utility company in the city as to any damage claims, repairs and timeliness of construction.
- (2) The utility company shall file an annual surety bond which will be valid each year construction will occur through one full year after the completion of the construction from a surety company authorized to do business in the State of Texas, and must be on forms provided by the city. Such surety bond will be in the

amount of the estimated cost to restore the public rights-of-way for the work anticipated to be done in that year and to relocate facilities pursuant to this article. If the director determines that the annual surety bond on file is insufficient to restore the public rights-of-way and to relocate facilities related to a specific project for which a permit application has been filed, then the director may require the utility company to file an additional surety bond for such project.

- (3) The city may either waive or reduce the amount of the bond in the event the utility company provides written documentation as to reserves available to compensate the city for damages, and has a two year history of no claims, or damages to city property by the city, or of prompt payment on such claims. Further, notwithstanding subsection (b)(1) of this section, a bond shall not be required of a utility company that can demonstrate a record of at least four years of work in the public rights-of-way in the city and to the extent applicable, in all other municipalities it has performed such work, free of unsatisfied claims. No bonds for aerial construction will be required of holders of a state-issued certificate of franchising authority to provide cable or video services, in accordance with state law.
- (c) Alternate compliance methods. The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of city.

#### **Section 10. Indemnity**

- (a) Except as to certificated telecommunications providers, as provided in Local Government Code Chapter 283, and holders of a state-issued certificate of franchising authority to provide cable or video services, in accordance with Texas Utilities Code Chapter 66, each utility company placing facilities in the public rights-of-way shall agree to promptly defend, indemnify and hold the city harmless from and against all damages, costs, losses, claims, demands, suits, causes of action, judgments or expenses arising out of, incident to, concerning or resulting from the negligent or willful acts or omissions of the utility company, its agents, employees, and subcontractors, in the performance of activities pursuant to or authorized under this article for the repair, replacement or restoration of the city's property, equipment, materials, structures and facilities that are damaged, destroyed or found to be defective; damage to or loss of the property of any utility company, including but not limited to the utility company, its agents, officers, employees and subcontractors, city's agents, officers and employees, and third parties; and death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, including, but not limited to, the agents, officers and employees of the utility company, utility company's subcontractors and city, and third parties.
- (b) Upon commencement of any suit, proceeding at law or in equity against the city relating to or covering any matter covered by this indemnity, for which the utility company is obligated to indemnify and hold the city harmless, or to pay said final judgment and costs, as the case may be, the city shall give the utility company reasonable notice of such suit or proceeding. The utility company shall promptly provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay any final judgment or judgments that may be rendered against the city by reason of such damage suit. Upon failure of the utility company to comply with the provisions of this article, after reasonable notice to the city, the city shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against the city, together with all court costs incurred therein, the utility company shall promptly reimburse the city for attorney's fees, including those employed by the city in such case or cases, as well as all expenses incurred by the city by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the city.
- (c) This indemnity provision shall not apply to any liability resulting from the negligence of the city, its officers, employees, agents, contractors or subcontractors.
- (d) The provisions of this indemnity are solely for the benefit of the city and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.



- (e) To the fullest extent permitted by law, a utility company shall pay all expenses incurred by the city in defending itself with regard to all damages and penalties provided in this article. These expenses shall include all out-of-pocket expenses such as attorney's fees, and shall also include the reasonable value of any services rendered by any employees of the city. In the event the city is compelled to undertake the defense of any such suit by reason of a utility company's failure to provide a defense as hereinabove provided, the city shall have full right and authority to make or enter into any settlement or compromise of such adjudication as the city council shall deem in the best interest of the city, without the prior approval or consent of the utility company with respect to the terms of such compromise or settlement.

### **Section 11. Application Form**

An applicant for a permit shall submit the following information on a city-provided application form:

- (1) The name and residence or business address of the applicant;
- (2) The location and approximate area of the excavation,
- (3) The approximate length and width of the excavation;
- (4) If the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes;
- (5) The purpose of the excavation;
- (6) Plans presenting the methodology of construction prepared in accordance with city specifications;
- (7) Maps of the existing and proposed facilities in the area to the extent available;
- (8) Proposed start and completion dates; and
- (9) Any other information requested by the city administrator or city engineer.

### **Section 12. Supplemental Permit for Excavation of Larger Area**

A permit shall only be valid for the area of the right-of-way specified within the permit. No permit holder may cause any work to be done outside the area specified in the permit. A permit holder who determines that an area greater than that which is specified in the permit must be excavated must:

- (1) Make application for a permit extension and pay any additional fees required; and
- (2) Receive a new right-of-way permit or permit extension.

