

ORDINANCE NO. 9001-54

AN ORDINANCE OF THE CITY OF WYLIE, TEXAS, ADOPTING A COMPREHENSIVE RIGHT-OF-WAY MANAGEMENT ORDINANCE GOVERNING ANY AND ALL CONSTRUCTION OCCURRING WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF WYLIE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000 PER DAY FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Wylie, Texas ("City") is charged with maintaining control of and access to the Public Right-of-Way in order to protect the health, safety and welfare of its citizens; and

WHEREAS, Excavations in City Streets may significantly interfere with public use of the Streets and result in negative impact in air quality, loss of parking, and in a loss of business to merchants; and

WHEREAS, Excavations in paved Streets may significantly degrade and shorten the life of the surface of the Streets and increase the frequency and cost to the public of requisite resurfacing, maintenance and repair, regardless of the quality of restoration; and

WHEREAS, It is desirable to adopt regulations that will provide the City greater control over Excavations in City Streets; and

WHEREAS, Substantial public funds have been invested to build, maintain and repair the City Streets and the City holds these Streets as an asset in trust for its citizens. It is desirable to adopt regulations to protect the structural integrity of City Streets and safeguard the value of the public investment for the benefit of City residents, by providing incentives to reduce the number of Excavations in City Streets. Such incentives will encourage coordination among Utilities and minimize the number of Excavations where feasible, so as to ensure Excavations are performed to the extent possible, in Streets scheduled for resurfacing within the same or succeeding fiscal year as the Excavation; and

WHEREAS, When a repair fails in a paved Street that is not scheduled for resurfacing within the same or succeeding fiscal year, the Excavator should be required to make repairs necessary for proper use and appearance of the street. Excavations and faulty repairs cause the greatest damage in newly surfaced Streets; and

WHEREAS, Entities making and benefiting from an Excavation in a City street also should comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensures the best possible restoration of the paved surface over and adjacent to the trench; and

WHEREAS, Regulation of Excavations in City Streets helps reduce disruption of and interference with public use of the Streets, helps prevent pavement damage, helps maintain the safe condition of the Streets, protects the public health, safety and welfare, is a valid and appropriate exercise of the City's police power, and is a municipal responsibility; and

WHEREAS, the City Council finds there is increasing demand for use of the Right-of-Way; and

WHEREAS, Section 283 of the Texas local Government Code (the "Act"), sets forth certain regulations governing municipalities and Certificated Telecommunications Providers ("CTP"). It is the City's intent to comply with these regulations; and

WHEREAS, the purpose of the Act is to establish a uniform method of compensation for the use of Public Right-of-Way by CTPs that is fair and reasonable, administratively simple, competitively neutral (relative to all CTP's), nondiscriminatory, and consistent relative to the municipalities and CTPs; and

WHEREAS, this Ordinance promotes compliance with the Texas Utilities Code; and

WHEREAS, the City Council of the City of Wylie adopted regulations governing street reconstruction occurring within the City's Rights-of-Way, and such Ordinance was codified as Chapter 102, Streets, Sidewalks and Other Public Places, of the Code of Ordinances of the City of Wylie ("Current Ordinance"); and

WHEREAS, in an effort to cooperate with and meet the needs of the entities that will be affected by this ordinance, City Staff allowed the various entities to participate in the drafting of the ordinance through holding a meeting to review and comment on the provisions of the ordinance and allowing written comments and suggestions to be submitted; and

WHEREAS, the Current Ordinance contains no provisions for Right-of-Way management, and taking into consideration the comments and suggestions made by the entities, City Staff has created a new and comprehensive Right-of-Way management ordinance that will accommodate the entities' need to use the Public Rights-of-Way to provide services to the public while allowing the City: to insure that the public safety is maintained and that public inconvenience is minimized; to protect the City's infrastructure investment; to facilitate work within the Public Rights-of-Way; and to fairly and responsibly protect the public health, safety, and welfare; and

WHEREAS, the City Council finds it is in the best interest of the City of Wylie and its citizens to adopt a comprehensive Right-of-Way management ordinance; and

WHEREAS, the City Council finds that all legal notices, hearings, procedures, and publishing requirements have been performed and completed in the manner and form set forth by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, THAT:

Section I. The proposed right-of-way management ordinance be entitled "Right-of-Way Management Ordinance" and to read in its entirety as follows:

RIGHT-OF-WAY MANAGEMENT ORDINANCE

Sec. 1-1. Title.

