

Chapter 23

STREETS, SIDEWALKS, PUBLIC GROUNDS AND PUBLIC WORKS INCLUDING WATER DEPARTMENT AND SEWER DEPARTMENT

Cross References — *City bench mark established, § 2-3; Street and alley committee established, § 2-249; Obstructions and filth on public ways declared a nuisance, § 18-93; Unsafe sidewalks, gutters and curbstones declared a nuisance, § 18-96; Parks and recreation, § 19-1 et seq.; Planning and zoning generally, § 20-1 et seq.; Subdivisions, § 24-1 et seq.; Water and sewers, § 28-1 et seq.; Building inspector/code enforcement officer — authorized to enforce ch. 23, § 2-209.*

State Law Reference — *Control of streets and sidewalks, RSMo. § 77.520.*

ARTICLE I In General ¹

SECTION 23-1. Streets, Sidewalks and Public Grounds. [RSMo. 77.520; Ord. No. 2009-08 § 1, 2-24-2009]

The City Council may prohibit and prevent all encroachments into and upon the sidewalks, streets, avenues, alleys and other public places of the City and may provide for the removal of all obstructions from the sidewalks, curbstones, gutters and crosswalks at the expense of the owners or occupants of the ground fronting thereon or at the expense of the person causing the same; the Council may also regulate the planting of shade trees, erecting of awnings, hitching posts, lampposts, awning posts, telephone, telegraph and electric light poles and the making of excavations through and under the sidewalks or in any public street, avenue, alley or other public place within the City.

SECTION 23-2. Obstruction of and on Public Ways — Nuisance. [Ord. No. 2009-08 § 1, 2-24-2009]

- A. *Obstructions — Nuisance.* All obstructions caused or placed on any street, sidewalk or public alley and all wood, barrels, crates, lumber, bricks, stones, dirt, filth, slops, vegetable matter, grass clippings, leaves, branches or other articles placed or thrown by any person on or in any street, alley, sidewalk or other public place which in any way may cause, or is liable to cause, danger, injury, inconvenience or annoyance to the public within the City is hereby declared a nuisance.
- B. *Exceptions.*

¹. Editor's Note — Ord. no. 2009-08 § 1, adopted February 24, 2009, repealed sections 23-1 — 23-2, 23-4 and enacted new provisions set out herein. Former sections 23-1 — 23-2, 23-4 derived from ord. of 5-5-1970 § 17; rev. ord. no. 34 § 71, 10-21-1912; ord. no. 80-11 § 1, 8-12-1980.

1. Merchants may use three (3) feet of the sidewalk next to and in front of their buildings for the purpose of displaying their wares and merchandise.
 2. Persons receiving or discharging any article in the way of regular business unless such articles are permitted to remain more than two (2) hours upon any square, street, alley or sidewalk.
 3. Any person may use the squares, streets, alleys or sidewalks in the construction of any new building, or in the removal, repair or alteration of any building, or for the purpose of piling thereon building materials or tools, provided such person shall first have obtained the written permission of the Mayor or the Mayor's designee to use such squares, streets, alleys or sidewalks for such purposes.
 4. Obstructions or barricades deemed necessary by the City.
 5. Regulatory, information or direction signs, kiosks.
 6. Sidewalk cafes when approved by the City Council.
 7. Displays during fairs or public events approved by the City Council.
 8. Daytime only sidewalk sales by merchants in front of their buildings.
- C. *Sidewalk Blockage.* In no case shall sidewalks be blocked so as to prohibit:
1. The normal flow of traffic including both foot and wheelchair access.
 2. Access to fire hydrants or other safety devices.
 3. Street crossings.

SECTION 23-3. Adjacent Property Owners to Keep Sidewalks Clean, Free of Debris, Snow, etc. [Rev. Ord. No. 34, § 71, 10-21-1912; Ord. No. 2009-08 § 1, 2-24-2009]

Any person who shall fail, neglect or refuse to keep the sidewalk, curbing and gutter in front of the real property owned, occupied or possessed by him swept clean of mud, filth, dirt or snow, grass cuttings, and clear and clean from weeds, grass or other substances shall be deemed guilty of a misdemeanor.

SECTION 23-4. Maintenance and Repair of Sidewalks. [RSMo. 88.890; RSMo. 88.877; Ord. No. 2009-08 § 1, 2-24-2009]

A. *Maintenance And Repair.*

1. No property owner shall permit any sidewalk dedicated to public use and enjoyment, which abuts property owned by that person, to fall into a state of disrepair or to be unsafe. Said property owner shall have the responsibility for maintenance, repair, construction and upkeep of all such sidewalks.
2. All sidewalks, gutters or curbstones, within the City, permitted to remain in any unsafe condition or out of repair by any person required by ordinance to keep the same in good condition and repair are hereby declared a nuisance.

B. *Property owner Notification of Unsafe Sidewalk.*

1. Whenever the City Building Inspector or his designee determines that a sidewalk is unsafe for use, notice shall be given to the property owner or his representatives or by publication of the lot or premises adjacent to and abutting upon said sidewalk of such determination. Said notice shall be given in writing and delivered by U.S. mail or in person by the Building Inspector or designee or published in the local newspaper. Thereafter, it shall be the duty of the owner to place said sidewalk in a safe condition. Such notice shall specify a reasonable time, but not more than thirty (30) days, within which such work shall be commenced and shall further provide that the work shall be completed with due diligence. If the owner of such lot or premises shall refuse or neglect to repair said sidewalk within the time limit or in a manner otherwise than in accordance with this Section, the Building Inspector shall have said sidewalk repaired. The cost of repairs hereunder shall be levied as a special assessment against the premises which said sidewalk abuts and adjoins.
2. Any person who shall, after having been notified as above, fail, neglect, or refuse to comply with said order, shall be guilty of an offense, and shall be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) for each offense.

SECTION 23-5. Coasting on Handsleds or Skates. [Rev. Ord. No. 34, § 24, 10-21-1912; Ord. No. 2009-08 § 1, 2-24-2009]

Except in or on streets, or other places specially designated by the City Marshal for that purpose, any person within the City who shall coast upon any handsled or skates in or upon any street, alley, sidewalk or other public place shall be deemed guilty of a misdemeanor.

SECTION 23-6. through SECTION 23-14. (Reserved)

ARTICLE II
Street Commissioner

SECTION 23-15. Office Created. [Rev. Ord. No. 12, § 1, 10-21-1912]

The office of Street Commissioner is hereby created.

