

Ref: "Trench Repairs"

2/16/06

ORDINANCE NO. 26263

An ordinance amending Article VIII, composed of Sections 43-135 through 43-148, of CHAPTER 43, "STREETS AND SIDEWALKS," of the Dallas City Code, as amended; defining terms; providing permit requirements, notice requirements, and other regulations for above ground utility structures; providing for exceptions and waivers; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Article VIII, "Certain Uses of Public Right-of-Way," of CHAPTER 43, "STREETS AND SIDEWALKS," of the Dallas City Code, as amended, is amended to read as follows:

"ARTICLE VIII.

CERTAIN USES OF PUBLIC RIGHT-OF-WAY.

SEC. 43-135. DEFINITIONS.

In this article:

(1) ABOVE GROUND UTILITY STRUCTURE or AGUS means any utility structure that extends higher than the surrounding grade.

(2) AGUS PLACEMENT GUIDELINES means a manual published by the city of Dallas that contains engineering, technical, and other special criteria and standards established by the director for the placement of above ground utility structures.

(3) BACKFILL means:

(A) the placement of new dirt, fill, or other material to refill an excavation; or

(B) the return of excavated dirt, fill, or other material to an excavation.

(4) ~~[(2)]~~ CITY means the city of Dallas and the city's officers and employees.

(5) ~~[(3)]~~ CLOSURE means a complete or partial closing of one or more lanes of traffic of a thoroughfare for any period of time.

(6) ~~[(4)]~~ CONSTRUCTION means any of the following activities performed by any person within a public right-of-way:

(A) Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.

(B) Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way.

(C) Performance, restoration, or repair of pavement cuts or excavations.

(D) Reconstruction of any of the work described in Paragraphs (6)~~[(4)]~~(A) through (6)~~[(4)]~~(C) of this subsection.

(E) Other similar construction work.

(7) ~~[(5)]~~ DIRECTOR means the director of public works and transportation or any designated representative.

(8) ~~[(6)]~~ EMERGENCY ACTIVITY means circumstances requiring immediate construction or operations by a public service provider to:

(A) prevent imminent damage or injury to the health or safety of any person or to the public right-of-way;

(B) restore service; or

(C) prevent the loss of service.

(9) ~~[(7)]~~ EXCAVATION means the removal of dirt, fill, or other material in the public right-of-way, including but not limited to the methods of open trenching, boring, tunneling, or jacking.

(10) [(8)] FACILITIES means the plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, above ground utility structures, and appurtenances of a public service provider and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public service provider.

(11) [(9)] MAJOR PROJECT means any construction that requires a pavement cut of a length of 300 linear feet or greater within any single street or alley.

(12) [(10)] PAVEMENT CUT means a cut made into the paved surface of the public right-of-way.

(13) [(11)] PAVEMENT CUT AND REPAIR STANDARDS MANUAL means a manual published by the city of Dallas that contains engineering, technical, and other special criteria and standards established by the director for pavement cut, excavation, backfill, restoration, and repair activities in the public right-of-way.

(14) [(12)] PERMITTEE means the person applying for or receiving a permit to perform construction within the city's right-of-way under the terms and conditions of this article. The term includes:

(A) any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the permittee; and

(B) any contractor or subcontractor of the permittee, for purposes of compliance with the *City of Dallas Pavement Cut and Repair Standards Manual* and the traffic control, construction, and maintenance requirements of this article.

(15) [(13)] PERSON means a natural person, a corporation, a public service provider, ~~a governmental entity or agency (including the city), a limited liability company, a joint venture, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.~~

(16) [(14)] PUBLIC RIGHT-OF-WAY means any area of land within the city that is acquired by, dedicated to, or claimed by the city in fee simple, by easement, or by prescriptive right and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, highway, street, sidewalk, alley, or utility access easement. The term includes the area on, below, and above the surface of the public right-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved. The term does not include airwaves above the public right-of-way that fall under the exclusive jurisdiction of the United States government.

(17) [(15)] PUBLIC SERVICE PROVIDER means any wholesale or retail electric utility, gas utility, telecommunications company, cable company, water utility, storm water utility, or wastewater utility, regardless of whether the public service provider is publicly or privately owned or required to operate within the city pursuant to a franchise.

(18) [(16)] SPOILS or EXCAVATED MATERIAL means construction waste, construction supplies, or excavated dirt, fill, or other similar material that is stored or placed upon the surface of a public right-of-way.

(19) [(17)] SUBDIVISION means "subdivision" as defined in Article VIII, "Plat Regulations," of the Dallas Development Code, as amended.

(20) [(18)] THOROUGHFARE means:

(A) a public traffic arterial, as designated in the city's thoroughfare plan;

(B) a nonresidential collector street, as defined in the *City of Dallas Paving Design Manual*; and

(C) all streets within the central business district.

(21) UTILITY STRUCTURE:

(A) means any structure, cabinet, or other appurtenance (other than a pole or a device attached to a pole) that is owned or used by a public service provider to provide service; and

(B) does not include:

(i) a device or structure used to control or direct pedestrian or vehicular traffic on an adjacent roadway; or

(ii) any infrastructure that provides water used for fire suppression.

SEC. 43-136. DIRECTOR'S AUTHORITY; ENFORCEMENT; OFFENSES.

(a) The director is authorized to administer and enforce the provisions of this article, and to promulgate regulations, including but not limited to engineering, technical, and other special criteria and standards, to aid in the administration and enforcement of this article that are not in conflict with this article, this code, or state or federal law.

(b) The director is authorized to enter upon a construction site for which a permit is granted under this article or, where necessary, upon private property adjacent to the construction site, for purposes of inspection to determine compliance with the permit or this article.

(c) A person commits an offense if he:

(1) performs, authorizes, directs, or supervises construction without a valid permit issued under this article;

- (2) violates any other provision of this article;
- (3) fails to comply with restrictions or requirements of a permit issued under this article; or
- (4) fails to comply with an order or regulation of the director issued pursuant to this article.

(d) A person commits an offense if, in connection with the performance of construction in the public right-of-way, he:

- (1) damages the public right-of-way beyond what is incidental or necessary to the performance of the construction;
- (2) damages public or private facilities within the public right-of-way; or
- (3) knowingly fails to clear debris associated with the construction from a public right-of-way after construction is completed.