This Article shall be known and cited as the Right-of-Way Management Ordinance for the City of Wylie, Texas.

Sec. 1-2. Findings Incorporated.

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Sec. 1-3. Scope

This Article shall be effective within the geographical limits of the City, including any areas subsequently annexed by the City.

Sec. 1-4. Purpose; objectives; applicability.

A. Purpose. The City Council hereby declares that its purpose in enacting this Ordinance is to protect the health, safety and welfare of the public in connection with the use of City streets. This Ordinance provides principles, procedures and mechanisms for the placement of Structures and Facilities, construction, excavation, encroachments, and work activities within or upon any Public Right-of-Way and to protect the integrity of the road and City utility system. This Ordinance does not grant any specific authority for occupation of the Rights-of-Way. To achieve these purposes, it is necessary to require permits of private users of the Public Rights-of-Way and to establish permit procedures, rules, and regulations for work done within or upon the Public Rights-of-Way.

B. Objectives.

Public and private uses of Public Rights-of-Way for location of Facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the City of Wylie must insure that the primary purpose of the Rights-of-Way, safe passage of pedestrian and vehicular traffic, is

maintained to the greatest extent possible. In addition, the value of other public and private installations, roadways, the City utility system, Facilities and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the Public Rights-of-Way by Persons, Agencies, and Public Infrastructure Contractors is secondary to these public objectives and the movement of traffic. This Ordinance is intended to strike a balance between the public need for efficient, safe transportation routes and the use of Public Rights-of-Way for location of Facilities by public and private entities. The Ordinance thus has several objectives:

1. To insure that the public safety is maintained and that public inconvenience is minimized by reducing disruption of and interference with the public use of streets.
2. To protect the City's infrastructure investment by establishing repair standards for the pavement, Facilities, and property in the Public Rights-of-Way when work is accomplished.
3. To facilitate work within the Public Rights-of-Way through the standardization of regulations.
4. To maintain an efficient permit process.
5. To conserve and fairly apportion the limited physical capacity of the Public Rights-of-Way held in public trust by the City.
6. To establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition, and technological development.
7. To promote cooperation among the Agencies and Public Infrastructure Contractors and the City in the occupation of the Public Rights-of-Way, and work therein, in order to (i) eliminate duplication that is wasteful, unnecessary or unsightly, (ii) lower the Agencies', Public Infrastructure Contractors' and the City's costs of providing services to the public, and (iii) preserve the physical integrity of the streets and highways by minimizing street cuts.
8. To assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.

C. Applicability.

1. The requirements of this Ordinance apply to all Persons, Agencies, Public Infrastructure Contractors and private users of the Public Rights-of-Way except:

- (a) Persons, Agencies, or Public Infrastructure Contractors conducting projects for Single-Family and Two-Family Residence zoned properties. All permits for these properties will be issued through the City's Building Inspection Department.
 - (b) New residential service connections that are permitted through the Building Inspection Department of the City of Wylie as provided in Section 1-10(A)(4) below.
2. Any permit issued prior to the effective date of this Ordinance, will remain subject to the terms and conditions of City ordinances and requirements in effect at the time of issuance of the permit and is not affected by this Ordinance, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this Ordinance.

Sec. 1-5. Definitions.

- A. AGENCY means any Person (including franchised or licensed person), or certificated telecommunications provider. "Agency" includes all contractors and sub-contractors hired or retained to do construction for an Agency.
- B. BACKFILL means the restoration of excavated material.
- C. CERTIFICATED TELECOMMUNICATIONS PROVIDER (CTP) means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Public Utility Commission of Texas to offer local exchange telephone service.
- D. CITY means the City of Wylie, Texas. As used throughout, the term City also includes the designated agent of the City.
- E. CITY ENGINEER means the City Engineer of the City or his designee(s).
- F. CITY MANAGER means the City Manager of the City or his designee(s).
- G. CLOSURE means a complete or partial closing of one or more lanes of traffic of a Major Thoroughfare and the complete closure of any other type street.
- H. COMPACTION means 95% of maximum density with a moisture content of -2% to +4% of optimum under paved surfaces and 90% of maximum density with a moisture content of -2% to +4% of optimum outside of paved surfaces.

