

CHAPTER 8A-05. RIGHT OF WAY ENCROACHMENT, USAGE OR EXCAVATION PERMITS

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8A-05-010. Title.

This Chapter shall be known as and may be referred to as the *FRUIT HEIGHTS CITY EXCAVATION PERMIT ORDINANCE*.

8A-05-020. Authority.

This Chapter is adopted pursuant to and in accordance with applicable provisions of state law regarding a municipality's right to regulate its rights of way and under the City's police power to establish procedures and standards for the safe use of its right of way, including, but not limited to, the provisions set forth in Utah Code Annotated sections 10-8-11, 10-8-13, 10-8-23 and 10-8-84, as amended, and provisions of the protection of highways act, as set forth in Utah Code Annotated section 72-7-101 et seq., as amended.

8A-05-030. Administration.

This Chapter shall be administered and enforced by the public works superintendent, or his or her authorized designees.

8A-05-040. Definitions.

(a) **APPLICANT:** Any person who makes application for an excavation permit under the provisions of this Chapter.

(b) **EMERGENCY:** Any unforeseen circumstances or occurrence, the existence of which constitutes a clear and immediate danger to persons or property, or which causes interruption of utility services.

(c) **EXCAVATION(S) OR EXCAVATE:** means digging in, cutting into the surface of, or breaking the surface of a public right of way.

(d) **MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES:** The manual on proper barricading and traffic control practices, as published by the federal government. The current standard for signs, signals, and pavement markings.

(e) **PERMITTEE:** Any person which has been issued a permit and thereby has agreed to fulfill the requirements of this Chapter.

(f) **PERSON:** An individual, partnership, association, trust, corporation, firm, company, organization or entity of any kind.

(g) **PIPE DRIVEWAY:** a driveway approach which uses a pipe or other means to ridge the gutter.

(h) **PROPERTY OWNER:** Any person or persons who have legal title to property and/or equitable interest in the property.

(i) **PROVIDER:** Any person, providing utility, cable or telecommunications services to another through the use of a system of facilities and infrastructure which uses the public rights of way, or any person who owns or operates such a system and leases it to another for the purpose of providing utility, cable or telecommunications services to another, or any public utility company which uses the public rights of way for purposes of providing gas, electrical, water or other utility product or services for the use by the general public.

(j) **PUBLIC RIGHT OF WAY:** Means and includes all municipal streets, alleys, roads, lanes, footpaths, walkways, sidewalks and easements within the City dedicated to the public; provided rights of way shall not include any real or personal property of the City that is not specifically described herein and shall not include utility easements not within rights of way of the City.

(k) **STANDARDS AND SPECIFICATIONS:** The latest version of the Fruit Heights City standard details for construction of public improvements and other construction within the public rights of way as adopted by the City.

(l) **WORK SITE RESTORATION:** Means and includes the restoring of the original ground or paved hard surface area to comply with engineering design and construction standards, and includes, but is not limited to, repair, cleanup, backfilling, compaction, stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit

8A-05-050. Permit Required.

(a) Any person desiring to perform work of any kind in a public right of way, other than the City or its authorized employees and agents, shall be required to apply for and obtain an excavation permit from the City. For safety purposes, dumpsters are not allowed on the street. Any contractor or developer installing a service connection within the public right of way shall be required to obtain an excavation permit in accordance with the terms and conditions of this Chapter. Any person performing work in the public right of way, including, but not limited to, use of dump trucks, cement trucks, cranes, pumper trucks and landscaping trucks, shall be required to apply for and obtain an excavation permit from the City. The decision by the City to issue an excavation permit shall include, among other factors

determined by the City, the following:

- (1) The capacity of the public right of way to accommodate the facilities or structures proposed to be installed in the public right of way;
- (2) The capacity of the public right of way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the public right of way, such as electrical power, telephone, gas, sewer and water;
- (3) The damage or disruption, if any, of public or private facilities, improvements or landscaping previously existing in the public right of way;
- (4) The public interest in minimizing the cost and disruption of construction from numerous excavations of the public right of way; and
- (5) Public safety.
- (6) The square footage of the excavation site restoration and the age of the road being cut are considered when determining the value of the diminished life of the road.