(e) It is a defense to prosecution under Subsection (d)(2) if the person complied with all of the requirements of this article and state law and caused the damage because the facilities in question:

- (1) were not shown or indicated in a plan document, plan of record, record construction drawing, or field survey, staking, or marking; and
- (2) could not otherwise be discovered in the public right-of-way through the use of due diligence.

(f) A person commits an offense if, while performing any construction or other activity along a public right-of-way (whether or not a building or other permit is required for the activity), the person:

- (1) damages the public right-of-way or public or private facilities located within the public right-of-way; or
- (2) fails to clear debris associated with the construction or other activity from a public right-of-way.

(g) It is a defense to prosecution under Subsections (f)(1) and (f)(2) that the person was performing all of the construction or other activity along the public right-of-way in compliance with any permit issued for the construction or activity.

(h) Unless specifically provided otherwise, a [A] culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized, directed, or permitted. An offense under Subsection (d)(3) or (f)(2) is punishable by a fine of not less than \$500 or more than \$2,000. Any other offense under this article is punishable by a fine of \$500.

(i) This article may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the city has for a violation of this article.

(j) Prior to initiation of civil enforcement litigation, the permittee or any other person who has violated a provision of this article must be given the opportunity to correct the violation within the time frame specified by the director. This subsection does not prohibit the director or the city from taking enforcement action as to past or present violations of this article, notwithstanding their correction.

SEC. 43-137. REGISTRATION; OTHER REQUIREMENTS.

(a) Nothing in this section relieves a public service provider from obtaining a permit under this article to perform work in the public right-of-way.

(b) In order to protect the public health, safety, and welfare, a public service provider maintaining or operating existing facilities in the public right-of-way must register with the director in accordance with the following requirements:

(1) The registration must be on a form furnished by the director and made in the name of the public service provider that owns the facilities.

~~(2) Registration expires March 1 of every other year after the calendar year in which the first registration occurs. If a registration is not renewed by the expiration date, the director shall furnish written notice to the public service provider that the registration has expired. If the public service provider fails to renew registration within 30 calendar days after the director gives notice of the expiration, the facilities of the public service provider will be deemed to have been legally abandoned.~~

(3) If information provided as part of the registration changes, the public service provider must inform the director in writing not more than 30 days after the date the change occurs.

(4) The public service provider shall also include the following with the registration:

(A) The name of the public service provider using the public right-of-way, including any business name, assumed name, or trade name the public service provider operates under or has operated under within the past five years.

(B) If the public service provider is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission.

(C) The ordinance number of any franchise or license issued by the city of Dallas that authorizes the public service provider to use the public right-of-way.

(D) The names, addresses, and telephone numbers of at least two persons who will be general, day-to-day contacts for the public service provider. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.

(E) The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider.

(F) The name, address, and telephone number of any contractor or subcontractor, if known, who will be working in the public right-of-way on behalf of the public service provider.

(G) The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the city having to pay a long distance telephone or toll charge.

(H) Proof of existing insurance that complies with the following requirements:

(i) The minimum insurance coverage for a public service provider must be commercial general liability insurance, or any combination of general liability and umbrella/excess insurance, (including, but not limited to, premises operations, personal and advertising injury, products/completed operations, and independent contractors and contractual liability) with a minimum combined bodily injury (including death) and property damage limit of \$25,000,000 per occurrence, \$25,000,000 products/completed operations aggregate, and \$25,000,000 general aggregate. The liability insurance policy must also include coverage for explosion, collapse, and underground hazards. The insurance coverage must be written by a company or companies approved to conduct business in the State of Texas. The city must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.

(ii) The insurance filed by a public service provider must also meet the same requirements as insurance filed by a permittee under Section 43-140(a)(3) through (a)(7). A public service provider has the same duties, obligations, and liabilities as a permittee under Section 43-140(a)(3) through (a)(7), except that a public service provider does not have to file separate proof of insurance every time it obtains a permit to perform work in the public right-of-way.

(iii) If the public service provider is an entity that has a tangible net worth ratio of 3 to 1 (assets to liabilities) with a minimum tangible net worth of at least \$100,000,000, proof of self-insurance sufficient to meet the coverage required in this subparagraph is sufficient to satisfy the insurance requirements of this subparagraph.

(5) The insurance requirements of Subsection (b)(4)(H) of this section do not apply to:

(A) construction or other activity performed by the city's own forces or by contractors hired by the city and working on city-owned facilities within the public right-of-way; or

(B) a public service provider operating facilities or performing construction pursuant to a valid existing franchise or license approved by the city council.

SEC. 43-138. PLANS OF RECORD.

(a) Any public service provider with facilities in the public right-of-way shall submit plans of record in accordance with the following requirements:

(1) On or before April 1, 2001, a public service provider shall submit to the director a schedule to provide complete plans of record that show all of its facilities existing in the public right-of-way as of the date the plans of record are submitted to the director in compliance with this section. The schedule must provide for all plans of record for existing facilities inside the central business district to be furnished to the director on or before March 1, 2002 and for all plans of record for existing facilities outside the central business district to be furnished to the director on or before March 1, 2003.

(2) On or before March 1 of each calendar year following the initial submittal of its plans of record, a public service provider shall provide to the director plans of record that show all installations of new facilities, and all changes, additions, abandonments, and relocations relating to existing facilities, completed in the previous calendar year, both inside and outside of the central business district.

(3) The plans of record must be provided in a format specified by the director and must contain such detail and accuracy as are required by the director. Plans of record must be submitted in computerized or digital format.

(b) If plans of record submitted under this section include information expressly designated by the public service provider as a trade secret or other confidential information protected from disclosure by state law, the director may not disclose that information to the public without the consent of the public service provider, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Open Records Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a public service provider to designate all matters in its plans of record as confidential or as trade secrets.

SEC. 43-139. PERMIT REQUIRED; EXCEPTIONS; CONDITIONS; DENIAL AND REVOCATION.

(a) A person shall not perform any construction, except for an emergency activity, within a public right-of-way without first obtaining a permit from the director prior to the start of construction. A person who undertakes any work outside of the public right-of-way that will cut, break, or otherwise damage the public right-of-way shall also obtain a permit under this section. Except as provided in Subsection (b), a permit is required in accordance with this section for the following types of construction, regardless of whether the construction is in or outside of a public right-of-way:

(1) Installation of an above ground utility structure that does not replace an existing facility.

