

## CHAPTER 92: STREETS AND SIDEWALKS

### EXCAVATIONS AND CUTTINGS

#### § 92.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Abandon* (and its derivatives). The facilities installed in the rights-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by user in an unused or nonfunctioning condition for more than 120 consecutive calendar days unless, after notice, user has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

*Applicable Codes.*

- (1) All applicable Woodcreek Code of Ordinance provisions, policies and guidelines;
- (2) All applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of work in or around rights-of-way and includes the most current version of the National Electric Safety Code, the National Electrical Code, the Texas Health and Safety Code and regulations of the Occupational Safety and Health Act; and
- (3) Any applicable lawful rules, requirements or orders now in effect or hereafter issued by the City or authority with jurisdiction.

*Construction Activity or work.* Includes, but is not limited to, the causing or carrying out of any man-made change in any property or facility through building, erecting, installing, bulkheading, filling, mining, dredging, clearing, paving, grading, excavating, boring, drilling, or the addition, removal or alteration of any facility or any improvement to property, including altering of the size of any facilities, or other similar work or activity in, over, under, through, along or across the rights-of-ways or streets within the City limits.

*Contractor and Subcontractor.* Includes, but is not limited to, the person possessing a permit, franchise or license agreement as required under this subchapter and all persons actually performing, directing, monitoring, managing or overseeing any construction activity, work or other such similar activity in, over, under, through, along or across any streets or rights-of-ways within the City limits.

*Director of Public Works or Inspector.* The person, his or her staff or employees, or entity designated by the City to perform the duties and responsibilities set forth herein to be performed by the City, or, if none has been designated, the City Manager of the City.

*Easement.* Includes any public easement or other compatible use created by dedication, or by other means, to the City for public roadway, access or utility purposes, or any other purpose whatsoever. *Easement* shall include a private easement used for the provision of utilities.

*Emergency.* A reasonably unforeseen situation presenting an imminent hazard to personal or public health, safety or property, and the work necessary to address a service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergencies under this subchapter.

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*Excavation.* Any man-made formation of a cavity, hole or hollow by way of any means of digging, plowing, quarrying, uncovering, blasting, scooping, drilling, dredging, bulldozing, relocating or making cuts, openings, borings or other action or processes to form a cavity, hole or hollow.

*Facility or Facilities.* Any plant, equipment and property, including, but not limited to, duct spaces, manholes, poles, towers, utility pipes, pipes, conduits, lines, wires, transmission media, underground and overhead passageways or other equipment, structures and appurtenances which are located in, over, under, through, along or across the rights-of-ways or streets.

*Franchisee.* Any company, business, or service provider holding a franchise approved and issued by the City of Woodcreek.

*Installation.* The addition, removal, repair or alteration of any facility located in, over, under, through, along or across the rights-of-ways or streets.

*Owner.* Any person having financial interests in property or facilities located in, over, under, through, along or across streets and rights-of-ways in the City, including the person directing the actions of any contractor, paying a contractor, or for whose benefit the actions of the contractor are undertaken.

*Permanent Structure.* Any facility located in, over, under, through, along or across the rights-of-ways or streets within the City limits that occupies, affixes or otherwise is to remain in the same location for a period of time of more than 30 days.

*Person.* An individual human, partnership, firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, association, legal entity, or corporation of any kind, including but not limited to any provider of any utility service or public service, as those terms are defined below.

*Public Service.* Any business or commercial activity which is not included in the definition of *Utility Service* that requires the use of the public streets or rights-of-ways for the location of any facility or equipment to provide services to persons or property situated within the City, including but not limited to cable television service and services using a transmission media, but excluding taxi service and solid waste collection.

*Rights-of-Ways.* The surface of, and the space above and below any and all present and future public thoroughfares, public utility easements, public ways, public grounds, public waterways and, without limitation by the foregoing, any other public property within the corporate limits of the City.

*Streets.* The surface of, and the space above and below, any and all present and future public streets, avenues, highways, boulevards, drives, roads, bridges, alleys, lanes, viaducts and all other public roadways within the City limits and any highways, county roads or other public roadways for which the City has an agreement or contract to control, regulate or maintain.

*Transmission Media.* All cables, fibers, wires, tubes, pipes or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, video or data, or other purposes, which are physically located in the rights-of-ways or streets.

*Utility Service.* Shall have its common meaning and shall specifically include, but not be limited to, electric, water, wastewater, gas, telephone service, internet and cable TV.

(Ord. 17-241, 12-20-2017)

## **§ 92.02 UNDERGROUND UTILITY SERVICE.**

- (A) In all residential areas of the City, all cable television lines, telephone lines, and electric distribution lines and individual service lines shall be installed underground. If overhead lines existed prior to underground installation, all such poles, guy wires, and related structures shall be removed following construction of the underground infrastructure.

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- (B) For non-residential and multi-family developments where no existing overhead infrastructure exists, underground cable television, telephone, and electric utility lines shall be required along the street and within the site. Where existing overhead infrastructure is to be located, it shall be re-installed underground and the existing facilities shall be removed at the discretion of the City.
  - (C) Transformers and all related equipment supporting cable television, telephone, and electric service shall be mounted on pads at ground level. For non-residential development, such equipment shall be located outside of the street yard where practical and preferable located behind the front facade of the primary building structure. Such equipment shall reasonably be separated from pedestrian or vehicular access ways, shall have approved driveway or all weather vehicular accessibility, shall not conflict with roadway sight visibility, and shall be located outside of future rights of way.
  - (D) Screening of pad-mounted above-ground equipment for non-residential development shall consist of barrier fencing or shrub plantings located no closer than three feet from the equipment, except for the entry side of the equipment, which shall have a minimum of ten feet of unobstructed clearance. The entry side of the equipment shall not face a public street unless located behind the front facade of the primary building structure. The equipment pad shall be located with adequate room for the required landscape screening to be installed consistent with these provisions.
  - (E) Once utility service lines have been installed underground, the installation of new above-ground lines in that location is prohibited.
  - (F) The installation of public street lights, and connection of electric service thereto, shall be the responsibility of the developer.
  - (G) Exceptions or alternatives to the requirements of this section may be considered by the City Manager or designee. An appeal of the decision made by the City Manager in this regard shall be heard by the City Council.