- I. **CONSTRUCTION** means excavation, installation of Facilities, boring or jacking of utilities, restoration of pavement cuts, or other work by an Agency or Public Infrastructure Contractor in a Public Right-of-Way.
- J. **DUCT** or **CONDUIT** means a single enclosed raceway for cables, fiber optics, or other wires. "Duct" or "Conduit" shall not include the maintenance duct associated with a conduit that is reserved for use in replacing damaged cable or for rerouting purposes.
- K. **EMERGENCY** means any event that may threaten public health or safety, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged Facilities, downed aerial Facilities, service outages whether to one customer or an area of the City, or other events where citizen(s) are out of service or in imminent danger of being out of service.
- L. **EROSION CONTROL** means compliance with the design and construction standards adopted by the City of Wylie, as amended.
- M. **EXCAVATE** or **EXCAVATION** means any activity that removes, penetrates or otherwise disturbs any part of a Public Right-of-Way.
- N. **FACILITIES** means the plant, equipment, and property, including, but not limited to, lines, poles, mains, pipes, conduits, ducts, cables and wires located under, on or above the surface of the ground within the Public Right-of-Way and valves, and related facilities and equipment used or useful for the provision of utility services.
- O. **LOCAL EXCHANGE TELEPHONE SERVICE** means telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The terms does not include the following services, whether offered on an intraexchange or interexchange basis:
- (1) Central office based PBX-type services for system of 75 stations or more;
 - (2) Billing and collection services;
 - (3) High-speed private line services of 1.544 megabits or greater;
 - (4) Customized services;

- (5) Private line or virtual private line services;
 - (6) Resold or shared local exchange telephone services if permitted by tariff;
 - (7) Dark fiber services;
 - (8) Non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
 - (9) Dedicated or virtually dedicated access services; or
 - (10) Any other service the Public Utility Commission determines is not a "local exchange telephone service."
- P. MAJOR THOROUGHFARE means any Thoroughfare as shown on the City of Wylie Thoroughfare Plan, as amended.
- Q. PAVEMENT CUT means a cut made into the paved surface of a public street, alley, curb, sidewalk, or public easement.
- R. PERSON means a natural person (an individual), corporation, company, cooperative, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity who owns or controls Facilities.
- S. PUBLIC INFRASTRUCTURE CONTRACTOR means a person hired or retained to do construction of Facilities that will be maintained by the City. "Public Infrastructure Contractor" includes all sub-contractors.
- T. PUBLIC RIGHT(S)-OF-WAY means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by or under the control of the City to which the City holds the property rights in regard to the use for utilities. The term does not include the airwaves above a public right-of-way with regard to wireless telecommunications. The term is synonymous with "street," "public way," and "right(s)-of-way."
- U. THOROUGHFARE means any public traffic artery, major street, secondary street or alley.

Sec. 1-6. City engineer's authority; enforcement; violations.

- A. City Engineer's Authority. The City Engineer or his/her designee is authorized to administer and enforce the provisions of this Ordinance and to promulgate regulations, including but not limited to, engineering, technical, and other special criteria and standards to aid in the administration and enforcement of this Ordinance that are not in conflict with this Ordinance, the Code of Ordinances of the City, or state or federal law.
- B. Enforcement. The City Engineer or his/her designee is authorized to enter upon a construction site for which a permit is granted or required under this Ordinance or, where necessary, upon private property adjacent to the construction site for purposes of inspection to determine compliance with the permit or this Ordinance.
- C. Violations. A Person, Agency, or Public Infrastructure Contractor commits an offense if he:
1. Performs, authorizes, directs, or supervises construction without a valid permit issued under this Ordinance;
 2. Violates any provision of this Ordinance;
 3. Fails to comply with restrictions or requirements of a permit issued pursuant to this Ordinance; or
 4. Fails to comply with an order or regulation of the City Engineer issued pursuant to this Ordinance.
- D. This Ordinance may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the City has for violation of this Ordinance.
- E. Prior to initiation of civil enforcement litigation, a Person, Agency, or Public Infrastructure Contractor who has violated a provision of this Ordinance must be given the opportunity to correct the violation within the timeframe specified by the City Engineer. This Section does not prohibit the City Engineer or the City from taking enforcement action as to past or present violations of this Ordinance, notwithstanding their correction.