(2) Replacement or upgrade of an existing above ground utility structure with another above ground utility structure.

(3) Replacement of an existing below ground utility structure with an above ground utility structure.

(b) Exceptions.

(1) A permit is not required under Subsection (a) if the activity in or outside of the public right-of-way consists exclusively of:

(A) the placement of an above ground utility structure on property that is not:

(i) zoned as residential; or

(ii) adjacent to property zoned as residential;

(B) the replacement or upgrade of an existing above ground utility structure on or adjacent to property that is zoned as residential when:

(i) the existing structure is less than 39 inches tall; and

(ii) the replacement or upgrade will not increase the size or change the location of the structure; or

(C) maintenance or service to an existing above ground utility structure.

(2) A permit is not required under Subsection (a) if the activity in the public right-of-way consists exclusively of:

(A) [(+)] a connection of real property to a retail utility service on the same side of the public right-of-way, if the connection does not require a pavement cut; or

(B) [(2)] the replacement of a single damaged pole.

(c) The following procedures and requirements govern the application for and issuance of a permit required under Subsection (a) of this section [~~to perform construction within the public right-of-way~~]:

(1) A permit application must be made in writing on a form approved by the director. The application must be signed and submitted by the owner of the facility for which the permit is requested or, if the work does not involve a facility, by the owner of the improvement for which the permit is requested.

(2) Except in the case of a major project, a permit application must be submitted to the director not less than two business days before commencement of the proposed construction unless emergency activity is required, in which case immediate notice, including the reasons for the emergency activity, must be given to the director.

(3) A permit application for a major project must be submitted enough time in advance of the commencement of the proposed construction to allow the director at least 30 business days for review. During this project submission review period, schedules, alternatives to cutting the street, utility assignments, special repair requirements, and all other questions will be resolved. Adjustments to time limits specified in the *Pavement Cut and Repair Standards Manual* may be granted by the director for major project work. The proposed construction on the project may commence upon issuance of the permit by the director.

(4) A permit application must include a statement by the applicant that the applicant has collected all available plans for existing city of Dallas underground facilities and other public and private utilities and has included those facilities and utilities in the applicant's design, showing no apparent conflict. The statement must also affirm that the applicant will perform field verifications as necessary during construction to locate all city and other existing underground facilities.

(5) A permit application for an above ground utility structure in or outside of a public right-of-way must include identification of appropriate locations for the structure that are consistent with the placement criteria set forth in the *AGUS Placement Guidelines*.

(6) The permit application on any project must include submittal of plans to the director. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas. The plans must include the horizontal alignment of all proposed facilities in relation to all existing public and private facilities in plan view. The plans must clearly show the proposed locations of all above ground utility structures and include a detail view showing the height, width, and depth dimensions of each type of above ground utility structure (including any supporting pad) to be installed. If the project is a major project that is located within the central business district, crosses street intersections, or involves crossing proposed facilities over or under existing

facilities, the plans must also include a representation of the vertical alignment of the facilities in profile view. Each sheet of the plans must have a note instructing the contractor to verify the location of underground utilities at least 100 feet in advance of all proposed utility crossings, and also at locations where the proposed facilities are shown to be running parallel to existing facilities within five feet. The plans must be half size (11" X 17") at a scale no smaller than 1" = 40' in plan view and 1" = 6' in profile view. Each project must be assigned a project number, which must appear on each sheet.

(7) [(6)] A permit is required even if other authority has been granted by the director to make a pavement cut or excavation in a public right-of-way as part of a city construction project.

(8) [(7)] The director shall state on the permit the activity for which the permit is issued and include any additional restrictions or requirements determined necessary by the director.

(9) [(8)] The permittee has the exclusive responsibility to coordinate with other public service providers to protect all existing facilities in the public right-of-way in which the construction occurs.

(10) [(9)] The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the *Pavement Cut and Repair Standards Manual* and with all other city ordinances and state or federal laws or regulations affecting the permitted activity.

(11) [(10)] The director shall notify public service providers that registered under Section 43-137 during the previous calendar year of pavement surfaces to be reconstructed or resurfaced by the city during the next calendar year.

~~(12) [(11)] A public service provider planning construction within the public right-of-way shall notify the director by March 1 of each year of all then-known facility expansion or replacement projects planned for the next fiscal year that may require pavement cuts or excavations.~~

(13) [(12)] The director may require any permittee to use trenchless technology or boring, instead of disturbing a public right-of-way surface, if it is:

- (A) in the best interest of the city;
- (B) technically, commercially, and economically feasible; and
- (C) not in violation of federal or state regulations or industry safety standards.

(14) [(13)] Directional drilling or boring may not be used in the central business district, unless otherwise approved by the director as being in the best interest of the public health, safety, welfare, and convenience.

(15) [(14)] In using trenchless technology or boring, whether or not required under Paragraph (13) [(12)] of this subsection, the permittee must:

(A) obtain and have at the construction site recent plans from the city's water utilities department, and, where available, plans from owners of all other underground facilities, showing the horizontal and vertical placement of the underground facilities, if the permittee's proposed facilities will:

- (i) cross other existing facilities; or
- (ii) be located within five feet of existing facilities at any point;

(B) locate all water main lines by potholing, if the permittee's proposed facilities will:

- (i) cross other existing facilities; or
- (ii) be located within five feet of existing facilities at any point;

and

(C) be able to locate the bore head at all times in accordance with the latest technologies and provide the location of the bore to the director upon request.

(16) [(15)] The permittee shall maintain the construction area in a public right-of-way in a manner that avoids dust, other health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way is permanently repaired.

(17) [(16)] When making a pavement cut or excavation, or placing spoils or excavated material in or along a public right-of-way, the permittee shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the cut, excavation, spoils, or excavated material in compliance with the 1980 Edition of the *Texas Manual on Uniform Traffic Control Devices*, as amended, published by the Texas Department of Transportation.

(18) [(17)] The director may require the permittee to share trench space to minimize the disruption of vehicular and pedestrian traffic or to provide space for needed city facility installations if such sharing is:

- (A) technically, commercially, and economically feasible; and
- (B) not in violation of state or federal regulations or industry safety standards.

(d) The following additional procedures apply if it is necessary to close, in whole or in part, a public right-of-way for purposes of making a pavement cut or an excavation:

(1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting one day or less, the permittee shall conspicuously mark its vehicles with the permittee's name and telephone number.