(Ord. 17-241, 12-20-2017)

### **§ 92.03 STREETS AND RIGHTS-OF-WAY.**

- (A) The City shall have exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and rights-of-ways, and may provide for the improvement thereof by paving, re-paving, raising, draining, realigning, closing, or otherwise the use thereof. Such exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and rights-of-way of the City shall also include, but not be limited to, the power to regulate, locate, remove or prohibit the location, installation, alteration or removal of any type of facility or other property in, over, under, through, along or across any streets or rights-of-way. The location, alteration or removal, including the route, of all facilities within the rights-of-way or streets shall be subject to the reasonable direction of the City.
- (B) It shall be unlawful for any owner or contractor, including his or her agents, servants, independent contractors, or employees to occupy or obstruct any portion of the right-of-way or streets or to perform any construction activity, or to cause another to do the same, for any purpose in, over, under, through, along or across any street or right-of-way without first having made all applications for permits and, when required, obtained all permits therefore, together with a bond approved by the City Manager or designee in an amount determined as herein provided, conditioned that the principal therein will discharge all claims of every character arising from or occasioned by such occupancy or construction activity or by reason of damages or injuries sustained by persons or property because of such occupancy, construction activity, excavation or other such activity thereon and discharge all judgments obtained, together with all costs attached thereto against the City by reason of any such claim, injury or damage sustained. Contractor and owner carrying on any construction activity or excavation shall keep all streets and rights-of-way adjacent to

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such construction activity or excavation carried on by such contractor or owner, in a clean, safe and orderly condition, and unobstructed, except as provided in this subchapter, during all such activities, and shall restore all such streets, rights-of-way, facilities and other structures damaged, altered or injured, in any way, to as good condition as they were before the beginning of such activities.

- (C) It shall be unlawful for any person to use or occupy any street or right-of-way for the purpose of providing abutting, adjoining or other property with any utility service, public service, data, voice or video transmission service, cable television, taxi or solid waste collection service, without having first obtained a franchise or license issued and approved by the City Council; except as specifically provided otherwise by state law.
- (D) Construction activity, excavation, obstruction or other work shall cease immediately upon the issuance of a stop work order from the City Manager or designee or from any authorized law enforcement agent of the City. It shall be unlawful to remove a stop work order placed upon a construction or work site until compliance with this subchapter has been accomplished. No work so ordered to stop shall commence after issuance of the stop work order until the violation has been corrected and the City Manager or designee issues written authorization for the contractor to begin again.
- (E) It shall be unlawful and a violation of this subchapter for any person, contractor or owner to maintain an existing excavation within the City or to work upon or assist in any way in the execution or operation of any such excavation, without a permit having been issued by the City in accordance with this subchapter.
- (F) It shall be unlawful for the owner of any building or property abutting on any street or right-of-way in the City, or any tenant occupying such building or property, or any other person, to construct, build, operate or maintain any building, facility, or part thereof, including a show window, which extends over any part of any street or right-of-way.

(Ord. 17-241, 12-20-2017)

Cross reference(s)—Penalty, see § 92.99

#### **§ 92.04 PERMITS.**

Application for a permit required by § 92.02 of this subchapter shall be addressed to the City Manager and made on a form furnished for that purpose, detailing the extent, character and purpose of any construction activity or other work to be performed.

- (A) *Permits required.* The owner or contractor for all construction activity, installations, and similar activities must have applied for and have been issued all of the permits required for the work. The approved application and supporting documentation shall serve as the permit. A copy of the approved application and supporting documentation shall be maintained for inspection at the site of construction activity. The types of activities which must have a permit issued pursuant to this subchapter are:
  - (1) *Excavation of rights-of-way.* Any person considering major excavation, cutting, boring, digging or demolition activity in, over, under, through, or along the rights-of-way within five feet of the utility easement or property line shall, in advance of same, submit a design plan to the City for review and comment and shall secure a proper permit and/or approval and pay the fees as required.
  - (2) *Construction activity in rights-of-way or street.* Any person considering adding, repairing, removing or altering any facility or landscaping owned by the City of Woodcreek, in, over, under, through, along or across the streets or rights-of-way within the City limits shall in advance of same, submit a design plan to the City for review and comment and shall secure proper permits and/or approvals and pay the fees as required.

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- (B) *Permit fees.* In the event an application is made for a permit to perform any construction activity in any of the streets or rights-of-way, such permit shall be subject to the following permit fees to cover the costs and expenses of the City. Acceptance of any such permit shall constitute an acceptance by the permittee of the conditions of the permit and any of the obligations and duties to repair any cut, damage, injury or excavation in full compliance with the requirements set forth in § 92.06. Payment for each such permit shall be made with the application for the permit. No permit shall be issued for less than the required permit fee.
- (1) *Boring permit minimum fee.* The fee for each permit required pursuant to this subchapter for any construction activities including but not limited to, excavation, installation, removal, repair, addition or other alteration of any facilities or landscaping owned by the City of Woodcreek in the rights-of-way or streets shall be based on the Master Rate Schedule as adopted by resolution of the City of Woodcreek, plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the City for and with respect to such permit.
  - (2) *Professional fees.* In addition to the above permit fees, the City shall be fully reimbursed for all reasonable costs associated with activities in the streets or rights-of-way pursuant to this subchapter that require inspection, plan review or any other reasonable overview or action by an engineer or other professional. All engineer and other professional fees shall be paid prior to issuance of a permit. Permits shall not be issued to, and may not be maintained by, any person owing engineer or other professional fees to the City.
- (C) *Duration.* All activities or construction authorized by a permit issued under this subchapter shall be commenced within five business days after the effective date of the permit and thereafter be continuously prosecuted to completion, or such permit shall be void and the person to whom the permit was issued must make a new application before commencing or continuing any further activities or construction. Each permit issued shall be issued for a specific time period with a maximum period of 30 calendar days, after which period the permit shall be void and the person to whom the permit was issued must make a new application for a new permit for each succeeding 30 calendar days or portion thereof. If the permit is allowed to expire, the person shall apply for and procure a new permit, paying the fee therefore as before, prior to proceeding with any such work.
- (D) *Applications.* Applications for permits required by this subchapter shall be submitted to the City at least 30 calendar days prior to the commencement of construction and must be made in writing by the person to do the work, the subcontractor, the franchisee, the contractor, or his authorized agent, that will be submitted upon forms provided by the City for that purpose. An application for such permit shall be deposited at the office of the City Administrator for delivery to and action by the City Manager or designee, or his/her designated representative. Such application shall contain:
- (1) Date application is submitted; name, address, phone, fax, e-mail and other pertinent information of owner(s) and the name of all contractor(s), including subcontractors, employed, or that will be employed, to perform any portion of any construction activity or excavation; name, address, phone, fax, e-mail and other pertinent information of the person(s) designated to be the 24 hour contact or emergency contact at all times while the permit is active [if such emergency contact changes during the term of the permit, the City Manager or designee shall be notified no later than 24 hours after such change, to maintain an active permit]; exact location of any property, streets or rights-of-way where the construction activities or excavation is proposed to occur; a certification by the contractor, subcontractor, franchisee, owner, or the person employed to do the work, that existing underground utilities have been located and marked prior to commencement of construction and a copy of the one call confirmation order attached with the application. Applicant will provide City Hall with each two week refresh of locate documentation.
  - (2) A fee, appropriate to the number and kinds of installations, alterations, removals or construction activities to be made or activities to be performed.

