

CITY OF ENGLEWOOD

**NOTICE OF APPROVAL
OF A BILL FOR AN ORDINANCE**

On the 21st day of October 2024, the City Council of the City of Englewood, Colorado, approved on first reading the following Council Bill:

**BY AUTHORITY
COUNCIL BILL NO.56
INTRODUCED BY
COUNCIL MEMBER WARD**

A BILL FOR AN ORDINANCE
AMENDING ENGLEWOOD
MUNICIPAL CODE TITLE 11,
CHAPTER 7, CITY RIGHT-OF-WAY,
AND ESTABLISHING FEES AND
PENALTIES REGARDING USE OF
THE CITY'S RIGHT-OF-WAY

Copies of the aforesaid council bill are available for public inspection in the office of the City Clerk, City of Englewood, Civic Center, 1000 Englewood Parkway, Englewood, Colorado 80110 or it can be found at <http://www.englewoodco.gov>, Government, Legal/Public Notices.

PUBLISHED: OCTOBER 23, 2024
Official Website of the City of
Englewood, Colorado

ORDINANCE
NO. _____
SERIES OF 2024

COUNCIL BILL NO. 56
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING ENGLEWOOD MUNICIPAL CODE TITLE 11, CHAPTER 7, CITY RIGHT-OF-WAY, AND ESTABLISHING FEES AND PENALTIES REGARDING USE OF THE CITY'S RIGHT-OF-WAY

WHEREAS, third parties working in and on public ways have been observed to require lengthy street closures which causes travel impacts and delays; and

WHEREAS, the City's elected officials have received numerous complaints and concerns from citizens regarding extended road closures, failure to remove barriers when work is complete, failure to follow best practices, and perceived violation of right of way permits; and

WHEREAS, City Council studied the issue in multiple study sessions, received information regarding right-of-way regulations by surrounding cities, and considered administrative penalties and other tools to ensure compliance with the City's right-of-way code and permits to work therein; and

WHEREAS, City Council desires to protect the rights of the City and its citizens in utilizing public streets and sidewalks by providing for additional enforcement mechanisms and best practices for third parties working in and on public right-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. Declaration. The City of Englewood finds and declares that Title 11, Chapter 7 provides principles, procedures and associated funding for the placement of structures and facilities, construction, excavation, encroachments and work activities within or upon any public right-of-way, and to protect the integrity of the road system and the City's infrastructure. To achieve these purposes, it is necessary to require permits of private users of the public rights-of-way, to establish permit procedures, and to fix and collect fees and charges. Public and private uses of public rights-of-way for location of facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the City must ensure that the primary purpose of the right-of-way, the safe and efficient passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, roadways, facilities, and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the right-of-way corridors by private users is secondary to these public objectives, and the movement of traffic. This Chapter is intended to strike a balance between the public need for efficient, safe transportation routes and the use of rights-of-way for location of facilities by public and private entities. It thus has several objectives:

1. To ensure that the public safety is maintained and that public inconvenience is minimized.
2. To protect the City's infrastructure investment by establishing repair standards for the pavement, facilities, and property in the public rights-of-way, when work is accomplished.
3. To facilitate work within the rights-of-way through the standardization of regulations.
4. To maintain an efficient permit process.
5. To conserve and fairly apportion the limited physical capacity of the public rights-of-way held in public trust by the City.

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6. To establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
 7. To promote cooperation among the permittees (as defined herein) and the City in the occupation of the public rights-of-way, and work therein, in order to; (i) eliminate duplication that is wasteful, unnecessary or unsightly; (ii) lower the permittee's and the City's costs of providing services to the public; and (iii) minimize street cuts.
 8. To assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.
 9. To reduce disruptions and interference with the public use of City streets and damage to the pavement and landscaping caused by excavations.
 10. To facilitate joint use of utility and similar facilities in Right-of-Way such as attachment of flags, banners, or similar signs announcing public events, holiday lights and other decorative attachments, pedestrian or other traffic related safety signs, flashing crosswalk lights, flower pots and baskets, and other similar attachments.

Section 2. Amendment of Title 11, Chapter 7. Title 11, Chapter 7 to the Englewood Municipal Code is hereby amended to read as follows (new provisions underlined; deleted provisions crossed through):

11-7-1: Purpose and Objectives.

A. The Purpose and Objectives of this Chapter are provided in Section 1 of Ordinance [INSERT], Series of 2024, which is incorporated by reference as if fully set forth herein.~~Purpose:~~

~~This Chapter provides principles, procedures and associated funding for the placement of structures and facilities, construction, excavation, encroachments and work activities within or upon any public right-of-way, and to protect the integrity of the road system and the City's infrastructure. To achieve these purposes, it is necessary to require permits of private users of the public rights-of-way, to establish permit procedures, and to fix and collect fees and charges.~~

B. ~~Objectives:~~

~~Public and private uses of public rights-of-way for location of facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the City must insure that the primary purpose of the right-of-way, passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, roadways, facilities, and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the right-of-way corridors by private users is secondary to these public objectives, and the movement of traffic. This Chapter is intended to strike a balance between the public need for efficient, safe transportation routes and the use of rights-of-way for location of facilities by public and private entities. It thus has several objectives:~~

- ~~1. To insure that the public safety is maintained and that public inconvenience is minimized.~~
- ~~2. To protect the City's infrastructure investment by establishing repair standards for the pavement, facilities, and property in the public rights-of-way, when work is accomplished.~~
- ~~3. To facilitate work within the rights-of-way through the standardization of regulations.~~
- ~~4. To maintain an efficient permit process.~~
- ~~5. To conserve and fairly apportion the limited physical capacity of the public rights-of-way held in public trust by the City.~~

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6. ~~To establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.~~
 7. ~~To promote cooperation among the permittees (as defined herein) and the City in the occupation of the public rights of way, and work therein, in order to; (i) eliminate duplication that is wasteful, unnecessary or unsightly; (ii) lower the permittee's and the City's costs of providing services to the public; and (iii) minimize street cuts.~~
 8. ~~To assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.~~

11-7-2: Definitions.

Terms shall be defined as follows. The following words and phrases, when used in this Chapter, shall have the following meanings unless the context otherwise clearly indicates to the contrary. If a term is not defined herein, definitions from other applicable authority shall apply in the following order: EMC § 1-3-4, EMC § 16-13-2, elsewhere in EMC, applicable state law.

~~*Access Vault:* Any structure containing one or more ducts, conduits, manholes, handhole or other such facilities in permittee's facilities.~~

A. *Appurtenances:* Transformers, switching boxes, gas regulator stations, terminal boxes, meter cabinets, pedestals, junction boxes, handholes substations, system amplifiers, power supplies, pump stations, manholes, valves and valve housings and other devices that are necessary to the function of electric, communications, cable television, water, sewer, stormwater, natural gas and other utilities and services.

B. *Block:* One (1) side of a Street between two (2) consecutive intersecting Streets.

~~*Bus stop:* The area immediately adjacent to any marked bus stop. Such area shall be a ten-foot wide strip parallel to the roadway measured from the curb, or where there is no curb, the edge of the pavement, and shall run from the bus stop sign forty feet (40') in the direction opposite to the flow of traffic.~~

~~*Chapter:* Title 11, Chapter 7, of the Englewood Municipal Code entitled "City Rights of Way—Permits and Requirements."~~

~~*City:* City of Englewood, Colorado.~~

~~*City Manager:* The chief executive officer of the city government of the City of Englewood or the manager's authorized representative.~~

C. *Contractor:* A Person, partnership, corporation, or other legal entity licensed by the City (unless specifically exempted) who undertakes Work to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate, or add to any improvements regulated covered by this Chapter ordinance, that requires presence work, workers, and/or equipment to be in the Public Right-of-Way right-of-way in the process of performing the above named operations.

D. *Corral:* An area on the Right-of-Way enclosed on three (3) sides by a fence or railing for the purpose of controlling the placement of Newsracks.

E. *Degradation:* A decrease in the useful life of the Street improvements or damage to any Landscaping within the Right-of-Way ~~rights of way~~ caused by Excavation~~excavation~~ in or disturbance of the Right-of-Way, resulting in the need to reconstruct the surface and/or subsurface structure of such Right-of-Way earlier than would be required if the Excavation~~excavation~~ or disturbance did not occur.

F. *Developer:* The ~~Person~~person, partnership, corporation, or other legal entity who is improving a parcel of land within the City and who is legally responsible to the City for the construction of improvements within a subdivision or as a condition of a building permit.

G. *Duct or Conduit:* A single enclosed raceway for cables, fiber optics, or other wires, or a pipe or canal used to convey fluids, air, or gases; considered surplus if unoccupied and held by permittee as emergency use spares or that permittee reasonably expects to use within three (3) years from the date of a request for use.

H. *E-M-C:* Englewood Municipal Code.

I. *Emergency:* Any event which may threaten public health or safety, or that results in an interruption in the provision of services including, but not limited to, damaged or leaking water or gas systems, damaged, plugged, or leaking sewer or storm drainage systems, damaged electrical and communications ~~F~~facilities, and advance notice of needed repairs is impracticable under the circumstances.

~~*Excavate:* To dig into or in any way remove, distribute or penetrate any part of a right of way.~~

J. *Explicit Sexual Acts:* Specified Anatomical Areas and Specified Sexual Activities as defined in EMC § 5-6-1, including between human and animals, Depictions of sexual intercourse, oral copulation, anal intercourse, oral or anal copulation, plus bestiality, and sadism, masochism, or excretory functions in connection with sexual activity, masturbation, or lewd exhibition of genitals, whether any of the above conduct is depicted or described as being performed alone or between members of the same or opposite sex or between humans and animals, or other acts of sexual arousal involving physical conduct with a person's genitals, pubic hair, perineum, anus or anal region.

K. *Facilities:* Includes, without limitation, any pipes, ~~C~~onduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, transmission structures, ~~S~~street lights, ~~D~~educts, fixtures and appurtenances, ~~o~~and other like equipment used in connection with transmitting, receiving, distributing, offering, and providing utilities and other services or otherwise permanently placed in Right-of-Way.

L. *Fence:* Any artificially or naturally constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials erected to enclose, partition, beautify, mark, or screen areas of land.

M. *Hazardous Substances:* Any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

N. *Infrastructure:* Any City owned facility, system, or improvement including, without limitation, water and sewer mains and appurtenances, the City ditch, storm drains and structures, ~~S~~streets, alleys, traffic signal poles and appurtenances, ~~C~~onduits, ~~S~~street lights, ~~S~~street light and utility poles, signs, landscape improvements, ~~S~~sidewalks, and public safety equipment.

O. *Landscaping:* Materials, including without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non-living natural materials commonly used in landscape development, as well as attendant irrigation systems.

~~*Lightrail stop:* The sidewalk area and any raised boarding platform adjacent to any lightrail stop as defined by the curb line, a line parallel to the curb line, and fifteen feet from the curb line, or the total depth of the boarding platform, whichever is greater, which area extends from five (5) feet before the boarding platform to five (5) feet after the boarding platform, measuring along the curb line.~~

~~*Manager:* The City Manager or designee.~~

P. *Newsrack:* Any self-service or coin operated box, container, storage unit or other dispenser installed, used or maintained for the display, distribution or sale of newspapers or other periodicals.

