

CHAPTER 141

RIGHTS-OF-WAY WORK

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141.01 PURPOSE. The purposes of this chapter are:

1. To promote the public health, safety and general welfare.
2. To ensure oversight and accountability for work done in the public rights-of-way.
3. To ensure management of facilities located in the public rights-of-way.
4. To manage a limited resource to the long-term benefit of the public.
5. To recover a portion of the costs of managing the public rights-of-way.
6. To minimize inconvenience to the public occasioned by the emplacement and maintenance of facilities in the public rights-of-way.
7. To prevent premature exhaustion of capacity in the public rights-of-way to accommodate communications and other services.
8. To assure restoration of damaged public property.

141.02 DEFINITIONS.

1. "Excavation" means any opening and/or tunneling in or under the surface of any public place or public rights-of-way in the City. The exception is an opening into a lawful structure below the surface of a public place or public right-of-way (e.g., a manhole), the top of which is flush with the adjoining surface and so constructed as to allow frequent openings without injury or damage to the public place or public right-of-way.
2. "Facility" means a pipe, sewer, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, fiber optic, public irrigation system, junction box, transformer or any other material, structure, sign, traffic control device, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under or over any public place or public right-of-way.
3. "Franchise" means an authorization granted by the City to a person to construct, maintain, or emplace facilities generally upon, across, beneath and over a public place or the public right-of-way in the City.

4. “Franchise agreement” means a contract entered into between the City and a franchisee that sets forth the terms and conditions under which the franchise may be exercised.
5. “Person” means any person, firm, partnership, association, corporation, company or organization of any kind, including private or public utility.
6. “Public place” means property owned or controlled by the City and dedicated to public use, including but not limited to any park, square or plaza.
7. “Public right-of-way” means the surface and space above, on and below, including but not limited to any public highway, avenue, street, lane, alley, sidewalk, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, or rights-of-way within the City on public or private property, in which the City now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a facility.
8. “Public Works Director” means the City of Johnston, Director of Public Works, or his or her designee.
9. “Routine maintenance” means the action of keeping in a certain state of repair, that is a regular, customary procedure and does not include excavation, restoration or impede the traveling public.
10. “Street lane closure notice” means a notice of approval required for any street lane closure.
11. “Substructure” means any pipe, conduit, duct, tunnel, manhole, vault, buried cable or wire, or any other similar structure located below the surface of any public place or public right-of way.
12. “Traffic control device” means any traffic signal equipment, signs, interconnect lines or cables, paint or pavement markings, traffic safety barricades or cones, or any other in-place traffic safety device.
13. “Utility” means a private company and/or corporation or City department engaged in providing a particular service to the general public.
14. “Work” means any excavation upon, under or through a public place or the public rights-of-way at specified times and places to erect, construct, excavate, emplace, or otherwise work on facilities.
15. “Work permit” means an authorization to perform work, issued by the Public Works Director.

141.03 WORK PERMIT REQUIRED.

1. No person shall enter upon a public place or the public rights-of-way at any time to erect, construct, emplace or otherwise work on facilities without first obtaining a work permit to do so from the Public Works Director, except as otherwise provided in this chapter. No work permit to work or make an excavation in a public place or public rights-of-way shall be issued except as provided in this chapter.
2. No person shall tunnel under the surface of any public place or public rights-of-way for the purpose of making any gas, sewer, water, steam heating pipe or underground electric connection without first obtaining a work permit required herein.

3. No work permit shall be issued unless a written application (on a form provided by the Public Works Director) is submitted to the Public Works Director. The written application shall include:

- A. Name and address of applicant;
- B. Signature of applicant;
- C. Principal place of business of the applicant, with contact information, including 24-hour notification capability;
- D. Authority of the applicant to occupy the public place or public rights-of-way for which the work permit is sought;
- E. Appropriate indemnifying bond or insurance certificate if applicable;
- F. Location and dimensions of the installation or removal and the approximate area and scope of the work to be done;
- G. Location of all known survey monuments in the area of the work;
- H. Location and dimensions of any relevant easement associated with the work;
- I. Location and dimensions of any and all existing and proposed traffic control and traffic safety devices (including signs) that will be affected by the work;
- J. The purpose of the facility and the proposed start date and ending dates that will be required to complete such work, including backfilling said excavation and removing all obstructions, material and debris, and restoration.
- K. Any other sketches, maps, studies, engineering reports, tests, profiles, cross-sections, construction plans and specifications the Public Works Director may require to fully analyze the application.