(b) All permits shall be subject to revocation and the City may revoke or refuse to issue a permit for failure of the applicant to abide by the terms and conditions of this chapter.

8A-05-060. Permit Application Requirements.

(a) Filing: Application for a permit shall be filed with the public works superintendent on forms to be furnished by the City.

(b) Eligibility: Only the following persons or entities shall be eligible to receive an excavation permit to do work within the public rights of way of the City:

- (1) Contractors licensed by the state of Utah as general contractors; or
- (2) Providers.
- (3) Property Owners, replacing, or maintaining more than five hundred (500) square feet or one hundred (100) linear feet of sidewalk or driveway approach.
- (4) Persons offering a service which requires occupation of the public way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or signboards or other structures.

(c) Plans, Details: All applications shall include excavation plans and details, showing the trench detail including the length, width and depth of the trench, the exact location and address of the trench, and the relationship of the trench to the right of way lines, traffic lanes, intersections, signals and structures. Trenches must meet OSHA standards.

(d) Compliance With Traffic Manual: All applications shall be in compliance with the "Manual On Uniform Traffic Control Devices".

(e) Fee, Bonds, Insurance: All applications shall include the requisite application fee, bonds and insurance certificates as more particularly set forth in this Chapter and according to the general fee schedule.

8A-05-070. Application Review And Approval.

(a) Review; Past Performance: The public works superintendent shall review all applications and may deny the issuance of permits to contractors, providers, utility companies or other permit applicants who have shown by past performance that in the opinion of the public works superintendent they will not consistently conform to the standards and specifications, or the requirements of this Chapter.

(b) Plans, Sketches May Be Required: The public works superintendent may require the filing of engineering plans, specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

(c) Approval, Permit Required; Driveways: It shall be unlawful for any person to commence work upon any public right of way until the public works superintendent has approved the application and until an excavation permit has been issued for such work. Any installation of or modification to a driveway within the public right of way shall also require review and approval from the community development director or his or her designee.

(d) Appeals: The disapproval or denial of an application by the public works superintendent may be appealed by the applicant to the City Manager by filing of a written notice of appeal within ten (10) days of the action of the public works superintendent. The City Manager shall hear such appeal as soon as practicable, if written request therefor is timely filed, and render his or her decision within three (3) weeks following notice of such appeal. Any final decision of the City Manager issued hereunder may be appealed to the City Council by filing a written notice of appeal within ten (10) days from the date of the final decision issued by the City Manager. The City Council shall hear such appeal as soon as practicable, if written request therefor is timely filed, and render its decision within three (3) weeks following notice of such appeal.

(e) Limitation Of Authority: In approving or disapproving work within any public right of way, or permits therefor, in the inspection of such work, in reviewing plans, sketches or specifications, and generally in the exercise of the authority conferred upon him/her by this Chapter, the public works superintendent shall act in such manner as to preserve and protect the public right of way and the use thereof, but shall have no authority to govern the actions or inaction of permittees and applicants or other persons which have no relationship to the use, preservation or protection of the public right of way.

(f) Exception To Permit Requirement: An excavation permit is not required for public utility providers providing routine maintenance, accessing their utility within the right of way, including exercising valves, checking manholes and other work that does not require road excavation and that is approved by the public works superintendent. However, all work within the right of way, including routine maintenance, shall be performed in accordance to the City standards and specifications, the "Manual On Uniform Traffic Control Devices" and other laws, regulations, and generally recognized practices of the industry.

8A-05-080. Franchise Required.

Any person, governmental entity or provider desiring to construct, maintain, repair, operate or use any improvements or facilities to be located within the public right of way shall be required to obtain a franchise or other acceptable rights of way use agreement or license agreement with the City authorizing the use of the public right of way for such improvements or facilities in accordance with the provisions of Section 8A-02-040 of this Title, as amended, in addition and prior to the issuance of any excavation permit for work within the public right of way.

8A-05-090. Emergency Work.

(a) Scope: Any person maintaining pipes, lines, or facilities in the public right of way may proceed with work upon existing facilities without an excavation permit when emergency circumstances demand the work to be done immediately, provided an excavation permit could not reasonably and practicably have been obtained beforehand.