~~*Newsrack Permittee:* Any person responsible for placing and maintaining a newsrack in the right-of-way.~~

~~*Park:* Any area used as a park, playground, open space, or trail, devoted or designated for active or passive recreation.~~

Q. ~~*Permit:* Any authorization for use of the Right-of-Way ~~public rights of way~~ granted in accordance with the terms of this Chapter, and the laws and policies of the City. The holder of a valid Permit is a Permittee.~~

~~*Permittee:* The holder of valid permit issued pursuant to this Chapter.~~

~~*Person:* Any person or persons, or entity, including, but not limited to, a corporation, limited liability company, partnership, unincorporated association, or joint venture.~~

~~*Pictorial material:* Any material suggesting or conveying a visual image, and includes, but is not limited to, a photograph, painting or drawing.~~

R. ~~*Public Right-of-Way or Right-of-Way or Public Way:* The width and total surface area, and the area above and below the surface that is dedicated, deeded, reserved by plat or otherwise owned or controlled by the City, for public use for: infrastructure improvements, pedestrians, vehicular movement, parks, utilities, or storm drainage and runoff. For the purposes of this Chapter, Parks, trails and open space are not Right-of-Way, except for those portions containing public use areas specifically described herein.~~

~~*Right-of-way:* The entire width between the boundary lines of property owned by the City and dedicated by the City for vehicular or pedestrian traffic.~~

~~*Rights of Way Occupancy Permit:* Any permit for temporary use or occupation of public rights of way, where there are no infrastructure or facility improvements proposed to be placed in the public way, and existing infrastructure or facility improvements in the right of way will not be disturbed. Rights of way occupancy permits do not require payment of degradation fees as part of the permit fee.~~

S. ~~*Roadway:* That portion of a Sstreet that is improved, designed, or ordinarily used for vehicular travel.~~

~~*Service:* Service of process will be complete upon mailing a copy of any notice or order to the Permittee, by certified mail, return receipt requested, and sending the notice or order via facsimile transmission to a facsimile number if one is provided by the Permittee.~~

T. ~~*Service Connections:* Any Wwork involved in taking the Ppermittee's services from the Ppermittee's Ffacilities to individual properties when this Wwork can be done without disturbing Right-of-Way~~public way~~ Sstreet improvements.~~

~~*Sidewalk:* Any surface provided for the use of pedestrians.~~

U. ~~*Specifications:* Engineering regulations, construction specifications, and design standards adopted by the City.~~

~~*Street:* All the area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, tree lawns and sidewalks.~~

V. ~~*Structure:* Anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, Ffences, retaining walls, awnings, balconies, and canopies.~~

~~*Surplus Ducts or Conduits:* Conduits or ducts other than those occupied by permittee or any prior permittee, or unoccupied ducts held by permittee as emergency use spares, or other unoccupied ducts that permittee reasonably expects to use within three (3) years from the date of a request for use.~~

~~Tree lawn: The area between the sidewalk and the curb of any street, and where there is no sidewalk, the area between the edge of the roadway and the property line adjacent thereto. Tree lawn shall also include any area within a roadway that is not open to vehicular travel.~~

W. Work: Any use or storage of equipment or materials, or any labor performed including ~~but not limited to,~~ the construction, maintenance and repairs of Sstreets and all related appurtenances, fixtures, improvements, Ssidewalks, driveway openings, Landscaping, bus shelters, bus pads, Sstreet lights, and traffic signal devices. It also shall ~~also~~ mean Excavation, construction, maintenance, and repair of all underground structures such as pipes, Conduit, Ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structures located below surface, and installation, maintenance and repair of overhead poles and wires used for any purpose.

11-7-3: Police Powers.

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

11-7-4: Permit Required.

A. *Contractor's License.* It shall be unlawful for any ~~Person~~ person other than the City or a franchisee to perform any Work in the ~~Right-of-Way~~ public way without first obtaining a contractor's license from the City.

B. *Obtaining a Permit.* No ~~Person~~ person except an employee or official of the City or a ~~Person~~ person exempted by contract with the City shall undertake or permit to be undertaken any ~~construction, excavation, or~~ Work in the ~~Right-of-Way~~ public rights-of-way without first obtaining a Permit from the City as set forth in this Chapter, except for Service Connections; emergencies as provided in ~~E.M.C. EMC § 11-7-22~~, and routine maintenance as provided in ~~E.M.C. EMC § 11-7-4(G)~~.

1. Such Permits will be issued only to ~~regularly~~ licensed and bonded Contractors, or to a homeowner for their primary residence unless the Work impacts any Right-of-Way usage not owned by the homeowner ~~property in which he owns and resides~~.

2. A copy of each Permit obtained, along with associated documents, shall be maintained on the job site and available for inspection upon request by ~~any officer or employee~~ of the City.

3. A Permit issued under this Chapter ~~expires in~~ may not be effective for more than one hundred and eighty (180) days ~~or less~~. The expiration date ~~of the permit~~ shall be stated on the Permit.

C. *Construction, Excavation or Work Area.* No Permittee shall perform ~~construction, excavation, or~~ Work in an area larger or at a location different, or for a longer period of time than that specified in the Permit ~~or permit application~~. If, after ~~construction, excavation, or~~ Work is commenced under an approved Permit, it becomes necessary to perform ~~construction, excavation, or~~ Work in a larger or different area ~~than originally requested under the application~~ or for a longer period of time, the Permittee shall obtain an amended City Permit ~~prior to exceeding the scope of the original Permit, notify the City Manager's or designee immediately and within twenty four (24) hours shall file by filing an amendment request and paying the Permit amendment a supplementary~~

application fee and other applicable City fees set by City Council for the additional Work. ~~for the additional construction, excavation, or work, and the permittee shall be billed for the additional amount owed.~~

- D. *Permit Transferability or Assignability.* ~~The Permittee applicant may subcontract the Work to be performed under a Permit to a qualified Contractor, but provided that the Permittee shall be and remains responsible for compliance with for the performance of the work under the Permit and this Chapter, all insurance and financial security as required. Permits are transferable to a qualified Contractor posting the required security and agreeing to comply with the Permit and this Chapter, by filing an application for transfer and paying the Permit transfer fee set by City Council and assignable if the transferee or assignee posts all required security pursuant to this Chapter and agrees to be bound by all requirements of the permit and this Chapter.~~
- E. *Developer Ownership of Public Infrastructure.* ~~In the City, Tthe physical construction of public Infrastructure in new developments is the responsibility of the Ddeveloper, and requires a Permit if within Right-of-Way. of the land. Ownership of that infrastructure remains with Tthe Ddeveloper owns that Infrastructure of the land until acceptance by the City, which shall not occur unless. Any developer of land where work is undertaken on infrastructure that is within a public right of way, but prior to acceptance by the City, shall obtain a permit from the City. The City will not accept public infrastructure improvements, where Wwork performed complies is not in accordance with applicable City Specifications and applicable provisions of this Chapter.~~
- F. *Excavating Without a Permit.* ~~Any Personperson or utility excavating found to be conducting any excavation activity within the Right-of-Waypublic right of way without having first obtained the required a Permit(s), except for Sservice Cconnections under and as provided in E.M.C. EMC § 11-7-22, shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a Permit before Wwork may be restarted. A surcharge shall be required in addition to all applicable permit fees. This surcharge shall be set by Council resolution.~~
- G. *Routine Maintenance Exemption.* Any Permittee may undertake routine maintenance on existing Ffacilities without obtaining a Permit from the City providing:
1. No Wwork ~~occurs~~ creates an obstruction or otherwise interferes with the regular vehicular and pedestrian movement on any collector or arterial Sstreet ~~on a weekday during the morning or evening rush hours as defined by E.M.C. 11-7-14(D).~~
 2. Safe Wwork area traffic signing and barricading is provided under ~~in accordance with Part VI of the Manual on Uniform Traffic Control Devices.~~
 3. The routine maintenance Wwork does not involve ~~any material~~ disturbance of any Right-of-Waypublic way Infrastructure improvements.
 4. The routine maintenance Wwork does not involve ~~any activities that generate noise levels that constitute a public nuisance under as defined in the noise control provisions of E.M.C. EMC Title 6 Chapter 6-2~~ between the hours of 7:00 p.m. and 7:00 a.m.

11-7-5: Permit Application—Permit Contents.

- A. *Permit Application.* An applicant for a Permit to allow ~~construction, excavation, or Wwork~~ in the Right-of-Waypublic right of way under this Section shall:
1. Complete and file the City's a written application providing on forms furnished by the City which shall include the following:
 - a. The date of application.
 - b. The name and address of the applicant.

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- c. The name and address of the Developer (if applicable).
 - d. The name and address of the licensed Contractor ~~who is going to perform Wwork in the Right-of-Way~~ public right of way (contractor must have a contractor license from the City).
 - e. An emergency telephone number at which ~~said the Contractor doing the work~~ may be contacted on a twenty-four-hour basis.
 - f. The exact location of the proposed ~~construction, excavation or Wwork activity.~~
 - g. A description of the Wwork proposed.
 - h. The type of existing public Infrastructure (Strict pavement, curb and gutter, Sidewalks or utilities) impacted by the ~~construction, excavation or Wwork.~~
 - i. The purpose of the proposed ~~construction, excavation or Wwork.~~
 - j. Estimated start and completion dates of the date and estimated time to complete Wwork.
 - k. The proposed hours of Wwork.
 - l. An itemization of the total actual estimated cost of restoration. ~~(If if required to establish the performance bond requirement, which may be adjusted upward by the City if → Itemized costs should be based on actual cost to do work, if in the opinion of the City Manager or designee the itemized costs appear inadequate in comparison to contemporaneous bids received for similar work, then the costs shall be adjusted to be in line with the most recent bids received by the City or by the Colorado Department of Transportation for similar work.~~
2. Any delinquent charges, including penalties, interest and fees, due the City by the applicant, Developer and or its Contractor for prior Wwork must be paid prior to issuance of a Permit. Permittee may establish an escrow account with the City for future fees owed under a Permit to cover charges for permits.
 3. Attach copies of all additional Permits or licenses (or pending applications therefore) required to do the proposed ~~work or to Wwork in the Right-of-Way, public rights of way~~ (including those required by any applicable jurisdiction, EMC, required insurance, deposits, bonding, and warranties, unless otherwise specified in an franchise agreement between the Permittee and the City), ~~and any licenses or permits that are required under the laws of the United States, the State of Colorado, or other ordinances or regulations of the City. If relevant permits or licenses have been applied for but not yet received, provide a written statement so indicating.~~ Copies of any such Permits or licenses for which an application is pending shall be provided to the City within forty-eight (48) hours after issuance receipt.
 4. Provide a satisfactory plan of work showing protection of the subject property and adjacent properties.
 5. Provide a satisfactory plan for the protection of existing Landscaping, if impacted ~~when the City determines that damage may occur.~~
 6. Include a signed statement verifying that all orders issued by the City to the applicant, requiring the applicant to correct deficiencies on previous Permits, have been satisfied.
 7. Include with the application engineering construction drawings or site plans for the proposed ~~construction, excavation, or Wwork~~ in compliance with City Specifications and EMC § 11-7-25.

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8. Include with the application a satisfactory traffic control, work area barricading, and erosion protection plans for the proposed ~~construction, excavation, or~~ Wwork in compliance with this Chapter and EMC § 11-7-14.
 9. Include a statement indicating any proposed joint use or ownership of the Ffacility; any known existing Ffacility or Ppermit of the applicant at this location; any known existing Ffacility of others with which the proposed installations might conflict; and the name, address and telephone number of a representative of the applicant available to review proposed locations at the site.