(2) Any closure of a traffic lane or blocking of a sidewalk or alley lasting longer than one day must be identified by a sign that is clearly legible to the traveling public. The sign must be posted at or in close proximity to the worksite and must contain:

(A) the name of the permittee;

(B) the name of the person performing the construction on behalf of the permittee, if any; and

(C) a local 24-hour contact number that can be used in case of emergency or to answer any questions.

(3) The requirements of Paragraphs (1) and (2) of this subsection are in addition to any other signage, barricades, or warning devices required by law or ordinance. The sign information required by Paragraph (2) of this subsection may be included on barricades or warning devices.

(4) When permitted construction will last longer than two weeks, the permittee shall give written notification to all adjacent property occupants by conspicuously posting the notification on each adjacent property at least 72 hours before commencement of construction, unless the director determines that an emergency exists.

(5) If a street or alley must be totally closed for any duration, the permittee shall provide for reasonable alternative access to the adjacent property by the property's occupants and invitees, which access must include but is not limited to deliveries to the property.

(6) If construction on a partially closed thoroughfare stops for the day, all thoroughfare lanes must be reopened to traffic, unless an extended time of closure is expressly granted by the permit.

(7) If a pavement cut is to be covered, the permittee shall use steel plates, or equivalent plates, of sufficient strength and thickness to support all traffic.

(8) Plates must be sufficiently secured in place so as not to become dislodged or in any way cause a hazard to any traffic. Asphalt transitions must be placed as required to provide a reasonably smooth riding surface.

(9) Plates must be marked with the name of the person performing the construction and with a local 24-hour contact number that can be used in case of an emergency, unless a sign complying with Paragraph (2) of this subsection is posted at or in close proximity to the worksite.

(e) Unless it becomes necessary to conduct emergency activity, a permittee shall not cause or allow interference with traffic flow on a thoroughfare during the hours of 6:30 a.m. through 9:30 a.m. and 3:30 p.m. through 6:30 p.m., Monday through Friday.

(f) A temporary repair may not remain on public right-of-way for more than 14 calendar days after the completion of the repair or installation of the underground structure or facility, unless a time extension has been granted by the director. The city may, at the expense of the permittee or other responsible person, remove any temporary repair remaining in the public right-of-way beyond the 14-day time limit and make permanent repairs. Any exception to the 14-day time limit, other than a relocation of a facility in advance of a city construction project in the public right-of-way, must be approved by the director prior to expiration of the time limit.

(g) If no construction has commenced under a permit within 120 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public right-of-way or, for an above ground utility structure, in or outside of the public right-of-way. An extension to a permit may be granted by the director only before the permit expires.

(h) The director may refuse to issue a permit if:

(1) the proposed construction will substantially interfere with vehicles or pedestrians and no procedures, or procedures inconsistent with this article, have been implemented to minimize the interference;

(2) the proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing facilities already in the public right-of-way;

(3) ~~the proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the 1980 edition of the~~ *Texas Manual on Uniform Traffic Control Devices*, as amended;

(4) the proposed construction, incidental traffic control, or other permitted activity, or the manner in which it is to be performed, will violate a city ordinance or regulation or a state or federal statute or regulation;

(5) the permittee:

(A) failed to furnish all the information required by this article;

(B) knowingly or intentionally furnished materially false or incorrect information to the director;

(C) failed, except for good cause shown, to file the application on the approved form within the time limits prescribed by this section;

26263

(D) failed or refused to submit plans of record as required under Section 43-138;

(E) was convicted of violating a provision of this article twice within the two-year period immediately preceding the date of application;

(F) failed to furnish or have on file with the director the insurance required under this article;

(G) is not in compliance with applicable requirements of an existing permit issued under this article; [✗]

(H) has not obtained a current copy of the *Pavement Cut and Repair Standards Manual* from the director; or

(I) failed to comply with the AGUS Placement Guidelines without having received a waiver by the director under Section 43-141.

(i) The director may suspend construction or revoke an issued permit on the same grounds on which a permit may be denied under Subsection (h), or if the permittee:

(1) commences or performs construction in violation of an applicable requirement of this article or the permit;

(2) creates or is likely to create a public health or safety hazard by performance of the construction in question;

(3) fails to comply with an order or regulation of the director;

~~(4) fails to comply with restrictions or requirements of other city ordinances or state or federal laws or regulations applicable to the construction; or~~

(5) commences or performs work without having prior knowledge and understanding of the applicable repair standards or without having obtained a current copy of the *Pavement Cut and Repair Standards Manual* from the director.

(j) The director shall provide written notice of a suspension or revocation to the permittee or the person hired by the permittee to perform the construction. Construction that is suspended may not resume until the director determines that the permittee has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been revoked may be reinstated by the director if the director determines that:

(1) the permittee has corrected the violation, noncompliance, or hazard that caused the revocation; and

(2) the health or safety of the public is not jeopardized by reinstating the permit.

(k) Any variance from the requirements of this article must be approved in advance by the director. The director may grant a variance only if an extreme hardship exists and the public health, safety, welfare, and convenience is not adversely affected by granting the variance. The director may not approve any variance that would give a competitive advantage to one public service provider over another public service provider providing the same or similar service. The director may not grant a variance from the indemnity requirements of Section 43-140(d).

**SEC. 43-140. INSURANCE AND INDEMNITY REQUIREMENTS;
EXCEPTIONS.**

(a) As an express precondition to being granted a permit to perform construction within a public right-of-way, the permittee shall furnish the director proof of existing insurance in accordance with the following requirements:

(1) If the construction will require a pavement cut or excavation not more than 18 inches in depth and 300 feet in length, the permittee must provide proof of commercial general liability insurance (including, but not limited to, premises operations, personal and advertising injury, products/completed operations, and independent contractors and contractual liability) with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence, \$500,000 products/completed operations aggregate, and \$500,000 general aggregate. The insurance coverage must be written by a company or companies approved to conduct business in the State of Texas. The city must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.