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- (3) Proof of liability insurance or bond (certificate of insurance) in the amount of not less than \$1,000,000.00 personal injury and property damage:
    - (a) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards as applicable to the size and type of project;
    - (b) Each policy must be posted at City Hall throughout the project;
    - (c) Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than 30 days before canceling, failing to renew, or reducing policy limits;
    - (d) The City of Woodcreek shall be named as additional insured on the policy; and
  - (4) A description of the work to be performed, including duration of the work. Applications shall be accompanied by two copies of a complete layout drawing to showing the location and the work to be performed. The plan or diagram shall show the manner in which the installations or construction activities are to be made or the character of any of the repairs to existing installations or construction activities.
  - (5) *Excavations.* If any site is to be excavated the application must include:
    - (a) The location where the soil will be moved or deposited;
    - (b) A positive statement that the proposed excavation shall not block, encumber or close any street or disturb the lateral support thereof;
    - (c) The proposed slopes and lateral supports to be used in any excavation greater than four feet in depth shall be set forth;
    - (d) The proposed arrangements made for surface water drainage and siltation control;
    - (e) The safety precautions to be installed and maintained at the site, such as fences around the excavation, traffic control devices and drainage systems to keep the excavation from collecting water within or creating a hazard to workers, travelers and citizens; and
    - (f) Such other pertinent data as the City Manager or designee may require.
  - (E) *Review of application.* The City shall have the power and reserves the authority to refuse to issue a permit under this subchapter to any person, contractor, subcontractor or owner who has not complied with this subchapter, has previously failed to comply with the terms, requirements or standards of any prior permit issued for a similar project, or who has failed to provide insurance and bond as required. Additionally, the City shall have the power and reserves the authority to refuse any permit, or to modify or amend any application for permit, where the particular location, by reason of the nature of such particular location, the character and value of the permanent improvements already erected on or approximately adjacent to the particular location, and the use of which the land and surroundings, when in the City Manager or designee's opinion, or on appeal, the excavating, operation of an excavation or addition or alteration of any such proposed facility on such particular location or construction activity would constitute a nuisance, be injurious to public health, be a public hazard to the inhabitants as a whole, or to a substantial number of its inhabitants or travelers, or be a disadvantage to the City in its planned growth, or otherwise have a negative impact on the property values of property within the City. Review by the City shall be completed within 30 calendar days from the date the complete application is received by the City.
  - (F) *Factors to be considered.*

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- (1) In considering and reviewing all plans submitted and applications for permits the City Manager or designee shall be guided by the general purpose of orderly municipal planning, avoiding conditions or the doing of any act constituting or creating a nuisance, health hazard or endangering the public safety. As aids in accomplishing these purposes, the following points shall be considered by the City in reviewing applications for permits; however, such aids shall not be exclusive in the City Manager or designee's consideration and ultimate recommendation:
    - (a) The plan's compliance with all provisions of this subchapter and other ordinances of the City;
    - (b) The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood;
    - (c) The relationship of the development to adjacent uses in terms of harmonious use and design, maintenance of property values, and negative impacts;
    - (d) The provision of a safe and efficient vehicular and pedestrian circulation system;
    - (e) Surface water drainage and water drainage facilities of the excavation or installation, including soil and earth erosion by water and wind;
    - (f) Lateral supports of the excavation, including protections for existing buildings, facilities, streets and other property to be affected thereby;
    - (g) Conditions in which the excavation, construction activities or installation are to be maintained and safeguards to be taken to prohibit creating a nuisance, health or safety hazard, attractiveness to children, and features provided to dispense with the endangering of the lives and property of the public;
    - (h) Proposed use or condition of land upon completion of excavation process, construction activity or installation;
    - (i) Protection, access and encumbrance such installation, construction activity or excavation will have upon existing facilities and the location of the facilities in reference to the proposed excavation or installation, including the size, quantity, location and permanent nature of the all facilities currently located or proposed to be located therein; and
    - (j) Such other facts as may bear or relate to the coordinated, adjusted and harmonious physical development of the City.
  - (2) In arriving at the ultimate recommendation, the City Manager or designee may attach such special conditions thereto as may be reasonably necessary to attain the overall purpose of this subchapter.
- (G) *Appeals.* Appeals from the denial or granting of a permit, shall be made to City Council.
- (1) If an application for a permit is refused, the applicant may, not later than ten days from the date of receiving notice of such refusal, appeal to City Council by directing a letter to City Council setting forth therein the date of denial of the permit and the reasons the permit should be granted.
  - (2) Upon the filing of such appeal, the right to operate under any such permit shall be suspended until final determination by the City Council.
- (H) *Conditions of permit.* All permits shall be issued based upon the representations made within the application for the permit, information provided from the applicant, information known to the City Manager or designee and/or City, and all plans submitted with the application. Violations of any

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conditions of the permit or the general conditions listed herein shall constitute a forfeiture of all rights and privileges granted by the permit(s). The following general conditions of permit are in addition to the specific conditions identified in the specific permit:

- (1) Permit holders may not deviate from the plans approved with the permit without prior written permission from the City Manager or designee and amendment of such permit.
  - (2) Permit holders must comply at all times with the requirements of this subchapter and other applicable City ordinances as well as state and federal laws.
  - (3) No permit issued under the terms of this subchapter shall ever be transferred, sold, assigned, or otherwise disposed of in any manner to any other person without the written consent of the City Manager or designee.
  - (4) No permit shall be issued for less than the required permit fees.
  - (5) Bonds and/or insurance must be maintained at all times applicable to the permitted project.
  - (6) All applications for permit must contain complete and accurate information and plans for the project.
  - (7) No work shall be done under any permit issued under this subchapter except as stated in the permit and in compliance with State and Federal laws. The permittee shall ensure compliance at all times therewith.
  - (8) The City Manager or designee shall at all times have authority to inspect the project site and stop all work not in conformity with the permit, ordinances of the City, or state or federal law. A copy of the permit shall be maintained at the construction site and made available for inspection at all times when construction or installation work is occurring.
  - (9) Approval of a permit does not constitute an agreement to undertake construction activities contrary to state, federal or City requirements.
  - (10) No permanent structure shall remain in the rights-of-way or street without all proper permits.
- (I) *Revocation of permit.* Any permit issued under this subchapter may be cancelled if a notice to stop all work or activities thereunder is issued, and such notice is not immediately complied with. Any such non-compliance shall constitute grounds for immediate revocation of any and all permits, or portions thereof, for the project, when the following conditions exist:
- (1) A violation of any condition of the permit;
  - (2) A violation of any provisions of this subchapter or any other applicable ordinance or law relating to the requirements of the permit, excavations, construction or installation of the type of facility being installed, repaired, altered or removed;
  - (3) Failure to cease construction activities or correct such violations as directed by the City Manager or designee; or
  - (4) The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.
- (J) *Appeals from permit revocation or other action.* A permit holder pursuant to this subchapter, who is aggrieved by a revocation or any other action by the City Manager or designee regarding such permit, may appeal to City Council. The appeal shall be made by filing with the City Manager/Administrator a written notice thereof within ten calendar days from the date of the revocation of the permit, or other action appealed from, including, but not limited to, notices to repair and stop work orders. A fee based on the Master Rate Schedule as adopted by resolution of the City of Woodcreek shall be collected for processing the appeal. The aggrieved person shall be given a hearing before City Council, in due order



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of business, after which the City Council may affirm, modify or overrule the City Manager or designee's decision. Written notice of the time and place of such hearing shall be served upon the permit holder. Notice of the hearing may be given by personal delivery thereof to the permit holder or by deposit in the United States mail in a sealed envelope with postage prepaid, addressed to such person at the address appearing in the application or notice of appeal. All work shall be stopped at the construction site while the appeal is pending with the exception of work required to safely secure the site and to protect the health, safety and well-being of the public. The request for variance will be approved or denied within 60 days from the date the request was received by the City.

- (K) *Franchise holders and transmission media.* Utility service providers and public service providers having a current franchise or license agreement with the City shall be governed by the terms of the franchise or license agreement and shall not be required to post additional bond or insurance; and shall be exempt from paying any permit fees when required hereby to obtain a permit; but shall otherwise be subject to, bound and governed by each and every term and provision of this subchapter except as explicitly exempted in the franchise or license agreement. Where the terms and conditions of the franchise or license agreement conflict with the provisions of this subchapter, the terms and conditions of the franchise or license agreement shall govern. Unless otherwise exempted by a current franchise, license agreement or state law, the utility service provider or public service provider shall:
- (1) Complete all applications for permits required herein but shall not be required to pay the fees;
  - (2) Provide the City the information required in the application and a certification by the contractor, subcontractor, franchisee, owner, or the person employed to do the work, that existing underground utilities have been located and marked prior to commencement of construction and a copy of the Dig-Tess confirmation order attached with the application;
  - (3) Coordinate with the City as directed by the City Manager or designee based upon the size of the project and construction activities;
  - (4) Apply for all permits at least 30 calendar days prior to commencing any activity for which a permit must be issued as required by this subchapter; and provide an estimation of time for completion of each project.
- (L) *Exception to certain fees.* Telecommunication entities that are certified telecommunications providers, certified by the State of Texas to service the City, and that pay the City compensation as required by Tex. Local Gov't. Code Ch. 283, shall be exempt from such fees as are set forth therein upon verification from the Public Utilities Commission that the telecommunications entity seeking a permit is, at the time of application, a certificated provider holding a current certificate of convenience and necessity to service the City, and is paying the City compensation as required by Tex. Local Gov't. Code Ch. 283. The telecommunications entity shall be subject to all other provisions of this subchapter for which the entity is not exempt.

(Ord. 17-241, 12-20-2017; Ord. 19-256, 3-13-2019)

## **§ 92.05 BOND AND LIABILITY.**

A person considering any construction activity, installation of facilities, excavation, cutting, boring, digging or demolition activity in, over, under, through, along or across the streets or rights-of-way within the City, and who is not under a written contract, franchise, license or other express written agreement with the City, shall post a bond, make a cash deposit with the City, or provide other suitable forms of financial security as determined by the City Manager or designee in an amount that approximates the projected costs of inspection, observation, labor, equipment, materials, and overhead associated with the permit work, and the restoration, reconstruction and

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repair of the cut, work or excavation in compliance with the standards and requirements set forth in § 92.06. Such security shall be posted prior to the issuance of a permit and the start of construction.

- (A) *Bond required.* A good and sufficient bond shall be filed with the application for the permit required by this subchapter, executed by a bonding company, which bond shall be approved by the City Manager or designee as to form and sufficiency and shall be in the sum of not less than \$5,000.00. The bond shall be conditioned, among other things, that the contractor shall faithfully, at his or her own expense, furnish all proper materials, tools and appliances, and perform, execute, construct and complete all such work undertaken by such contractor, and observe and comply with the specifications, requirements and provisions of this subchapter. The bond shall be and remain in effect at all times in which the excavation or construction activities are commenced or in progress.
- (B) *Maintenance provisions in bond.*
- (1) Every permittee issued a permit under this subchapter shall be bound and obligated to construct all work, and use such materials in the construction thereof, so that the same shall be in as good or better condition than prior to the work, and will remain in such as good or better condition for and during a period of not less than one year from and after the date of completion of the work, free from all cracks, breaks, disintegration, undue wear, scaling or departures from true line or grade, or other defects which might impair the permanence or usefulness of the work or construction activity or surrounding facilities, streets or rights-of-way; however, such cracks as may appear in expansion joints, or cuts between blocks, shall not be deemed to be defects unless in the opinion of the City Manager or designee such cracks are excessive in opening or deflecting of surface.
  - (2) Each such bond issued pursuant to this subchapter shall continue in effect for and during the maintenance period of one year following the completion of the work, construction activity or repair.
  - (3) Each bond issuer shall promptly adjust, pay and settle all legitimate claims for damages or injuries that may result by reason of carelessness or negligence in the manner of performing the work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof.
  - (4) Each permittee and bond issuer shall hold the City free and harmless from liability on all claims for damages that are based upon, that arise from, or that are related to, the work or construction, or the condition thereof during the maintenance period, or that arise by reason of carelessness or negligence of the permittee, owner, or contractor, in the manner of performing such work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof, or otherwise by reason of the work or construction.
- (C) *Withdrawal of surety on bond.* On written notice to the City Manager or designee and the contractor, any surety on a bond issued pursuant to this subchapter may withdraw from all liability thereon on account of any and all future work undertaken by the contractor and for which excavation or construction activity was not begun before the delivery of the notice. After receipt of such, the contractor shall not begin any new work unless and until the contractor shall provide and procure the approval of a new bond in the same manner as required for the first bond. No bond or surety may be withdrawn after the permitted work is commenced.
- (D) *Emergency conditions.* In the event emergency conditions warrant immediate response by an affected person, the City Manager or designee may waive and/or modify normal standard procedures outlined herein to promulgate standards or requirements to expeditiously address the resolution of the emergency conditions; provided that, in any such event, the contractor shall submit an application for a permit for such work on the first business day of the City following performance of the work. Before

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work commences, contractors shall also notify all emergency services and public agencies of any effect on usual traffic patterns.