~~10. Pay all required permit fees~~

- B. *Updating Applications.* Applicants shall update any new information on Ppermit applications within ten (10) days after any material change occurs.
- C. *Joint Applications.* Applicants may apply jointly for Ppermits to Wwork in Right-of-Way ~~public rights-of-way~~ at the same time and place. Applicants who apply jointly for Ppermits may share in the payment of the Ppermit fee. Applicants must agree among themselves as to the portion each shall pay.

11-7-6: Permit Fee.

- A. *Permit Fee.* Before a Ppermit is issued pursuant to this Chapter, the applicant shall pay to the City ~~all a Ppermit, Degradation, and City-required restoration fees set which shall be determined in accordance with a fee schedule adopted by the City Council by resolution.~~ Fees will be reasonably related to the costs inherent in managing the Right-of-Way, including public rights-of-way. ~~These costs include, but are not necessarily limited to, administering this Chapter, the costs of permitting, verifying, and mapping Right-of-Way rights-of-way occupations, inspecting job sites, Degradation, and Right-of-Way rights-of-way restorations, and costs relating to the degradation of the rights-of-way, i.e., the cost to achieve a level of restoration as determined by the City at the time the permit is issued.~~
- B. *Reduction in Degradation Costs.* ~~The portion of the cost permit fee relating to Ddegradation costs shall be reduced by the City in cases where the applicant demonstrates to the satisfaction of the City Manager or designee that the Excavationexcavation proposed will be used by three (3) or more entities, legally and financially unrelated, for the installation, maintenance or repair of Ffacilities. The Ddegradation cost portion of the permit fee shall be further reduced in cases where the applicant demonstrates to the satisfaction of the City Manager or designee that the for an Excavationexcavation in a Street scheduled to be repaved or resurfaced by the City within the next twenty-four (24) months. to be made will be commenced and completed during the twenty-four-month period immediately prior to the scheduled repaving or resurfacing of a street, as indicated in the most recent edition of the City's repaving plan. There are no Ddegradation costs for Wwork that does not involve Excavationexcavation in, or material disturbance of, Sstreet improvements in the Right-of-Way rights-of-way.~~

11-7-8: Insurance and Indemnification.

- A. *Insurance Coverage.* Unless otherwise specified in a franchise agreement between the Ppermittee and the City, prior to the granting of any Ppermit, the Ppermittee shall file with the City an insurance policy or certificate in a form satisfactory to the City with coverage as follows:
 1. The Ppermittee shall carry and maintain in full effect at all times a commercial general liability policy, including broad form property damage, completed operations contractual liability,

explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less than ~~one~~ two million dollars (\$~~2,000,000.00~~) each occurrence for damages of bodily injury or death to one or more persons ~~or; and five hundred thousand dollars (\$500,000.00) each occurrence for damage to or destruction of property; and four million dollars (\$4,000,000.00) aggregate for each.~~

2. Workers compensation insurance as required by State law.
 3. The City shall not be required to submit ~~be relieved of the obligation of submitting~~ a certificate of insurance.
- B. *Insuring Additional or Subsequent Permit Holders.* Whenever any ~~Person~~ person has filed with the City evidence of insurance as required, any additional or subsequent ~~P~~ permittee holder in the employ of said initial ~~Person~~ person may, at the discretion of the City, be excused from depositing or filing any additional evidence of insurance if such employee is fully covered by the ~~P~~ permittee's insurance policy.
- C. *Protection Against Injury or Damage to Persons or Property.* Each ~~P~~ permittee shall construct, maintain, and operate its ~~F~~ facilities in a manner which provides protection against injury or damage to persons or property.
1. The ~~P~~ permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall ~~save~~ ~~[hold]~~ the City harmless, and defend, and indemnify the City, its successors, assigns, officers, employees, agents, and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature, unless caused by the negligent or intentional acts of the City, and reimburse the City for all its reasonable expenses and any attorneys fees, as incurred, arising out of ~~the installation, maintenance, operation or any other W~~ work or activity in the ~~Right-of-Way~~ public right-of-way or by the ~~P~~ permittee related to its use thereof, including, but not limited to, the actions of the ~~P~~ permittee, its employees, agents, ~~C~~ contractor, subcontractor(s), related entities, successors and assigns, or the securing of and the exercise by the ~~P~~ permittee of the permit rights granted in the ~~P~~ permit, including any third party claims, administrative hearings, and litigation; whether or not any act or omission complained of is authorized, allowed, or prohibited by this Chapter or other applicable law.
 2. The terms of each contract awarded by the ~~P~~ permittee for activities pursuant to a ~~P~~ permit shall contain indemnity provisions whereby the ~~C~~ contractor and subcontractor(s) shall defend and indemnify the City to the same extent as described above.
 3. The ~~P~~ permittee shall have the right to defend the City with regard to all third party actions, damages and penalties arising in any way out of the exercise of any rights in the ~~P~~ permit. If at any time, however, ~~P~~ permittee refuses to defend, and the City elects to defend itself with regard to such matters, the ~~P~~ permittee shall pay all reasonable expenses including attorneys fees incurred by the City ~~related to its defense~~.
 4. ~~In any the event the City institutes litigation by the City against the P~~ permittee for a breach of the ~~P~~ permit or any provision of this Chapter, to collect any costs or penalties owed to the City, or for an interpretation of this Chapter, and the City is the prevailing party, the ~~P~~ permittee shall reimburse the City for all costs related hereto, including reasonable attorney's fees. ~~The permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence, or any intentional and/or willful acts of the City or any of its officers, employees, or agents.~~
 5. In the event the ~~P~~ permittee is a public entity, the ~~indemnification requirements of this Section~~ public entity shall not be obligated to indemnify the City against third party claims, and the

entity's obligations for any damages shall be subject to the provisions of the Colorado Governmental Immunity Act and other applicable State law.

11-7-9: Performance Bond/Letter of Credit.

- A. *Bond or Letter of Credit.* Before any ~~P~~ermit ~~is required by this Chapter shall be issued to an applicant,~~ the applicant shall file with the City ~~Manager or designee~~ a bond or letter of credit in favor of the City in an amount equal to the total cost of construction, including labor and materials, or five thousand dollars (\$5,000.00), whichever is greater. The bond or letter of credit shall be executed by the applicant as principal and by at least one surety upon whom service of process may be had in the State. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of City ordinances, rules and regulations, and upon payment of all judgments and costs rendered against the applicant for any material violation of City ordinances or State statutes that may be recovered against the applicant by any ~~Person~~person for damages arising out of any negligent or wrongful acts of the applicant in the performance of Work done pursuant to the ~~P~~ermit. The City may bring an action on the bond or letter of credit on its own behalf or on behalf of any ~~Person~~person so aggrieved as beneficiary. The bond or letter of credit must be approved by the City ~~Manager or designee~~ as to form and as to the responsibility of the surety thereon prior to the issuance of the ~~P~~ermit. However, the City may waive the requirements of any such bond or letter of credit or may permit the applicant to post a bond without surety thereon upon finding that the applicant has financial stability and assets located in the State to satisfy any claims intended to be protected against the security required by this Section.
- B. *Letter of Responsibility.* A letter of responsibility will be accepted in lieu of a performance bond or letter of credit from all public utilities, all franchised entities, and all metropolitan, water and sanitation districts operating within the City.
- C. *Performance Bond Duration.* The performance bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of two (2) years after completion and the City's acceptance of the Work ~~street cut, excavation or lane closure~~.

11-7-10: Performance Warranty/Guarantee.

- A. *Warranty.* Any warranty made hereunder shall serve as security for the performance of Work necessary to repair the Right-of-Way~~public right-of-way~~ if the ~~P~~ermittee fails to make the necessary repairs or to complete the Work under the ~~P~~ermit.
- B. *Guarantee.* The ~~P~~ermittee, by acceptance of the ~~P~~ermit, expressly warrants and guarantees complete performance of the Work in a manner acceptable to the City and warrants and guarantees all Work done for a period of two (2) years after the date of initial acceptance, and agrees to maintain upon demand and to make all necessary repairs during the two (2) year period. This warranty shall include all repairs and actions needed as a result of:
1. Defects in workmanship.
 2. Settling of fills or Excavation~~excavations~~.
 3. Any unauthorized deviations from the approved plans and Specifications.
 4. Failure to barricade.
 5. Failure to clean up during and after performance of the Work.
 6. Any other violation of this Chapter or the ordinances of the City.

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- C. *Period of Warranty.* The two (2) year warranty period shall run from the date of the City's initial acceptance of the Wwork. If repairs are required during the two (2) year warranty period, those repairs need only be warranted until the end of the initial two (2) year period starting with the date of initial acceptance. It is not necessary that a new two (2) year warranty be provided for subsequent repairs after initial acceptance.
- D. *Repairs Under Warranty.* At any time prior to completion of the two (2) year warranty period, the City may notify the Permittee in writing of any needed repairs. Emergency repairs shall be completed within twenty-four (24) hours if the defects are determined by the City to be an imminent danger to the public health, safety and welfare. Nonemergency repairs shall be completed within thirty (30) calendar days after notice. If such deficiencies are not corrected within the prescribed time, the City may make such corrections and the Permittee shall pay the actual costs thereof plus a penalty of fifty percent (50%) of the amount thereof, within thirty (30) days of billing by the City.
- E. *Work Disturbed While Under Warranty.* The warranty described in this Section shall cover only those areas of Wwork undertaken by a Permittee and/or its Contractors. In the event that Wwork of another Permittee or the City subsequently impacts a portion of Wwork under warranty by a Permittee during the warranty period, then the subsequent Permittee or the City shall assume responsibility for repair to the subsequently impacted ~~Section of Right-of-Way~~ right-of-way.

11-7-11: Inspections.

A. The City shall have the right to make inspections at any time, to reject any Wwork or materials which are defective or do not conform with the requirements of this Code, the approved plans, or Specifications. Upon review of the application for a Permit, the City Manager or designee shall determine how many inspections, if any, may be required. For most Permits the inspection procedure will entail the following:

1. The City conducts a pre-construction inspection, to determine any necessary conditions for the Permit.
2. The Permittee shall notify the City immediately after Wwork begins and the City shall conduct periodic inspections as Wwork operations are completed.
3. The City shall inspect the completed Wwork within twenty-one (21) days of Permittee's request for initial acceptance. Initial acceptance will be given if all Wwork meets City and Permit standards.
4. Approximately thirty (30) days prior to the expiration of the two (2) year guarantee, the City shall conduct a final acceptance inspection of the completed Wwork. If the Wwork is still satisfactory the bond or letter of credit shall be returned or allowed to expire, with a letter of final acceptance, less any amounts needed to complete Wwork not done by Permittee.

B. The Permittee shall pay the inspection fees, and reinspection fees upon failure to pass an initial inspection, as set by City Council.

C. For Wwork that does not involve material disturbance in ~~the Right-of-Way~~ rights-of-way, the City ~~Manager or designee~~ shall waive the final acceptance inspection and the performance bond/letter of credit.

11-7-12: Public Safety.

