



**City of Rowlett**  
**Official Copy**  
**Ordinance: 2005-277**

City of Rowlett  
4000 Main Street  
P.O. Box 99  
Rowlett, TX 75030  
www.ci.rowlett.tx.us

**File Number: 2005-277**

**Enactment Number: ORD-21-05**

**AN ORDINANCE OF THE CITY OF ROWLETT, TEXAS, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES TO ADD ARTICLE 15-10A, MANAGEMENT OF PUBLIC RIGHTS-OF-WAY AND ARTICLE 15-10B, PROPERTY OWNER RESPONSIBILITIES IN PUBLIC RIGHTS-OF-WAY TO ADMINISTER AND REGULATE THE USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ISSUANCE AND REGULATION OF CONSTRUCTION PERMITS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Rowlett is charged with maintaining control of and access to the Public Rights-of-Way in order to protect the health, safety and welfare of its citizens; and,

**WHEREAS**, in accordance with applicable federal, including, but not limited to, 47 U.S.C., Section 253(c) and state laws, including, but not limited to, Texas Utility Code, Section 14.008 and the Texas Local Government Code, the City seeks to exercise its historical rights to control and manage its Public Rights-of-Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations in the use of those Public Rights-of-Way; and,

**WHEREAS**, establishing a permitting process to improve coordination of work in Public Rights-of-Way under City jurisdiction will ease traffic congestion and limit inconvenience to citizens of and visitors to the City; and,

**WHEREAS**, the permitting process is necessary to enhance the public's access to information about construction in Public Rights-of-Way, and to protect and preserve the valuable investment of the City's taxpayers in the construction and maintenance of the Public Rights-of-Way; and,

**WHEREAS**, the permitting process is necessary to minimize the impact of construction on neighborhood residents and businesses by enforcing cleanliness and safety standards for construction sites, imposing strict timelines for construction, and requiring Owners to comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensure the best possible restoration of the paved surface over and adjacent to the trench; and,

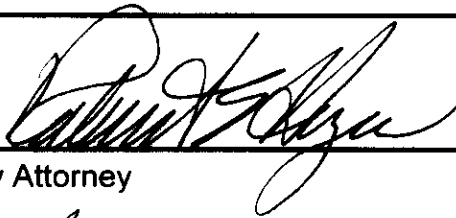
**WHEREAS**, the permitting process is necessary to allow the City to properly enforce violations of this Ordinance by the imposition of criminal penalties; and,

**WHEREAS**, the permitting process is necessary to conserve the limited physical capacity of the Public Rights-of-Way held by the City; and,

**WHEREAS**, regulation of excavations in City streets helps reduce disruption of, and interference with public use of the streets, helps prevent pavement damage, helps maintain the safe condition of the streets, protects the public health, safety and welfare, is a valid and

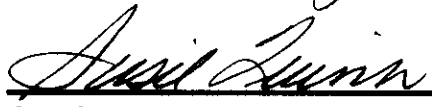


Approved to Form by

  
\_\_\_\_\_  
City Attorney

Date 5/4/05

Certified by

  
\_\_\_\_\_  
City Secretary

Date 5/4/05

## **"ARTICLE 15-10A. MANAGEMENT OF PUBLIC RIGHTS-OF-WAY**

### **Sec. 15.1101 Definitions.**

For the purpose of this article, the following words shall be defined herein below:

*City* means the City of Rowlett, Texas, or its designated agent of the City.

*Construction* means any work performed above the surface, on the surface or beneath the surface of a Public Rights-of-Way, including, but not limited to, installing, servicing, repairing, upgrading, or modifying any Facility(s) in, above or under the surface of the Public Rights-of-Way, and restoring the surface and subsurface of the Public Rights-of-Way, subject to the provisions of Section 15-8. "Construction" does not include the installation of Facilities necessary to initiate service to a customer's property, or the repair or maintenance of existing Facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring within the Public Rights-of- Way boundaries.

*Construction Security* means any of the following forms of Security provided at the Owner's option:

- (1) Individual project or performance bond
- (2) Cash deposit
- (3) Security of a form listed or approved under State of Texas Statutes
- (4) Letter of Credit, in a form acceptable by City

*Construction Permit* means the permit that, pursuant to this Ordinance, must be obtained before an Owner may construct facilities in, on, above or under Public Rights-of-Way. A Construction Permit allows the holder to construct Facilities in that part of the Public Rights-of-Way described in such permit.

*Department* means the Department of Public Works for the City.

*Director* means the Director of the Public Works of the City or designee.

*Emergency* means a condition that (1) poses any danger to life or health, or loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore service to a customer.

*Facility* or *Facilities* shall include, but not be limited to, any and all cables, pipelines, splice boxes, tracks, tunnels, utilities, vaults, and

other appurtenances or tangible things owned, leased, operated, or licensed by an Owner or Owners, that are located or are proposed to be located in, on, above or under the Public Rights-of-Way.