SECTION 23-16. (Reserved) ²

SECTION 23-17. Qualifications. [Rev. Ord. No. 12 § 3, 10-21-1912]

The person appointed to the office of Street Commissioner shall possess a thorough and practical knowledge of the latest and most approved methods of street improvement, and of the work and material required and tools used in the opening, widening, grading, guttering and paving of streets, alleys and sidewalks, and also a practical knowledge of the work to be done and material used in the construction of drains, sewers, culverts and bridges. He shall be sober and

2. Editor's Note — Ord. No. 95-06 adopted on 4-11-1995 repealed § 23-16 which originally derived from Rev. Ord. No. 12 § 2, 10-21-1912.

industrious, a qualified voter of the City and during his term of office shall reside therein.

SECTION 23-18. (Reserved) ³

SECTION 23-19. (Reserved) ⁴

SECTION 23-20. General Duties. [Rev. Ord. No. 12, § 5, 10-21-1912; Ord. No. 2009-19 § I, 4-14-2009]

- A. It shall be the duty of the Street Commissioner to superintend the construction of all public works ordered by the City Council, to make out the plans, specifications and estimates for such public work as may be required by the Council, to perform engineering ordered by the City Council and to employ such labor as may be necessary and oversee the same.
- B. He shall personally superintend and direct all the labor required to be done in the opening, widening, grading, guttering, paving or other improvement of any street, alley, City installed sidewalk or thoroughfare of the City.
- C. He shall give his personal attention to and direct the labor employed in the construction of any building, bridge, culvert, drain or sewer or in the improvement of any public place, whenever required by ordinance or resolution of the Council.
- D. He is hereby authorized to make such repairs on the streets and alleys of the City as may be immediately necessary for the safety and convenience of the public.
- E. He shall see that all streets, alleys, gutters, drains and sewers are kept free from obstructions and in a clean conditions.
- F. He shall, when in the course of his duties, observe any accumulation of snow, ice, mud, filth, debris or other offensive matter or anything calculated to impede the free and unobstructed passage of pedestrians on public sidewalks, notify the Nuisance Enforcement Officer and request enforcement of City ordinance, Chapter 23, Sections 23-2 and 23-3 to eliminate such obstructions.
- G. He shall have general supervision over the streets, alleys and public places of the City and recommend to the Council from time to time any necessary improvements therein.
- H. He shall report to the City Engineer/Building Inspector, for his information and action, any sidewalk/s in the City that are not kept in good condition and repair.

SECTION 23-21. Purchases. [Rev. Ord. No. 12, § 7, 10-21-1912]

The Street Commissioner shall keep an accurate and itemized account of all purchases made by him, and of all services rendered by those in his employ or under his control, and shall certify to the correctness of all accounts for purchases made by him.

3. Editor's Note — Ord. No. 95-06 adopted on 4-11-1995 repealed § 23-18 which originally derived from Rev. Ord. No. 12 § 3, 10-21-1912.

4. Editor's Note — Ord. No. 95-06 adopted on 4-11-1995 repealed § 23-19 which originally derived from Rev. Ord. No. 12 § 3, 10-21-1912.

SECTION 23-22. Care and Custody of Property. [Rev. Ord. No. 12, § 8, 10-21-1912]

The Street Commissioner shall have the care and custody of all tools, machinery, implements and other property of the City, or those under his control in the performance of his duties, and shall be held responsible for their loss and abuse.

ARTICLE III
Department of Public Works

SECTION 23-23. Establishment. [Ord. No. 2012-26 § 1, 8-14-2012]

The Department of Public Works will include the Street Department, the Water Department and the Sewer Department. The office of Director of Public Works may be occupied by one (1) person designated by the Mayor, with the consent of the City Council.

SECTION 23-24. Powers. [Ord. No. 2012-26 § 1, 8-14-2012]

It shall be the duty of the Director of Public Works to act as department head for all said departments and to supervise the construction, operation, and maintenance of public works as ordered by the Mayor and the City Council with the aid and assistance of such consultants as the City may provide to oversee the operation of the department, supervision of employees, discipline, and discharge or terminate employment. The Director of Public Works will supervise all labor required to be done in said departments. To give his personal attention to direct the labor in the department, make such repairs to the public facilities as may be necessary for the convenience, safety, and well-being of the public, to keep the same in good operation, free of obstructions, and in a clean condition; to protect themselves from the weather elements, including flood, and to provide general supervision over the Sewer and Water Departments, as well as streets and alleyways. The Director of Public Works will delegate authority as necessary to foster efficient operation of each department.

SECTION 23-25. Duties. [Ord. No. 2012-26 § 1, 8-14-2012]

The Director of Public Works shall report to the City Engineer for information and action to be taken, and to the City Administrator, and in his absence to the Mayor, and keep facilities in good operating condition and repair.

SECTION 23-26. Account of all Purchases. [Ord. No. 2012-26 § 1, 8-14-2012]

The Director of Public Works shall keep an accurate and itemized account of all purchases made for public works and all services rendered by all those under his supervision and certify the correctness of all amounts for purchases and expenditures under the procurement ordinances and policies of the City of Lexington, Missouri.

SECTION 23-27. Authority Over Care and Custody of Supplies. [Ord. No. 2012-26 § 1, 8-14-2012]

The Director of Public Works shall have ultimate authority over the care and custody of all tools, machinery, implements, supplies, and other property of the City of Lexington, Missouri, or those under the Director's control in performance of his duties.

SECTION 23-28. through SECTION 23-33. (Reserved)

ARTICLE IV
Excavations

SECTION 23-34. Permit Required. [Ord. of 11-2-1971, § 3]

It shall be unlawful for any person to excavate or otherwise dig in any public thoroughfare, street, alley or other City property without first obtaining a permit therefor.

SECTION 23-35. Written Application to be Filed Prior to Making Excavation; Contents of Request. [Ord. of 11-2-1971, § 2; Ord. No. 2004-04 § 1, 2-10-2004]

Any person desiring to excavate or otherwise dig in any public thoroughfare, street, alley or other City property for any purpose whatsoever shall file a written request application which shall set out in detail the specifications of the proposed excavations along with the specific area in which such excavations are to be made. A minimum of directional boring under the thoroughfares, streets, alleys or other City property will be required, however City Council may waive the boring requirement.

