

## **16 - USE AND OCCUPANCY OF THE PUBLIC RIGHT OF WAY (PRIVATE DEVELOPMENT)**

### **16.1 SCOPE**

The Section governs the use of the Public Right of Way for improvements.

### **16.2 GENERAL**

- (a) No person shall excavate the right-of-way, construct, or use the facilities within the right-of-way of the City except as provided herein.
- (b) All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way.
- (c) The City Engineer is the principal City official for administration of right-of-way permits for work and excavations made in the right-of-way. The City Engineer may delegate any or all of the duties hereunder.
- (d) No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.
- (e) Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit.
- (f) The service provider shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way.
- (g) All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City.
- (h) Whenever reasonably possible, all newly constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the City Engineer at his discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the City Engineer, including, but not limited to, requirements regarding location and height.
- (i) The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time.
- (j) All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the City Engineer that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the City Engineer may direct the City to make such repair or

replacement and bill the ROW-user for the City cost. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do any necessary additional work.

(k) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in these specifications may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the City Engineer and having received a permit for such improvement.

(l) The City Engineer may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.

(m) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.

(n) Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.

(o) Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.

(p) Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

(q) In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, City Engineer, in his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

### **16.3 CONSTRUCTION**

(a) The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the City Engineer may extend the date for completion of the project upon receipt of a supplementary application for a permit extension.

(b) All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or

replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the City. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the permittee to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed fifteen days will be provided to allow for the deficiencies to be corrected.

(c) After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the excavation thereof.

(d) In addition to repairing its own street cuts, the permittee must restore any area within five (5) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.

(e) The permittee responsible for the excavation that leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual of Uniform Traffic Control Devices and any applicable federal or state requirement.

(f) If an excavation cannot be back-filled immediately and left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(g) In restoring the right-of-way, the permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months the permittee shall, upon notification from the City Engineer, correct all restoration work to the extent necessary, using any method as required by the City Engineer. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Public Works (not including days during which work cannot be done because of circumstances constituting force Majeure or days when work is prohibited as unseasonable or unreasonable). In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the City Engineer shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration, if the City Engineer determines any overt action by the permittee not to comply with the conditions of the right-of-way permit and any restoration requirements.

(h) The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

(i) Payment of a degradation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

(j) Any excavation, back filling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the City's Manual of Infrastructure Standards as promulgated by the City Engineer.

(k) The permittee shall employ a testing laboratory as approved by the City Engineer, which shall certify the proper back-filling on any street cut. The permittee shall pay all costs associated with such testing. This provision shall be waived when flowable fill is used as backfill or with the permission of the City Engineer.

(l) The permittee shall notify the office of the City Engineer upon completion of the authorized work permit.

(m) The permittee will notify the City Engineer to schedule an inspection at the start of back filling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.

(n) When any corrective actions required have been completed and inspected to the City Engineer's satisfaction, the two (2) year maintenance period will begin.

(o) In addition to the required scheduled inspections, the City Engineer may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.

(p) At the time of any inspection, the City Engineer may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public. The City Engineer may issue a citation to the permittee for any work, which does not conform, to the applicable standards, conditions, code or terms of the permit. The citation shall state that failure to correct the violation will be cause for revocation of the permit.