Sec. 1-7. Penalties.

Any Person, Agency, human, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500.00), unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this

Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

Sec. 1-8. Registration.

- A. In order to protect the public health, safety and welfare, all Agencies and Public Infrastructure Contractors placing Facilities or engaging in construction, excavation, encroachments, and work activities within or upon any Public Right-of-Way must register with the City of Wylie. Registration must be renewed annually on or before January 31. The Registration Form to be used may be obtained from the Engineering Department. If a registration is not renewed, construction permits will not be issued to the Agency or Public Infrastructure Contractor by the City, and the penalty provisions and/or the abandonment and removal provisions contained herein shall apply. When any information provided for the registration changes, the Agency or Public Infrastructure Contractor shall notify the City of Wylie of the change no more than thirty (30) days after the date the change is made. Registration shall include:
1. The name, address, and telephone number(s) of the Agency that is the owner of the Facilities to be located in the Public Rights-of-Way, including the business name, assumed name, or trade name under which the Agency operates or under which it has operated within the past five (5) years. In the case of a Public Infrastructure Contractor, the name, address, and telephone number(s) of the Public Infrastructure Contractor and the name, address, and telephone number(s) of the developer for whom the Public Infrastructure Contractor is working.
 2. The name(s), address(es) and telephone number(s) of the person(s) who will be contact person(s) for the Agency or Public Infrastructure Contractor.
 3. The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the Public Rights-of-Way on behalf of the Agency or Public Infrastructure Contractor.
 4. The name and telephone number(s) of an emergency contact for the Agency or Public Infrastructure Contractor who shall be available twenty-four (24) hours a day.
 5. (Reserved)
 6. The name(s), address(es) and telephone number(s) of the person(s) who will be receiving plans of City construction projects on behalf of the Agency or Public Infrastructure Contractor.

7. The name, address, and telephone number(s) of the person who will be responsible for receiving notifications or citations from the City on behalf of the Agency or Public Infrastructure Contractor.
 8. Proof of insurance as required by Section 1-12 below.
 9. For Agencies that are Certificated Telecommunications Providers, a copy of the Notice of Approval issued by the Public Utility Commission of Texas that grants the Certificated Telecommunications Provider a service provider certificate of operating authority (SPCOA) or certificate of convenience and necessity (CCN).
 10. The ordinance number of any franchise or license issued by the City of Wylie that authorizes the Agency to use the Public Rights-of-Way.
 11. A City street map, to be updated annually, marked in such a manner as to evidence which streets, thoroughfares and/or Public Rights-of-Way the Agency or Public Infrastructure Contractor has placed facilities.
- B. Registration shall be a prerequisite to issuance of a construction permit. Each Agency and Public Infrastructure Contractor shall update and keep current its registration with the City at all times.

Sec. 1-9. Permit required.

- A. Any Agency or Public Infrastructure Contractor seeking to place Facilities on, in or over a Public Right-of-Way or to engage in construction, excavation, encroachments, and work activities within or upon any Public Right-of-Way shall first file an application for a construction permit with the City and shall abide by the terms and provisions of this Ordinance pertaining to the use of the Public Rights-of-Way.
- B. Exception. City maintenance activities are excepted from the permitting requirements outlined herein.
- C. This Ordinance does not constitute or create authority to place, reconstruct, or alter Facilities in, on or over the Public Rights-of-Way nor to engage in construction, excavation, encroachments, or work activity within or upon any Public Right-of-Way, and said authority must be obtained by obtaining a permit.
- D. Permits will be issued in the name of the Agency that will own the Facilities. Permits for public infrastructure will be issued in the name of the Public Infrastructure Contractor.