- (E) *Decision binding on contractor and sureties.* The decision of the City Manager or designee shall be binding and conclusive on the contractor, subcontractor and the sureties on all such bonds as to when any work or construction was actually commenced.
- (F) *Liability of the contractor and sureties for defective work.* A contractor or subcontractor whose work, construction activities or excavations are completed, or caused to be completed, by the City shall, on completion of such work and receipt of a certified bill of the cost thereof approved by the City Administrator, pay to the City, on its order, the cost of the work. The sureties on the contractor's or subcontractor bond shall be liable for all items and amounts listed in the certified bill of costs submitted to the contractor or subcontractor by the City. In the event the contractor or subcontractor, or the surety on any bond, shall fail and refuse to timely pay any such certified bill to the City, the contractor or subcontractor and such surety shall be and become liable to the City for its attorney fees and costs of collection.
- (G) *Liability of the contractor and sureties for maintenance and repair work.* If any defect in the work or construction develops during the one year guaranty period established by this subchapter, which, in the opinion of the City Manager or designee, is due in any measure to defects of workmanship or material, the contractor or subcontractor shall remedy, repair and reconstruct such work, and/or any part thereof, as may be required by the City Manager or designee, and such work shall be known as maintenance and repair work, and the surety on the contractor's or subcontractor's bond shall be fully liable for any default of such contractor or subcontractor under this section.

(Ord. 17-241, 12-20-2017)

## **§ 92.06 CITY FACILITIES AND LANDS.**

City facilities and lands shall not be altered, obstructed or occupied without the express written permission of the City. Additionally, no facilities may be located in, over, under, through, along or across any parks, recreational land or other similar City owned property, which is not a street or street right-of-way, without the express written permission of the City.

(Ord. 17-241, 12-20-2017)

Cross reference(s)—Penalty, see § 92.99

## **§ 92.07 DUTIES AND RESPONSIBILITIES.**

The contractor, subcontractor and the owner, and any other person to whom a permit is issued, shall, during the period for which the permit is issued, and as provided in § 92.03, have all of the duties and responsibilities identified in this subchapter, other applicable ordinances of the City, and as provided for in state and federal law. The owner, its agents, assigns, contractors and subcontractors installing the facilities, shall continually have the duties identified in this subchapter for so long as facilities or property, under the control of any such owners, and any subsequent owners thereof, are located in the rights-of-way or streets, to perform pursuant to the terms of this subchapter.

- (A) *Duty to barricade and protect.* The owner, the contractor, the subcontractor, and every person to whom a permit is issued under this subchapter, shall have a duty to ensure that each contractor, subcontractor, employee, agent or assignee:
  - (1) Prosecutes such work diligently and in a good and workmanlike manner; and

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- (2) Safeguards and protects the public upon or using the street, right-of-way, or other place where the work is being performed, from accidents, injury or damage by placing barriers, lights and other sufficient safeguards, including a watchman, if necessary, around all cuts, openings, excavations, installation site and materials, implements and tools used in connection with the construction activity, and shall conform to the provisions of this subchapter and all requirements of the City Manager or designee during the prosecution and completion of such work. All barricades and barriers shall be erected and maintained in compliance with accepted industry practices and applicable safety standards. The owner, the contractor and the subcontractor shall be responsible for the costs and expenses of all such barricades, barriers and watchmen.
- (B) *Supervision of work.* It shall be the duty of the owner, the contractor, the subcontractor, and the supervisor of the work site, who shall cause to be made any hole, cut, trench, excavation, mound, embankment, installation or other obstruction in any street or right-of-way, to carefully guard or cause to be guarded such hole, trench, excavation, mound, embankment, installation or other obstruction while the same may exist and not to suffer the same to remain beyond a time reasonably sufficient for the completion of the construction or removal of the obstruction, and to repair the portion of such street or right-of-way or any facility or property affected thereby so as to restore the same to as good or better condition than existed just previous to such activity.
- (C) *Duty to promptly repair.* It shall be the duty of the owner, the contractor, the subcontractor, and the supervisor of the work site, on whose behalf the hole, trench, mound, excavation, construction activity, installation or other obstruction or intrusion shall be made, or has been made, in the streets or rights-of-way of the City, to protect the same while such condition exists and to promptly repair the same so as to leave the street or right-of-way in as good or better condition than as before the work. All facilities, streets, sidewalks or other structures or property damaged, altered or injured, in any fashion, shall be restored with similar material and workmanship to that existing before the same was damaged, altered or injured through any actions of the owner, contractor, subcontractor or person employed in any fashion thereby. All work shall be done to the satisfaction of the City Manager or designee whose duty it shall be to inspect the same after it has been done.
- (D) *Removal and reconstruction when work defective.* All construction activities undertaken in the streets and rights-of-way of the City are declared to be wholly subject to the exclusive control of the City, and whenever, in the opinion of the City Manager or designee, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or material or because not true to lines or grades or specifications, then upon written demand or notice from the City Manager or designee, such contractor, subcontractor or the owner shall promptly remedy, complete or remove and reconstruct such incomplete or defective construction all as the City Manager or designee may require, and these provisions shall also be understood to apply to all repairs, installations and maintenance activities. If the contractor, subcontractor or owner shall fail or refuse so to do within a reasonable time as specified in writing by the City Manager or designee, then, if the City Manager or designee shall so order, such work may, at the expense of the owner, contractor and subcontractor, be completed, corrected or removed and wholly or partially reconstructed by the City, or its instance, in such manner as in the opinion of the City Manager or designee may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the provision of this subchapter and the direction of the City Manager or designee.
- (E) *Excavation.*
- (1) All excavations in the streets and rights-of-way are declared to be wholly subject to the rules, regulations, directions and control of the City, and whenever, in the opinion of the City Manager or designee, any such work shall not be in compliance herewith, the permit, and § 92.06, then upon written demand or notice from the City Manager or designee, such owner, contractor, and

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subcontractor shall promptly remedy, complete or fill the excavation all as the City Manager or designee may require.