SECTION 23-36. Inspection of Proposed Excavation; Approval or Disapproval. [Ord. of 11-2-1971, § 2]

The proposed excavation and area shall be inspected by the Mayor or a person properly authorized by the Mayor to make said inspection and written approval or disapproval of the proposed excavation shall be filed with the City Clerk and shall bear the signature of the person making the inspection.

SECTION 23-37. Permit Fee. [Ord. No. 80-20, § 2, 11-3-1980]

Upon approval of a proposed excavation by the Mayor or other authorized person, the person desiring to make the excavation shall pay a permit fee to the City Collector in the amount of one hundred dollars (\$100.00) and shall obtain a receipt therefor.

SECTION 23-38. Issuance of Permit. [Ord. of 11-2-1971, § 2]

The City Clerk shall only issue a permit for a proposed excavation upon presentation of the receipt from the City Collector, approval of the proposed excavation by the person inspecting the proposed excavation and payment of one dollar (\$1.00), City Clerk fee for the issuance of the permit.

SECTION 23-39. Restoration of Surface; Inspection. [Ord. of 11-2-1971, § 2; Ord. No. 2009-31 § 1, 8-11-2009]

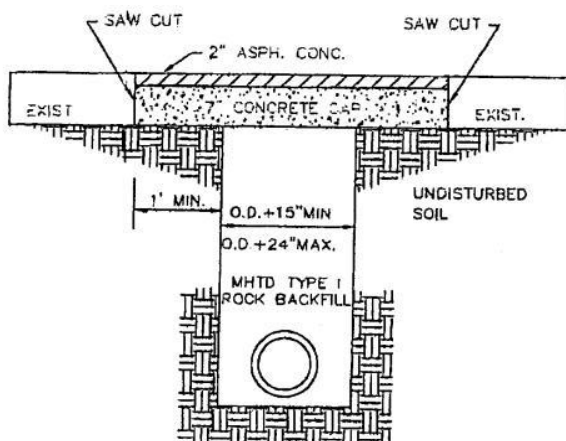
The person making an excavation shall return and restore the area within fourteen (14) days of the permit issuance date to in as good a condition as it was prior to the excavation and shall have the same inspected by the Street Commissioner, Mayor or a person properly authorized by the Mayor to make the inspection. For each violation penalties shall be chargeable to the applicant at a rate of not less than one hundred dollars (\$100.00) per day and not exceeding two hundred fifty

dollars (\$250.00) per day for so long as the violation continues.

SECTION 23-40. Cutting of Streets; Requires a Bond and/or Security Deposit for Repair and Restoration; Standards for Restoration; Penalty Provision. [Ord. No. 03-85-2004, §§ 1-8, 3-5-1985; Ord. No. 88-24 § 2, 12-13-1988; Ord. No. 2004-30 § 1, 11-9-2004; Ord. No. 2009-18 § 1, 4-14-2009]

- A. No individual, firm, corporation, utility department or other entity whatsoever shall make an opening in any street or alley of the City of Lexington, unless the City Clerk has issued a duly authorized permit. A fee of one hundred dollars (\$100.00) for said permit shall be required as set out in Section 23-37.
- B. Cutting, backfilling and restoring street or alley surfaces shall be under the supervision of the Street Superintendent or his designee. The following procedures are to be used when opening streets or alleys: The street shall be cut twelve (12) inches wider than the trench on each side. All street and alley crossings shall be backfilled with one (1) inch size clean MoDot Type I rock, four (4) feet back of curb to four (4) feet back from the edge of the asphalt. Job excavated material may be used for compacted backfill (outside of street or alley right-of-ways) when the job excavated material is finely divided and free from debris, organic material, cinders or other corrosive material and stones larger than three (3) inches in greatest dimension. Large masses of moist, stiff clay shall not be used. Job excavated material shall be compacted to ninety-five percent (95%) of maximum density at optimum moisture content as determined by ASTM D698 when the test is appropriate or to seventy percent (70%) relative density as determined by ASTM D2049 when that test is appropriate. See reference drawing street patch details. The concrete should not exceed seven (7) inches thick with a mix of 3500 PSI with no reinforcing steel, with a minimum cap of two (2) inches of hot asphalt to street level. Oil and sealed alleys shall be filled to within two (2) inches of surface with one (1) inch rock with fines; then filled to surface with cold mix.

STREET PATCH DETAIL



NOTE:
1. THE 1 FT ON EITHER SIDE OF ACTUAL TRENCH WIDTH SHALL NOT BE REMOVED UNTIL THE TRENCH HAS BEEN FILLED AND COMPACTED.

- C. The permit holder shall present to the City Clerk the permit card signed by the Street Superintendent or his representative certifying as to the completion of the work in accordance with the ordinances of the City of Lexington.
- D. In the event that the work is not approved by the Street Superintendent, permit holder shall, within three (3) days from the time such notice of deficiency is given, replace the work in accordance with the conditions and requirements herein contained and set out further in this Chapter. In the event of failure to comply with the deficiency notice stating intent on the part of the City to contract for whatever remedial work is necessary and required, the permit holder shall be fully, completely, absolutely and unequivocally liable and shall pay the total cost of the contract and any other expenses involved in repairing the street and putting it back in condition as set out herein and in the other provisions of this Chapter.
- E. The permit holder, at his expense, shall maintain at all times during the progress of the work suitable barricades, fences, signs or other adequate protection for the public safety, and shall maintain such danger lights, signals or flagmen as may be necessary to insure safety to the public. In the event the above safety measures are not complied with and the City is required to furnish necessary safety devices, the permit holder will be responsible for indemnity to the City for all reasonable costs associated therewith.
- F. The permit holder shall assume any and all liability in regard to any excavations and shall execute and deliver his contractual agreement wherein he indemnifies the City and holds the City of Lexington free from damages in any manner.
- G. The permit holder shall, as a condition precedent to receiving his permit to open the street, be required to execute and deliver to the City of Lexington, his full and satisfactory performance bond in cash or corporate surety in an amount sufficient to reasonably insure the proper, effective and successful completion of the project and assuring the City of his complete and absolute financial responsibility for replacement and repair of the street as set out in Section 23-39 of the ordinances of Lexington and in this Chapter. Posting of the performance bond is a condition precedent to the receipt of a permit under this Section and is required prior to opening a basic area five (5) feet by five (5) feet in dimension as well as an additional ditch tract of two feet (2) by twelve and one-half (12 1/2) feet in dimension. The opening of additional area will require posting of additional bond in accord with the provisions of this Section. Bonds required to be posted shall substantially comply with the following schedule:
 - 1. For excavation or cutting a concrete or brick street, the sum of five hundred dollars (\$500.00) plus five dollars (\$5.00) for each linear foot over the basic area; and
 - 2. For excavation or cutting an asphalt, black top, oil top, hot mix or macadam surface, the sum of two hundred fifty dollars (\$250.00) plus three dollars (\$3.00) for each linear foot over the basic area; and
 - 3. For excavation or cutting a gravel, dirt or shale street, the sum of one hundred twenty-five dollars (\$125.00) plus one dollar fifty cents (\$1.50) for each linear foot over the basic area.