*Municipal Authorization* means the individual grant to use the Public Rights-of-Way issued by the City and accepted by the individual Owners in accordance with the Ordinances of the City of Rowlett, Texas, a Franchise Agreement, a License, or under operation of state law which provides a specific grant of authority to use the Public Rights-of-Way.

*Owner* means any Person who owns any Facility or Facilities that are or are proposed to be installed or maintained in, on, above or under the Public Rights-of-Way. Included within this definition is the Owner's contractor, subcontractor, agent or authorized representative.

*Permit or Permit to Construct* means a Permit to perform Construction in accordance with this ordinance.

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

*Public Rights-of-Way* means the 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 Rights-of-Way. The term applies regardless of whether the Public Rights-of-Way is paved or unpaved. The term does not include airwaves above the Public Rights-of-Way with regard to wireless telecommunications nor does the term include any private property or private easement in, on, across or under which an Owner has allowed the City or another Owner to install or maintain any Facilities.

*Restore or Restoration* means the process by which Public Rights-of-Way are returned to a condition that is at least equal to than the condition that existed before Construction.

#### **Sec. 15.1102 Right-of-Way Occupancy.**

(a) Any person prior to constructing Facilities in, on or over the Public Rights-of-Way, must first obtain separate Municipal Authorization.

(b) This article does not constitute or create authority to place, reconstruct, or alter Facilities in, on or over the Public Rights-of-Way nor to engage in construction, excavation, encroachments, or work

activity within or upon any Public Right-of-Way, and said authority must be obtained in accordance with the terms of this article.

(c) Any person with a current, unexpired Franchise, Municipal Authorization, License or other authorization from the City (Grant) or State to use the Public Right-of-Way that is in effect at the time this Ordinance takes effect, shall continue to operate under and comply with that Municipal Authorization, and in the event this article conflicts with the terms of such Municipal Authorization, the more restrictive provision shall apply unless otherwise provided by the terms of a Municipal Authorization.. To the extent that the provisions can be reconciled, both the Franchise/Grant and this article shall be given effect, provided, however, that if the terms of a Municipal Authorization provide for the means of reconciling any conflict between the terms of such Municipal Authorization and there terms of this Ordinance then the provisions of the Municipal Authorization shall control.

#### **Sec. 15.1103 Registration.**

(a) In order to protect the public health, safety and welfare, all Owners of Facilities in the Public Rights-of-Way will register with the City. Registration and Permits will be issued in the name of the Person who will own the Facilities. Registration must be renewed on or before January 31 of each year. For owners with a current Municipal Authorization as of the effective date of this Ordinance, such Municipal Authorization shall be evidence of renewal of registration. The City shall provide written notification of this renewal requirement. If a registration is not renewed, subject to 60 calendar days notification to the Owner, the facilities of the Owner other than those Facilities installed, owned, operated or maintained by an Owner under the terms and conditions of a Municipal Authorization will be deemed to have been abandoned. When any information provided for the registration changes, the Owner will inform the City of the change no more than thirty (30) days after the date the change is made. Registration shall include:

- (1) The name, address(es) and telephone number(s) of the Owner;
- (2) The names, address(es) and telephone number(s) of the contact person(s) for the Owner;
- (3) The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the Public Rights-of-Way on behalf of the Owner. If the names of contractors and subcontractors are not available at the time of permit application, they must be submitted to the City prior to permit issuance. Pre-submittal of an approved "annual contractor list" is also acceptable;

- (4) The name(s) and telephone number(s) of an emergency contact who shall be available twenty-four (24) hours a day;
- (5) The source of the Owner's Municipal Authorization (e.g., franchise, state law, etc.). If the Owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission;
- (6) The Owner shall submit two year projections of their plans for the construction of facilities in the City at the time of registration renewal; and
- (7) Registration shall be a prerequisite to issuance of a construction permit. Each Owner shall update and keep current its registration with the City at all times.

**Sec. 15.1104 Construction Permits.**

(a) General

- (1) No Owner shall perform any Construction in, on, above or under the Public Rights-of-Way without first obtaining a Construction Permit. Permit applications are required for Construction of new, replacement or upgrades of the Facilities in the Public Rights-of-Way whether aerial or underground.
- (2) An annual Permit may be issued to Owners for routine typical work required for customer service. Submittal of notification information in a form authorized by the City shall be required under the annual Permit. Such notification shall reference the annual permit and contain the Construction location, time of start and finish, and contractor identification. An annual roster of approved contractors may also be submitted for reference in annual Permit Construction notification.
- (3) No Owner shall perform any Construction in, on, above or under Public Rights-of-Way within a flood plain without first obtaining a flood plain Construction Permit, except as otherwise provided herein. Permit applications are required for Construction of new, replacement or upgrades of the Facilities within Public Rights-of-Way located in the Flood Plain whether aerial or underground. Such flood plain Construction Permit shall be in addition to any Right of Way Construction Permit.
- (4) Emergency responses related to existing Facilities may be undertaken without first obtaining a Permit; however, the Department shall be notified in writing within two (2)

business days of any Construction related to an emergency response; including a reasonably detailed description of the work performed in the Public Rights-of-Way. An updated map of any Facilities that were relocated, if applicable, shall be provided within 90 days.