- (2) All excavations made into any street or right-of-way shall be repaired to as good or better condition than such street, right-of-way or other property was in prior to such excavation. Any excavation located in or over the rights-of-way or streets within the City shall and does constitute a nuisance when maintained or permitted to exist by any person in an unwholesome or nauseous condition, or in a manner by which stagnant water accumulates, or in a manner in which water collects where it is possible and probable stagnant water accumulates, or in a manner in which water collects where it is possible and probable mosquitoes will breed, or in a condition where rats could harbor, or in a manner and condition constituting a breeding place for flies, or in a manner and condition where filth, garbage, trash, debris or other discarded material accumulates and is deposited, or is maintained or permitted to exist in an unfenced, open condition, accessible to children or other members of the public, or is maintained and worked in such a manner as to disturb, effect or destroy the lateral support of or block or otherwise impede traffic on any street, alley, road or rights-of-way, or that is maintained or permitted to exist in any condition which constitutes a possible and probable medium of transmission of disease to or between human beings, or to be maintained or permitted to exist in any one or more of the above-enumerated conditions.
- (F) *Relocation of facilities.* All persons placing facilities in the right-of-way or streets or owning, operating or maintaining facilities in, over, under, through, along and across the rights-of-way or streets of the City shall be responsible for the relocation and costs of relocation of such facilities and shall be liable for any construction delays with the City contractor when the public health, safety or a public purpose, including street or drainage reconstruction or localized full depth repair or improvements, requires relocation, in accordance with § 92.06.
- (1) *Permanent relocation.* Upon 30 days written notice by the City, the owner of a facility shall, at the owner's expense, begin relocation of its facilities that are within a right-of-way or street, when deemed necessary by the City for the public health or safety, or for any public purpose, or to permit the widening, straightening or improvement of a street, drainage, water or sewer project, or any other public works project. The notice by the City may specify the new location for the owner's facilities along the rights-of-way or streets. The City shall have the right to move any facilities within the rights-of-way or streets to cure or otherwise address a public health or safety concern, to accomplish a public purpose, or to widen, straighten or improve a street, water or sewer projects or other public works projects and the owner refuses to move the facilities. The City shall assess the reasonable costs and expenses of moving the facilities against the owner. The owner shall pay the costs and expenses of moving the facilities.
  - (2) *Temporary relocation.* Upon 30 days written notice by the City, the owner of a facility shall temporarily relocate any portion of its facilities within the rights-of-way or streets at the owner's own expense when deemed essential by the City for the public's health and safety or to permit construction activities of the City, or water or sewer projects or any other public works project. The notice by the City shall specify the affected areas where the facilities are located and the area for temporary relocation of the owner's facilities along the rights-of-way or streets to cure or otherwise address a public health or safety concern, to widen or straighten streets, water or sewer projects or other public works projects or construction activities and where the owner refuses to move the facilities. The City shall assess the reasonable costs and expenses of moving the facilities against the owner. The owner shall pay the costs and expenses of moving the facilities.
  - (3) *Temporary removal of aerial wires.* The owner of aerial wires, on the request of any person, shall remove or raise or lower aerial wires within the City temporarily to permit the moving of houses

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or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the owner of the wires may require such payment in advance. The owner shall be given not less than five business days advance notice to arrange for such temporary wire changes.

- (G) *Traffic interference.* The owner, contractor, and subcontractor shall endeavor to minimize disruptions to the efficient use of the rights-of-way and streets by pedestrians and vehicular traffic, and the rights-of-way and streets shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. Access for emergency vehicles shall be required at all times.
- (H) *Maintenance of facilities.* The owner of any facility and person holding a license or franchise shall be responsible for ensuring the continued maintenance, repair, removal of any nuisances and other such upgrades or repairs to maintain such facility in a safe and good workman like condition. Any vegetative growth interfering with such facilities that is determined by the City Manager or designee to be a nuisance shall be removed, cut or cleared at the sole cost and expense of the owner of the facility or holder of the license or franchise. Circumstances and conditions that impose a threat to the public health, safety or welfare shall be promptly remedied by the owner, and a known emergency condition that exists and is determined to require immediate attention so as not to reasonably allow for notice under this section may be immediately abated by the City, and notice of the abatement and costs for the expenses incurred will be forwarded to the owner or holder of the franchise or license for reimbursement to the City as required in § 92.07.
- (I) *Abandonment of facilities.*
  - (1) Whenever a user intends to abandon any of its facilities within the rights-of-way, it shall submit to the City Manager or designee written notification of such intent, describing the facility to be abandoned and the date of the proposed abandonment. Such notification shall include a statement of waiver of claims against the City for subsequent damages to abandoned facilities. City may require the user, within 30 days of notice from the City, at the user's expense:
    - (a) To remove the facility from the rights-of-way; or
    - (b) To modify the facility in order to protect the public health and safety or otherwise serve the public interest.
  - (2) A user shall remove all abandoned facilities and equipment simultaneously during construction of new facilities. In removing its facilities structures and equipment a user shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as existed prior to removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this subchapter shall continue in full force and effect during the period of removal and until full compliance by a user with the terms and conditions of this section. If user does not remove its facilities within 30 days simultaneously with new installation, the City shall have the option of removing the facilities on behalf of the user and to charge user for the reasonable and actual costs incurred by the City. User shall reimburse the City for the costs within 30 days of receiving the invoice from the City.
- (J) *Tree trimming.* The owner of facilities located within the rights-of-way or streets shall not trim any trees upon or overhanging the rights-of-way without first obtaining a permit as provided herein. All activities and costs necessary to protect and preserve the facilities from damage due to trees shall be the responsibility of the owner of such facilities.
- (K) *Violations, notice, failure to abate.*