ARTICLE V
Public Right-of-Way

SECTION 23-41. Purpose and Necessity. [Ord. No. 2001-29 § 1(1), 6-12-2001]

The regulations contained herein are necessary to encourage the interest of public safety and welfare and right-of-ways are a fixed resource which needs to be managed to maximize the preservation of essential services to the inhabitants of Lexington, Missouri. In light of changes in the law and technology, the City of Lexington expects an increase in the use and excavation in the right-of-way, therefore the City of Lexington needs to control and regulate the right-of-way to protect public safety and welfare. Due to damages to the right-of-way caused by excavation, this accelerates the end of the useful life of the pavement. The City of Lexington finds that the demand to perform work in its public right-of-way by service providers can be effectively administered through the issuance of a permit.

SECTION 23-42. Definitions. [Ord. No. 2001-29 § 1(2), 6-12-2001]

As used in this Article, the following terms shall have these prescribed meanings:

ABANDONED FACILITIES — Those facilities owned by the ROW user that are not in use and will not be utilized by the owner in the future.

ADMINISTRATIVE FEE — The fee charged by the City to recover its cost incurred for right-of-way management including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-way permit applications; inspecting job sites and restoration improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits; and other costs the City may incur in managing the provision of this Article.

APPLICANT — Any person requesting permission to occupy, lease or operate facilities using the right-of-way or to excavate the right-of-way.

APPLICATION — The form designed by the City Engineer which an applicant must use to obtain a permit.

AREA OF INFLUENCE — The area within one (1) foot around a street excavation where the pavement and subgrade is impacted by the excavation and is subject to more rapid deterioration.

CONSTRUCT — Includes construct, install, erect, build, affix or otherwise place any fixed structure or object in, on, under, through or above the right-of-way.

DEGRADATION — The accelerated depreciation of a street caused by excavation in or disturbance of the paved portion of the street that is normally subject to vehicular traffic resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

DEGRADATION AREA — The area of the excavation in the public right-of-way and the area one (1) foot around the perimeter of the excavation.

EMERGENCY FACILITIES WORK — Facilities work made necessary by unexpected emergency condition including, but not limited to, the following:

1. An unexpected or unplanned outage, cut, rupture, leak or any other failure of facilities that prevents or significantly jeopardized the ability of a public utility to provide services to customers;
2. An unexpected or unplanned outage, cut, rupture, leak or any other failure of facilities that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or other such failure is not immediately repaired, controlled, stabilized or rectified; or
3. Any occurrence involving a facility that a reasonable person would conclude, under the circumstances, warrants immediate and undelayed action by the owner of the facility in order to protect the public and the public rights-of-way.

EXCAVATE — Includes any cutting, digging, excavating, tunneling, boring, grading or alteration of the surface or subsurface material or earth in the right-of-way.

FACILITY — Lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances or other equipment.

FACILITY-BASED SERVICE PROVIDER — A service provider owning or possessing facilities in the right-of-way.

PARKWAY — The area between a property line and the street curb.

PAVEMENT — Includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate based material.

PERSON — Any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing or any other legal entity.

PUBLIC IMPROVEMENT — Any project undertaken by the City for the construction, reconstruction, maintenance or repair of any public infrastructure and including, without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands; provided that projects undertaken by the City for the construction, reconstruction, maintenance or repair of any public infrastructure funded by or substantially by user fees imposed upon those using the public infrastructure shall not be deemed "public improvements" and shall not be exempt from the permit requirements of this Article.

PUBLIC LANDS — Any real property of the City that is not right-of-way.

RIGHT-OF-WAY — The area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.

RIGHT-OF-WAY PERMIT — The authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.

ROW USER — A person, its successors and assigns that uses the right-of-way for purposes of work, excavation, provision of services or to install, construct, maintain, repair facilities thereon

including, but not limited to, landowners and service providers. A ROW user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an inter-local agreement with the City regarding the use and occupancy of the City's right-of-way (unless that governmental entity is acting as a service provider in a proprietary capacity) or a reseller service provider that does not own or control its own facilities in the right-of-way.

SERVICE — A commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines or sanitary sewerage.

SERVICE PROVIDER — Any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the FCC (Federal Communications Commission), to provide such service. Service providers includes both facility-based service providers and reseller service providers.

SECTION 23-43. Policy. [Ord. No. 2001-29 § 1(3), 6-12-2001]

- A. It is the policy of the City to authorize any service provider to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the efficient use of and conserves the right-of-way and minimizes the burden on the right-of-way physically and aesthetically. Any use of the right-of-way by a ROW user shall be subject to the terms and conditions hereof in addition to applicable Federal, State or local requirements.
- B. This article also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits to construct, reconstruct, repair and maintain facilities within the right-of-way in the City.

SECTION 23-44. Administration. [Ord. No. 2001-29 § 1(4), 6-12-2001]

The City Engineer is the principal City Official authorized to administer right-of-way permits for work and excavations made in the right-of-way. The City Engineer may delegate any or all of the duties hereunder.

SECTION 23-45. Requirements of Service Provider. [Ord. No. 2001-29 § 1(5), 6-12-2001]

Any person desiring to conduct facilities work within the public rights-of-way must first apply for and obtain a permit, in addition to any other building permit, license, easement or authorization required by law, unless such facilities work is emergency facilities work. A person conducting emergency facilities work shall as soon as practicable notify the City of the location of the work and shall apply for the required permit by the next business day following the commencement of such emergency facilities work. A permit should be obtained for each project.

- 1. Any existing service provider must register within thirty (30) days of the effective date of this Article.
- 2. Any person who is not an existing service provider prior to the effective date of this Article and who wishes to become a service provider must first register with the City.
- 3. The service provider shall report any changes in its registration information within thirty

(30) days.