- (5) All Construction in the Public Rights-of-Way shall be in accordance with the Permit for the Facilities provided, however, that any applicable federal or state law requirements which govern the Construction of particular Facilities shall control to the extent any terms or conditions of a Construction Permit are inconsistent herewith. The Director shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the Permit.
- (6) Unless approved by the City Engineer or in case of Emergency, the Owner or Contractor shall not close any traffic lanes or otherwise impede rush hour traffic on Major Thoroughfares during the morning or evening rush hours on weekdays during the hours of 7:00 a.m. to 8:30 a.m. or 4:00 p.m. to 6:30 p.m. Any closure of a traffic lane for more than four hours during any non-peak traffic period shall also require a Permit, unless waived by the Director. All lane closures shall comply with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.
- (7) A copy of the Permit and approved engineering plans shall be maintained at the Construction site and made available for inspection by the Director at all times when Construction work is occurring.
- (8) All Construction work authorized by Permit must be completed in the time specified in the Construction Permit. If the work cannot be completed in the specified time periods, the Owner may request an extension of the time period from the Director. The Director will use best efforts to approve or disapprove a request for Permit as soon as possible. If the request for the extension is made prior to the expiration of the permit, work may continue while the request is pending.
- (9) Construction Area. No Owner or contractor shall perform construction, excavation, or work in an area larger or at a location different than that specified in the permit or permit application. If, after Construction, is commenced under an approved permit, it becomes necessary to perform Construction in a larger or different area than originally requested under the application, the Owner or Contractor shall notify the Director immediately and, within 48 hours,



shall file a supplementary application for the additional Construction.

- (10) A copy of any Permit or approval issued by federal or state authorities for work in federal or state Right-of-Way located in the City shall be provided, if requested by the Department.

(b) Permit Application

- (1) The Permit shall state to whom it is issued, location of work, location of Facilities, dates and times work is to take place and any other conditions set out by the Director. Permit shall expire within 90 calendar days after issuance if the Owner fails to commence work pursuant to the Permit during that period in which event the Owner will be required to obtain another Permit. A Permit is non-transferable.
- (2) The Permit will be in the name of the Person who will own the Facilities to be constructed. The Permit application must be completed and signed by a representative of the Owner of the Facilities to be constructed.
- (3) Any person requesting a Permit will provide the Director with documentation in the format specified by the Department, at the time of Permit submittal describing and containing:
  - a. The proposed location and route of all Facilities to be constructed or installed and the Owner's plan for Public Rights-of-Way Construction.
  - b. Two (2) sets of engineering plans, including plan and profile, which will be on a reasonable scale, acceptable to the Department, unless waived by 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.
  - c. The location of all Public Rights-of-Way and common utility easements that Owner plans to use.
  - d. The existing utilities located in the Public Rights-of-Way, including the City owned utilities as may be known by Owner, in relationship to Owner's proposed route as known.

- e. Detail of what Owner proposes to construct including typical: size of facilities; materials used, such as pipe size, number of ducts, valves; etc.
  - f. The plans to remove and replace asphalt or concrete in streets in accordance with Article 15-8, General Construction Specifications.
  - g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, equipment, etc. including depth located in Public Right-of-Way.
  - h. Typical details of manholes and/or handholes Owner plans to use or access.
  - i. Complete legend of drawings submitted by Owner, which may be provided by reference to previously submitted documents acceptable to the City.
  - j. The construction methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Public Rights-of-Way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Director.
  - k. Proof of Insurance and Bonds as required by Section 15.1115.
- (4) A request for a Permit must be submitted at least ten (10) business days before the proposed commencement of work identified in the request, unless waived by the Director.
- (5) Requests for Permits will be approved or disapproved by the Director within a reasonable time of receiving all the necessary information. The Director will use best efforts to approve or disapprove a request for Permit as soon as possible. The Director will consider all information submitted by the applicant including a review of the availability of space in the Public Rights-of-Way based on the applicant's proposed route and location. The Director will provide a written notification of denial for rejected permits.
- (6) The Department or the Owner can request a pre-construction meeting with the construction contractor.

**Sec. 15.1105 Construction Standards.**

(a) All Construction shall be in conformance with all City codes and applicable local, state and federal laws at time of Permit issuance.

(b) The Department must be notified twenty-four (24) hours in advance that Construction is ready to proceed by the Owner. At the time of notification, the Owner will inform the Department of the number (or other information) assigned from the appropriate one-call notification center. "Notification center" means the same as in Texas Civil Statutes, Article 9033, or its successor. The name, address and phone numbers of the contractor or subcontractor who will perform the actual Construction, including the name and telephone number of an individual with the contractor who will be available at all times during Construction. Such information shall be required prior to the commencement of any work.

(c) Public Notification of work to be performed.