The application, when approved and signed by the Public Works Director, shall constitute a work permit.

4. Any proposed lane closures will require the completion of a separate lane closure notice, including a sketch showing the location of the lane to be closed and applicable dimensions. The form is provided by the Public Works Director, and must also be submitted to and approved by the Public Works Director.

141.04 WORK PERMITS NOT TRANSFERABLE. A work permit issued under the provisions of this chapter shall not be transferable to another person.

141.05 EXCEPTIONS. The following are exempt from the application of this chapter:

- 1. A project that has been approved and funded by the City.
- 2. Routine maintenance, as determined by the Public Works Director. However, if damage is caused during routine maintenance, restoration shall be in compliance with Section 141.12 of this chapter.

141.06 TERM OF WORK PERMIT.

- 1. The term for completion of the work, as included on the work permit, shall be defined by the Public Works Director at the time the work permit is issued.

2. If the work permit holder fails to meet the conditions included on the work permit as determined by the Public Works Director, the City reserves the right to nullify the work permit, restore the area using the security deposit and proceed to issue violations.
3. A work permit may be renewed, for a period to be determined by the Public Works Director, upon demonstration by the work permit holder that circumstances or conditions require an extension of time in order to accomplish the work covered by the work permit.
4. An extension may be granted by the Public Works Director if requested prior to the expiration date of the original work permit.

141.07 FEES. The purpose of a work permit fee is to reimburse the City for a portion of the expense in issuing the work permit, and any on-site inspection required. A work permit fee may be charged by the City for the issuance of a work permit. The fee for each work permit shall be established in accordance with a resolution adopted by the City Council.

141.08 BOND, CERTIFICATE OF INSURANCE AND SPECIAL DEPOSIT OR ANNUAL BOND REQUIREMENTS.

1. Indemnifying Bond or Certificate of Insurance. Before a work permit is issued as herein provided, the applicant shall deposit with the City an indemnifying bond payable to the City, or file a certificate of insurance in favor of the City in such amounts of not less than \$100,000.00 for any one person killed or injured, \$300,000.00 for total liability for all persons killed or injured in one accident and \$50,000.00 for any property damage incurred as a result of an accident.
 - A. The indemnifying bond or certificate of insurance shall indemnify and save harmless the City, its officers, employees, agents and representatives against any and all damages, claims, losses, demands, judgments, actions or causes of actions, including payments made under the workmen's compensation laws and any costs including attorney fees arising out of or in connection with the excavation or tunneling and other works covered by the excavation work permit or for which the City, City Council, or any City officer, employee, agent or representative may be held liable by reason of any accident or injury to any person, including the work permit holder, its agents or employees, or any property through the fault of the work permit holder, its agents or employees, either in not properly guarding the excavation or the maintenance of the excavation or for any other injury resulting from the negligence, wrongful acts, faults or misconduct on the part of the work permit holder, its agents or employees.
 - B. The City, the City Council, and its agents, employees or representatives shall not be liable nor share any cost incidental to the removal, reconstruction or relocation of any structure or facility of a work permit holder or any person or of any utility placed in any public place, public rights-of-way or public easement, in the exercise of any power the City, the City Council or any officer of the City now has or which may hereafter be authorized or permitted by the laws of the State.
 - C. In addition, if the City, through its City Council, elects to alter or change the grade of any street, alley, or public way, work permit holder shall,

upon reasonable notice by the City, remove, or relocate any substructure or facility at work permit holder's expense.