4. No service provider 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. The permits shall be conspicuously displayed at all times at the work site.
5. The information required for registration includes the following:
 - a. Identity and legal status of service provider, including related affiliates.
 - b. The name, address and telephone number of the applicant.
 - c. The name, address and telephone number of a responsible person whom the City may notify or contact at any time concerning the applicant's facilities work within the public right-of-way.
 - d. The name, address and telephone number of the owner of the facilities if applicant is not the owner.
 - e. An engineering site plan showing the proposed location of the applicant's facilities, including proposed manholes or poles; length, size, type and depth of facilities; relationship to other facilities; and number of street crossings and their locations and dimensions.
 - f. Projected commencement and termination dates, unless such dates are unknown at the time the permit is issued, in which case a provision requiring the permit holder to provide the City Engineer with reasonable advance notice of such dates once they are determined shall be included. The anticipated duration of the facilities work shall be provided at the time of the application.
 - g. Copies or other proof of certificates of insurance.
 - h. Any additional information the City Engineer may require including, but not limited to, such conditions and requirements as are reasonably necessary to protect structures and facilities in the public rights-of-way from damage and for the proper restoration of such public rights-of-way, structures and facilities and for the protection of the public and the continuity of pedestrian and vehicular traffic.
6. The service provider shall participate in any joint planning, construction and advance notification of right-of-way, including coordination and consolidation of street cut work as directed by the City Engineer.
7. To the extent allowed by law, the City may limit the number of registrations in a competitively neutral manner based upon, but not necessarily limited to, specific local considerations such as:
 - a. The capacity of the right-of-way to accommodate service facilities.
 - b. The disruption arising from numerous excavations of the right-of-way.
 - c. Any other consideration based upon the interests of the public safety and welfare.
8. *Payments of fees.* Each application shall be accompanied by payment of fees as designated

in this Article.

9. *Authority of applicant.* The City Engineer shall review each application and, upon determining that the applicant has all requisite authority to perform the facilities work and that the applicant has submitted all necessary information and has paid the appropriate fee, shall issue the permit, except as provided in Subsection (13) hereof.
10. *Review of application.* It is the intention of the City that disruption of the public rights-of-way should be minimized. Upon receipt of the application, the City Engineer shall:
 - a. Evaluate the degree of excavation necessary to perform the facilities work in the public rights-of-way and determine whether the proposed excavation will be more than minor in nature. If the applicant can show to the City Engineer's reasonable satisfaction that the facilities work involves no significant disruption or damage to the public rights-of-way or that the facilities work involves time-sensitive maintenance, then the City Engineer shall grant the permit without delay; provided, that if the permit is not issued in ten (10) business days, the aggrieved party may appeal as provided in Subsection (14); and
 - b. For circumstances where the City Engineer determines that there will be significant excavation of the public rights-of-way and where no exemption under (10)(a) or any other provisions of this Subsection applies, the City Engineer may, consistent with the time requirements set forth in Section 23-45 and in the permit, direct permit holders performing facilities work in the same area to consult with the City Engineer on how they may schedule and coordinate their work to accomplish the goals of this Article.
 - c. All public works supervisors must sign off on the plans and specifications prior to the City Engineer approval of the permit. Supervisors must review the plans and specifications within forty-eight (48) hours of the application date.
11. *Changes.* An applicant receiving a permit shall promptly notify the City Engineer of any changes in the information submitted in his application.
12. *Index.* The City Engineer shall maintain an index of all applicants who have been granted permits and their point(s) of contact.
13. *Denial of permit.* The City Engineer may deny an application for any of the following reasons if deemed in the public interest:
 - a. Undisputed past-due fees from prior permits or delinquent debt owed to the City.
 - b. Failure to return the public rights-of-way to their previous condition under previously-issued permits.
 - c. Undue disruption to existing use of the public rights-of-way by the public, the City or other utilities.
 - d. Environmental sensitivity, as defined by State or Federal Statutes, of land within the desired project's scope.
 - e. The applicant is in violation of the provisions of this Article.

- f. To protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its user.
- g. Availability of space where the permit is being sought.
- h. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival or any other event.

If a permit is denied under Subsection (13)(c) or (13)(d), the City Engineer shall cooperate with the applicant to identify alternative routes which most nearly match the routes requested by the applicant for the placement of facilities.

The City Engineer may issue a right-of-way permit in any case where the permit is necessary to allow such user to materially improve the service provided by the applicant or to prevent substantial economic hardship to a user of the applicant's service.

- 14. *Appeal of denial.* Applicant may appeal within ten (10) calendar days of the date of notice of such final decision of the City Engineer to the City Administrator or Mayor, which appeal shall be acted upon by the City Administrator or Mayor within five (5) business days and if denied by the City Administrator or Mayor, the applicant may then appeal to the City Council which shall act upon the appeal within thirty (30) days. If a permittee still deems himself aggrieved after the appeal to the City Council, such permittee shall have thirty (30) days after the effective date to institute an action in the Circuit Court of Lafayette County, Missouri.
- 15. *Applicable fees.* The fees collected pursuant to this Section will be used only to reimburse the City for costs incurred in managing the public rights-of-way and will not be used to generate revenue above such costs. Fees paid for a right-of-way permit which is subsequently revoked by the City Engineer are not refundable.
 - a. Non-exclusive franchises and owners of more than one thousand (1,000) lineal feet of facilities within the public rights-of-way shall be required to pay an annual fee of one thousand dollars (\$1,000.00). This fee is in lieu of and shall relieve such persons of the obligations to pay such fees as would be ordinarily be required under Subsection (15)(b) below for each permit sought during the given year.
 - b. The fee required for a single excavation permit shall be one hundred dollars (\$100.00).
 - c. Supplementary applications shall be a fee of twenty-five dollars (\$25.00).
- 16. *Revocation of permit.* Permittees hold right-of-way permits as a privilege and not as a right. The City reserves its right to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. Upon breach the City Engineer shall make a written demand upon the permittee to remedy such violation within five (5) calendar days of receiving notification of the breach. The permittee is required to submit a plan to the City Engineer within that five

(5) days for the correction. If the permit is revoked, the permittee shall also reimburse the City for its reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorney's fees, incurred in connection with such revocation. A substantial breach shall include, but not limited to, the following:

- a. Failure to maintain the required bond or insurance.
- b. Repeated traffic control violations.
- c. Failure to repair facilities damaged in the right-of-way.
- d. Failure to complete the work in a timely manner.
- e. Any material misrepresentation of any fact in the permit application.
- f. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens.