(b) Regular Business Hours: In the event that emergency work is commenced on or within any public right of way of the City during regular business hours, the public works superintendent shall be notified within one-half (1/2) hour from the time the work is commenced. Contact shall be made with the City's "on call" personnel. The person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall ensure that the work is accomplished according to City standards and specifications, the "Manual On Uniform Traffic Control Devices" and other applicable laws, regulations or generally recognized practices in the industry.

(c) Work Without Permit: Any person commencing emergency work in the public right of way without an excavation permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which City offices are open for business after such work is commenced. An excavation permit for such emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the public works superintendent.

8A-05-100. Application And Permit Fees.

(a) Payment Required: The City shall charge and the applicant shall pay, upon filing of an application for an excavation permit, an application fee as more particularly set forth in the consolidated fee schedule. The City shall charge and the permittee shall pay, upon issuance of the excavation permit, permit fees for costs associated with the work performed under the excavation permit as outlined in the consolidated fee schedule. All application and permit fees shall be assessed in a nondiscriminatory manner.

(b) Waiver: The public works superintendent may waive permit fees or portions thereof provided for in this Chapter, when he or she determines that such permit fee:

(1) Pertains to construction or rehabilitation of housing for persons whose income is below the median income level for the City;

(2) Pertains to an encroachment on the public right of way involving a beautification project which furthers specific goals and objectives set forth in the City's strategic plan, master plans or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping; or

(3) Pertains to work that is performed for a public utility provider, is for the health, welfare or benefit to the City, and the applicant has worked with the City or provided services that offset the City's costs.

(c) Additional Charges: Additional charges to cover the reasonable cost and expenses of any required engineering review, professional services, inspection and work site restoration associated with each undertaking may be charged by the City to each permittee, in addition to the application and permit fees. A deposit for such charges may be required as a condition of permit approval.

8A-05-110. Permit; Contents, Duration And Extensions.

(a) Starting, Completion Dates: Each excavation permit application shall state the starting date and estimated completion date. Work shall be completed within five (5) days from the starting date or as determined by the public works superintendent. Such determination shall be based upon factors

reasonably related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed, the following:

- (1) The scope of work to be performed under the permit;
- (2) Maintaining the safe and effective flow of pedestrian and vehicular traffic on the public right of way affected by the work;
- (3) Protecting the existing improvements to the public right of way impacted by the work;
- (4) The season of the year during which the work is to be performed, as well as the current weather and its impact on public safety and the use of the public right of way by the public; and
- (5) Use of the public right of way for extraordinary events anticipated by the City.

(b) Notification Of Commencement: The public works superintendent shall be notified by the permittee of commencement of the work within twenty four (24) hours prior to commencing work. The excavation permit shall be valid for (60) sixty days or the time period specified in the permit, during which time the work must be completed.

(c) Extension: If the work is not completed during such period, prior to the expiration of the permit, the permittee may apply to the public works superintendent for an additional permit or an extension, which may be granted by the public works superintendent for good cause shown.

(d) Length Of Extension: The length of the extension requested by the permittee shall be subject to the approval of the public works superintendent.

8A-05-120. Permit; No Transfer Or Assignment.

Excavation permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this Chapter and under said permit.

8A-05-130. Compliance With Standards And Specifications.

(a) Required: The work performed in the public right of way shall conform to the requirements of the standards and specifications and the "Manual On Uniform Traffic Control Devices", copies of which shall be available from the public works superintendent, kept on file in the office of the City recorder and open to public inspection during office hours.

(b) Signage: Where a job site is left unattended, before completion of the work, signage with minimum two inch (2") high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after hours telephone number.

8A-05-140. Boring Requirements.

Except as otherwise approved by the City, all lateral crossing excavations shall be placed by boring. If boring is impossible, a request for an exception may be made to the public works superintendent. Upon review and consideration of the submitted request and supporting information, the public works superintendent may approve the exception.

8A-05-150. Minimum Interference.

All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the public right of way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the City; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the City. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The City, police department, fire department, emergency services dispatch, US Postal Service, and David School District shall be notified at least twenty four (24) hours in advance of any planned excavation requiring street closure or traffic detour.

8A-05-160. Other Highway Permits.