- A. The Permittee shall maintain a safe work area, free of safety hazards. The City may make any repair necessary to eliminate any safety hazards not performed by Permittee as directed. Any such Wwork performed by the City shall be completed and billed to the Permittee at overtime

rates. The Ppermittee shall comply with any requests from the City to secure the route area and otherwise cooperate with the City at no expense to City to remove such hazard or impediment. The Ppermittee shall pay all such charges within thirty (30) days of the statement date. If the Ppermittee fails to pay such charges within the prescribed time period, the City may, in addition to taking other collection remedies, seek reimbursement through the warranty guarantee. Furthermore, the Ppermittee may be barred from performing any Wwork in the Right-of-Way~~public right-of-way~~, and under no circumstances will the City issue any further Ppermits of any kind to said Ppermittee, until all outstanding charges have been paid in full.

- B. Permittee and Permittee's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the Facilities are being placed, including safety of all persons (including employees and the public) and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Permittee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Permittee from compliance.

11-7-13: Time of Completion.

All Wwork covered by the Ppermit shall be completed by the date stated on the application. Ppermits shall be void if Wwork has not commenced sixty (60) days ~~six (6) months~~ after issuance, unless within that period, an extension request describing the extenuating circumstances supporting a delay for commencement of work has been filed with the City along with the accompanying permit extension application fee set by City Council, and said extension for commencement has been granted by the City Manager or designee. Performance bonds, letters of credit or letters of responsibility deposited as a performance/warranty guarantee for individual Ppermits will be returned after voiding of the Ppermit, with administrative and any other incurred City costs deducted.

11-7-14: Traffic Control.

- A. *Traffic Control Plan.* When it is necessary to obstruct traffic, a traffic control plan shall be submitted to the City prior to starting construction, except as provided in ~~E.M.C.~~ EMC § 11-7-22 ~~and EMC § 11-7-14(H).~~ Part VI of the Manual on Uniform Traffic Control Devices ("MUTCD") or any successor publication thereto shall be used as a guide for all maintenance and construction signing. The Ppermittee shall illustrate on the Ppermit the warning and control devices proposed for use in compliance with MUTCD. At the direction of the City ~~Manager or designee~~, such warning and control devices shall be modified. No Ppermit will be issued until the plan is approved by the City. The Ppermittee shall use extra care so as to minimize disruption to adjacent property and drives and to provide access to parking areas while accomplishing the Wwork. If access to private property must be blocked in order to accomplish the Wwork, then the Ppermittee shall develop an access maintenance plan in coordination with and based on all reasonable requirements of the affected property owners and tenants, and submit it to the City. No Ppermittee shall block access to and from side Sstreets, alleys, maintenance roads, walkways, driveways, Ssidewalks, bike paths, fire hydrants, fire stations, fire escapes, mail boxes, dumpsters, parked vehicles, water valves, underground vaults, valve housing structures, or any other vital equipment unless the Ppermittee demonstrates to the City they have~~that he/she has~~ worked with the owner or occupant of the facility to minimize potential impacts.
- B. *Street or Lane Closures.* If a Sstreet, Sidewalk, or lane closing is required~~desired~~, the Ppermittee will request the assistance and obtain the approval of the City for a reasonable closure duration and pay all closure fees set by City Council. ~~It shall be the responsibility of t~~The Ppermittee shall to

develop a detour and signing plan, provide advance warning signs to advise drivers of the ~~street~~ closure and deliver notices to the affected properties a minimum of forty-eight (48) hours prior to any street closure. ~~It shall be the responsibility of the~~ The Permittee shall ~~to~~ notify and coordinate all Work in the Right-of-Way~~public way~~ with police, fire, ambulance, other governmental entities, and transit organizations.

- C. *Flag Persons.* When necessary for public safety, the Permittee shall employ flag persons ~~whose duties shall be to control traffic around or through the construction site.~~ The use of flag persons may be required by the City ~~Manager or designee.~~
- D. *Acceptable Hours of Construction.* No construction shall ~~be performed that obstructs or impedes the flow of traffic on arterial or collector~~ Streets on weekdays during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:00 p.m. without the approval of the City ~~Manager or designee,~~ except as provided in ~~E.M.C. EMC § 11-7-22.~~ No Work will be performed in the Right-of-Way~~public way~~ shall that involves activities that generate noise levels that constitute a noise control public nuisance ~~in as defined in the noise control provisions of E.M.C. EMC Title 6 Chapter 2~~ between the hours of ~~79:00 p.m. and 76:00 a.m.~~ without the approval of the City ~~Manager or designee,~~ except as provided in ~~E.M.C. EMC § 11-7-22.~~
- E. *Traffic Control Devices.* Effective work area traffic control must be provided for all Streets construction and maintenance, and utility and telecommunications work and maintenance in order to provide for the safety of the workers, vehicular users, and pedestrians. The type of traffic control should be selected based upon the type of Roadway, traffic conditions, duration of operation, physical constraints, and the proximity of the workspace to traffic. All traffic control devices and advance warning signs used for work area traffic control shall conform to the applicable Specifications in Part VI of the Manual on Uniform Traffic Control Devices. Traffic control devices are to be supplied by the Permittee. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights. The Permittee shall promptly remove all traffic control devices and Work signage upon completion of the Work, and no later than expiration of the Permit term; if they fail to do so, Permittee shall pay the administrative penalty set by City Council and City staff may remove them unless it poses a danger to pedestrian or vehicular traffic.
- F. *Prohibited Methods of Illumination.* Oil flares or kerosene lanterns are not allowed as means of illumination. Nighttime work area flood lighting shall not be allowed to spill out of the construction area in such a way as to disturb, annoy, or endanger the comfort, health or peace of others.
- G. *Maintenance and Construction Signing.* The Contractor shall be responsible for maintaining all work area signing and barricading during construction operations as well as any signs and barricades that are needed to protect Roadway users and pedestrians during non-work hours. During non-work hours, all construction work area signs that are not appropriate shall be removed, covered, or turned ~~around~~ so that they do not face traffic. Any deficiencies noted by the City shall be corrected immediately by the Contractor. If Contractor is not available or cannot be found, the City may make such corrections and the Contractor shall pay the actual costs plus a penalty of fifty percent (50%) of the amount thereof.
- H. *Routine Maintenance.* Any Permittee may undertake routine maintenance on existing Facilities without obtaining traffic control plan approval from the City ~~provideding:~~ that such maintenance meets the requirements of EMC § 11-7-4(G).
- ~~1. No work occurs on any collector or arterial street on a weekday during the morning or evening rush hours as defined by E.M.C. 11-7-14(D) above.~~
 - ~~2. Safe work area traffic signing and barricading is provided in accordance with Part VI of the Manual on Uniform Traffic Control Devices.~~

3. ~~The routine maintenance work does not involve any material disturbance of any public way infrastructure improvements.~~

I. *Traffic Control Costs and Responsibilities.* All costs related to developing a work area traffic control plan, and implementing the traffic control plan, and as well as maintaining the traffic control elements are the responsibility of the Permittee.

11-7-15: General Right-of-Way ~~Rights of Way~~ Use and Construction.

A. *Right-of-Way Meetings.* Permittee will make reasonable efforts to attend and participate in meetings of the City, of which the Permittee is made aware, regarding Right-of-Way~~right-of-way~~ issues that may impact its Facilities, including, planning meetings to anticipate joint trenching and boring. Permittees and franchisees shall joint trench or share bores or cuts and coordinate construction whenever it is possible and reasonably practicable ~~so as to reduce so far as possible~~ the number of Right-of-Way~~right-of-way~~ cuts within the City and the amount of time that pedestrian and vehicular traffic is obstructed or impeded.

B. *Minimal Interference.*

The City ~~Manager or designee~~ shall assign locations of Facilities in the Right-of-Way~~public right-of-way~~. Work in the Right-of-Way~~right-of-way~~, or on or near other public or private property, ~~near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents, and shall interfere as little as possible with traffic or other authorized uses within said Right-of-Way and easements.~~ Permittee's Facilities and maintenance shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, Ceonduits, pedestals, structures, or other Ffacilities that may have been laid in the Right-of-Way ~~rights-of-way~~ by, or under, the City's authority. Five feet (5') minimum horizontal clearance and eighteen inch (18") minimum vertical clearance shall be provided between Facilities and water and sewer mains. ~~If the minimum horizontal and vertical clearances are not adhered to then the Ppermittee assumes all risk of damage and loss arising out of failure to comply with required clearances. The Ppermittee's Ffacilities shall be located, erected and maintained so as not to endanger or interfere with the lives of persons; or to interfere with new City improvements or uses the City may deem proper to make, or to unnecessarily hinder or obstruct the free use of the Right-of-Way rights-of-way or other public property, and including fixtures that protrude into a pedestrian path.~~ Permittee's Facilities shall not unreasonably interfere with travel by the public and the use of public places during the construction, maintenance and repair, operation or removal thereof, or reduce the path width or otherwise cause a violation of the Americans with Disabilities Act of 1990 ("ADA").

C. *Underground Construction and Use of Poles.*

1. Unless otherwise provided below, when required by applicable law, general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Permittee's Facilities shall be placed underground at no cost to the City. Where all Facilities are installed underground at the time of Permittee's construction, or when all such Facilities are subsequently placed underground, all Permittee Facilities shall also be placed underground at no expense to the City ~~unless funding is generally available for such relocation to all users of the rights-of-way.~~ Placing Facilities underground does not preclude the use of ground-mounted appurtenances; however, related equipment, such as pedestals, must be placed in accordance with the City's applicable rules and code requirements.

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2. In areas where existing Ffacilities are aerial, the Ppermittee may install aerial Ffacilities. For above ground Ffacilities, the Ppermittee shall utilize existing poles wherever possible, although under no circumstances is the Ppermittee allowed to attach Ffacilities to ornamental poles.
 3. ~~Should the City desire to place its own facilities in trenches or bores opened by the permittee, the permittee shall cooperate with the City in any construction by the permittee that involves trenching or boring, provided that the City has first notified the permittee in some manner that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The Ppermittee shall allow the City to place its Ffacilities in the Ppermittee's trenches and bores, including ducts or conduit that could be utilized by other entities, should the City timely notify Permittee, provided the City incurs any incremental increase in cost of the trenching and boring due to the City's Facilities. Should the City desire to install ducts or conduit for the possible use of other entities, then the permittee shall allow the City to place these facilities in the permittee's trenches and bores, provided the City shares proportionally in the cost of trenching and boring. The City shall be responsible for maintaining its respective own Ffacilities buried within the Ppermittee's trenches and bores under this paragraph.~~
- D. *Use of Conduits by the City.* The City may install or affix and maintain its own Ffacilities for ~~City purposes~~ in or upon ~~any and all of~~ Ppermittee's Dducts, Conduits or equipment in the Right-of-Way ~~rights-of-way~~ and other public places, ~~at a charge to be negotiated between the parties (but in no event greater~~ at a cost to the City equal to or less than the best price charged by Ppermittee to any other user), to the extent space ~~therein or thereon~~ is reasonably available, and pursuant to all applicable ordinances and Codes. ~~For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems.~~
- E. *Common Users.*
1. ~~Unless prohibited by applicable law or regulations and except for Permittee's competitors, The rights-of-way have a finite capacity for containing facilities. Therefore, whenever the City determines it is impracticable to permit construction of an underground Conduit system by any otherwise-authorized entity which may at the time have authority to construct or maintain conduits or ducts in the rights-of-way, but excluding entities providing services in competition with Ppermittee, and unless otherwise prohibited by federal or State law or regulations, the City may require Ppermittee to allow the afford to such entity the right to use Ppermittee's surplus Dducts or Conduits in common with Ppermittee as long as such use does not compromise Permittee's Facilities, pursuant to the terms and conditions of an agreement for use between of surplus ducts or conduits entered into by Ppermittee and the other entity. Nothing herein shall require permittee to enter into an agreement with such entity if, in permittee's reasonable determination, such an agreement could compromise the integrity of the permittee's facilities.~~
 2. Permittee shall give a common user pursuant to this Section a minimum of one hundred twenty (120) days notice of its need to occupy a Conduit, and the common user shall and shall propose that the common user take the first feasible action as follows:
 - (a) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with space-saving technology sufficient to meet Ppermittee's space needs;
 - (b) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Ppermittee's space needs;
 - (c) Vacate the needed Dducts or Conduit; or
 - (d) Construct and maintain sufficient new Conduit to meet Ppermittee's space needs.