(2) If the construction will require a pavement cut or excavation exceeding either 18 inches in depth or 300 feet in length, the permittee must provide proof of commercial general liability insurance, or any combination of general liability and umbrella/excess insurance, (including, but not limited to, premises operations, personal and advertising injury, ~~products/completed operations, and independent contractors and contractual liability~~) with a minimum combined bodily injury (including death) and property damage limit of \$25,000,000 per occurrence, \$25,000,000 products/completed operations aggregate, and \$25,000,000 general aggregate. The liability insurance policy must also include coverage for explosion, collapse, and underground hazards. The insurance coverage must be written by a company or companies approved to conduct business in the State of Texas. The city must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.

(3) Each policy must include a provision that requires the insurance company to notify the city in writing at least 30 days before canceling or failing to renew the policy or before reducing policy limits or coverages.

(4) The permittee agrees, with respect to the insurance coverage required by this subsection, to waive subrogation against the city and its officers and employees for bodily injury (including death), property damage, or any other loss.

(5) The insurance coverage required by this subsection is considered primary insurance in regard to the city and its officers, employees, and elected representatives.

(6) Proof of insurance in the form of an original industry standard certificate of insurance showing the city as an additional insured must be provided to the director prior to any commencement of work by the permittee. The certificate of insurance must be executed by the insurer or its authorized agent and must state specific coverage, limits, and expiration dates in accordance with the requirements of this subsection.

(7) The permittee shall make available to the director, upon request, a copy of the insurance policy, including any endorsements, riders, and amendments to the policy and any statements respecting coverage under the policy.

(b) A permittee who is a public service provider who has registered and filed proof of insurance under Section 43-137 of this article is not required to furnish separate proof of insurance under this section when obtaining a permit, but must comply with all other requirements of this section.

(c) If the permittee is an entity that has a tangible net worth ratio of 3 to 1 (assets to liabilities) with a minimum tangible net worth of at least \$100,000,000, proof of self-insurance sufficient to meet the coverage required in Subsection (a) is sufficient to satisfy the requirements of that subsection.

(d) The following indemnity provisions apply to a public service provider registered under Section 43-137 and are also included by reference as express terms of a permit issued under this article:

(1) A permittee who is a certificated telecommunications provider as defined in Chapter 283, Texas Local Government Code, as amended, agrees to give to the city the indemnity provided in Section 283.057, Texas Local Government Code, as amended.

(2) A permittee, other than a certificated telecommunications provider described in Paragraph (1) of this subsection, expressly agrees to fully and completely defend, indemnify, and hold harmless the city and its officers, agents, and employees, against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by any negligent, grossly negligent, wrongful, or strictly liable act or omission of the permittee or its agents, employees, or contractors, in the performance of work or activity pursuant to the permit issued under this article, regardless of whether or not the negligence, gross negligence, wrongful act, or fault of the city or its officers, agents, or employees, contributes in any way to the damage, injury, or other harm. The requirement of the permittee to defend the city also unconditionally applies regardless of whether or not the negligence, gross negligence, or fault of the city or its officers, agents, or employees contributes in any way to the damage, injury, or other harm. Nothing in this paragraph may be construed as waiving any governmental immunity available to the city under state law. This provision is solely for the benefit of the permittee and the city and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

(e) This section does not apply to:

- (1) construction or other activity performed by the city's own forces or by contractors hired by the city and working on city-owned facilities within the public right-of-way;
- (2) a person operating facilities or performing construction pursuant to a valid existing franchise or license approved by the city council; or
- (3) construction or repair of a sidewalk or driveway approach for an abutting single-family or duplex residential property owner.

SEC. 43-140.1. PERFORMANCE BOND; LETTER OF CREDIT; CASH DEPOSIT.

(a) General. As an express precondition to being granted a permit to perform construction within a public right-of-way, the permittee shall furnish the director a performance bond, letter of credit, or cash deposit, complying with this section, for any project that involves pavement excavation or boring for the installation of a new facility or for a significant facility relocation other than an excavation or boring for a localized new service line installation or facility repair. Without exception, the city's forms must be used, and exclusive venue for any lawsuit is specified as Dallas County. A performance bond will automatically be increased by the amount of any change order, which increases the contract price with or without notice to the surety, but in no event may a change, which reduced the contract amount, reduce the penal sum of the bond.

(b) Amount. A good and sufficient bond, letter of credit, or cash deposit must be in an amount not less than 100 percent of the total cost, as determined by the director, of those items of work associated with the temporary and permanent repair of the city's infrastructure, including, but not limited to backfill, pavement base, street pavement, curb and gutter, drive approaches, sidewalk, sod, irrigation, landscape, traffic control devices, signs, and pavement markings, ~~thereby guaranteeing the full and faithful execution of the work and performance of~~ the contract in accordance with the plans, specifications, and contract documents, including any extensions thereof, for the protection of the city. The bond, letter of credit, or cash deposit agreement must provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the work by the city. The permittee may choose to have the amount determined on a per project basis or an aggregate basis. If on an aggregate basis, the amount of a single bond, letter of credit, or cash deposit must be sufficient to cover all of permittee's projects outstanding at any one time. If the amount of the permittee's outstanding projects exceeds an existing bond, letter of credit, or cash deposit, the permittee shall immediately increase it or post a new bond, letter of credit, or cash deposit to cover the project that has caused the deficiency.

(c) Sureties. No surety may be accepted by the city who is in default or delinquent on any bonds or who is interested in any litigation against the city. All bonds must be made on the forms furnished by the city and must be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the city. Each surety must be listed in the most current Federal Register Treasury List. The permittee and the surety shall

execute each bond. The surety shall designate a resident agent in the city of Dallas acceptable to the city to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. The city reserves the right to reject any and all sureties.

(d) Additional or substitute bonds. If at any time the city is or becomes dissatisfied with any surety on a performance bond, the permittee shall, within five days after notice from the city to do so, substitute an acceptable bond, or provide an additional bond, in such form and sum signed by such other surety as may be satisfactory to the city. The premiums on the bonds must be paid by the permittee without recourse to the city.

(e) Letter of credit. In lieu of a performance bond, a permittee may provide an irrevocable letter of credit. Each letter of credit must be made on a form furnished by the city.

(f) Cash deposit. In lieu of a performance bond, a permittee may make a cash deposit, for the benefit of the city, pursuant to an agreement in a form acceptable to the city attorney.

SEC. 43-140.2. WAIVER OF BONDING REQUIREMENTS.

(a) A public service provider may annually submit to the director a written request for a waiver from the requirement that it provide a performance bond, letter of credit, or cash deposit pursuant to Section 43-140.1.