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

(2) For projects scheduled to last more than six (6) calendar days a three feet by three feet (3' x 3') informational sign stating the identity of the person doing the work, a local telephone number and Owner's identity shall be placed at the location where Construction is to occur prior to the beginning of work in the Public Rights-of-Way and shall continue to be placed at the location during the entire time the work is occurring. The informational sign will be posted on Public Right-of-Way one hundred (100) feet before the Construction location commences, unless other posting arrangements are approved or required by the Director.

(3) When projects last more than two (2) calendar days, the Owner shall also provide written notification to all adjacent property occupants prior to the beginning of Construction. Informational fliers shall include identity of the person doing the work, a local telephone number, Owner's identity, and proposed schedule.

(4) Projects in public easements on private property, or in Rights of way adjacent to private property that is likely to be disturbed, require notification by flier as in (3) above.

*(d) Approved erosion control measures and advance warning signs, markers, cones and barricades must be in place before Construction begins. Advance warning must comply with the Texas Manual on Uniform Traffic Control Devices.*

(e) Lane closures on major thoroughfares will be limited to one lane between 9:00 a.m. and 4:00 p.m. unless the Director grants prior approval or in case of Emergency. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices.

(f) Without affecting the legal relationship between the Owner and their contractor, Owners are responsible for any damages by their contractors or subcontractors. A responsible representative of the Owner will be reasonably available to the Department at all times during construction.

(g) Owner shall be responsible for storm water management, dust control, erosion control, employee sanitation and excavation safety measures that comply with city, state and federal guidelines effective at time of Permit issuance. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing, and placement and maintenance of portable toilets. Upon request, Owner may be required to furnish documentation submitted or received from federal or state government relative to a Storm Water Pollution Prevention Plan as applicable.

(h) Owner will notify the Department immediately of any damage to other utilities within Public Rights-of-Way.

(i) No open trench or cut shall be permitted in an alley or street with a Pavement Condition Index (PCI) greater than 85 unless in the case of Emergency. Such open cuts in pavements with  $PCI > 85$  shall be considered to deplete the useful life of that segment of pavement, causing Owner to replace the pavement full width and length of the entire disturbed or cut panel (limits identified by nearest existing sawed control joint or construction joint). Pavements with  $PCI < 86$  may be permitted to be open cut. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with City General Construction Specifications. All disturbances in the Public Rights-of-Way shall be restored as required in Section 15.1110.

(j) Construction of Facilities must not interfere with City utilities, in particular gravity dependent facilities. Facilities shall not be located over, or within two (2) feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the Director.

(k) New Facilities must be installed to a minimum depth required by state and federal codes and/or industry standards. Underground and buried utilities, shall be installed at a minimum depth of thirty-six (36) inches, unless the industry standard depth for such facilities is less than thirty-six (36) inches or otherwise approved by the Director. Industry standard depths shall be submitted in writing to the Director for approval. Such approved depths shall

be documented and become attached to the General Construction Specifications for reference.

(l) All directional boring shall have a locator place bore marks and depths while the bore is in progress. Locator shall place a mark at each stem with a paint dot and depth at least every other stem.

(m) No directional boring zones. To protect the water and sewer system, no Person, Agency, or Contractor will be allowed to directionally bore longitudinally with water mains that are larger than 12" and sewer mains that are 12" or larger, unless this requirement is waived in writing by the Director. The Construction of Facilities in the Public Rights-of-Way will be installed by open excavation to assure the protection of the City's water and sewer system. The City has available mapping that identifies such mains. The Owner is responsible for obtaining and using this information in the design of new Facilities.

(n) The working hours in the Public Rights-of-Way are 7:00 a.m. to 8:00 p.m., Monday through Friday, unless otherwise approved by Director or in case of Emergency. Any planned work performed on Saturday must be approved by the utility inspector by 9:00 a.m. on the Thursday prior to the proposed Saturday. No work will be done, except for emergencies, on Sundays or City holidays.

(o) Persons working in the Public Rights-of-Way are responsible for obtaining line locates in accordance with State and Federal underground facility damage prevention and safety laws (one-call/call before you dig laws) from all affected utilities or others with Facilities in the Public Rights-of-Way prior to any excavation. Use of a Geographic Information System or the plans of records does not satisfy this requirement.

(p) Owner will be responsible for verifying the location, both horizontal and vertical depth, of all Facilities. When required by the Department, Owner shall verify locations by pot holing, hand digging or other method approved by the Department prior to any excavation or boring.

(q) Placement of all manholes and/or handholes must be approved in advance by the Department. Handholes or manholes will not be located in sidewalks, unless approved by the Director.

(r) Locate flags shall not be removed from a location while Facilities are being constructed.

(s) When Construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the Department.