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- (1) In the event the City Manager or designee shall determine that a situation exists which is an immediate threat to the health, safety and well-being of the general public and that immediate action is necessary, said City Manager or designee may take such action as shall be necessary for violations of the terms and provisions hereof to the owner, contractor or subcontractor committing such violation.
  - (2) In the event the City Manager or designee determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner, contractor, or subcontractor is absent or fails to immediately remedy the situation, the City Administrator may, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare, including ordering repair or abatement of the nuisance. In such event, the City may also prosecute an action in any court of competent jurisdiction to recover its costs.
  - (3) In the event any owner, contractor, or subcontractor shall fail or refuse to remedy any of the conditions or violations indicated by the City Manager or designee within ten days after notice is sent, or immediately if determined by the City to be an emergency and the owner, contractor, or subcontractor is absent or fails to immediately respond, the City may do such work or cause the same to be done, and pay therefore, and charge the expenses in doing or having such work done or improvements made, to the owners of the facility, or the contractor, or subcontractor performing construction activities, whereupon such charge shall be a personal liability of the owner, the contractor, and/or the subcontractor to the City.
  - (4) Notices served upon an owner, contractor, or subcontractor may be verbal, or may be served on such owner, contractor, or subcontractor by an officer or employee of the City delivering a written notice to an employee or officer of such owner, contractor, or subcontractor at their respective place of business, or may be by letter addressed to such owner, contractor, or subcontractor at their post office address, or if personal service may not be had, or the owner, contractor or subcontractor's address is not known, then notice may be given by publishing a brief summary of such order at least once in the official newspaper of the City, by posting a notice on or near the site or location of each facility or property upon which the violation relates, or by posting notice on a placard attached to a stake driven into the ground on the property or facility to which the violation relates and addressed "Facility Improvements" "To Whom It May Concern," and such publication shall be deemed sufficient notice.
  - (5) In the event any owner, contractor, or subcontractor is mailed a notice in accordance with division (K)(4) of this section and the United States Postal Service returns the notice as "refused" or "unclaimed" the validity of the notice is not affected, and the notice is considered as delivered.
  - (6) Notices provided by mail or by posting as set forth above may provide for year-round abatement of the nuisance and inform the owner that should the owner commit any other violation of the same kind that pose a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may abate the violation at the owner's expense and assess the costs against the property.
  - (7) Appeals from a decision of the City Manager or designee identifying a violation or nuisance shall be filed in writing with the City Administrator within five days after the notice to abate a nuisance or notice of a violation of this subchapter is given. The procedures for appeal shall otherwise be the same as required in § 92.04(G) herein.
- (L) *Emergencies.* In the case of fire, disaster, or other emergency threatening life or property, as determined by the City, the City may remove or repair only the part of the facility required to be removed or repaired to remove such threat; provided, however, the City shall first use its reasonable efforts to immediately notify the owner of such threat and allow the owner to remove or repair the

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part of the facility required to be removed or repaired to remove such threat. In such event, neither the City, nor any agent, contractor or employee thereof shall be liable to the owner or its customers or third parties for any damages caused them or the facility, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the facility or equipment.

(Ord. 17-241, 12-20-2017)

## **§ 92.08 STANDARDS FOR INSTALLATIONS IN PAVEMENT CROSSINGS AND IN RIGHTS-OF-WAY.**

The following standards for excavation, and backfilling shall apply to all streets and rights-of-way.

- (A) *Depth and requirements of installation:* all installations, except electric utilities, are required to have a minimum cover of 36 inches and at locations where it passes beneath any pavement to be within Schedule 40 PVC conduit extending within five feet of right-of-way or property boundary. Electrical system utilities shall comply with the National Electric Code and be within Schedule 40 PVC conduit extending within five feet of right-of-way or property boundary.
- (B) *Method of placement:* all utilities must be installed within five feet of right-of-way or property line. Boring is required for all pavement crossings.
- (C) *Safety.*
  - (1) Warning, protective devices and flagmen must be provided in accordance with the current Federal Highway Administration's *Manual on Uniform Traffic Control Devices*, Part 5, Chapter 5G and Part 6 to ensure the safety of the public and workmen.
  - (2) Parking of the owners, contractors, subcontractor and worker trucks and cars on both sides of the pavement shall be prohibited. All such vehicles shall be parked on one side of the road off the pavement and as far as prudent from the roadway to prevent accidents.
  - (3) All construction equipment, vehicles, and materials are restricted to the right-of-way and shall be limited within that area necessary for the work in progress and stored in such a manner and at such locations that they do not interfere with the safe passage of traffic.
  - (4) Any trench that needs to remain open in the absence of workmen, either during the day or at night, must be covered with steel plating of sufficient thickness and strength to allow safe passage of any vehicles. Advance warning signs shall be placed advising of the road condition. Boring pits left open in the absence of workmen must be adequately protected with sufficient barrier to surround the pit and be illuminated at night with automatic light systems.
- (D) *Method of construction:* boring is required for all street crossings.
  - (1) *Excavation:* trench width shall be held to a minimum.
  - (2) *Backfill:* backfill within the earthen portions of the right-of-way may be with rock free earthen material excavated from the site or any clean rock free imported material stabilized to 95 percent density. Puddling is not permitted.
- (E) *Access:* ingress and egress at all public and private roads will be provided at all times. Residents shall be notified of the work in advance of the interruption. Access for emergency vehicles shall be required at all times.
- (F) *Rights-of-way restorations:* all excess excavation, materials, supplies, rock, and earthen materials shall be removed from the rights-of-way after the installation is complete. The rights-of-way shall be contoured.



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- (G) *Inspection and approval of completed work:* the City will conduct inspection at two stages of the work as follows:
- (1) *Depth of placement:* the City Manager or designee shall be notified when all excavation and placement of conduit is complete prior to backfilling the trench to verify that the required cover has been achieved. Notification by the owner, contractor or subcontractor must be made to the City Manager or designee at least 24 hours prior to placement.
- (H) *Construction hours of operation:* construction-related activities in the City are limited to Monday through Saturday during the hours from 7:00 a.m. to 6:00 p.m. Construction work on Sunday and City holidays is not allowed without prior approval from the City. Emergency work required to be undertaken during weekends and City holidays and outside the allowed hours shall be undertaken and completed in compliance with City of Woodcreek ordinances and this section, and the contractor shall obtain a permit for the work no later than the first business day following the commencement of such work.
- (I) *Utilities:* the City assumes no responsibility for conflict with existing utility lines, appurtenances or natural obstacles.

(Ord. 17-241, 12-20-2017)

### **§ 92.09 RIGHT TO INSPECT.**

For the purposes of administering and enforcing this subchapter, the City Manager or designee and authorized law enforcement entities (herein "inspecting official") shall have the right to enter into and upon any lands within the City limits, in or upon which excavation, installation, repairs or any other construction activities exist or on any lands on which operations are being conducted in creating an excavation, repair or installation, to examine and inspect such lands and excavations, repairs or installations, to determine whether such operations are in violation of this subchapter and to further determine whether all permits have been secured as required.