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3. When two (2) or more common users occupy a Section of Ceonduit facility, the last user to occupy the Ceonduit facility shall be the first to vacate or construct new Ceonduit. When Ceonduit rent is revised because of retrofitting, space-saving technology or construction of new Ceonduit, all common users (other than the Permittee) shall bear the increased cost.
 4. All Ffacilities shall comply with applicable law and regulations, meet any applicable local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and comply with contractual meet the provisions of contracts executed between Ppermittee and the other common user. Permittee may, at its option, correct any attachment deficiencies and charge the common user for its costs. Each common user shall pay Ppermittee for any fines, fees, damages or other costs the common user's attachments cause Ppermittee to incur.
- F. Hazardous Substances. Permittees may not produce, dispose, transport, treat, use, generate, or store any Hazardous Substances on, under, about or within the area of a utility pole or Right-of-Way in violation of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, et. seq.; the Resource Conservation and Recovery Act., 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; or any other federal, state, county, or local law or regulation. Permittee may not use the Right-of-Way in a manner that would require a Permit or approval related to Hazardous Substances from any governmental agency other than the City. Permittee will pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Permittee pursuant to this Agreement and must immediately notify City of any Hazardous Substance discovered at any time that is unlawfully present upon the Right-of-Way. Permittee will ensure that any storage, treatment, transportation, disposal or other handling of Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted by law to perform those services.

11-7-16: Coordination of Excavations: Joint Planning and Construction.

- A. *Reduction of Disruption and Interference.* Excavations in City rights of way disrupt and interfere with the public use of City streets and damage the pavement and landscaping. The purpose of this Section is to reduce this disruption, interference and damage by promoting better coordination among permittees making excavations in City rights of way and between these permittees and the City. Better coordination will assist in minimizing the number of excavations being made wherever feasible, and will ensure the excavations in Right of Way are, to the maximum extent possible, performed before, rather than after, the resurfacing of the streets by the City.
- ~~A.B.~~ *Excavation Master Plan.* Any Ppermittee owning, operating or installing Ffacilities in City Right-of-Wayrights of way, providing water, sewer, gas, electric, communication, video or other utility services, shall meet annually with the City Manager or designee, at the City Manager's or designee's request to discuss Ppermittee's Excavationexcavation master plan, including any planned major Excavationexcavation work disrupting City Right-of-Way more than five (5) days within the next two (2) years. At such meeting, unless to the extent not already in possession of the City, Ppermittee shall submit the City's form documentation, in a form required by the City Manager or designee, showing a location of the Ppermittee's existing Ffacilities in the City Right-of-Way rights of way. Permittee shall discuss with the City Manager or designee, its excavation master plan, and identify planned major excavation work in the City. Any map or documentation created by the City The City Manager or designee may make his own record on a map, drawing or other documentation, of each Ppermittee's planned major Excavationexcavation work, which in the City; provided, however, that no such document prepared by the City Manager or designee shall not identify any specific Permitteea particular entity, or the planned major excavation work of that particular entity. Such meeting shall be held Permittee shall meet with the City Manager or designee to discuss an initial

~~Excavation~~ excavation master plan no later than sixty (60) days after ~~submission of the~~ submitting its first ~~P~~ permit application. Thereafter, each ~~P~~ permittee shall submit annually, ~~by~~ on the first regular business day of January, a revised and updated ~~Excavation~~ excavation master plan. As used in this subsection, the term ~~planned major excavation work~~ refers to any future excavations planned by the permittee when the excavation master plan or update is submitted that will affect any City right-of-way for more than five (5) days, provided that the permittee shall not be required to identify future major excavations planned to occur more than two (2) years after the date that the permittee's master plan or update is discussed. ~~Between the annual meetings to discuss planned major excavation work,~~ ~~P~~ permittee shall use its best efforts to ~~timely~~ inform the City Manager or designee of any substantial changes in the planned major ~~Excavation~~ excavation work ~~discussed at the annual meeting.~~

~~BE.~~ *Repaving Plan.* The City Manager's ~~or~~ designee shall prepare a repaving plan showing the ~~S~~ street resurfacing planned by the City, ~~including.~~ For purposes of this Section, the repaving plan shall include a ~~L~~ landscaping or other ~~Right-of-Way~~ right-of-way improvement plan. The repaving plan shall be ~~revised and updated~~ annually after considering Permittees' and the City's ~~on an annual basis~~ after meeting to discuss the permittees and the City's master plans and updates. The ~~City Manager or~~ designee shall make the City's repaving plan ~~shall be~~ available for public inspection ~~and provided to~~ ~~Permittees meeting annually with the City pursuant to Section A above.~~ ~~In addition, after~~ determining the street resurfacing work that is proposed for each year, the City Manager or designee shall send a notice of the proposed work to all permittees that have had an annual meeting with the City Manager or designee.

~~CD.~~ *Coordination with Repaving Plan.* Prior to applying for a ~~P~~ permit, any ~~Person~~ person planning an ~~Excavation~~ to excavate in the City's ~~Right-of-Way~~ rights-of-way shall review the City's repaving plan ~~on file with the City Manager or designee~~ and shall coordinate, to the extent practicable, with the utility and ~~S~~ street ~~W~~ work shown ~~on such plans~~ to minimize damage to, and avoid undue disruption and interference with, the public use of ~~such~~ ~~Right-of-Way~~ rights-of-way.

~~DE.~~ *Locating Facilities.* In performing locates of ~~F~~ facilities in the ~~Right-of-Way~~ public rights-of-way in preparation for construction under a ~~P~~ permit, ~~P~~ permittee shall compile all information obtained regarding its or any other ~~F~~ facilities in the ~~Right-of-Way~~ public rights-of-way related to a particular ~~P~~ permit, and shall make that information available to the City in a written and verified format pursuant to ~~written~~ City policy.

~~EE.~~ *Documentation of Location of Permittee's Facilities.* Prior to undertaking any ~~W~~ work in the ~~Right-of-Way,~~ rights-of-way the City may notify all ~~P~~ permittees of the City ~~W~~ work to be performed. Upon ~~such~~ notification, all ~~P~~ permittees shall, within seven (7) days, locate their ~~F~~ facilities in the ~~Right-of-Way~~ rights-of-way in which the ~~W~~ work will be performed, and provide documentation in a format pursuant to ~~written~~ City policy of the ~~P~~ permittee's ~~F~~ facilities in that ~~Right-of-Way~~ right-of-way. If the ~~P~~ permittee fails to provide the locate information requested by the City, the City may obtain this information and charge the ~~P~~ permittee the actual costs for obtaining the information.

11-7-17: Minimizing the Impacts of Work in the ~~Right-of-Way~~ Rights-of-Way.

A. *Notification Association.* Before placing any ~~F~~ facilities in the City ~~Right-of-Way,~~ right-of-way the ~~Permittee~~ all entities shall become a member of the Utility Notification Center of Colorado (UNCC), and shall comply with all requirements provided in C.R.S. Title § 9- ~~Article~~ 1.5 et seq. In addition, all ~~Permittees~~ shall ~~make~~ entities are responsible for making inquiries of all ditch companies, utility companies, districts, local government, and all other agencies that ~~may~~ might have ~~F~~ facilities in the area of ~~W~~ work to determine possible conflicts.

B. *Field Locates.* The ~~P~~ permittee shall contact the UNCC and request field locations of all ~~F~~ facilities in the area pursuant to UNCC requirements. Field locations shall be marked prior to commencing ~~W~~ work. The ~~P~~ permittee shall support and protect all ~~Facilities~~ pipes, conduits, poles, wires, or other

apparatus which may be affected by the Work from damage during construction or settlement of trenches subsequent to construction.

- C. *Noise, Dust, Debris, Hours of Work.* Each Permittee shall conduct Work ~~in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property, and.~~ ~~In the performance of the work, the permittee shall take appropriate measures to reduce noise, dust, and unsightly debris. No Work shall be done between the hours of 7:00 p.m. and 7:00 a.m., except with the written permission of the City; or in case of an Emergency. ~~Any entity with facilities in the public right-of-way may undertake routine maintenance on existing facilities without obtaining written permission of the City Manager or designee providing:~~~~
- ~~1. The routine maintenance Work does not involve any material disturbance of any public way Infrastucture improvements.~~
 - ~~2. The routine maintenance Work does not involve any activities that generate noise levels that constitute a public nuisance as defined in the noise control provisions of the Municipal Code.~~
- D. *Trash and Construction Materials.* Each Permittee shall maintain the Work site so that:
1. Trash and construction materials ~~are contained so that they~~ are not blown off of the construction-site.
 2. Trash is removed from a construction-site often enough so that it does not become a health, fire, or safety hazard.
 3. Trash dumpsters and storage or construction trailers are not placed in the Street without specific City approval ~~of the City Manager or designee.~~
- E. *Deposit of Dirt and Material on Roadways.* Each Permittee shall minimize or utilize their best efforts to eliminate the tracking of mud or debris upon any Street or Sidewalk. Streets and Sidewalks shall be cleaned of mud and debris at the end of each day. All equipment and trucks tracking mud and debris into the Right-of-Way~~right-of-way~~ shall be cleaned of mud and debris at the end of each day or as directed by the City ~~Manager or designee.~~
- F. *Protection of Trees and Landscaping.* Each Permittee shall use their best efforts to protect trees, landscape, and landscape features, and shall not trim or remove any trees, shrubs, or brush without permission of the City. ~~as required by the City.~~ All protective measures shall be provided at the expense of the Permittee. When required by City, each Permittee, at its expense, shall trim or cut down trees, shrubs or brush and remove and dispose of cutting debris to the satisfaction of City. ~~If Permittee causes damage to trees and other landscape features, then the Permittee shall be responsible for repairs and depending upon the extent of damage, the replacement of the landscape improvements.~~
- G. *Protection of Paved Surfaces from Equipment Damage.* Backhoe equipment outriggers shall be fitted with rubber pads whenever ~~outriggers are~~ placed on any paved surface. Tracked vehicles that will damage pavement surfaces are not permitted on paved surfaces unless specific precautions are taken to protect the surface. The Permittee will be responsible for any damage caused to the pavement by the operation of such equipment and, shall repair such surfaces. Failure to do so will result in the use of the Permittee's applicants performance/warranty guarantee ~~by the City~~ to repair any damage, and may require ~~possibly, the requirement of~~ additional warrantee(s).
- H. *Protection of Property.* Each Permittee shall preserve private and public property and protect it from damage. The Permittee shall, at its own expense, shore up and protect all buildings, walls, Fences or other property likely to be damaged during the Work, and shall be responsible for all damage to public or private property resulting from its failure to properly protect and carry out Work in the Right-of-Way~~public way.~~