(t) A Person shall perform operations, excavations and other Construction in the Public Rights-of-Way in accordance with all applicable City requirements, at time of permit issuance including the obligation to use trench-less technology whenever commercially economical and practical and

*consistent with obligations on other similar users of the Public Rights-of-Way. The City shall waive the requirements of trench-less technology if it determines that the field conditions warrant the waiver, based upon information provided to the City by the Person. All excavations and other Construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.*

*(u) **Excavation Safety.** On construction projects in which excavation will exceed a depth of five (5) feet, the Agency must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with State law and Occupational Safety and Health Administration (OSHA) standards and regulations.*

**Sec. 15.1106 Record Drawings or Plans.**

(a) Right-of-Way users will provide the Director with "record drawings or plans" within ninety (90) days of completion of Facilities in the Right-of-Way. The record drawings or plans shall represent the actual installation as accurately as possible. The plans shall be provided to the City with as much detail and accuracy as required by the Director. All the requirements specified for the plans submitted for the initial Permit, as set forth in Section 15.1104(b), shall be submitted and updated in the "record drawings or plans." Users which have facilities in the Public Rights-of-Way existing as of the date of this ordinance who have not provided "record drawings or plans" shall provide one (1) quarter of the information concerning facilities in City Right-of-Way within one (1) year after the passage of the ordinance and one (1) quarter each six (6) months thereafter. The detail and accuracy will concern issues such as location, size of Facilities, materials used, and any other health, safety and welfare concerns. Public Rights-of-Way users will provide the Director with updates to the "record drawings or plans" of Facilities in the Public Rights-of-Way annually. The record drawings or plans shall represent the actual Facilities as detailed and accurately as reasonably possible. Submittal of "record drawings or plans" shall be in digital format and one set of plans in a paper format .

(b) If record drawings or plans submitted under this section include information expressly designated by the Owner 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 Owner, 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 an Owner to designate all matters in its as-built plans as confidential or as trade secrets.

(c) Record drawings or plans submitted under this section are for the general informational purposes of the City only. They shall not be relied upon by City or other Owners performing Construction in the Public Rights-of-Way. City and Owners will be responsible for verifying the location of all Facilities

**Sec. 15.1107 Conformance with Public Improvements.**

(a) Whenever by reasons of widening or straightening of streets, side walks, water or sewer line projects, or any other City project, it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform an Owner's underground or overhead facilities within the Public Rights-of-Way to another part of the Public Rights-of-Way, such alterations shall be made by the Owner of the Facilities at the Owner's expense (unless provided otherwise by federal law, state law, a franchise, a license or a Municipal Authorization until that grant expires or is otherwise terminated). The Owner shall be responsible for conforming its facilities within mutually agreed upon time limits. If no time limits can be agreed upon, the time limit shall be ninety (90) days from the day the City secures any additional Public Rights-of-Way and transmits final plans and notice to make the alterations. The Owner of facilities shall be responsible for any direct costs associated with project delays associated with failure to conform facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this paragraph shall be made within sixty (60) calendar days.

(b) An Owner may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its Facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and the International Society of Arboriculture. The Owner, its contractor or agent, shall remove such trimmings within twenty-four (24) hours during normal maintenance. During emergency weather conditions owners shall remove tree trimmings within five (5) days of all service restoration activities within the City of Rowlett. The City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Owner shall promptly reimburse the City for all costs incurred within sixty (60) calendar days.

(c) An Owner shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures. The Owner shall temporarily remove, raise or lower its aerial Facilities within fifteen (15) working days of receiving a copy of a permit issued by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

**Sec. 15.1108 Improperly Installed Facilities.**

(a) Any Owner doing work in the Public Rights-of-Way shall properly install, repair, upgrade and maintain Facilities.

(b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:

- (1) The installation, repair, upgrade or maintenance endangers people or property;
- (2) The Facilities do not meet the applicable City codes applicable at time of Permit issuance;
- (3) The Facilities are not capable of being located using standard practices;
- (4) The Facilities are not located in the proper place at the time of Construction in accordance with the directions provided by the Department or the plans approved by the Department.

**Sec. 15.1109 Location of Utility Structures.**

(a) Utility structures not exceeding 20 cubic feet are allowed in the right of way or utility easements, subject to available room and located as approved by the Director. The Director will review the placement of utility structures larger than 20 cubic feet, but not exceeding 30 cubic feet on a case-by-case, or typical installation basis. Such structures shall not encroach within a sidewalk area, including a vertical clearance of 7.5 feet above the sidewalk or within the sight visibility area. Utility structures greater than 240 cubic feet shall be placed within a public or private utility easement outside the street right-of-way.

(b) Utility structures larger than 30 cubic feet shall be located as close as practical to the back of a public or private utility easement and subject to available room and located as approved by the Director.

(c) Above-ground Facilities such as pedestals, switching boxes and similar Facilities shall be located no less than three (3) feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway or alleys. Above-ground Facilities serving adjacent properties shall be placed on the common property line where practical.

(d) The Owner's identity shall be placed on all Utility structures placed in the Public Rights-of-Way.

**Sec. 15.1110 Restoration of Property.**



(a) Owners shall Restore property affected by Construction of Facilities to a condition that is at least equal to the condition of the property prior to Construction. Owners may submit photographs and/or a video of the Construction area at the time of the issuance of the permit for record purposes. Restoration must be approved by the Department.