(a) Scope: Holders of permits for work on highways owned or under the jurisdiction of other government entities, but located within the City limits, shall not be required to obtain an excavation permit from the City under the provisions of this Chapter, unless deemed necessary by the City. Any City permit shall not be construed to permit or allow work on a county road or on a state highway within the City without an applicable county or state permit.

(b) Authority Of City: The public works superintendent, in his or her discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the permittee of said governmental entity for the protection of traffic and safety of persons and property. Notwithstanding the foregoing, nothing in this Chapter shall be construed to impose any duty, implied or express, on the City or its employees, officers, agents or assigns, relative to the protection of traffic and safety of persons or property, arising out of the issuance of any permit issued by government entities other than the City, or arising out of any work performed on any public right of way owned or within the jurisdiction of the City.

8A-05-170. Relocation Of Structures In Public Rights Of Way.

(a) Direction Of Public Works Superintendent: The public works superintendent may direct any person owning or maintaining facilities or structures in the public right of way to alter, modify or relocate such facilities or structures as the public works superintendent may require. Such facilities or structures include, but shall not be limited to, sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, cable, telecommunication and communication facilities, pressure irrigation lines, and power and telephone poles. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the City, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the City. In the event that such person refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including design, engineering, construction, materials, insurance, court costs and attorney fees.

(b) Considerations: Any directive by the public works superintendent shall be based upon one or more of the following:

(1) The facility or structure was installed, erected or is being maintained contrary to law, or determined by the public works superintendent to be structurally unsound or defective;

(2) The facility or structure constitutes a nuisance as defined under state statute or City ordinance (this section shall not, however, be deemed to diminish the vehicle impound

authority of the police department);

(3) The authority under which the facility or structure was installed has expired or has been revoked;

(4) The facility or structure is not in conformity with public improvements consistent with the general plan of the City for the area;

(5) The public right of way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or

(6) The grades or lines of the public right of way are to be altered or changed.

(c) Failure To Comply: Any person owning or maintaining facilities or structures in the public right of way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the public works superintendent shall be guilty of a class B misdemeanor. All costs of alteration, modification or relocation shall be borne by the person owning or maintaining the facilities or structures involved.

8A-05-180. Impact Of Excavation On Existing Improvements.

(a) Sidewalk Or Curb Ramp: If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with City standards for such.

(b) Gravel Surfaces: Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.

(c) Disturbance Of Property: At any time a permittee disturbs the yard, residence or the real or personal property of a private property owner or the City, such permittee shall ensure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work. The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the permittee.

(d) Reimbursement For Damage: A permittee shall reimburse a property owner, or the City, for any actual damage caused by the permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this subsection shall require the permittee to pay a subscriber or private property owner when that subscriber or private property owner requests that the permittee remove, replace or relocate improvements associated with the service provided by the permittee to the property owner and when the permittee exercises due care in the performance of that service, or when the subscriber or private property owner provided false information to the permittee on which the permittee relied to its detriment.

(e) Drainage Channels: Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the public works superintendent prior to the blockage of the channel. Permittee shall comply with all other stormwater drainage requirements and restrictions, including, but not limited to, applicable provisions of the stormwater ordinance as set forth in Title 12A of the Fruit Heights City Code, as amended.

(f) Requirements Applicable To Subcontractors: The requirements imposed upon the permittee extend to any subcontractor or independent contractor that the permittee might employ to perform the tasks pursuant to the permit.

(g) Exception: The requirements of this section shall not apply to the removal by a permittee of a permanent structure placed by a property owner in the public right of way, unless such property

owner has received prior written permission from the City granting the property owner the right to install a permanent structure on or within the public right of way, and such written permission has been recorded in the office of the county recorder.

8A-05-190. Restoration Of Public Property.

(a) Required: The permittee shall, at its own expense, restore the surface of any public right of way to its original condition and replace any removed or damaged pavement. All restoration shall conform to the standards and specifications promulgated by the City which include but are not limited to the following: 1) All back-fill shall be thoroughly compacted, in 6 inch layers, to prevent future settlement and 2) The gravel surface materials will be replaced to a minimum depth of 8 inches within the travel and shoulder area of the road. Paving materials will be replaced when no other settlement is evident. All restoration work shall be accomplished within the time limits set forth in the permit, unless additional time is granted in writing by the public works superintendent.