SECTION 23-46. Facilities Work. [Ord. No. 2001-29 § 1(6), 6-12-2001]

A. *Oversight Of Facilities Work.*

1. Applicants shall comply with all City Codes and ordinances.
2. Facilities work shall be subject to periodic inspections by the City. An inspection will be required at the start of backfilling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection with the Street Commissioner.
3. The City Engineer shall have full access to all portions of facilities work and may issue stop work orders and corrective orders to prevent unauthorized work or unsafe traffic control. Such corrective or stop work orders shall state that work not authorized by a permit is being carried out, summarize the unauthorized work and provide a period of not longer than thirty (30) days to cure the problem; provided however, that the order may require immediate remedial action or the cessation of activities where such is necessary to protect the public safety. Such orders may be delivered personally or by certified mail to the address listed on the application or to the person in charge of the construction site at the time of delivery. Such orders may be enforced by equitable action in Circuit Court of Lafayette County, Missouri. If the City prevails, the person involved in the facilities work shall be liable for all costs and expenses incurred by the City, including reasonable attorney's fees in enforcing the order, in addition to any and all fines and penalties established in this Article.
4. Any person who engages in facilities work in the public rights-of-way without a valid permit from the City shall nonetheless be subject to all requirements of this Article. Unless the facilities work is emergency facilities work, the City may, in its discretion, at any time until a permit is secured order the facilities work ceased and do any of the following:
 - a. Require such person to apply for a permit within thirty (30) days of receipt of a

written notice from the City that a permit is required;

- b. Require such person to remove its property and restore the affected area to a condition satisfactory to the City; or
 - c. Take any other action it is entitled to take under applicable law including, but not limited to, filing for and seeking damages for trespass.
5. Owners of facilities that maintain more than one thousand (1,000) lineal feet of facilities within the public rights-of-way shall keep complete and accurate maps and records of the location of their facilities. Within twelve (12) months of the effectiveness of this Article, any person maintaining or owning more than one thousand (1,000) lineal feet of facilities within the public rights-of-way shall file with the City Engineer a detailed map of those portions of that person's facilities lying within the public rights-of-way. Maps furnished to the City Engineer shall show the location of the facilities and their relationship to the public rights-of-way boundaries. Map updates shall be provided to the City Engineer at the time of payment of the annual excavation permit fee. The City shall indemnify the owners of facilities required to provide a map from any damages or harm caused by the improper use or distribution of the maps and/or records provided by the owners of the facilities. Such maps are intended to be proprietary to the owners of the facilities and not owned by the City. The City, to the extent permitted by law, will not provide such maps to third (3rd) parties.
6. The rights granted by a permit inure to the benefit of the applicant. The rights and permits shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise, including by force or involuntary sale, without the express written consent of the City. Such consent shall not be withheld unreasonably nor required for assignment to entities that control, are controlled by or are under common control with the applicant.
7. Should any applicant fail to abide by the terms of a permit, the City Council may, after thirty (30) days' written notice of breach or default and after a public hearing in which applicant has been afforded due process, terminate a permit if applicant has failed to undertake reasonable steps to cure such breach or default. Upon such termination, the City may order the removal of any of the applicant's facilities under the permit and if applicant should refuse, the City may remove such facilities at applicant's sole expense.

B. *Construction Standards.*

1. All facilities work shall be performed in accordance with applicable health, safety and construction codes.
2. All facilities shall be installed and located so as to minimize interference with the public and with other users of the public rights-of-way, including the City.
3. Before initiating construction of new facilities in the public rights-of-way, the applicant shall make all reasonable efforts to use existing facilities. An applicant shall not place facilities where they will damage or interfere with the use or operation of

- those previously installed or obstruct or hinder the various utilities serving the residents and businesses in the City in their use of any public rights-of-way.
4. Any and all public rights-of-way disturbed or damaged during the facilities work shall be promptly repaired or replaced by applicant to their previous condition, at applicant's expense.
 5. Any subcontractor of applicant used for facilities work must be properly licensed under the law of the State and all applicable local ordinances and each subcontractor shall have the same obligations with respect to its work as applicant would have hereunder. Applicant shall be responsible for ensuring that the work of all subcontractors is performed consistent with its permits and applicable law, shall be fully responsible for all acts or omissions of subcontractors and shall be responsible for promptly correcting acts or omissions by the subcontractor.
 6. After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition that it was prior to the excavation.
 7. If the permittee fails to restore the right-of-way in the manner and to the condition required or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the permittee and its surety that, unless within five (5) days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way, the City shall immediately serve notice of failure to comply upon the surety and the permittee and the surety shall have the right to take over and complete the work; provided however, that if the surety does not commence performance thereof within ten (10) days from the date of notice, the City may take over and prosecute same to completion, by contract or otherwise, at the expense of the permittee and the permittee and its surety shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.
 8. In restoring the right-of-way, the permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months the permittee shall, upon notification from the City, correct all restoration work to the extent necessary. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice. The City Engineer shall have the authority to extend the guarantee period for up to an additional twenty-four (24) months from the date of the new restoration if the City Engineer determines any overt action by the permittee not to comply.
 9. The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

SECTION 23-47. Performance Guarantee and Remedies. [Ord. No. 2001-29 § 1(7), 6-12-2001]

A. Performance Bond.

1. Prior to any facilities work in the public rights-of-way, an applicant shall establish in the City's favor a performance bond in the penal sum of two thousand dollars (\$2,000.00). Owners of facilities that maintain more than one thousand (1,000) lineal

feet of facilities within the public rights-of-way and franchises shall establish in the City's favor a performance bond in the penal sum of five thousand dollars (\$5,000.00). An annual bond of fifty thousand dollars (\$50,000.00) automatically renewed yearly shall satisfy the requirement of this Section. Differences in bond requirements, including provision for self-insurance or provisions for a single continuing bond where facilities work is conducted by the same applicant under numerous permits, may be established by regulation based on the extent or nature of the facilities work and the past performances of the applicant but may not be based on the characteristics of the applicant.