(b) Restoration must be made within ten (10) working days of completion of trench backfill for every length of three hundred (300) feet, or within the limits of one city block, unless otherwise approved by the Director. If an Owner holds a Municipal Authorization that provides a greater length of time in which Restoration may be properly made, then the greater time limit shall apply to such Owner. If Restoration is not satisfactory and performed in a timely manner, after written notice, then all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any future Permits until all Restoration is complete.

(c) Upon failure of an Owner to perform such Restoration, and five (5) days after written notice has been given to the Owner by the City, and in the event Restoration has not been initiated during such five day period, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Owner, its contractors or agents. Upon receipt of an invoice from the City, the Owner will reimburse the City for the costs reasonably incurred within sixty (60) calendar days from the date of the City invoice.

(d) If the City determines that the failure of an Owner to properly repair or Restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and Restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the City, the Owner shall promptly reimburse the City for the costs incurred by the City within sixty (60) calendar days from the date of the City invoice. If payment is not received within the sixty (60) calendar days, the City shall initiate a claim for compensation with the appropriate bonding company.

(e) Should the City reasonably determine, within one (1) year from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional Restoration work to meet the standards of subsection (a), an Owner shall perform such additional Restoration work to the satisfaction of the City, subject to all City remedies as provided herein.

(f) Restoration must be to the reasonable satisfaction of the Department. The Restoration shall include, but not be limited to:

- (1) Replacing all ground cover with the type of ground cover damaged during work to a condition at least equal to

conditions prior to construction. Such restoration shall be by either sod where solid turf existed or where erosion may likely occur or, by seeding or hydro-mulching in other areas, or as directed by the Department. Seeded areas will be acceptable provided all requirements, including maintenance, have been completed and a healthy uniform close stand of the specified grass is established free of weeds, undesirable grass species, disease and insects. No individual lawn areas shall have bare spots or unacceptable cover totaling more than 2% of the individual area;

- (2) Adjusting of all manholes and handholes, as required;
  - (3) Backfilling all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the Department. Holes with only vertical walls shall be covered and secured to prevent entry. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded to secure the work site as approved by the Department;
  - (4) Leveling of all trenches and backhoe lines;
  - (5) Restoration of excavation site to City specifications;
  - (6) Restoration of all paving, sidewalks, landscaping, ground cover, trees, shrubs and irrigation systems;
  - (7) All restoration work and materials, including repaired irrigation systems, shall be warranted for ninety (90) days.
- (g) Removal of all location flags during the clean up process by the Owner or his/her contractor at the completion of the work.

#### **Sec. 15.1111 Revocation or Denial of Permit.**

If any of the provisions of this article are not followed, a Permit may be revoked by the Director. If a person has not followed the terms and conditions of this article in work done pursuant to a prior Permit, new Permits may be denied or additional terms required. Revocation shall be effective upon the expiration of fifteen business days after written notice of the violation(s), unless cured, or during that period, a plan to cure is agreed upon, except for violations that pose a threat to public safety or health, for which the revocation will be immediate upon delivery of written notice.

#### **Sec. 15.1112 Appeals.**

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#### **Sec. 15.1112 Appeals.**

(a) Applicability. Appeals may be filed pursuant to this article for decisions of the Director related to the denial, suspension, or revocation of a Permit. However, the appeal process provided by this Section shall not be available for criminal violations of this article.

(b) Appeal to Board of Adjustment. A permittee may appeal decisions referred to in Subsection (a) above by filing a written appeal with the City Secretary within seven (7) working days of receipt of denial, suspension, or revocation of the Permit. An appeal filed pursuant to this Section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this article.

(c) Issuance of Decision by Board of Adjustment. The Board of Adjustment shall hear the appeal at the next scheduled meeting after receipt of the written appeal. Decisions of the Board of Adjustment shall be final.

#### **Sec. 15.1113. Penalty for Violation.**

Any person, firm or corporation violating any of the provisions or terms of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not exceeding two thousand dollars (\$2,000) for each violation, and each day that such violation shall continue to exist constitutes a separate offense.

#### **Sec. 15.1114. Indemnity.**

(a) Each Owner conducting Construction in the Public Rights-of-Way shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or Restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Owner's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgements for (a) damage to or loss of the property of any Owner (including, but not limited to the Owner, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Owner (including, but not limited to the agents) arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Owner, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this Ordinance.

(b) This indemnity provision shall not apply to any liability resulting from the negligent or willful acts of the City, its officers, employees, agents, contractors, or subcontractors.

(c) The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other Owner or entity.