(b) Restoration By City: The permittee doing the actual excavation work may request that the City restore the surface to its original condition. Approval of such request shall be made by the public works superintendent as part of the excavation permit approval. The fee for such resurfacing shall be determined by the public works superintendent in accordance with its reasonable costs for such work and shall be charged to the person, firm or corporation making the excavation. Payment for the estimated cost of said work shall be received by the City prior to issuance of the excavation permit. Actual cost of such work shall be paid to the City prior to release of the bond.

8A-05-200. Insurance Requirements.

(a) Limits And Requirements: Before a permit is issued, the applicant shall furnish to the City evidence that such applicant has a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions:

(1) A minimum of two million dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury and property damage, and not less than two million dollars (\$2,000,000.00) in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be in the nature of broad form commercial general liability coverage. The City may increase minimum insurance limits, depending on the potential liability of any project. In no event shall insurance coverage be in amounts less than those set forth herein or less than federal or state statutory limits and requirements, whichever is greater, including, but not limited to, governmental immunity cap limits for municipal corporations, as set forth in Utah Code Annotated Section 63G-7-101 et seq., as amended. The permittee shall increase the limits of such insurance to at least the amount of the limitation of judgments described in Utah Code Annotated Section 63G-7-101 et seq., as amended, of the governmental immunity act of Utah, as calculated by the state risk manager every two (2) years and stated in Utah Administrative Code R37-4-3, as amended.

(2) All policies shall include the City, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the "City" shall include the City, its employees, officers, officials, agents, volunteers and assigns.

(3) The coverage shall be primary insurance as respects the City, its employees, officers, officials, agents, volunteers and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers and assigns shall be in excess of the permittee's insurance and shall not contribute to or with it.

(4) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers and assigns.

(5) Coverage shall state that the permittee's insurance shall apply separately to each

insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(6) Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

(7) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.

(8) Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested sent to the City.

(9) Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by the permittee, or his/her subcontractor or agent, whether or not the work has been completed and whether or not the right of way has been opened to public travel.

(10) Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to, falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and right of way is opened for public use.

(b) Rating Requirements: Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of "A7" or higher.

(c) Certificates: The permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.

(d) Unsatisfactory Policy: If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this Chapter.

(e) Subcontractors Included: The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

(f) Deductibles: Any deductibles or self-insured retentions shall be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its employees, officers, officials, agents, volunteers or assigns, or the permittee shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(g) Exceptions: A provider may be relieved of the obligation of submitting certificates of insurance if such company submits satisfactory evidence in advance that:

(1) It is insured in the amounts set forth in this Chapter, or has complied with state requirements to become self-insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and

(2) Said coverage provides to the City the same scope of coverage that would otherwise be provided by a separate policy as required by this Chapter; or

(3) The work to be performed under the permit issued to the applicant is performed by the City, in which case insurance requirement shall be negotiated between the City and the applicant by separate agreement.

8A-05-210. Bonds; When Required, Conditions, Warranty.

(a) Required: Except as noted in this Chapter, each applicant that will be excavating in the right of way, before being issued a permit, shall provide the City with an acceptable annual bond in the amount of one thousand dollars (\$1,000.00) and a corporate surety bond or another type of security in an amount and type as determined by the public works superintendent to guarantee faithful performance of the work authorized by a permit granted pursuant to this Chapter. The amount of the bond required may be increased or decreased at the discretion of the public works superintendent whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of bond otherwise required under this Chapter. The form of the bond and the entity issuing the bond shall be subject to the approval of the City.

(b) Exception: Public utilities franchised or authorized by separate agreement with the City shall not be required to file the cash bond or the corporate surety bond if such requirement is expressly waived in the franchise document or other acceptable right of way use agreement or license, or if such bond(s) has been provided with the franchise grant or other acceptable right of way use agreement or license.

(c) Conditions: The bonds required by this section shall be conditioned as follows:

(1) The permittee shall fully comply with the requirements of the City ordinances and regulations, the "Manual On Uniform Traffic Control Devices", and the standards and specifications promulgated by the City relative to work in the public right of way, and respond to the City in damages for failure to conform therewith;

(2) After work is commenced, the permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the public right of way to construction specifications, so as not to obstruct the public right of way or travel thereon more than is reasonably necessary;

(3) The permittee shall guarantee the materials and workmanship for a period of two years from completion of such work, with reasonable wear and tear excepted; and

(4) Unless authorized by the public works superintendent on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within two (2) calendar days from the time the excavation commences, and within five (5) calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to the standards and specifications. In winter, a temporary patch must be provided. In all excavations, restoration of pavement surfaces shall be made immediately after backfilling is completed or concrete is cured.