- E. Any Agency or Public Infrastructure Contractor with a current, unexpired consent, franchise, agreement or other authorization from the City (Grant) to use the Public Rights-of-Way that is in effect at the time this Ordinance takes effect shall continue to operate under and comply with that Grant until the Grant expires under its own terms or until it is terminated by mutual agreement of the City and the Agency or Public Infrastructure Contractor or as otherwise provided for by law.
- F. Construction, Excavation, or Work Area. No Agency or Public Infrastructure Contractor shall perform construction, excavation, or work in an area larger or at a location different, or for a longer period of time than that specified in the permit or permit application. If, after construction, excavation, or work is commenced under an approved permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application or for a longer period of time, the Agency or Public Infrastructure Contractor shall notify the City Engineer immediately and stop work and secure site until such time as a supplementary application for the additional construction, excavation, or work is approved.
- G. Permit Transferability or Assignability. The Agency or Public Infrastructure Contractor may subcontract the work to be performed under a permit provided that the Agency or Public Infrastructure Contractor shall be and remain responsible for the performance of the work under the permit and all insurance and financial security as required. Permits are transferable and assignable upon written notice to the City Engineer that the transferee or assignee has registered and posted all required security pursuant to this Ordinance. Any transferee or assignee shall be bound by all requirements of the permit and this Ordinance.
- H. In the City, the physical construction of public infrastructure, excluding Agency infrastructure, in new developments is the responsibility of the developer of the land. Ownership of that infrastructure remains with the developer of the land until accepted by the City. Any Agency or Public Infrastructure Contractor performing work on infrastructure which is within a Public Right-of-Way, but prior to acceptance by the City, shall obtain a permit from the City and permission from the owner of the infrastructure in the Public Right-of-Way. The Agency shall be financially responsible to the owner of the infrastructure to carry out all remedial work necessary to receive acceptance by the City of that infrastructure. This financial obligation shall apply only to the work in the Public Right-of-Way done by the Agency or Public Infrastructure Contractor. The City will not accept for dedication Public Rights-of-Way, or other property where work performed is not in accordance with applicable City specifications.
- I. Any Agency or Public Infrastructure Contractor found to be conducting any excavation activity within the Public Right-of-Way without having first obtained the required permit(s) will be subject to the penalty provisions contained herein

and shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted.

- J. The City may institute all appropriate legal action to prohibit any Agency or Public Infrastructure Contractor from knowingly using the Public Rights-of-Way unless the Agency or Public Infrastructure Contractor has complied with the terms of this Ordinance.

Sec. 1-10. Permit application; permit contents.

A. General.

1. No Person, Agency, or Public Infrastructure Contractor shall install any Facilities or other encroachment or make a pavement cut or excavate in a Public Right-of-Way without first obtaining a permit from the City Engineer, except in an emergency.
2. Franchised Agencies and Agencies that are certificated telecommunications providers have prior authorization to do work in Public Rights-of-Way. However, an Agency's use of the Public Rights-of-Way is subject to and must occur in accordance with State of Texas laws and City ordinances, policies, standards and procedures. Said use is non-exclusive and does not establish priority for use over other franchise holders, permit holders, or the City. A permit issued by the City of Wylie is required for all work done in the Public Rights-of-Way.
3. Each application for a permit shall be submitted using the required form which may be obtained from the Engineering Department. The Agency or Public Infrastructure Contractor requesting a permit shall provide the City Engineer with documentation in the format specified by the Engineering Department. The application form shall request at a minimum, the following information:
 - a. The proposed location and route of all Facilities to be constructed or installed and applicant's plan for Right-of-Way construction.
 - b. Engineering plans, which will: (i) be on a reasonable scale; or (ii) provide sufficient information, acceptable to the Public Works Department.
 - c. Details of the location of all Right-of-Way that applicant and/or owner plans to use.
 - d. Description of all known existing City utilities in relation to applicant's proposed route.

- e. Description of what applicant proposes to install.
 - f. Detail of plans to remove and replace asphalt and/or concrete in streets, driveways, alleys, and sidewalks.
 - g. Drawing of any bores, trenches, handholds, manholes, switch great transformation, pedestals, etc. (including approximate depth) located in Public Right-of-Way.
 - h. Typical details of manholes and/or handholds applicant plans to use or access.
 - i. Complete legend of drawings submitted by applicant, which may be provided by reference to previously submitted documents.
 - j. One (1) set of plans must be submitted with permit application.
 - k. The construction and installation methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Right-of-Way, and the estimated dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the City Engineer.
 - l. Proof of insurance or net worth as required herein.
 - m. If traffic is to be obstructed, a traffic control plan.
 - n. The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the Public Rights-of-Way on behalf of the Agency or Public Infrastructure Contractor.
4. New residential service connections do not require a permit under this Ordinance. However, a permit may be required from the Building Inspections Department. An Agency or Public Infrastructure Contractor must inquire with the Building Inspections Department as to whether a permit is required for such service connections.
- a. Exception. Maintenance or replacement of existing service connections that requires excavation by mechanical means will require a permit under this Ordinance.