## **Sec. 15.1115 Insurance Requirements.**

### **(a) General**

- (1) An Owner must provide acceptable proof of insurance in the total amount required by this Section for Permits for Construction within Public Rights-of-Way, or make other provisions acceptable to the Director.**
- (2) The coverage must be on an "occurrence" or "claims made" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.**
- (3) Each policy or certificate of insurance must include a provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.**
- (4) The Owner shall file the required original certificate of insurance prior to the issuance of a permit. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.**
- (5) Owner shall file an annual surety bond, or provide certificate of self - insurance which will be valid for one full year, from a surety company authorized to do business in the State of Texas in the amount equal to the estimated amount of the cost to Restore the Right-of-Way for the work anticipated to be done in that year, in the event the Owner leaves a job site in the Right-of-Way unfinished, incomplete or unsafe. Owner may make other provisions, in lieu of a bond, as acceptable to the Director. The Director may waive the requirement if the Owner submits documentation, in a form acceptable to the City Attorney, that demonstrates the Owner has assets in excess of 10 million dollars.**
- (6) Owner shall file a Maintenance Bond for twenty-five (25%) percent of the cost of Restoring the Right-of-Way for the preceding year. Said bond shall be in force for two (2) years. Owner may make other provisions, in lieu of a bond, as acceptable to the Director. The Director may waive the requirement if the Owner submits documentation, in a form acceptable to the City Attorney, that demonstrates the Owner has assets in excess of 10 million dollars.**

- (7) The above requirements (1-6) may be met by utilities with a current franchise, license or Municipal Authorization if their current franchise, license or Municipal Authorization provides for insurance or bonds required herein, or provides an indemnity in favor of the City.
- (8) The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City.
- (9) An insurer has no right of recovery against the City. The required insurance policies shall protect the Agency or Public Infrastructure Contractor and include the City as an additional insured (except workers compensation). The insurance shall be primary coverage for losses covered by the policies.

(b) Insurance Requirements.

- (1) Owners. Each owner applying for a Permit shall obtain, maintain, and provide proof of the each of the following types of insurance and coverage limits:
  - a. Commercial General or Excess liability on an occurrence form with minimum limits of \$5,000,000 per occurrence and \$10,000,000 aggregate. This coverage shall include the following:

Products/Completed Operations to be maintained for one year if applicable.  
Personal and advertising injury if applicable.  
Owners and contractors protective liability.  
Explosion, Collapse, or Underground (XCU) hazards.

Coverage limits may be reduced upon demonstration of fiscal responsibility acceptable to the City Finance Director and/or Risk Manager.
  - b. Automobile liability coverage with a minimum policy limits of \$1,000,000 combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
  - c. Workers Compensation and Employers Liability Coverage. Statutory coverage limits for Coverage A and \$500,000 Coverage B Employers Liability.

- (2) Contractors and Sub-contractors. Each Contractor and sub-contractor applying for a permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in Subsection (1) above; however, the policy limits under the General Liability insurance shall be \$1,000,000 per occurrence and \$2,000,000 aggregate. All other coverages provisions outlined in Subsection (1) above shall apply.
- (3) An Owner or Contractor that has registered and filed proof of insurance under Section 15.1103 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."

## **ARTICLE 15-10B PROPERTY OWNERS' RESPONSIBILITIES IN PUBLIC RIGHTS-OF-WAY**

### **Sec. 15.1116 Scope**

This Article shall govern the construction and installation of improvements, and the use of, the City's Public Rights-of-Way by persons who own property abutting the Public Rights-of-Way.

### **Sec. 15.1117 Permit Required**

Prior to construction and improvements in the right-of-way by persons who own property abutting the right-of-way, such persons shall acquire a building permit, as set forth in Article 15.1104 in this Chapter, and unless otherwise indicated, the procedures and fees of such permits shall apply to the construction requirements contemplated under this Article.

### **Sec. 15.1118 Property Owner's Responsibilities**

- (a) Extent of construction required:
  - (1) Commercial. When a structure is to be built on a lot or moved onto a lot and used for other than residential purposes, right-of-way improvements shall be required on the property abutting the public right-of-way; sidewalks and curb and gutter shall be required around the portion of the property being improved. In special situations where existing conditions make the installation of curb and gutter and sidewalks impracticable, this provision may be waived by the Director. Right-of-way improvements may be required for additions to existing buildings. All construction in the right-of-way shall be subject to the provision of this Article and the City Subdivision Ordinance, Access Management Standards and General Construction Specifications. Construction improvements within public

rights-of-way where permanent structures exist on abutting property shall be allowed, provided such improvement do not create a hazardous condition provided that all construction materials and methods conform the provisions of this chapter.