(d) Release: When no excavation work is being done in the right of way, at the discretion of the public works superintendent, the cash bond may be released no later than 60 days after the City has inspected and approved the completed work.

8A-05-220. Hold Harmless Agreement; Limitations On City Liability.

(a) Hold Harmless: The permittee agrees to save the City, its officers, employees, volunteers and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this Chapter shall constitute such an agreement by the permittee to this section.'

(b) Nonliability: This Chapter shall neither be construed as imposing upon the City, its officers, employees, volunteers and agents, any liability or responsibility for damages to any person injured by or by reason of the performance of any work within the public rights of way, or under a permit issued pursuant to this Chapter; nor shall the City, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

8A-05-230. Work Without Permit; Penalty.

(a) Stop Work Order: A stop work order may be issued by the public works superintendent, or his or her designee, directed to any person or persons doing or causing any work to be done in the public right of way without a permit.

(b) Fee: Any person found to be doing work in the public right of way without having obtained a permit, as provided in this Chapter, shall be required to pay a permit fee equal to two (2) times the normal permit fee. For replacement work, where a fee is not normally charged, the normal permit fee for new construction shall apply.

8A-05-240. Failure To Comply; Default In Performance.

(a) Reasons For Action: Any permit may be revoked or suspended and a stop work order issued by the public works superintendent, after notice to the permittee for any of the following reasons:

(1) Violation of any condition of the permit, the bond, or of any provision of this Chapter;

(2) Violation of any provision of any other ordinance of the City or law relating to the work; or

(3) Existence of any condition or the doing of any act which may constitute or cause a condition endangering life or property.

(b) Immediate Effect: A suspension or revocation by the public works superintendent, and a stop work order, shall take effect immediately upon entry thereof by the public works superintendent and notice to the person performing the work in the public right of way. Notice to the person performing the work shall be accomplished when the public works superintendent has posted a stop work order at the location of the work and written notice has been mailed, return receipt requested, to the address indicated by the permittee on the permit.

(c) Notice: Whenever the public works superintendent finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the public works superintendent to be reasonably necessary for the completion of the work.

(d) Performance By City: In the event that the surety or principal, within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the City for the cost of doing the work, as set forth in the notice, the City may perform the work, at the discretion of the public works superintendent, with City forces or contract forces or both, and suit may be commenced by the City against the contractor and bonding company and such other persons as may be liable, to recover the entire amount due to the City, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

8A-05-250. Failure To Conform To Design Standards; Penalty.

For failure to conform to the design standards and regulations, the public works superintendent may:

- (a) Suspend or revoke the permit;
- (b) Issue a stop work order;
- (c) Order removal and replacement of faulty work;
- (d) Require an extended warranty period; and/or
- (e) Negotiate a cash settlement to be applied toward future maintenance costs.

8A-05-260. Appeal Of Suspension, Revocation Or Stop Work Order.

Any suspension, revocation or stop order by the public works superintendent may be appealed by the permittee by filing a written notice of appeal with the City Council within ten (10) days of the action of the public works superintendent. The City Council shall hear such appeal, if written request therefor is timely filed, as soon as practicable, and render its decision within a reasonable time following filing of notice of appeal.

8A-05-270. Tampering With Traffic Barricades.

It shall be unlawful for any person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

8A-05-280. Conflict With Governing Provisions.

Should there be a conflict between the provisions of this Chapter and the provisions of any other ordinance, agreement, franchise or other document governing the excavation of a public right of way, the more restrictive provisions of the aforesaid documents shall apply.

8A-05-290. Violation; Penalty.

Unless otherwise specified in this Chapter, a violation of any provision of this Chapter, or failure to comply with an order of suspension, revocation or stop work, shall be a class B misdemeanor. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this Chapter. Civil penalties may also be imposed in accordance with applicable ordinances regarding the same.