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- I. *Sanitary Facilities.* Each Permittee shall provide necessary sanitary Facilities for workers.
 - J. *Clean Up.* As the Work progresses, all Right-of-Way ~~public rights of way~~ and private property shall be thoroughly cleaned of all gas and oil spills, rubbish, excess dirt, rock, and other debris. All clean up operations shall be done at the expense of the Permittee.
 - K. *Preservation of Monuments.* A Permittee shall not disturb or move any land monuments, property marks, or survey hubs and points that may interfere or be impacted by the proposed Work, until their location has been witnessed or referenced in accordance with standard survey practices, or unless approval is obtained from the City ~~Manager or designee~~. Any monuments, hubs, and points disturbed will be replaced by a Colorado Registered Land Surveyor at the Permittee's expense.
 - L. *Construction Vehicle Parking.* Each Permittee shall make provisions for employee and construction vehicle parking so that neighborhood and business parking adjacent to a work site is not impacted.
 - M. *Maintaining Safe Walkways.* Each Permittee shall maintain an adequate and safe unobstructed walkway around a construction-site ~~in accordance with E.M.C. 11-3-3.~~ In cases Where the Sidewalk must be blocked and pedestrian traffic must be routed around the Work area, the Permittee shall provide adequate barricading and detour signing to protect and serve the pedestrians. Once a Permittee has occupied the Right-of-Way~~public way~~, it shall be the Permittee's ~~responsibility~~ to clear all snow and ice hazards from public Sidewalks at the work site ~~under following a snowfall in conformance with E.M.C. EMC § 11-3-2.~~

11-7-18: Standards for Repairs and Restoration.

A. *Owner Responsibility.* Whenever the City ~~Manager or designee~~ determines that any Sidewalk, curb or gutter should be constructed or repaired, it shall cause notice in writing, to make such construction or repair within thirty (30) days, to be served upon the owner or agent in charge of the premises alongside thereof, ~~pursuant to EMC § as provided in Section 1-10-1 of this Code.~~

If such construction or repairs are not made by the owner within thirty (30) days after service of the notice, the City ~~Manager or designee~~ may order such construction or repairs to be made by the City and the expenses connected therewith shall be a lien upon the property alongside such Sidewalk until the cost thereof is fully paid. When such construction or repairs are made by the City, the cost thereof shall be assessed by the City upon the property fronting upon the same, and if the assessment is not paid within thirty (30) days thereafter, the City shall certify such assessment to the County Treasurer who shall place the same upon the tax list for the current year, to be collected in the same manner as other taxes are collected, with ten percent (10%) penalty thereon to defray the cost of collection.

- B. *Permittee Responsibility.* The Permittee shall be fully responsible for the cost and actual performance of all Work in the Right-of-Way~~public way~~. The costs associated with compaction testing shall be borne by the applicant. The Permittee shall do all Work in conformance with the approved plans, any and all engineering regulations, construction Specifications, and design standards adopted by the City. These standards shall apply to all Work in the Right-of-Way~~public way~~ unless otherwise indicated in the Permit.
- C. *Restoration of Work Site Condition.* All restoration shall result in a work site condition equal to or better than that which existed prior to construction. In addition to the regulations, Specifications and standards referred to in subsection B above, (A) the following provisions shall apply to Work in the Right-of-Way ~~public rights of way of the City~~.
 1. Pavement cuts shall be filled with compacted select material. Either concrete or asphalt patches will be placed to match the existing Street cross section. Select material shall include select fill, stone (CDOT 26 or 57) or controlled density (flowable) fill.

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2. ~~The New~~ asphalt will be placed by City crews unless special circumstances raised by City staff, or the ~~P~~ermittee justify the ~~P~~ermittee contracting with a reputable paving firm to complete this ~~W~~ork to City standard.
 3. Concrete meeting all construction standards of the City shall be used to replace concrete pavement wherever it occurs.
 4. Flowable fill backfill material, satisfying design and construction standards adopted by the City, shall be used to restore all trenches that have been excavated in the paved portion of any public ~~S~~treet or alley. When controlled density fill type material is used, steel plate will be placed to cover the opening for the time required to allow the material to set, or until asphalt patching is completed. The ~~Permittee applicant~~ may utilize granular backfill material in lieu of flowable fill backfill material, provided that all of the following conditions are satisfied.
 - aA. Prior to the issuance of a ~~P~~ermit for ~~construction, excavation, or W~~ork activity, in the ~~Right-of-Way~~public right of way, the applicant must request and receive approval for the use of granular backfill material.
 - b. The type, gradation, placement, compaction, and testing of the granular backfill material shall meet or exceed all requirements specified in design and construction standards adopted by the City. The costs associated with compaction testing shall be borne by the applicant.
 - c. Once the compacted backfill has been placed, an asphalt cutback shall be made. The cutback will extend six inches (6") minimum on each side of the opening and will be over undisturbed pavement material (1-1/2 inch deep minimum). All edges of the opening shall be neatly cut with an asphalt saw at ninety (90) degrees to the ~~R~~oadway and uniformly tacked.
 5. If a Permittee damages any private property, Permittee shall, at its own expense, and in a manner acceptable to the property owner, repair the damage. If Permittee fails to do so, the property owner may repair the damage at its own expense, and Permittee shall reimburse the property owner within thirty (30) days of invoicing.

11-7-19: Construction and Restoration Standards for Newly Constructed or Overlaid Streets.

No ~~Person~~person shall cause an open trench ~~Excavation~~excavation or potholing of utilities in the pavement of any ~~Right-of-Way~~public right of way for a period of two (2) years from the completion of construction or resurfacing except in compliance with the provisions of this Section.

- A. *Permit Application.* Any application for a ~~P~~ermit ~~for Excavation~~to excavate in a ~~Right-of-Way~~public right of way subject to the requirements of this Section shall contain the following information:
 1. A detailed and dimensional engineering plan that identifies and accurately represents ~~the City rights of way~~ Right-of-Way or property that will be impacted by the proposed ~~Excavation~~excavation, as well as adjacent ~~S~~treet, and the method of construction.
 2. The ~~S~~treet width or alley width including curb and gutter over the total length of each City ~~B~~lock that will be impacted by the proposed ~~Excavation~~excavation.
 3. The location, width, length, and depth of the proposed ~~Excavation~~excavation.
 4. The total area of existing ~~S~~treet or alley pavement in each individual City ~~B~~lock that will be impacted by the proposed ~~Excavation~~excavation.
 5. A written statement addressing the criteria for approval.

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- B. *Criteria for Approval.* No ~~P~~permit for ~~Excavation~~excavation in the ~~Right-of-Way~~right-of-way of new ~~S~~streets shall be approved unless the City ~~Manager or designee~~ finds that all of the following criteria have been met:
1. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the ~~S~~street or alley or other utility conflicts.
 2. Alternative utility alignments that do not involve excavating the ~~S~~street or alley are found to be impracticable.
 3. The proposed ~~Excavation~~excavation cannot reasonably be delayed until after the two (2) year deferment period has lapsed.
- C. *Exemptions for Emergency Operations.* Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer service. Persons with prior authorization from the City to perform ~~E~~emergency maintenance operations within the ~~Right-of-Way~~public rights-of-way, shall be exempted from this Section. Any ~~Person~~person commencing operations under the laws of this Section shall submit detailed engineering plans, construction methods and remediation plans no later than three (3) working days after initiating the ~~E~~emergency maintenance operation.
- D. *Construction and Restoration Standards for Newly Constructed or Overlaid Streets and Alleys.* The ~~S~~streets shall be restored and repaired in accordance with design and construction standards adopted by the City and guaranteed in accordance with ~~E.M.C.~~ EMC § 11-76-10.
- E. *Exemptions for Non-Emergency Operations.* A ~~P~~permittee may apply to the City ~~Manager or designee~~ for an exemption under this Section when the construction is necessary in the public interest or to provide a public service, such as. ~~By way of example, but not by limitation, an exemption could be requested in order to provide services to a part of the City where no service would be available without construction. If a non-emergency exemption is granted to disturb a~~ ~~Right-of-Way~~public way (within the two (2) year period), the City ~~Manager or designee~~ may, in ~~its~~his sole discretion, impose additional restoration requirements, including ~~but not necessarily limited to~~, roto-milling and repaving of a larger area, such as an entire ~~B~~block in which the construction occurs.

11-7-20: Relocation of Facilities.

~~If at any time the City requests the P~~permittee ~~to relocate or remove~~ its ~~F~~facilities ~~in the Right-of-Way due to any public purpose, in order to allow the City to make any public use of rights-of-way, or if at any time it shall become necessary because of a change in the grade or for any other purpose by reason of the improving, repairing, constructing, or maintaining of any rights-of-way, or reason of traffic conditions, public safety or by reason of installation of any type of structure or public improvement by the City or other public agency or special district, and any general program for the undergrounding of such facilities, to move or change the permittee's facilities within or adjacent to rights-of-way in any manner, either temporarily or permanently, the City shall notify the P~~permittee, at least ninety (90) days in advance, except in the case of emergencies, ~~of the City's intention to perform or have such work performed.~~ The ~~P~~permittee shall ~~thereupon~~, at no cost to the City, accomplish the necessary relocation ~~or~~ removal ~~or change~~ within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date the City has notified the ~~P~~permittee that it intends to commence its ~~W~~work or immediately in the case of emergencies. Upon the ~~P~~permittee's failure to accomplish such ~~W~~work, the City (or other public agencies or special district requiring the relocation or removal) may perform such ~~W~~work at the ~~P~~permittee's expense and the ~~P~~permittee shall reimburse the City or other agency within thirty (30) days after receipt of a written invoice. Following relocation, all affected property shall be restored to, at a minimum, the condition which existed prior to construction, by the

Permittee at the Permittee's expense. Notwithstanding the requirements of the Section, a Permittee may request additional time to complete a relocation project. The City ~~Manager or designee~~ shall grant a reasonable extension if, in its sole discretion, the extension will not adversely affect the City project.

11-7-21: Abandonment and Removal of Facilities.

A. *Notification of Abandoned Facilities.* Any Permittee that intends to discontinue use of any Facilities within the Right-of-Way ~~public right of way~~ shall notify the City ~~Manager or designee~~ in writing of the intent to discontinue use. Such notice shall include ~~the following~~:

1. A description of the Facilities for which the use is to be discontinued.
2. A description of all known Hazardous Substances ~~materials~~ contained or used in the Facilities.
3. A proposed date for discontinuance of use. Said date shall not be less than thirty (30) days from the date such notice is submitted to the City ~~Manager or designee~~.
4. The proposed method of abandonment, or removal and restoration.

The Permittee may not remove, destroy or permanently disable any such Facilities during said thirty-day period without written approval of the City ~~Manager or designee~~ but may continue to perform maintenance on the Facilities. The City ~~Manager or designee~~ shall review the abandonment notice within thirty (30) days to determine whether Facilities and Conduits can and should be kept available for future users, or if not, the proposed method of abandonment, or removal and restoration.