D. An annual indemnifying bond or certificate of insurance for a specified period given under this provision shall remain in full force and effect during the period specified in the application to cover all excavation work in public places or public rights-of-way.

2. Security Deposit or Annual Bond. The application for a work permit to perform work under this chapter shall be accompanied by a \$10,000.00 security deposit or annual bond made to the City and submitted to the Director of Finance. The City may use any or all of this amount to pay the cost of any work the City performs to restore or maintain the public place or public rights-of-way as herein provided in the event the work permit holder fails to perform such work, in which event the work permit holder will not be issued any more work permits until the security deposit or annual bond is again reinstated. Use of the security deposit or annual bond by the City shall not affect the City's right to issue a municipal infraction or charge a work permit holder with a simple misdemeanor.

3. Refund of Security Deposit. Upon the Public Works Director's receipt of written application by the work permit holder, all security deposits shall be refunded by the City to the work permit holder upon completion of the work. This does not remove the responsibility of the work permit holder to complete the work as required in this chapter; actual completion shall be determined by the Public Works Director.

141.09 MAINTENANCE OF DRAWINGS.

1. Maps shall be drawn to a scale of not less than one inch to two hundred feet (1" = 200'). The scale shall show in detail the plan location, size and kind of installation, if known, of all substructures; except service lines designed to serve single properties beneath the surface of the public place or public rights-of-way belonging to, used by or under the control of such person having any interest.

2. In addition, updated maps of the same specifications shall be filed with the Public Works Director no later than April 1 of every year, for the previous year's work, relative to the work permits that have been issued.

3. Failure to file maps with the Public Works Director shall be considered grounds for denial of future work permits to the applicant.

141.10 MANNER OF EXCAVATION. Excavation shall be in compliance with the adopted standards of the City.

141.11 TEMPORARY BARRIERS AND WARNING DEVICES. Temporary barriers and warning devices shall be in compliance with the *Manual for Uniform Traffic Control Devices* (MUTCD) standards.

141.12 RESTORATION OF EXCAVATED SITE.

1. Restoration shall be in compliance with the adopted standards of the City.

2. If an owner or operator or any agent of a facility disturbs a pavement, sidewalk, driveway or other surfacing, or landscaping in public rights-of-way, the owner or operator or agent, in a manner approved by the Public Works Director, shall replace and restore all pavement, sidewalk, driveway or other surfacing, or

landscaping disturbed, in substantially the same condition and in a good, workmanlike, timely manner, in accordance with any standards for such work set by the City. Such restoration shall be completed prior to expiration of the work permit.

3. The work permit holder is responsible for correcting defective materials and/or workmanship for at least one year from the date of completion included on the work permit.

4. If any work remains unfinished or is not in compliance at the expiration of the work permit and as determined by the Public Works Director, then the City will proceed to restore the area using the security deposit and proceed to issue violations.

5. Upon completion of all work provided for in the work permit or as directed by the Public Works Director, the work permit holder shall remove all temporary barriers and warning devices.

141.13 EMERGENCY EXCAVATION WORK.

1. Urgent Work. When traffic conditions, the safety or convenience of the traveling public or the public interest, require that the excavation work be performed as emergency work, the Public Works Director shall have the authority to order that an adequate crew and facilities be employed by the work permit holder for twenty-four (24) hours a day until the work is completed.

2. Emergency Action. Nothing in this chapter shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the urgent location of trouble in a facility, or for making emergency repairs, provided that the person making such excavation shall apply to the Public Works Director for such a work permit on the first working day after such work is commenced.

141.14 PRESERVATION OF MONUMENTS. Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey benchmark within the City shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the Public Works Director to do so. Permission to remove or disturb such monuments, reference points or benchmarks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper replacement of this monument by the City.

141.15 SIGNAGE. No signs shall be removed, except by the City. If signs are removed or damaged, the work permit holder shall reimburse the City for the actual cost of replacement by the City.