- (2) **Residential.** When a new structure is to be built on a lot or moved onto a lot and used for residential purposes and the right-of-way improvements are not covered under the City Subdivision Ordinance or the City Zoning Ordinance, then there shall be no right-of-way improvement requirements under this Article; however, any construction that is done in the right-of-way shall be done in compliance with the provisions of this Chapter. Construction improvements within the public right-of-way where permanent structures exist on abutting property shall be allowed, provided such improvements do not create a hazardous condition and provided that all construction materials and methods conform to the provisions of this Chapter. Notwithstanding any of the above provisions in this subsection, whenever any structure is built on a lot or moved onto a lot and used for residential purposes, the installation of sidewalks around such lot shall be required if either of the following conditions exist:
  - (a) If all or any portion of such lot is bordered by existing curb and gutter; or
  - (b) If the City Council has determined the necessity for, and has ordered the installation of, curb and gutter improvements around all or any portion of said lot.
- (b) **Protection of Adjoining Property.** The permittee shall at all times, and at his own expense, preserve and protect from injury any adjoining property by providing proper safeguards and taking measures adequate for the purpose.
- (c) **Routing Traffic.** The normal conditions of traffic will not be disrupted without the approval of the City Engineer. The City Engineer shall prescribe such traffic control as he deems necessary.
- (d) **Prompt Completion of Work.** The permittee shall proceed with diligence and expedition on all work covered by the permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event, not later than the date specified in the permit therefor.



- (e) **Urgent Work.** If, in his judgment, traffic conditions, the safety or convenience of the traveling public or the public interest, require that the work be performed as emergency work, the Director of Public Works shall have full power to order, at the time the permit is granted, that a work crew and adequate facilities be employed by the permittee twenty-four (24) hours a day to the end that such work may be completed as soon as possible.
- (f) **Restoration of Surface.** The permittee shall restore all pavement damaged as a result of the construction work to their original condition in accordance with this Article and the City General Construction Specifications. Acceptance or approval of any work by the City Engineer shall not prevent the City from asserting a claim against the permittee and his or its surety under the required surety bond for incomplete or defective work if discovered within twelve months from the completion of the work. The City Engineer's presence during the performance of any work shall not relieve the permittee of his responsibilities hereunder.
- (g) **Protection of Watercourses.** The permittee shall provide for the flow of all watercourses, sewer or drains intercepted during the work and shall replace the same in as good condition as they were found, or shall make such provisions for them as the City Engineer may direct. The permittee shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provisions to take care of all surplus water, muck, silt, slicking, or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from his failure to so provide.
- (h) **Removal and Protection of Existing Improvements.** The permittee shall not interfere with any existing improvements without the written consent of the Director and the person owning the improvements. If it becomes necessary to remove an existing improvement, its owner shall do this. No improvements owned by the City shall be removed to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned improvements shall be similarly borne by the permittee unless he makes other arrangements with the person owning the improvement. The permittee shall protect any improvements that may be in any way affected by his work. In case any of said improvements should be damaged, they shall be repaired in conformance with all applicable requirements by the permittee, and his or its

bond shall be liable therefor. The Director shall have the authority to cause said necessary labor and materials to be furnished by the City and the cost shall be charged against the permittee, and the permittee shall also be liable on his or its bond therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, oil pipe, gas pipe, electric conduit, telephone conduit, or other utility and his bond shall be liable therefor. The permittee shall inform himself as to the existence and location of all underground utilities and protect the same against drainage.

**Sec. 15.1119 Maintenance of Public Rights-of-Way by Property Owners**

- (a) Maintenance of Public Rights-of-Way.
- (1) Any owner, occupant or tenant of any lot or parcel of land located within the City shall maintain or cause to be maintained the area of land located between the property line of the lot, tract, or parcel and the adjacent curb, and if no curb exists, then to a line ten feet from the edge of the street pavement toward the property line.
  - (2) Any owner, occupant, or tenant of any lot or parcel of land located within the City shall maintain or cause to be maintained the area of land located between the property line of the lot, tract, or parcel and the edge of the adjacent alley pavement.
  - (3) Any owner of the property abutting on a public street and sidewalk shall clean and maintain in good repair the sidewalk and any driveway approach apron crossing the sidewalk.
  - (4) The owner of property which abuts on any public street, sidewalk, or driveway approach apron shall be liable for any injury or damage arising from a defect or defects caused by any act or omission, failure, or negligence relative to the maintenance or repair of such sidewalk or driveway approach apron crossing such sidewalk.
- (b) Maintenance of Trees, Shrubs, and Vegetation. It shall be unlawful for any owner, occupant, or person in charge of adjacent property to:
- (1) Allow the branches of any tree to extend over or into a public street or alley at a height less than fourteen and one-half (14 ½) feet.

- (2) Allow the branches of any tree to extend over a sidewalk at a height of less than eight (8) feet.
- (3) Allow any shrubbery or similar vegetation to extend into or over any sidewalk blocking or hindering pedestrian access.

(c) Maintenance of Easements.

- (1) It shall be unlawful to construct or replace any temporary or permanent structure within, on, or over any public utility or drainage easement except for utilities or facilities associated with drainage. The property owner may place removable section-type fencing, asphalt, or concrete paving, or landscaping within any dedicated public utility or drainage easement. The City or franchised utility of the City shall not be required to replace anything that must be removed during the course of maintenance, construction, or reconstruction within any public utility or drainage easement.
- (2) The property owner shall maintain the property containing any easement in the same manner as would be required if the easement did not exist.
- (3) The property owner shall not hinder the ability of the easement owner to fully utilize the area of the easement for the purposes, including construction and maintenance of improvements within the easement, for which the easement was obtained."