B. *Removal of Abandoned Facilities.* If it is determined that the Facilities should be removed, then the Permittee shall submit a Permit application to allow ~~construction, excavation and or~~ Work in the Right-of-Way ~~public right of way~~, and the Permittee shall be subject to all applicable fees and requirements of this Chapter. The Permittee shall be required to remove and dispose of such Facilities as set forth in the Permit, and shall complete such removal and disposal within six (6) months from the date of the initial notice of intent to abandon to the reasonable satisfaction of the City and without cost or expense to the City, unless additional time is requested from and the ~~approved by the City Manager or designee~~.

C. *Abandonment of Facilities in Place.* At the discretion of ~~the City~~, and upon written notice from the City, ~~Manager or designee~~ the Permittee may either:

1. Abandon the Facilities in place, and shall further convey full title and ownership of such abandoned Facilities to the City. The consideration for the conveyance is the City's permission to abandon the Facilities in place. The Permittee is responsible for all obligations as owner of the Facilities, or other liabilities associated therewith, until the conveyance to the City is completed.
2. Abandon the Facilities in place, but the Permittee still retains the responsibility for all obligations as owner of the Facilities, or other liabilities associated therewith.

11-7-22: Emergency Procedures.

A. *Emergency Repairs.* Any Person ~~person~~ maintaining Facilities in the Right-of-Way ~~public way~~ may proceed with repairs upon existing Facilities without a Permit when Emergency circumstances demand that the Work be done immediately. If the Emergency repairs involve disturbing any Right-of-Way ~~public right of way~~ improvements, then the Person ~~person~~ doing the Work shall apply to the City for a Permit on or before the second ~~third~~ working day after such Work has

commenced. All Emergency Work that involves material disturbance of any Right-of-Way ~~public rights-of-way~~ improvements, or any Emergency Work that will require that the acceptable hours of construction as provided in this Chapter ~~the E.M.C.~~ relating to noise or traffic to be violated, will require prior telephone notification to the City Public Works Department ~~at the City~~.

- B. *Notifications.* If any damage occurs to an underground facility or its protective covering, the Contractor shall notify the Facilities operator promptly. When the Facilities operator receives a damage notice, the Facilities operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the Contractor responsible shall immediately notify the Facilities operator and 911 and take immediate action to protect the public and nearby properties.
- C. *Public Emergency Disruption by the City.* The City shall have the right, because of a public emergency, to alter, relocate, sever, disrupt, remove, tear out, dig-up or otherwise damage and/or destroy Facilities of Permittee without any prior notice to Permittee, if the action is deemed necessary by the City Manager, Police Chief, City Engineer, Director of Public Works, or any designee of them. In such event, neither the City nor any agent, Contractor or employee of City shall be liable to Permittee, its Contractors or its customers or their parties for any harm so caused to them or the Facilities. When practical and if possible, City will consult with Permittee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of operation of the Facilities. The City shall inform Permittee of any actions taken. Permittee shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by the City.

11-7-23: ViolationsRevocation of Permits and Stop Work Orders.

- A. *Permit Revocation or Suspension.* Any Permit may be revoked or suspended by the City Manager ~~or designee~~, after written notice to the Permittee for:
1. Violation of any condition of the Permit or of any provision of this Chapter.
 2. Violation of EMC or any provision of any other City ordinance ~~or code of the City~~ or other applicable State ~~law~~ relating to the Work.
 3. Existence of any condition or performance of any act which the City determines constitutes or causes a condition endangering life or damage to property.
- B. *Stop Work Orders.* A stop work order may be issued by the City Manager ~~or designee~~ to any Person ~~person or persons~~ doing or causing any Work to be done in the Right-of-Way ~~public way~~ for:
1. Working without a Permit when required, ~~except for routine maintenance or emergency repairs to existing facilities as provided for in this Chapter.~~
 2. Doing Work in violation of any provision of this Chapter, or any other ordinance of the City, or other applicable State ~~law~~ relating to the Work.
 3. Performing any act, which City determines, constitutes or causes a condition that either endangers life or property.
- C. *Effective Immediately.* Stop work orders issued by the City Manager ~~or designee~~, shall take effect immediately upon notice to the Person ~~person~~ performing Work in the Right-of-Way ~~public way~~, or to the Permittee's last known address. Upon receipt of the stop work order, all Work is to cease except for those activities that are necessary to make the work area safe, or to end the disruption to traffic, or to protect people or property, or if approved by the City Manager ~~or designee~~, to cure the violation or conditions that caused the stop work order.

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- D. *Appealing a Suspension, Revocation, or Stop Work Order.* Any suspension or revocation or stop work order may be appealed by the ~~P~~ermittee to the City Board of Adjustment and Appeals by filing a written notice of appeal within thirty (30) days of the action.
- E. *Administrative Penalties.* Anyone violating any provision of this Chapter, including but not limited to, failing to obtain a Permit when required, failing to timely remove Roadway temporary construction signage or devices upon completion of Work that materially impacts vehicular or pedestrian travel, or violating any provision of an issued Permit, shall pay to the City the administrative penalty set by City Council within 30 days of notification by the City. Administrative penalties are in addition to all other remedies available for violating any provision of this Chapter.

11-7-24: Suspension or Revocation of Contractor's Licenses.

- A. *Causes for Suspension or Revocation of a Contractor's License.* The City ~~Manager or designee~~ may suspend or revoke a license when the licensee commits one or more of the following acts or omissions:
1. Failure to comply with the responsibilities as outlined in the Chapter or with the provisions in the Englewood Engineering Regulations and Construction Standards.
 2. Conspires with any ~~Person~~person to ~~P~~ermit a license to be used by another ~~Person~~person.
 3. Willfully violates or disregards any of the provisions of EMC, including this Chapter ~~the Code.~~
 4. Workers exhibit a disregard for safety and therefore ~~W~~work being performed results in unsafe conditions.
 5. Unsatisfactory ~~W~~work resulting from inadequate skills or carelessness in the judgment ~~judgement~~ of the City ~~Manager or designee~~.
 6. Failure to obey orders in a timely fashion.
 7. Failure to obey a stop work order.
 8. Working without a Permit when required by this Chapter.
- B. *License Suspension or Revocation Procedure.* When any of the acts or omissions outlined above are committed by a ~~licensee~~license holder, and the City ~~Manager or designee~~ deems that the license shall be suspended or revoked, the City shall notify the licensee in writing pursuant to EMC § 1-10-1 ~~in writing by certified mail or personal service.~~ Upon receipt of the notice, the licensee may request in writing a hearing to show cause why the license should not be suspended or revoked. If a hearing is requested by the licensee, the City ~~Manager or designee~~ shall set a time, date and place, and so notify the licensee. The suspension or revocation shall be stayed until after the hearing. When a hearing is conducted, the licensee, the Public Works Department, and all interested parties may attend. Upon completion of the hearing, the City Manager or designee shall take all evidence available as a result of the Public Works Department investigation and all evidence presented at the hearing under advisement, and shall notify the licensee in writing of the findings and decision, including length of suspension or revocation if any, by service pursuant to EMC § 1-10-1 ~~certified mail or personal service.~~ The time of a suspension may be up to one year. The time of revocation may be up to five (5) years.
- C. *Appeal Rights.* Any ~~Person~~person, who disputes a license suspension or revocation, may appeal the decision to the City Board of Adjustment and Appeals by filing a written notice of appeal. The revocation or suspension is not stayed while the City Board of Adjustment and Appeals hearing is pending.

11-7-25: Adoption of 2020 Design and Construction Standards and Specifications.

- A. There is hereby adopted, by reference thereto, the 2020 Design and Construction Standards and Specifications manual (Standards and Specifications), as developed by the City of Englewood. The City Clerk shall maintain a copy of the Standards and Specifications, including all appendices, within the Office of the Clerk and make such Standards and Specifications available for inspection during regular business hours. Additionally, a copy of the Standards and Specifications shall be maintained on the website of the City of Englewood.
1. The Standards and Specifications shall govern all Work within the Right-of-Way~~public right-of-way~~. ~~A permit is required for all work within the public right-of-way.~~
 2. All new developments and re-developments are required to construct new Right-of-Way~~public right-of-way~~ Infrastructure or replace existing Infrastructure within the Right-of-Way~~public right-of-way~~ and adjacent to the property ~~to be~~ in conformance with current ADA and City standards.
 3. A license agreement is required for the design, construction, operation and maintenance of any overhead or underground Facilities within the Right-of-Way~~public right-of-way~~ by any entity without a franchise agreement with the City or without any other prior lawful authorization to utilize the Right-of-Way. The license agreement shall be on a form provided by the City. All Work to construct and maintain Facilities shall be covered by the applicable right-of-way Permit. Prior lawful authorizations to utilize the Right-of-Way still require a Permit for site-specific Work.
 4. Standards and Specifications shall include, but are not limited to: requirements for site plan, construction plans, plan submission, and plan approval.
 5. Standards and Specifications shall include, but are not limited to: development guidelines and requirements, including traffic studies, Roadway designs, bicycle trails and pedestrian Facilities.
 6. Standards and Specifications shall include performance standards.
 7. Standards and Specifications shall include Permit types.
 8. Standards and Specifications shall include general construction requirements, including, but not limited to: construction materials and methods, asphalt pavement standards, concrete pavement standards, storm sewer standards, and traffic control device standards.
 9. Standards and Specifications shall include standard detail drawing requirements, including, but not limited to: standard signal details, standard signing and striping details, and Roadway and concrete details.
- B. The City of Englewood Construction Standards and Concrete Specifications, dated April, 2011, are hereby superseded and repealed in conformance with EMC Title 1, Chapter 2.

11-7-26. Disposition of Newsracks.

Newsracks placed in the Right-of-Way~~right-of-way~~ shall be in accordance with the following procedures:

- A. No Newsrack shall be placed in an area that would cause a violation of the applicable safety criteria as set forth in EMC~~this Code~~, or where the available space for News racks has been exhausted.

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- B. Where Newsrack Corral are provided or required as part of a comprehensive streetscaping design for a particular Block, or Street corridor, the number of Corral spaces available shall dictate how many News racks shall be allowed on any one Block. There shall be only one News rack per publication per Corral on each side of the Street.
 - C. News racks shall not be chained, bolted or otherwise attached to any tree or any fixture located in the Right-of-Way~~right of way~~. All bolts and protrusions shall be removed from the Right-of-Way~~right of way~~ when the News rack is moved or removed.
 - D. All owners of News racks shall be responsible for the maintenance and upkeep of their News racks. Any News rack found not to be in compliance shall be subject to removal under EMC § 11-7-30~~1 Englewood Municipal Code~~.

11-7-27: Permitting of Newsracks.

It shall be unlawful for any Person~~person~~ to erect, place, maintain or operate, on a public Street or Sidewalk, or in any other Right-of-Way~~public way~~ or public place, any News rack without first obtaining a Permit from the City Manager or designee specifying the location of such News rack and paying the Newsrack permit fee set by City Council. One (1) Permit may be issued to include any number of News racks and shall be signed by the applicant. A Permit shall be considered approved if the City takes no action within ten (10) working days. Notification by certified mail, return receipt requested, that the application is being processed shall be considered "action" for purposes of this Section.

All News racks shall contain a sticker or other method of information providing the name, address, and telephone number of the owner of the News rack.

11-7-28: Priority of Placement of Newsracks.