### **Section 13. Permit Issuance and Term**

- (a) Permits will be issued or denied within ten business days of receipt of an application.
- (b) Unless granted for a longer period, an excavation permit shall be valid for 30 days and for the dates specified in the permit. On initial submission of an application, an applicant may request a longer period if circumstances warrant. No permit holder may commence work before the permit start date or, except as provided herein, may continue working after the end date. If work is not completed within the allotted time, a permit holder must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the city prior to the permit end date. An expedited permit may be requested, and shall be issued within two days of application upon a showing of good cause.
- (c) No permit shall be transferable.
- (d) No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on the person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the administrator. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or in equity.

- (e) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the right-of-way user shall procure a new permit, paying the applicable fee, before proceeding with any such work.

#### **Section 14. Duties of Permit Holder**

- (a) A permit holder shall at all times while such work is in progress keep at the job location the permit, or a copy thereof, and shall, on demand, exhibit the permit to the city administrator or any police officer. At all times while the work is in progress the permit holder shall also maintain at the job location, a sign, barricade, or other device bearing the permit holder's name.
- (b) The permit holder shall reasonably protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, or other property at, near or encountered in his work. The permit holder shall determine the boundary of the right-of-way and private property. All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of rights-of-way and with the use of private property. The permit holder shall not trespass upon private property.
- (c) All transmission and distribution structures, lines, equipment and facilities erected by a permit holder within the city shall be so located as to cause minimum interference with the proper use of the public rights-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets. The city reserves the right to lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes and channels and streets and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the city, in, across, along, over or under any right-of-way or public place occupied by a permit holder and to change any curb or sidewalk or the grade of any street and to maintain all of the city's facilities. In allowing such work to be performed by others, the city shall not be liable to a permit holder for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a permit holder by such third party.
- (d) If the city requires a permit holder to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the city, to use, or to use with greater convenience, any right-of-way or public place, the permit holder shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a permit holder for any loss and expense which will be caused by or arise out of such removal, change, adaptation, alteration, conformance or relocation of a permit holder's facilities; provided, however, that the city shall never be liable for such reimbursement.

#### **Section 15. Denial of Permit**

A permit may be denied or suspended for any of the following reasons:

- (1) Failure to provide proof of a surety bond or liability insurance acceptable to the city;
- (2) Failure to secure a contractor's license or other required license;
- (3) Failure to perform in accordance with the requirements of the UCM or in accordance with these provisions;
- (4) The excavation would be in a new street and not otherwise permitted by this Ordinance;
- (5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the Texas Manual on Uniform Traffic Control Devices or the requirements of the administrator;
- (6) The proposed activity would violate a city ordinance or state or federal statute;
- (7) The permit application contains false or misleading information;
- (8) The activity would cause a public health or safety hazard;

- (9) The right-of-way user is not authorized within the city; or
- (10) The right-of-way user is in violation of this Ordinance relative to work in progress.

#### **Section 16. Appeal**

A right-of-way user may appeal a permit denial, revocation or fees imposed upon written request, as follows:

- (1) Within five days of the city's action, the appellant shall file with the city clerk a written notice of appeal. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors.
- (2) The appeal shall be heard by the city council on the first available regular city council agenda or at a special called meeting in the event of an emergency.
- (3) The decision of the city council shall be final.

### **ARTICLE V. ADMINISTRATION; EXCAVATION CONSTRUCTION STANDARDS AND CRITERIA**

#### **Section 17. Administration**

The city administrator or designee shall be the primary city official for the administration and enforcement of the right-of-way permits and right-of-way excavation construction.

#### **Section 18. Utility Excavation Criteria Manual Adopted**

The excavation design and construction standards of the City of Austin, Texas Utilities Criteria Manual, Section 5 – Working in Public Rights-of-Way (“UCM”), including amendments or subsequent editions, is incorporated herein and adopted by reference for all purposes, subject to the following:

- (1) The UCM shall serve as the city's official technical and policy manual regarding excavations of public rights-of-way.
- (2) The city administrator and the city engineer shall oversee the administration of the provisions of the UCM.
- (3) The city engineer shall interpret the UCM, and may waive compliance with any provisions therein that the city engineer deems not applicable to the city or where compliance would result in hardship to the permit holder;
- (4) A person aggrieved by an interpretation or decision of the UCM by the city engineer may appeal to the City Council via the appeals process contained in this Ordinance.
- (5) Any conflict between the UCM and this Ordinance shall be resolved in favor of this Ordinance.