5. The City Engineer shall state on the permit the activity for which the permit is issued and any restrictions or requirements that have been placed upon the permit.
6. All construction and installation in the Public Rights-of-Way shall be in accordance with the permit issued for the Facilities. The City Engineer shall be provided access to the work and to such further information as he may reasonably require to ensure compliance with the permit.
7. A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the City Engineer at all times when construction or installation work is occurring.
8. The Agency or Public Infrastructure Contractor shall update any new information on permit applications within ten (10) days after any change occurs.
9. Joint Applications. Agencies or Public Infrastructure Contractors may apply jointly for permits to work in Public Rights-of-Way at the same time and place.

B. Types of Permits:

1. Standard Permits

- a. A Standard Permit is required whenever a cut or excavation, including borings and directional drilling, is made in a Public Right-of-Way.
- b. Application for a standard permit shall be made no less than two (2) City of Wylie working days prior to the date of the proposed activity. If the proposed cut or excavation is to be made in the Public Rights-of-Way dedicated to the State of Texas, a City permit is required in addition to any and all permits required by the State. A City permit is required although specific authority has been granted by the Engineering Department to cut a paved street, curb or alley as a part of a new construction project.

2. Maintenance Permits

- a. A Maintenance Permit is allowed whenever setting poles or work is being done in or on a Thoroughfare and no cut or excavation is required.

- b. Application for a Maintenance Permit must be submitted no later than the business day prior to the date of the proposed maintenance work. Applications may be submitted in person or via fax or e-mail to the Engineering Department.
3. Permits Issued under Emergency Conditions. Any Agency or Public Infrastructure Contractor maintaining Facilities in the Public Rights-of-Way may proceed with repairs upon existing Facilities without a Standard or Maintenance Permit when emergency circumstances demand that the work be done immediately. If emergency work requires more than 12 hours to complete, the Agency or Public Infrastructure Contractor doing the work shall notify:
 - a. the City's police department by telephone immediately; and
 - b. the Engineering Department no later than the next business day by telephone, fax, or e-mail when an emergency permit is required. A permit application must be submitted no later than the next business day after the work is commenced.
- C. Denial, Suspension, or Revocation of a Permit
1. Denial of a Permit. A permit may be denied for any one of the following reasons:
 - a. The proposed activity will substantially interfere with vehicular or pedestrian traffic and no procedures, or procedures which are inconsistent with this Ordinance, have been implemented to minimize the interference.
 - b. The proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing Facilities already in the Public Right-of-Way.
 - c. The proposed barricading, channelizing, signing, warning or other traffic control procedures or equipment do not comply with the requirements of the *Texas Manual on Uniform Traffic Control Devices*.
 - d. The activity or the manner in which it is to be performed will violate a City ordinance or regulation or a state or federal statute or regulation.
 - e. The Agency or Public Infrastructure Contractor:

- (1) Does not have liability insurance as required by Section 12-12;
 - (2) Has consistently failed to perform in accordance with the requirements of this Ordinance;
 - (3) Has failed to furnish all of the information required by this Ordinance or, except for good cause shown, to file the applications within the time prescribed by this Ordinance;
 - (4) Has misrepresented or falsified any information in the applications;
 - (5) Has failed to comply with the Performance Warranty/Guarantee as provided in this Ordinance;
 - (6) Has outstanding debts to the City; or
 - (7) Is not in compliance with applicable requirements of an existing permit issued under this Ordinance.
- f. The Agency or Public Infrastructure Contractor requests to cut a City-maintained street that can be crossed by jacking, boring or tunneling.
- g. There is a lack of available space.
- h. The activity would cause a public health or safety hazard.
2. Suspension or Revocation of a Permit. The City Engineer may suspend by stop work order or revoke any or all permits granted to allow work in the Public Rights-of-Way on the same grounds on which a permit may be denied under this Subsection C or for the following reasons and subject to the procedural guidelines noted in this Ordinance and any agreement that applies to the Agency or Public Infrastructure Contractor using the Public Rights-of-Way, as well as any limitations imposed by federal, state or local law:
- a. Failing to comply with an order of the City Engineer;
 - b. The recognition that a permit was issued in error;
 - c. Failing to comply with restrictions or requirements placed on the permit by the City Engineer; or
 - d. Violating any provision of this Ordinance.