(b) The waiver request must set forth in detail the basis for the request, including but not limited to:

(1) the public service provider's history of performance in completing its projects and complying with restoration obligations in the city's rights-of-way; and

(2) documentation, in a form acceptable to the city, demonstrating that the public service provider has unencumbered assets or reserves sufficient to cover the amount of the performance bond, letter of credit, or cash deposit that would otherwise be required under Section 43-140.1.

(c) Within 30 calendar days after receiving a written request for a waiver, the director may, for good cause shown, grant a waiver from the requirement that the public service provider provide a performance bond, letter of credit, or cash deposit pursuant to Section 43-140.1. In making this decision, the director shall consider all of the following:

(1) The public service provider's record of performance in the city's rights-of-way.

(2) The public service provider's record of compliance with this article.

(3) A showing of financial responsibility by the public service provider sufficient to guarantee the full and faithful execution of the estimated work to be performed during the year in which the waiver is in effect.

(4) Any other factor relevant to a determination of the financial responsibility of the public service provider and its ability to safely and fully perform permitted work.

(d) A waiver expires one year after being granted by the director, and the public service provider must reapply for a waiver each year during which it will perform work in the city's rights-of-way.

(e) Upon determining that a public service provider is in violation of this article, the director may deny any request for a waiver and may terminate any existing waiver that had been granted under this section. A public service provider whose waiver is terminated may not reapply for another waiver until two years have elapsed since the date of termination.

(f) If a waiver is denied or terminated by the director, the public service provider shall immediately take all necessary steps to temporarily restore the right-of-way and then cease all work in the right-of-way until the public service provider has provided a bond, letter of credit, or cash deposit that has been approved by the director.

SEC. 43-141. MISCELLANEOUS REQUIREMENTS FOR STREET EXCAVATION AND INSTALLATIONS, [AND] TRENCH SAFETY, AND ABOVE GROUND UTILITY STRUCTURES.

(a) In addition to the other requirements of this article, a pavement cut, excavation, or repair, or the placement of an above ground utility structure, necessitated by or as a result of construction inside or outside of the public right-of-way must comply with all of the requirements contained in this section.

(b) General.

(1) A pavement cut in the public right-of-way, or the placement of an above ground utility structure either in or outside of a public right-of-way, may be made prior to obtaining a permit only if a valid need to perform emergency activity exists. Immediate notice, including the reasons for the emergency activity, must be given to the director. An [~~Whenever an emergency activity cut is made,~~] application for a permit must be made not later than the second business day following commencement of the emergency activity.

(2) A pavement cut that is made in a newly constructed, reconstructed, or resurfaced asphalt street that is not more than 60 months old will require that, in addition to repairs made in compliance with the *Pavement Cut and Repair Standards Manual*, a surface treatment must be applied that consists of slurry seal or micro-surfacing, or an equivalent method approved by the director, for the purposes of sealing the repair edges of the cut and maintaining uniformity in appearance with the surrounding street surfaces. No surface treatment is required if the repairs are made to match pavement color and are approved by the director. The application of slurry seal or micro-surfacing must be made to the entire block of the street in which a cut is

made. For an undivided street, the application must be made from curb to curb, and for a divided street, from median curb to outside curb. The *City of Dallas Slurry Seal and Micro-surfacing Specifications*, as amended, will govern design, material, testing, and construction of surface treatments.

(3) The permittee and any person responsible for construction shall protect the public right-of-way surface, drainage facilities, and all other existing facilities and improvements from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature. Adequate provisions must be made to ensure that traffic and adjacent property owners experience a minimum of inconvenience.

(c) Five-year maintenance period.

(1) All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this article, other city ordinances, and regulations promulgated by the director relating to construction within the public right-of-way.

(2) All construction performed under any permit granted to a permittee by the city under this article must be maintained to the satisfaction of the director for five years after the date of completion of the construction or repair.

(3) Any damage to, or any defect or other problem in, the permitted construction occurring at any time within five years after the completion of work under the permit must be corrected to the satisfaction of the director within 10 days after the director gives notice to the permittee to correct the damage, defect, or other problem.

(4) The opinion of the director as to the necessity of correcting any damage, defect, or other problem is binding on all parties.

(d) Repairs.

(1) All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the pavement cut or excavation area will be regarded as a part of the pavement cut or excavation and must be included in the total area repaired. If repaired by the city, the permittee shall reimburse the city for the actual direct and indirect costs of the repair.

(2) The director shall notify the permittee if the backfill on a permitted construction settles at any time during the five-year maintenance period required in Subsection (c) of this section, causing subsidence in the pavement of one-half inch or more, vertically measured in any three-foot horizontal direction. Upon notification, the permittee shall schedule appropriate repair work and promptly notify the director of the anticipated dates of commencement and completion of the repair work. If the repair work is not commenced or completed within the agreed-upon time schedule, or if no response is received by the director within 24 hours after notification to the permittee, the repair work may be performed by the city. The permittee shall reimburse the city for the actual direct and indirect costs of any repair work performed by the city.

(3) The permittee shall notify the director at least 24 hours before commencing any repair operations under Paragraph (2) of this subsection.

(e) Trench safety.

(1) Trench safety systems that meet U.S. Occupational Safety and Health Administration standards are required for construction in which trench excavation will exceed a depth of five feet.

(2) Paragraph (1) of this subsection does not apply to a construction contract entered into by a permittee that is subject to the safety standards adopted under Chapter 121, Texas Utilities Code, as amended.

(f) Tests.

(1) The permittee will be required to provide a certified construction materials testing lab, or use a testing method approved by the director, to perform the appropriate tests, at the permittee's expense, to ensure quality control for the backfill and pavement construction phases.

(2) Unless another method is approved by the director, tests must be made in accordance with the latest methods of the American Society of Testing and Materials. The results from tests for backfill compaction must be supplied to the city within three days of the backfill work completion and before pavement construction begins. The results from tests for pavement construction must be submitted within one week of completion of the project. Retesting after failure to pass the required tests will be at the expense of the permittee.

(3) Compaction testing is not required when flowable type backfill material is used and accepted.

