

### **Sec 8.03 Street And Sidewalk Excavations And Openings**

- a) *Permit Required.* No person shall, without first obtaining a permit from the Director of Public Works, make any opening in any street, alley, sidewalk or any public way within the City. No permit shall be granted when the ground is frozen unless the Director determines such opening is necessary. The work shall be completed within 30 days after the permit is issued.
- b) *Application.* Application for a permit shall be made on a form supplied by the Director of Public Works. The application shall be accompanied by a signed agreement to save the City harmless from any liability arising from the work or activity covered by the permit, the fee provided in sub. (c) below and a written description of the work, including a sketch designating the trench location.
- c) *Payment.* Prior to a permit application being considered for approval, the applicant will be responsible for the full payment for the following:
  - 1. Applicable fees and costs as set forth in this Section;
  - 2. Unpaid fees or costs due by the applicant to the City; and
  - 3. Any loss, damage, or expense suffered by the City because of applicant's prior actions.
- d) *Fee.* The permit fee shall be as set forth in the City's fee schedule.
- e) *Insurance.* A certificate of insurance evidencing that the applicant has in force and will maintain during the term of the permit public liability insurance of not less than \$500,000.00 for anyone person, \$1,000,000.00 for any one accident and \$50,000.00 for property damage.
- f) *Bond.* Prior to a permit application being approved, the applicant must post a permit bond in the amount of \$10,000.00, with said bond being valid for a minimum of one (1) year after the conclusion of the work described in the permit.
- g) *Requirements for the Protection of the Public.* Every permittee shall enclose each opening which he may make in the streets or public ways of the City with barricades and barricade lights in such a manner as to adequately warn the traveling public during the period the excavation is open and until the street or sidewalk is restored and made passable for vehicular and pedestrian traffic. All machinery and equipment shall be locked or otherwise effectively safeguarded from unauthorized use when not being used by the permittee, their agents or employees. Except by written permission from the Director of Public Works, no trench shall be excavated more than 250 feet in advance of pipe laying nor left unfilled more than 500 feet where pipe has been laid. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of the work.
- h) *Excavation, Refilling and Repaving Requirements.* Any work to be done under a permit, and the repair of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable. The permittee shall perform repairs according to the specifications of the Director of Public Works and in

accordance with the conditions specified in the permit. The Director of Public Works shall have the authority to prescribe the manner and extent of the repair and may do so in written procedures of general application or on a case-by-case basis.

1. *Guarantees.* The permittee guarantees its work and shall maintain said work following its completion, except for organic material, for twelve (12) months. The permittee shall, upon notification from the Director of Public Works, correct all repair work to the extent necessary, using the method required by the Director of Public Works. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Director of 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.
  2. *Failure to Repair.* If the permittee fails to repair the right-of-way in the manner and to the condition required, or fails to satisfactorily and timely complete all repair required, the Department of Public Works at its option may do such work, in which event the permittee shall pay the City within thirty (30) calendar days of billing, the actual costs of repairs. Failure of the permittee to repair as required may result in the permit being revoked by the City. If the permittee fails to pay as required, the City may exercise its rights under the bond and the permittee shall be denied future permit applications until the payment in full has been received. Nothing contained in this Section shall prohibit the City from using any reasonable means of collection.
- i) *Inspection.* The permittee shall notify the Director of Public Works within one (1) business day of when any work under this Section is completed. The permittee shall make the work site available to the Director of Public Works or their designee and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work. At the time of inspection, the Director of Public Works or their designee may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The City may issue an order to the permittee for any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) calendar days after issuance of the order, the permittee must provide proof to the Director of Public Works that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Works may revoke the permit.
- j) *Other Obligations.* Obtaining a permit does not relieve a permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by other City, County, State, or Federal rules, laws or regulations. A permittee shall comply with all requirements of local, state, and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work. Except in an emergency, or with the approval of the Director of Public Works, no right-of-way

work may be done when seasonally prohibited or when conditions are unreasonable for such work.