141.16 RELOCATION AND PROTECTION OF FACILITY.

1. The work permit holder shall not interfere with any existing facility without the written consent of the Public Works Director and the owner of the facility or said owner's agent. If it becomes necessary to relocate an existing facility, this shall be done by said owner or agent. No facility, either owned by the City or a person or utility, shall be moved to accommodate the work permit holder unless the cost of such work is borne by the work permit holder or unless other arrangements are made to the satisfaction of the Public Works Director.

2. The work permit holder shall support and protect all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. The work permit holder shall secure approval of the method of support and protection from the owner of the facility. In case any of said pipes, conduits, poles, wires, or apparatus or any substructures or facility should be damaged, including any pipe coating or other encasement or devices, the work permit holder shall promptly notify the owner thereof.

3. All facilities damaged by the work permit holder shall be repaired by the agency or person owning them and the expense of such repairs shall be paid by the work permit holder. It is the intent of this chapter that the work permit holder shall assume all liability for damage to facilities or substructures and any resulting damage or injury to anyone because of such facility or substructure damage and such assumption of liability is a contractual obligation of the work permit holder.

4. The only exception shall be such instances where damage is exclusively due to the negligence of the owning utility. The City shall not be made a party to any action because of this chapter.

5. The work permit holder is responsible for researching the existence and location of all underground facilities and substructures and for protecting the same against damage.

141.17 ABANDONMENT OF SUBSTRUCTURES. Whenever the use of a substructure or facility is abandoned, except the abandonment of service lines designed to serve single properties, the person owning, using, controlling, or having an interest therein shall file with the City, within thirty (30) days after such abandonment, a statement in writing giving in detail the location of the substructure or facility so abandoned. If such abandoned substructure or facility is in the way, or subsequently becomes in the way, of an installation of the City or any other public body or utility authorized or approved by the City, the Public Works Director may require removal of the same; the cost of its removal shall be paid by the owner or owner's agent. The conditions of removal and restoration shall be determined by the Public Works Director on a case-by-case basis.

141.18 APPROVAL; REVOCATION. The Public Works Director may suspend or revoke a work permit or approval under this chapter and order that all work stop for any one or all of the following reasons:

1. For conducting or accomplishing permitted work in such a manner as to materially and adversely affect the health, welfare, or safety of persons residing in, owning property in, or working in the neighborhood of the property where such work has occurred.

2. For conducting or accomplishing permitted work in a manner that is materially detrimental to the public welfare, or other property, or improvements within the neighborhood or the City.

3. For violation or failure to comply with any provision of this chapter.

141.19 APPEAL.

1. Any person aggrieved by an order, requirement, decision or determination of the Public Works Director in the enforcement of this chapter may, within thirty (30) calendar days thereof, appeal such action to the Board of Appeals by filing with the

Board of Appeals an appeal specifying the grounds thereof. The Public Works Director shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from is taken.

2. Before an appeal is filed with the Board of Appeals, the appellant shall pay to the City a fee in accordance with a duly approved resolution of the Council.

3. Upon receipt of such an appeal, and payment of the fee, the Board of Appeals or its designated representative shall establish a date, time and place for a public hearing on the appeal and shall cause the preparation, publication, posting and distribution of a public notice of said hearing.

4. The public hearing shall be attended by the appellant or agent, and by the Public Works Director or other designated official of the City.

5. The Board of Appeals may modify, reverse or affirm, wholly or partly, the order, requirement, decision or determination appealed from. It shall not have the power to grant exceptions or variances to the requirements of this chapter.

6. A majority vote of the members of the Board of Appeals present at the hearing shall be necessary to reverse any order, requirement, decision or determination appealed from.

141.20 RESPONSIBILITY. The failure of City officials to observe or foresee hazardous or unsightly conditions, or to impose other additional conditions or requirements on approved applicants or work permit holder, or to deny or revoke a work permit or approval, or to stop work in violation of this chapter, shall not relieve the work permit holders of the consequences of their actions or inactions or result in the City, its officers or agents, being liable therefor, or on account thereof.

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