(4) If the materials used for the street repairs do not meet the minimum requirements of the *Pavement Cut and Repair Standards Manual*, they may be considered unacceptable and may be ordered to be removed and replaced at the permittee's expense. In cases where the repairs are unacceptable and the permittee refuses to make them acceptable, the work may be accomplished by the city, and all of the direct and indirect costs will be charged back to the permittee responsible for the work.

(5) The city at its expense may perform, or have performed, any material tests it deems necessary to verify conformance with the specifications set forth in Paragraph (6) of this subsection. If tests performed at the city's expense show cause for additional work or rework by the permittee, then further testing required to show conformance with the specifications will be at the expense of the permittee, including the cost of the original testing that showed the need for additional work or rework.

(6) Specifications for backfill compaction must meet the requirements contained in the *Pavement Cut and Repair Standards Manual*. Specifications for pavement testing must meet the requirements contained in the applicable provisions of the *Standard Specifications for Public Works Construction y North Central Texas*.

(g) Additional requirements for above ground utility structures.

(1) Written notification required.

(A) An owner of an above ground utility structure shall provide written notice to:

(i) the occupant of each single family residence, town home, duplex, tri-plex, or four-plex property adjacent to the proposed location of the above ground utility structure; and

(ii) the management of each multi-family dwelling property adjacent to the proposed location of the above ground utility structure.

(B) The written notice must be provided at least two business days before construction of the above ground utility structure begins.

(C) The notice must be provided on forms approved by the director and must clearly identify:

(i) the proposed location of the above ground utility structure;

(ii) the dimensions and appearance of the above ground utility structure; and

(iii) the names and telephone numbers of the utility company representatives and the city of Dallas representatives authorized to discuss the proposed structure with the property owner.

(D) Written notice is not required for an above ground utility structure that:

(i) is placed in an alley; or

(ii) does not require a permit under Section 43-139.

(E) Upon request, proof of notification must be provided to the director at the time the permit application for the above ground utility structure is submitted to the city.

(F) An owner of an above ground utility structure shall make every reasonable effort to recognize and address the concerns of each property owner, subject to the service demands of the structure's owner. Requests of property owners that exceed the requirements of the AGUS Placement Guidelines are not a basis to deny a permit.

(2) An above ground utility structure must comply with all requirements of other city ordinances and other state and federal laws and regulations. The owner of the above ground utility structure is responsible for obtaining all other required permits.

(3) The owner of an above ground utility structure shall maintain the structure free of graffiti and other defacements such as posters, stickers, decals, and signs, except those placed on the structure by its owner. The exterior finish of an above ground utility structure must be maintained free of rust, peeling or faded paint, and other visible deterioration. An above ground utility structure and its supporting foundation or pad must be maintained in such a way as to prevent or eliminate leaning and soil erosion underneath. An above ground utility structure that leans beyond five degrees from the perpendicular must be corrected to be as close as possible to perpendicular. Any open space between the bottom of a foundation or pad and the ground underneath must be filled with either additional soil or concrete to maintain continuous contact with the ground. The permit application for installation of an above ground utility structure must include the name, mailing address, and telephone number of a single contact who will be responsible for resolving graffiti and other appearance issues involving the structure.

(4) An above ground utility structure must be clearly marked with the owner's name and telephone number.

(5) Waiver of AGUS Placement Guidelines.

(A) A request for a waiver from placing an above ground utility structure in accordance with one or more of the AGUS Placement Guidelines may be made to the director with respect to a particular site for a proposed structure.

(B) The request for a waiver must include:

(i) identification of the guideline or guidelines for which a waiver is requested;

(ii) proof that compliance with the guideline or guidelines is impracticable;

(iii) detailed justification for the waiver, including alternative sites sought and reviewed; and

(iv) an explanation of why the proposed above ground utility structure and its size are necessary at the proposed site to provide service to a property or area.

(C) Within 10 business days after receiving a written request for a waiver, the director shall grant or deny the waiver.

(D) The waiver may be granted for good cause shown. In determining whether to grant the waiver, the director shall consider:

(i) the feasibility of other sites located in or outside of the public right-of-way and the efforts of the owner of the proposed above ground utility structure to secure those sites;

(ii) the size and location of the above ground utility structure and its impact at the proposed site and on surrounding properties;

(iii) the need of the structure's owner to provide services to a property or area to be served by the proposed site;

(iv) the need of the structure's owner to provide services to a property or area to be served by the proposed site with an above ground utility structure of the size proposed;

(v) the public health, safety, welfare, and convenience; and

(vi) the size and location of other nearby above ground utility structures.

(6) Denial, suspension, or revocation of a permit for an above ground utility structure on private property; denial of a waiver from *AGUS Placement Guidelines*; appeals to the city manager.

(A) If the director denies, suspends, or revokes a permit for an above ground utility structure on private property, or denies waiver of an AGUS placement guideline, the director shall, in writing, notify the owner of the above ground utility structure of the action and include in the notice the reason for the action and a statement informing the structure's owner of the right of appeal.

(B) The owner of an above ground utility structure may appeal a denial, suspension, or revocation of a permit for an above ground utility structure on private property, or a denial of a waiver of an AGUS placement guideline, if the structure's owner requests an appeal in writing, delivered to the city manager not more than 10 business days after notice of the director's action is received.

(C) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this subsection. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this subsection, and the hearing officer shall make a ruling on the basis of a preponderance of the evidence presented at the hearing.

(D) The hearing officer may affirm, modify, or reverse all or part of the action of the director being appealed. The decision of the hearing officer is final as to available administrative remedies.

SEC. 43-142. RESTORATION REQUIREMENTS.

(a) The *Pavement Cut and Repair Standards Manual* and the requirements of this section govern the restoration of public right-of-way surfaces within the city. For those restoration activities not covered by the *Pavement Cut and Repair Standards Manual* or this section, the applicable provisions of the *Standard Specifications for Public Works Construction - North Central Texas* will govern.

(b) A permittee performing construction in the public right-of-way shall restore the public right-of-way to a condition that is equal to or better than the condition prescribed by the most recent version of the *Pavement Cut and Repair Standards Manual* or other applicable city design and construction standards.

(c) Restoration work must be performed to the satisfaction of the director. Restoration work must include, but is not limited to, the following:

(1) Replacement of all sod or ground cover with sod or ground cover equal to or better than the type damaged during the work, either by sodding or seeding as required by the director.

(2) Installation or reinstallation of all manholes and handholes, as required by the director.