2. In the event an applicant fails to complete the facilities work in a safe, timely and competent manner, there shall be recoverable, jointly and severally from the principal and surety on the bond, any damage or loss suffered by the City as a result, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
3. Upon completion of the facilities work to the satisfaction of the City Engineer, the City Engineer shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established by the City Engineer considering the nature of the work performed.
4. A performance bond shall be issued by a surety acceptable to the City and shall contain the following endorsement: "This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City of Lexington, Missouri, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
5. Recovery by the City of any amounts under the performance bond does not limit an applicant's duty to indemnify the City in any way, nor shall such recovery relieve an applicant of its obligations under a permit or reduce the amounts owed the City other than by the amounts recovered by the City under the performance bond or in any respect prevent the City from exercising any other rights or remedy it may have.
6. Evidence of liability insurance with an insurance company licensed to do business in Missouri shall be submitted and on file with the City. The amount will be not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in aggregate. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage to the extent caused or alleged to have been caused by the negligent acts or omissions of the permittee. If the permittee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

B. *Cost Recovery.*

1. In the event that an excavation is not refilled within a reasonable time after it is ready for refilling, the City Engineer shall notify the applicant making the excavation that if such excavation is not filled within four (4) days, it shall be filled by the City. The cost of such work shall be paid by the permit holder within ten (10) days after completion and no additional permit shall be issued to that person until such charge has been paid.

2. In the event the City incurs additional costs as a result of an unauthorized action or an inaction by any person and/or owner of facilities, the City shall have the right to recover from that person or owner any and all documentable costs incurred including, but not limited to, the identification of undocumented facilities, completion of improper facilities work, long-term structural damage, construction delay fees and penalties, fees paid to other agencies and any other documentable costs incurred by the City within the public rights-of-way.

SECTION 23-48. Relocation of Facilities in Existing Public Rights-of-Way. [Ord. No. 2001-29 § 1(8), 6-12-2001]

- A. Whenever, by reason of changes to a street or in the location or manner of constructing a drainage facility, sanitary sewer or other City-owned underground or above-ground structure, it is deemed necessary by the City to move, alter, change, adapt or conform existing facilities, the owner of such facilities shall make the alterations or changes on alternative right-of-way provided by the City, if available. The City will endeavor to minimize the interference with previously installed facilities when conducting its own facilities work.
- B. The City shall provide the ROW user with written notice of relocations and the anticipated date of said improvements as soon as working drawings are available. The ROW user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- C. Upon delivery of final design plans for such public improvements, the ROW user shall remove and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions.
- D. In the event the ROW user is required to move its facilities in accordance with this Section, any ordinary right-of-way permit fee shall be waived.

SECTION 23-49. Service Provider's Right to Sell, Transfer, Lease, Assign, Sublet or Dispose. [Ord. No. 2001-29 § 1(9), 6-12-2001]

In the event a service provider shall sell, transfer, lease, assign, sublet or dispose of its facilities or any portion thereof that is located in City right-of-way or right, title or interest in the same or transfer any rights granted by the City to any person either by forced or involuntary sale or by ordinary sale, consolidation or otherwise, it shall notify the City of same. In such case, the buyer, transferee, lessee or assignee shall be subject to the terms and conditions of this Article, including the requirements to register as provided in the preceding Section.

SECTION 23-50. Reseller Service Providers. [Ord. No. 2001-29 § 1(10), 6-12-2001]

A service provider may permit and has the authority to sell, sublet or lease any use of excess capacity and sell services for resale to any reseller service provider providing service within the City, including the service provider's subsidiary or affiliate. The reseller service provider shall first register and obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity including, but not limited to, the City or the FCC. Unless otherwise prohibited by law or regulatory authority, the service provider shall use all reasonable efforts to provide the City on an annual

basis the identity of entities with which the service provider has entered into an interconnection and/or resale agreement within the City.

SECTION 23-51. Use of the Right-of-Way. [Ord. No. 2001-29 § 1(11), 6-12-2001]

- A. The ROW user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.
- B. The ROW user shall consider any request made by the City concerning placement facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- C. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems or other structures or public improvements already installed. Also, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City.
- D. The ROW users shall not interfere with the facilities of the other ROW user without their permission. If the City would require or negotiate to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time. The City may waive this requirement when, in its sole discretion, it deems relocation impractical. The cost of such relocation shall be borne in accordance with this Article.
- E. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW user shall be fully repaired or replaced promptly by the ROW user at its sole expense and to the reasonable satisfaction of the City. If it is a public safety matter, all such repairs or replacement shall be corrected within twenty-four (24) hours of notice from the City.
- F. The ROW user shall cooperate promptly and fully with the City and take all necessary measures to provide accurate and complete on-site information regarding the nature and location of its facilities within the right-of-way, both underground and overhead. Such location and identification shall be at the sole expense of the ROW user.

SECTION 23-52. Protection of the Public. [Ord. No. 2001-29 § 1(12), 6-12-2001]

- A. It shall be the responsibility of the ROW user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- B. The City and ROW users shall be responsible for taking reasonable precautionary measures including calling for facility locations.
- C. Any ROW user who for any purpose makes or cause to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way and shall leave any part or portion thereof open or shall leave part or portion thereof disrupted with rubbish, building or other material during construction and/or the nighttime, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with

the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption. The sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights are required from the time the opening of the excavation until the excavation is surfaced and opened for travel.

- D. In the event the ROW user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW user will be required to remove and replace the tree at the ROW user's cost.

SECTION 23-53. Right-of-way Vacation. [Ord. No. 2001-29 § 1(13), 6-12-2001]

- A. If the City vacates a right-of-way which contains the facilities of the service provider and if the vacation does not require the relocation of the service provider's facilities, the City shall reserve, to and for itself and all service providers having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- B. If the vacation requires the relocation of facilities and
 - 1. If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs, or
 - 2. If the vacation proceedings are initiated by the City, the service provider must pay the relocation costs unless otherwise agreed to by the City and the service provider, or
 - 3. If a person other than the service provider of the City initiates the vacation proceedings, such other person must pay the relocation costs.

SECTION 23-54. Abandoned and Unusable Facilities. [Ord. No. 2001-29 § 1(14), 6-12-2001]

The City Engineer may allow underground facilities or portions thereof to remain in place if it is in the best interest of public safety to do so. The ROW user shall submit to the City a proposal and instruments for transferring ownership of its facilities to the City. Facilities which remain unused for two (2) years shall be deemed to be abandoned. The City may take possession and ownership of the facility.

SECTION 23-55. Permitted Work. [Ord. No. 2001-29 § 1(15), 6-12-2001]

- A. The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.
- B. The permittee shall notify the City no less than three (3) working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow for more than four (4) hours.
- C. All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at the permittee's expense.
- D. The permittee shall be liable for any damages to underground facilities or for any damages

to underground facilities that have been properly identified prior to excavation.