The City shall use the following criteria in determining when News racks will be permitted at any location:

- A. A News rack that is in place will have priority to its location if the location meets the criteria established in this Title. If a News rack, which is in place at the time EMC §§ 11-7-26 through 11-7-31 ~~Englewood Municipal Code~~ are created, must be moved, it shall have its current priority at the nearest location.
- B. Second priority shall be given to News racks containing publications published daily or five (5) or more days per week and shared News racks that contain multiple publications.
- C. Third priority shall be given to News racks containing publications published one (1) to four (4) days per week.
- D. Fourth priority shall be given to News racks containing publications published less frequently than once a week.
- E. If a publication has one (1) News rack located at any one location, it may only be permitted a second News rack after all other publications have been permitted. For purposes of this subsection, "location" means all News racks located on the same side of the Street in the same Block.
- F. Where a News rack Corral is being placed, the priority for the use of such Corral shall be as set forth in this Section.

11-7-29: Prohibitions on the Placement of Newsracks.

All ~~N~~newsracks placed in whole or in part on any portion of the ~~Right-of-Way~~right-of-way, or which project onto or over any part of the ~~Right-of-Way~~right-of-way shall be placed in accordance with the following provisions:

- A. It shall be unlawful for any ~~N~~newsrack or ~~N~~newsrack ~~C~~orral to be placed, installed, or used or maintained in the following manner:
 1. Within two feet (2') of the curb face or pavement edge of any ~~R~~oadway;
 2. Within three feet (3') of any marked pedestrian crosswalk;
 3. Within five feet (5') of any fire hydrant, fire call box, police call box, or any other emergency facility;
 4. On any portion of a pedestrian access ramp for disabled persons;
 5. Within five feet (5') of any of the following: parking meter posts, traffic control cabinets, bicycle parking racks, the entrance to public transit shelters, public telephone enclosures, kiosks, the entrance to ~~S~~idewalk cafe, business access, public works of art, any portion of a driveway, or trees;
 6. On any portion of a tree grate, manhole cover, meter and/or valve box cover, vent cover for underground utilities or on any granite or other decorative ~~S~~idewalk without special approval of the City ~~Manager~~ or ~~designee~~;
 7. Within a designated bus stop, or a ten-foot-wide strip parallel to the Roadway measured from the curb or edge of the pavement running from the bus stop sign forty feet (40') in the direction opposite to the flow of traffic, or lightrail stop, or the Sidewalk area within five (5) feet of, and including, any raised boarding platform adjacent to ingress/egress to a lightrail.
 8. Outside or adjacent to a news ~~C~~orral where ~~C~~orrals are provided;
 9. On landscaped areas or any location where there is no concrete pad;
 10. In whole or in part rests upon, in or over any public ~~S~~idewalk or ~~parking lot~~ ~~parkway~~, when such installation, use or maintenance interferes with intended use or endangers the safety of persons or property.

11-7-30: Prohibition on Display of Certain Materials.

Publications offered for sale or distribution from ~~N~~newsracks located on or projecting over public property shall not be displayed or exhibited in a manner that exposes to public view from the ~~S~~treet or ~~S~~idewalk any of the following:

1. Any statements or words describing ~~Explicit Sexual Act~~explicit sexual acts, sexual organs, or excrement where such statements or words have as their purpose or effect sexual arousal or gratification;
2. ~~Any pictorial material~~ Any material suggesting or conveying a visual image, including a photograph, painting or drawing, depicting a person's genitals, pubic hair, perineum, anus or anal region, or ~~or~~
3. ~~Any pictorial material depicting~~ Explicit Sexual Act~~explicit sexual acts~~.

11-7-31: Removal of Newsracks.

Any ~~N~~newsrack found in violation of this ~~Chapter~~Section is subject to removal by employees of the City under the following guidelines:

- A. A thirty (30) day notice of violation shall be served pursuant to EMC § 1-10-1, consistent with municipal service of process, upon the owner of the ~~N~~newsrack. Said notice shall set forth the violations and require the owner to correct the problem by bringing the ~~N~~newsrack into compliance or by removal of the ~~N~~newsrack.
- B. In the event that the owner has not corrected the problem or removed or moved the ~~N~~newsrack, the City may, at the expense of the owner, remove the ~~N~~newsrack and place the ~~N~~newsrack and its contents in storage.
- C. In the event that a ~~N~~newsrack obstructs the ~~Right-of-Way~~right-of-way or any ~~S~~sidewalk, ~~S~~street or other ~~Right-of-Way~~public-way, the City shall notify the owner of the ~~N~~newsrack requesting that the owner remove or move the ~~N~~newsrack. In the event that the owner does not remove or move the ~~N~~newsrack, and upon thirty (30) days elapsing from the initial notice, the City may remove said ~~N~~newsrack. If not claimed within thirty (30) days, it is deemed abandoned property of the City.

11-7-32: Use of ~~Public Rights-of-Way~~ Right-of-Way or other Public Places by Utilities and Similarly Situated Service Providers.

- ~~A.~~ *Purpose.* ~~Every utility and every provider of similar service within the City, regardless of whether it holds a franchise from the City, may be required by the City to permit joint use of its facilities located in the streets, alleys, or other public places in the City, as such may be reasonably practicable. Examples of such joint use may include, but are not limited to, attachment of flags, banners, or similar signs announcing public events, holiday lights and other decorative attachments, pedestrian or other traffic related safety signs, flashing crosswalk lights, flower pots and baskets, and other similar attachments. Such use of said facilities by the City shall not create a material negative impact on a private entity's facilities or operations, and such use may only be considered when it can be accomplished, at the City's discretion, in a manner that is protective of public health and safety. Nothing contained herein shall limit the City's ability to enter into any other type of joint use agreement with utility and other service providers owning facilities located in City streets, alleys, or other public places.~~
- ~~B.~~ *Standards.* ~~The City Manager or designee may adopt standards for use by the City of a private entity's Ffacilities in City Sstreets, alleys and other public places and shall apply such standards to all similarly situated Ffacilities; provided, however, that such standards may be modified where unusual conditions indicate such a modification will allow for an adequate and safe utilization of such Ffacilities. Such joint use shall not create a material negative impact on a private entity's Facilities or operations, and such use may only be considered when it can be accomplished, at the City's discretion, in a manner that is protective of public health and safety.~~
- ~~B.C.~~ *Enforcement.*
 1. If the utility or other service provider that is the owner of the Ffacilities in the Sstreets, alleys or other public places objects to any proposed City use of such Ffacilities, the City shall be permitted to undertake a study to address the concerns raised by the Ffacilities' owner. The owner of the Ffacilities shall cooperate in providing the City any information reasonably needed to study and respond to the owner's objections. For purposes of this Section, an owner

shall be deemed to have failed to cooperate if it does not provide the City with any information reasonably requested within seven (7) calendar days of a written request.

2. If the City provides information to the utility or other service provider which reasonably demonstrates that its proposed use of the facility will not cause a material negative impact on the utility or other service provider's Ffacilities or operations and will not negatively impact public health and safety, the facility owner shall allow the City's proposed use, subject to any conditions reasonably necessary to insure that the use will not cause the negative impacts described herein. Failure to make such Ffacilities available for City use as provided herein shall be a violation of this Section and may be subject to the penalties under EMC § 1-4-1 EMC.
3. It shall be unlawful for any Person~~person~~, including any representative or Contractor of a utility or other service provider, to remove flags, banners, or similar signs announcing public events, holiday lights and other decorative attachments, pedestrian or other traffic related safety signs, flashing crosswalk lights, flower pots and baskets, and other similar attachments from Ffacilities located in the Streets, alleys, or other public places in the City without receiving advance written permission from the City Manager~~or designee~~.
4. In addition to addressing violations of this Section, if a facility owner fails to make its Ffacilities available after the City has provided the information described in Subsections 1 and 2 above, the City Manager~~or designee~~ is authorized to withhold issuance of ~~a building permit or any other required P~~ermit sought by the facility's owner until arrangements have been made to the City's satisfaction that the requested City use of the Ffacilities in the Streets, alleys, or other public places is ~~being~~ provided.

Section 3. Fees and Penalties Established

The City of Englewood Schedule of Service, License and Permit Fees and Utility Rates shall be amended as follows:

Permit Fees (in addition to existing Occupancy Permit Fee):

Degradation, Restoration under EMC § 11-7-6	\$10/linear foot
Administrative review fee under EMC § 11-7-6	\$38 per hour \$125
Lane closure/sidewalk closure under EMC § 11-7-14(B) (cumulative)	
Sidewalk	\$0.45 /linear foot, per day
Bike Lane	\$0.99 /linear foot, per day
Transit Lane	\$3.12 /linear foot, per day
Parking Lane	\$3.50 /linear foot, per day
Alley or 1st Lane	\$6.00 /linear foot, per day
2nd Lane	\$12.00 /linear foot, per day
3rd Lane	\$24.00 /linear foot, per day
4th Lane	\$36.00 /linear foot, per day
5th Lane	\$54.00 /linear foot, per day
6th Lane	\$81.00 /linear foot, per day
Detour Fee for entire road closure, in addition to lane closure fees	\$5.05 /linear foot, per day

Administrative Penalties under EMC § 11-7-23(E) for Violating ROW Code, Permit, including Working without a valid Permit, Unlicensed Contractor, Failure to Remove Temporary Construction Signage or Traffic Control Devices	\$500 per violation, per day
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Permit Amendment Application Fee (to expand scope, duration, Transfer Permittee, prompt re-application after denial, other)	\$190
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under EMC § 11-7-4(C)

Newsrack permit fee under EMC § 11-7-27:

\$230 annually

All references in the Schedule to Municipal Code Authorizing the Fee under EMC § 11-7-1 shall instead reference EMC § 11-7-6. References in the Schedule to EMC § 12-8-6 that apply to Right-of-Way also shall include a reference to EMC § 11-7-6, including Re-inspection Fee, Occupancy Permit Fee. The fees established herein may be amended by City Council by any official act, including by motion or approval of an amended City of Englewood Schedule of Service, License and Permit Fees and Utility Rates.

Section 4. General Provisions

The following general provisions and findings are applicable to the interpretation and application of this Ordinance:

A. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

B. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

C. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

D. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. This Safety Clause is not intended to affect a Citizen right to challenge this Ordinance through referendum pursuant to City of Englewood Charter 47.

E. Publication. Publication of this Ordinance may be by reference or in full in the City's official newspaper, the City's official website, or both. Publication shall be effective upon the first publication by either authorized method. Manuals, Municipal Code, contracts, and other documents approved by reference in any Council Bill may be published by reference or in full on the City's official website; such documents shall be available at the City Clerk's office and in the City Council meeting agenda packet when the legislation was adopted.

F. Actions Authorized to Effectuate this Ordinance. The Mayor is hereby authorized and directed to execute all documents necessary to effectuate the approval authorized by this Ordinance, and the City Clerk is hereby authorized and directed to attest to such execution by the Mayor where necessary. In the absence of the Mayor, the Mayor Pro Tem is hereby authorized to execute the above-referenced documents. The execution of any documents by said officials shall be conclusive evidence of the approval by the City of such documents in accordance with the terms thereof and this Ordinance. City staff is further authorized to take additional actions as may be necessary to implement the provisions of this Ordinance.

G. Enforcement. To the extent this ordinance establishes a required or prohibited action punishable by law, unless otherwise specifically provided in Englewood Municipal Code or applicable law, violations shall be subject to the General Penalty provisions contained within EMC § 1-4-1.