- (A) *Cessation of operations/stop-work order.* If the inspection provided for above reveals that the excavation, installation, repair or construction activity is being operated or maintained in violation of the permit issued the inspecting official may immediately give notice in writing to the person in charge at the site, or the owner thereof, to stop all work or construction activities, setting forth therein the reason for the issuance of the stop work order. If no such person is available, the leaving of such a written notice on the equipment located at the site or upon a stake at the entry of the site where the excavation, installation, repair or construction activity is occurring, shall be deemed compliance with this section.
- (B) *Time limitations for correction.* After issuance of the notice as provided for above, there shall be no further operation of the excavation, installation, repair or any other construction activity until the violations complained of by the inspecting official have been remedied. Except that the violation shall constitute an immediate threat to the public health or safety, the owner, contractor, and/or subcontractor shall have three days from the date of receipt of the complaint notice from the inspecting official to remedy the violations complained of and to request a reinspection by the inspector to verify that the violations complained of have been remedied and that the construction activity is ready for additional inspection.
- (C) *Failure to remedy violation.* In the event a contractor, subcontractor, or owner fails to remedy the violation complained of, the City Manager or designee shall consider revocation of the contractor's, subcontractor's and owner's permit as provided in this subchapter. A continuation of work or operation of the construction activity, other than to remedy the violation complained of, after written

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notice has been received by the contractor, subcontractor or owner to cease the construction activity shall constitute a violation of this subchapter.

- (D) *Right to repair or correct.* The City may immediately repair any site or location within the streets or rights-of-way at the contractor's, subcontractor's and owner's expense where there exists: a known condition which constitutes a nuisance; a dangerous or hazardous condition; an eminent threat to the public health, safety or welfare; or when the contractor, subcontractor or owner is performing construction activities, excavations, installations or repairs without the appropriate permit; or when the contractor, subcontractor or owner is performing construction activities, excavations, installations or repairs contrary to the terms of this subchapter, other applicable ordinances, state or federal law and refuses to correct such situation immediately upon direction from the City Manager or designee.

(Ord. 17-241, 12-20-2017)

### **§ 92.10 COSTS.**

The reasonable costs and expenses for repairing, re-constructing or correction of any construction activity, excavation, addition, removal or alteration of a facility or any other alteration thereof to any street, right-of-way, or facilities located thereon, within the City, without a permit or express written contract or written agreement with the City, shall be charged against the persons, the corporation, company, or entity actually responsible for the actions; the owner(s) responsible for the work or for whose benefit such activity was undertaken which caused the damage to the street or right-of-way; and/or the permittee in whose name the permit to perform such activities was issued.

(Ord. 17-241, 12-20-2017)

### **§ 92.11 CITY RIGHTS RESERVED.**

Nothing in this subchapter grants permission for the occupation, obstruction, excavation, repair or alteration of any street or right-of-way of the City, and any such use shall be subject to consent of the City at its sole discretion. Additionally, nothing in this subchapter shall be construed as an assumption by the City, its officers and employees, of any responsibility to supervise construction activities, ensure adequate safety precautions by contractors or subcontractors or to protect any owners or customers of any facilities located in, over, under, through, along or across the rights-of-way or streets, or the owners of any property abutting, adjacent or within the rights-of-way or streets from any damages caused to the facilities located therein or as the result of the construction activities thereto. Further the City reserves the right to vacate any street or right-of-way at its sole discretion. If the City vacates or otherwise abandons a right-of-way or street or any portion thereof, the City, with or without notice to any permittee, may cancel any permits for such portion of a right-of-way or street without compensation or reimbursement to the permittee for any expenses associated with moving any facilities located therein, unless otherwise agreed in writing. The owner and, as applicable, the contractor and subcontractor shall be solely liable and responsible for any and all injuries and/or damages arising or resulting from any excavation, boring, trench, work or occupation of any street or right-of-way by or on behalf of such owner, contractor, or subcontractor.

(Ord. 17-241, 12-20-2017)

### **§ 92.12 ENFORCEMENT.**

- (A) The civil and criminal provisions of this subchapter shall be enforced by those persons or agencies designated by municipal authority and may be enforced by any law enforcement agent of the City.

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- (B) If applicable, default and revocation of any and all permits granted to allow construction activities in the streets or rights-of-way subject to the procedural guidelines herein and any agreement which applies to the right-of-way user, may be permanently enforced subject to any limitations imposed by federal or state law.
  - (C) In imposing the penalties and the amount, the City may weigh all applicable factors, such as damages caused by the violation, reasons for the violation, the seriousness of the violation, and all other factors. The minimum fee and penalty that shall be payable by any utility service, public service provider, owner, contractor, subcontractor or person that shall be found to have been occupying a street or right-of-way, in violation of this subchapter, shall be based on the Master Rate Schedule as adopted by resolution of the City of Woodcreek for each year of such prior unauthorized occupancy.
  - (D) Monetary civil penalties and injunctive relief may be imposed in the manner prescribed by either local or state law.
  - (E) The City Council may order specific performance of any actions required by this subchapter or required by a franchise, license or permit or any other agreement or authorization.

(Ord. 17-241, 12-20-2017; Ord. 19-256, 3-13-2019)

### **§ 92.99 PENALTY.**

- (A) Any person who shall violate any provision of §§ 92.01 through 92.12, or shall fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and shall be liable for a fine not to exceed the sum of \$500. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.
- (B) *Court proceedings.* Upon the request of the City Council, the City Attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of §§ 92.01 through 92.12, to obtain declaratory judgment, and to seek and recover court costs, attorney fees, and/or damages, including but not limited to, damages or costs incurred by the City to undertake any construction, repair, alteration or other activity necessary to bring about compliance with a requirement regarding the streets or rights-of-way and established pursuant to this subchapter and other applicable ordinances of the City.
- (C) *Indemnity.* Owners, contractors, and subcontractors shall indemnify, defend, and hold the City and its officers, employees and agents harmless from and against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused by the negligent act, error, or omission of any agent, officer, director, representative, employee, affiliate, or subcontractor of the owner, contractor, subcontractor or permittee installing, repairing, or maintaining facilities in the rights-of-way or streets.
- (D) *Governmental immunity.* Nothing in §§ 92.01 through 92.12 shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the City or its officers, employees and agents, nor to create any legal rights or claims on behalf of any third party. Sections 92.01 through 92.12 are solely for the benefit of the City, and the City in its representative capacity of the general public, and does not create or grant rights, contractual or otherwise, to any other person, entity or member of the general public. Neither the City, nor its officers, employees and agents waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

(Ord. 17-241, 12-20-2017)