- E. The permittee shall be responsible for providing adequate traffic control to the surrounding area. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic, the peace and quiet of the neighborhood.
- F. The City may use the as-built records of the service provider's facilities in connection with public improvements.

SECTION 23-56. Supplementary Applications. [Ord. No. 2001-29 § 1(16), 6-12-2001]

- A. A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area:
 - 1. Make application for a permit extension and pay any additional fees required thereby, and
 - 2. Receive a new right-of-way permit or permit extension.
- B. A right-of-way permit shall be valid only for the dates specified in the permit. If a permittee does not complete the work by the permit end date, the permittee must apply for and received a new right-of-way permit or a permit extension for additional time.

SECTION 23-57. Miscellaneous Provisions. [Ord. No. 2001-29 § 1(17), 6-12-2001]

- A. A permittee shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private vehicles may not be parked within or next to the permit area.
- B. Except in cases of emergency or with approval of the City Engineer, no right-of-way work may be done when conditions are unreasonable for such work.
- C. Each applicant shall comply with all applicable Federal and State laws as well as City ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established. The ROW user's rights are subject to the Police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Nothing herein shall be deemed to relieve an applicant or the City of the express provisions of an existing franchise, license or other agreement or permit.
- D. This Article may be amended from time to time and in no event shall this Article be considered a contract between the City and an applicant such that the City would be prohibited from amending any provision hereof.
- E. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW user's or the City's control. Applicant shall take immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its permit without unduly endangering the health, safety and integrity of the applicant's employees or property, the public, the public ROW, public property or private property.

- F. The City's failure to enforce or remedy any non-compliance of the terms and conditions of this Article or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.
- G. The exercise of one (1) remedy under this Article shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an applicant of its obligations to comply with its permits. Remedies may be used alone or in combination; in addition, the City may exercise any rights it has at law or equity. The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provisions of this Article. No applicant shall be relieved of its obligation to comply with any of the provisions of this Article by reason of any failure to the City to enforce prompt compliance.
- H. The provisions of this Article shall specifically apply to any lands or property annexed by City as of the date of such annexation.
- I. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required under this Article or any permit and a period of time is proscribed and is fixed herein, the time shall be computed so as to exclude the first (1st) and include the last day of the prescribed or fixed period of time.
- J. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, any right the City may have to acquire the property of the applicant through the exercise of the power of eminent domain.
- K. In the event the City Council closes or abandons any public ROW which contain facilities installed hereunder, any land contained in such closed or abandoned public ROW shall be subject to the rights of the applicant.
- L. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplement or otherwise nullify any other ordinances of the City or requirements thereof, whether or not relating to or in any manner connected with the subject written hereof, unless expressly provided otherwise herein or hereafter.
- M. The City shall have the right to waive any provision of this Article or any registration, permit or other authorization granted thereunder, except those required by Federal or State law, if the City determines that it is in the public interest to do so or that the enforcement of such provision will impose an undue hardship on the person.

SECTION 23-58. Indemnification. [Ord. No. 2001-29 § 1(18), 6-12-2001]

Applicant shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, Council members, commissions, agents and employees against any and all claims, suits, causes of action, proceedings and judgments, including reasonable attorney's fees, for damage or equitable relief arising out of the construction and maintenance of the applicant's facilities work, except to the extent such claim, suit, cause of action or proceedings and judgments for damages or equitable relief arise out of the negligent or willful misconduct of the City or its officials, boards, Council members, commissions agents or employees.

SECTION 23-59. Severability. [Ord. No. 2001-29 § 1(19), 6-12-2001]

If any Section, Subsection, sentence, clause, phrase or portion of the Article is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 23-60. Penalties. [Ord. No. 2001-29 § 1(20), 6-12-2001]

For each violation of the provisions of this Article or of a permit granted pursuant to this Article, as to which the City has given notice to applicant as provided in this Article, penalties may be chargeable to the applicant at a rate of not less than one hundred dollars (\$100.00) and not exceeding five hundred dollars (\$500.00) per day for so long as the violation continues. The violation of any provision of this Article is hereby deemed to be grounds for revocation of the permit and registration to operate with the City. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Article.

ARTICLE VI
City-Owned Parking Lots

SECTION 23-61. Rental Charges Established. [Ord. No. 2002-09 § 2, 3-19-2002]

The following are hereby established as the rental charges for the use of the City-owned parking lots:

1. The per diem charge for not-for-profit organizations shall be one hundred dollars (\$100.00).
2. The per diem charge for all profitable organizations shall be one hundred fifty dollars (\$150.00).
3. The City Council shall have the power to waive any per diem charge from time to time for the use of the City-owned parking lots by motion passed by the Council.

SECTION 23-62. Rental to be on a First-Come, First-Served Basis — When Charges are to be Paid. [Ord. No. 2002-09 § 3, 3-19-2002]

The City-owned parking lots shall be rented on a first-come, first-served basis and all payments, fees and charges shall be paid no later than ten (10) days prior to the rental date. The rental agreement shall be signed no later than ten (10) days prior to the rental date.

SECTION 23-63. Police Officer to be on Duty — Payment for Services. [Ord. No. 2002-09 § 4, 3-19-2002]

A member of the Police force shall be assigned and shall stay within the immediate area of the parking lot during the period that it is being occupied by any renter. The tenant shall pay to the City in addition to the rental an hourly rate of ten dollars (\$10.00) per hour per officer.

SECTION 23-64. Intoxicating Beverages on Premises. [Ord. No. 2002-09 § 5, 3-19-2002]

Intoxicating beverages shall not be served or consumed on any part of the parking lot, except by

written approval of the City Council. Such approval shall in no way discharge the renter from meeting all of the laws of the State regarding the serving of intoxicating liquors.

SECTION 23-65. Condition of Premises After Use by Tenant. [Ord. No. 2002-09 § 6, 3-19-2002]

The parking lot shall be cleaned and shall be free of any debris or trash and shall be in the same condition in which it was found by the tenant at the conclusion of his rental period.

SECTION 23-66. Closing Hour. [Ord. No. 2002-09 § 7, 3-19-2002]

The parking lots shall be closed at 1:00 A.M. All persons, other than those necessary to clean up and return the area to the condition in which it was found, shall be excluded from the area at that hour.