#### **Section 19. Improperly Installed Facilities**

- (a) Any entity doing work in the public rights-of-way shall properly install, repair, upgrade and maintain facilities.
- (b) Facilities will be considered to be improperly installed, repaired, upgraded or maintained if:
  - (1) The installation, repair, upgrade or maintenance endangers people or property or constitutes a threat to public health and safety;
  - (2) The facilities do not meet applicable federal, state and city codes and regulations;
  - (3) The facilities are not capable of being located using reasonable methods; or
  - (4) The facilities are not installed in accordance with the approved permit issued by the director.

## Section 20. Restoration and Repair

- (a) Within 14 days of completion of replacement, upgrading, excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of facilities or other work in the public rights-of-way, a utility company shall temporarily restore and repair the public rights-of-way.

Within 30 calendar days after completion of work in the public rights-of-way, the utility company shall permanently restore, replace, relay and/or repair the surface, base, curbs, drainage systems, irrigation systems, landscape treatment, trees, shrubs, sidewalks, mailboxes, walls, and other city facilities and infrastructure located on, in or under any public rights-of-way that has been excavated, altered or damaged by reason of the replacement, upgrading, excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the utility company's facilities to the same or better condition of the public rights-of-way before construction for final approval from the city administrator.

Upon a showing of good cause, the city administrator may extend the time for restoration and repair of the public rights-of-way under this section.

- (b) Restoration shall include, but shall not be limited to:
- (1) Restoration of all landscaping and sprinkler systems including replacing all ground cover damaged during work with the same type of ground cover or better by sodding, seeding;
  - (2) Installation of all manholes and handholes, as required;
  - (3) Backfilling and compaction of all bore pits, potholes, trenches or any other excavation sites;
  - (4) Smoothing of all trenches and ruts, and restoration of the surface to the lines and grades existing prior to the work being performed; and
  - (5) Restoration of excavation site, including compaction in accordance with city specifications.
- (c) All locate flags associated with the permitted utility project shall be removed during the cleanup process by the permit holder at the completion of the work.
- (d) A utility company shall restore any right-of-way markers or monuments disturbed or destroyed during construction activities within 30 days after construction has ceased. The utility company shall furnish three sets of drawings, blue line or black line, detailing the restored monumentation. State plane coordinates shall be shown for all monumentation (existing or restored). The drawings shall be signed (original signature), sealed and certified by a registered professional land surveyor, and delivered to the director for approval, no later than 30 days after construction has ceased.
- (e) Should additional restoration be needed as determined by the city administrator, the city shall provide written notice to the utility company which must begin additional restoration, replacement or repair within ten business days of receipt of written notice. If repairs have not been completed within 15 business days after receipt of notice, the city may repair such portion of the public rights-of-way. The utility company shall reimburse the city for costs incurred within 30 calendar days from receipt of the city's invoice.
- (f) If the city administrator determines that the repair or restoration is a public safety hazard, the city may undertake emergency repairs and restoration after notice to the permit holder and failure to respond to the emergency notice. The utility company shall reimburse the city for costs incurred within 30 calendar days from receipt of the city's invoice.

**Section 21. Revocation of Excavation Permit**

- (a) If the permit is revoked, the permit holder shall immediately restore the affected areas to their original condition within 24 hours after the revocation and shall remove equipment, persons, materials, and debris from the right-of-way.
- (b) If the restoration is not in compliance with this Ordinance, the City may restore the area to the condition that existed before the permitted activity. The city may recover from the Permit Holder and the owner, jointly and severally, the actual expenses incurred in the restoration, including the cost of labor, materials, overhead, rental of equipment used in restoring the site, and attorney's fees. The city may institute procedures to forfeit bonds or other security furnished in connection with the permit.

**ARTICLE VI. OFFENSE DECLARED; PENALTIES**

**Section 22. Misdemeanor Offense and Penalties**

- (a) Any person whose actions or omissions criminally negligently, recklessly, knowing, or intentionally violates any provision of this Ordinance shall be charged with a misdemeanor offense and upon conviction shall be punished by a penalty of not less than \$25.00 and not more than \$2000.00. Each day of continuation of each such violation shall be a separate offense and punishable as such.
- (b) In addition to the other remedies provided by law, the City Council may institute appropriate action to abate violations of these regulations as a public nuisance.