- k) *City Work Excluded.* The provisions of this Section shall not apply to excavation work done under the supervision of the City Engineer or Director of Public Works by City employees or contractors performing work under contract with the City necessitating excavation in City streets.
- l) *Revocations, Suspensions, Refusals to Issue or Extend Permits.* The Director of Public Works may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
  - 1. The permit application is incomplete;
  - 2. The permittee is seeking to perform work not included in its plan submitted to the Director of Public Works, which work was reasonably foreseeable by the applicant or permittee at the time said plan was filed;
  - 3. Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
  - 4. Misrepresentation of any fact by the applicant or permittee;
  - 5. Failure to maintain and provide proof of the required bonds and/or insurance;
  - 6. Failure to complete work in a timely manner;
  - 7. The proposed reason for the obstruction or occupation is contrary to the public health, safety or welfare;
  - 8. The extent to which space is available in the right-of-way for which the permit is sought;
  - 9. The availability of other more appropriate locations in the right-of-way or in other rights-of-way;
  - 10. The applicability of ordinances or other regulations of the right-of-way that affect location of the proposed obstruction or occupation;
  - 11. The condition of the right-of-way and or whether and when it is scheduled for total or partial reconstruction; and/or
  - 12. The applicant or permittee is otherwise not in full compliance with the requirements of this Section or any other applicable law or regulation.
- m) *Discretionary Issuance.* Notwithstanding the above Subsection (m), the Director of Public Works may issue a permit where issuance is necessary to prevent substantial economic hardship to a customer of the applicant, to allow such customer to materially improve its public utility service, and/or to allow the applicant to comply with state or federal law or City ordinance or an order of a court or administrative agency.
- n) *Appeals.* The City shall approve or deny a permit application no later than sixty (60) calendar days after receipt of the application. If the City fails to act on the application within that period, the application shall be deemed granted and the City shall issue the permit. If the City denies a permit application, the City shall provide applicant with a written explanation of the reason for the denial at the time the City denies the application. Any person aggrieved by a decision of the Director of Public Works, suspending, refusing to issue, or refusing to extend a permit may, within ten (10) calendar days of the Director of Public Works' decision being issued, file a written

request with the Director of Public Works seeking a review of the decision by the City's Administrative Review Appeals Board. Following a hearing, the Board may affirm, reverse or modify the decision of the Director of Public Works. The decision of the Administrative Review Appeals Board is final.

o) *Work Done Without a Permit.*

1. *Emergency Situations.* A permittee must immediately notify the City of any event regarding its facilities that it considers an emergency. The permittee may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the emergency, the permittee must apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this Section. If the City becomes aware of an emergency regarding a permittee's facilities, the Director of Public Works will attempt to contact the permittee. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the permittee whose obstruction/occupation occasioned the emergency.
  2. *Non-Emergency Situations.* Except in an emergency situation, any person who, without first having obtained the necessary permit, obstructs or occupies a right-of-way must subsequently register and apply for a permit, and shall, in addition to any penalties prescribed by ordinance, pay four times the normal fee for said permit, pay double all other fees required by this Section or other applicable sections of the City code, deposit with the Director of Public Works the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Section. If a subsequent permit is denied or is not approved, the applicant shall discontinue and abandon the right-of-way and the Director of Public Works may cause any offending conditions to be removed or corrected and the expense thereof charged to the person responsible.
- p) *Supplementary Notification and Application.* If obstruction or occupation in the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Director of Public Works of the accurate information as soon as this information is known. A permit is valid only for the area of the right-of-way specified in the permit. Facilities must be installed/placed within eighteen inches (18") of the area shown on the approved permit. Any permittee which determines that an area greater than that specified in the permit must be occupied or obstructed, before making said change must apply for a new permit and pay any additional fees required thereby, and be granted a new permit.
- q) *Corridors.* The Director of Public Works may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of obstruction or occupation, including facilities, that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. Any permittee who obstructs/occupies a right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the obstruction/occupation is

located, move the obstruction/occupation to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the permittee.

- r) *Limitation of Space.* To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the Director of Public Works may prohibit or limit the placement of new, replacement or additional obstructions or occupations, including facilities, within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such decisions, the Director of Public Works shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.
- s) *Relocation.* Except as prohibited by State or Federal law, a permittee must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facility located in the right-of-way whenever the Director of Public Works requests such relocation, and shall restore the right-of-way to the same condition it was in prior to said relocation. The Director of Public Works may make such request to prevent interference by the permittee's facility with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) when public health, safety and welfare require it, and/or (iv) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, relocation shall not be required in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.
- t) *Interference During Municipal Construction.* When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a permittee's facilities, the City shall notify the permittee. The permittee shall meet with the Director of Public Works within 24-hours of a request by the Director of Public Works to coordinate the protection, maintenance, supporting, and/or shoring of the permittee's facilities. The permittee shall accomplish the needed work within 72 hours, unless the City agrees in writing to a longer period. In the event that the permittee does not proceed to maintain, support, shore, or move its facilities, the City may arrange to do the work and bill the permittee for costs it incurs as well as damages of \$100 per day beyond the 72 hour deadline to accomplish the needed work, with said bill to be paid within thirty (30) days or the permit may be revoked and collection actions may take place.
- u) *Indemnification.* By accepting a permit under this Section, the applicant and permittee, and all agents, contractors, employees, officers or other designees thereof, agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collective,

"Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the City or its agents or employees except in such cases where caused by the sole negligence or willful misconduct of the City.