(3) Backfilling and compaction of all completed bore pits, potholes, trenches, or other holes, which must be performed on a daily basis unless other safety requirements are approved by the director.

(4) Street, sidewalk, and alley repair that conforms with the standards for construction established in this article and by the director.

(5) Leveling of all trenches and backhoe lines.

(6) Restoration of the excavation site to the specifications and requirements established in this article and by the director.

(7) Restoration of all landscaping, ground cover, and sprinkler systems.

(8) Restoration of any damaged traffic control devices, including but not limited to imbedded loop detectors, pavement markings, underground conduits, and signs.

(d) All location flags must be removed during the cleanup process by the permittee or the permittee's contractor at the completion of the work.

(e) Restoration of special street, sidewalk, or drive approach surfaces designed to present unique visual images, color, or designs (regardless of the type, color, pattern, or texture of special material or process used) must be done so that the restoration matches the color, texture, and pattern of the surrounding special surfaces.

(f) Restoration must be made in a timely manner. If restoration is unsatisfactory or not performed in a timely manner, then all of the permittee's work in progress on the project in question (except for that work related to the problem of unsatisfactory restoration) will be halted, and no other permit will be approved until all restoration is complete. Any hold on the permittee's work will include work previously permitted but not completed.

SEC. 43-143. CLEARANCE FOR STREET PAVING AND STORM DRAINAGE PROJECTS.

(a) A person making a pavement cut or excavation for the purpose of adjusting facilities at the request of the city in advance preparation for a city street paving or storm drainage project shall obtain a permit under this article, except that the time limits prescribed in Section 43-139(c) and (g) do not apply.

(b) The permittee shall maintain the pavement cut or excavation until the work order authorizing the construction of the street paving or storm drainage project is issued by the city. Upon notification by the director of any problem with the maintenance of the cut or excavation, the permittee shall promptly correct the problem. The permittee shall notify the director of the anticipated date of correction. If the correction is not made by the anticipated date, or if no response is received by the director within 24 hours after the director gives notice to the permittee, the correction may be made by the city, and the permittee shall reimburse the city for the actual direct and indirect costs of the correction.

SEC. 43-144. CONFORMANCE WITH PUBLIC IMPROVEMENTS.

(a) Whenever the city or the director deems it necessary to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way due to the city's reconstruction, widening, or straightening of streets; replacement of water or wastewater facilities; installation of traffic signals, traffic signs, and markings; or construction of any other city public improvement project, the public service provider that owns the facilities shall conform its facilities with the project as prescribed by the director.

(b) The facilities must be conformed, at the public service provider's expense, within 90 days after the director issues notice to the public service provider, unless a different schedule for the work is approved by the director.

(c) Facilities of a public service provider that are not conformed within the 90-day notice period or within the approved schedule will be deemed abandoned, and the city will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the city described in this section.

SEC. 43-145. IMPROPERLY CONSTRUCTED FACILITIES.

(a) A permittee shall:

(1) properly construct, install, operate, repair, relocate, upgrade, and maintain its facilities existing within the public right-of-way or, for an above ground utility structure, in or outside of the public right-of-way; and

(2) repair or restore any damage to other facilities, the public right-of-way, or private property that occurs as a result of improper construction, installation, operation, repair, relocation, upgrade, or maintenance of the permittee's facilities.

(b) Facilities will be considered to be improperly constructed, installed, operated, repaired, relocated, upgraded, or maintained if:

(1) the construction, installation, operation, repair, relocation, upgrade, or maintenance endangers public health or safety or creates a public inconvenience;

(2) the facilities were required to be located within the right-of-way and they encroach upon private property or extend outside the right-of-way location designated in the permit;

(3) above-ground facilities located within the right-of-way are less than one and one-half feet from the face of the curb or less than six inches from a sidewalk;

(4) the construction, design, or configuration of the facilities does not comply with applicable local, state, or federal laws or regulations;

(5) ~~the construction, installation, operation, repair, relocation, upgrade or maintenance is conducted in a manner that damages private property or another public service provider's facilities;~~

(6) the facilities are not capable of being located or maintained using standard practices; [or]

(7) the facilities are placed in an area that interferes with another public service provider's facilities; or

(8) the facilities consist of an above ground utility structure that fails to comply with the AGUS Placement Guidelines without having received a waiver by the director under Section 43-141.

(c) It is a defense to prosecution under Subsections (b)(3) and (b)(4) of this section that the facilities were constructed or installed in the public right-of-way before March 1, 2001.

(d) It is a defense to prosecution under Subsection (b)(8) of this section that the facilities were lawfully constructed or installed before March 1, 2006.

(e) Nothing in this section may be construed to diminish the authority of the director to require specific placement of specific facilities.

SEC. 43-146. EMERGENCY REPAIRS.

(a) If the director determines during construction that an emergency repair to a public right-of-way is necessary to correct a situation that is hazardous to the public, the director shall immediately notify the permittee. If the permittee does not commence the emergency repair promptly, the director may, in his sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The permittee shall reimburse the city for the actual direct and indirect costs of the work necessary to correct the hazardous situation, including cleanup. The permittee shall maintain the emergency repair until the permittee completes final repairs.

(b) If the director determines that a problem with a public service provider's existing facility in a public right-of-way requires an emergency repair to correct a situation that is hazardous to the public, the director shall immediately notify the public service provider. If the public service provider does not commence the emergency repair promptly, the director may, in his sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The public service provider shall reimburse the city for the actual direct and indirect costs of the work necessary to correct the hazardous situation, including cleanup. The public service provider shall maintain the emergency repair until the public service provider completes final repairs.

SEC. 43-147. EFFECT OF ARTICLE ON PERSONS ENGAGED IN CONSTRUCTION.

Any permit issued prior to March 1, 2001 will remain subject to the terms and conditions of city ordinances and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

SEC. 43-148. MARKING EXISTING UNDERGROUND UTILITIES.

A person shall not use, or cause the use of, any nonwashable substance in the public right-of-way to mark the location of existing underground utilities. A person commits an offense if a marking he makes, or causes to be made, in the public right-of-way to mark the location of existing underground utilities remains visible longer than 30 days after being applied."

SECTION 2. That CHAPTER 43 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect on March 1, 2006, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By *Jane Christopher*
Assistant City Attorney

Passed FEB 22 2006

LC/DCC/00382A