3. Automatic Revocation of a Permit. If no work has begun on a permitted project within thirty (30) calendar days of issuance of the permit, the permit shall be null and void, and a new permit shall be required.
4. Extension of a Permit. A sixty (60) day extension to a permit may be granted if requested by the Agency or Public Infrastructure Contractor in writing to the Engineering Department. Such a request must be made before the permit expires. If no call for the cancellation of a permit or for an inspection is received within the sixty (60) day extension period, the permit shall be null and void, and a new permit shall be required.
5. The City Engineer shall provide written notice of a denial, suspension or revocation to the Agency or Public Infrastructure Contractor. Construction that is suspended may not resume until the City Engineer determines that the Agency or Public Infrastructure Contractor has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been denied or revoked may be issued or reinstated by the City Engineer if the City Engineer determines that:
 - a. The Agency or Public Infrastructure Contractor has corrected the violation, noncompliance, or hazard that caused the revocation or denial; and
 - b. The health or safety of the public is not jeopardized by reinstating or issuing the permit.
6. An Agency or Public Infrastructure Contractor may appeal a permit denial, suspension, or revocation in accordance with the provisions of Section 1-11 of this Ordinance.
7. Any variance from the requirements of this Ordinance must be approved in advance by the City Engineer. The City Engineer may grant a variance only if an extreme hardship exists and the public health, safety, welfare, and convenience is not adversely affected by granting the variance. The City Engineer may not approve any variance that would give a competitive advantage to one Agency over another Agency providing the same or similar service. The City Engineer may not grant a variance from the indemnity requirements of Section 1-14.

Sec. 1-11. Appeals.

- A. Applicability. Appeals may be filed pursuant to this Section for decisions of the City Engineer related to the denial, suspension, or revocation of a permit. However, the appeal process provided by this Section shall not be available for criminal violations of this Ordinance.

- B. Appeal to City Manager. A permittee may appeal decisions made by the City Engineer by filing a written appeal with the City Manager within seven (7) working days of receipt of denial, suspension, or revocation of the permit. An appeal filed pursuant to this Section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this Ordinance.
- C. Issuance of Decision by City Manager. Decisions of the City Manager shall be issued within seven (7) working days of receipt of the written appeal.
- D. Appeal to City Council. A permittee may appeal a decision made by the City Manager to the City Council by filing a written appeal with the City Secretary within five (5) working days of the date of the City Manager's decision. An appeal filed pursuant to this Section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this Ordinance. If reasonably possible, and to the extent allowed by law, an appeal to the City Council will be placed on the City Council's agenda for the next regularly scheduled meeting. Decisions of the City Council shall be final.

Sec. 1-12. Insurance requirements.

- A. Agencies. Each Agency applying for a permit shall obtain, maintain, and provide proof of each of the following types of insurance and coverage limits. These insurance policies shall be underwritten by insurance companies with an A.M. Best Rating of A VI or better.
1. Commercial General Liability on an occurrence form with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate. This coverage shall include the following:
 - a. Products/Completed Operations to be maintained for one year.
 - b. Personal and advertising injury.
 - c. Owners and contractors protective liability.
 - d. Explosion, Collapse, or Underground (XCU) hazards.
 2. Automobile liability coverage with a minimum policy limits of One Million Dollars (\$1,000,000) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
 3. Workers Compensation and Employers Liability Coverage. Statutory coverage limits for Coverage A and Five Hundred Thousand Dollars (\$500,000) Coverage B Employers Liability is required.
- B. Public Infrastructure Contractors. Each Public Infrastructure Contractor applying for a permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in Subsection A above; however, the policy limits under the General Liability insurance shall be One Million Dollars

(\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. All other coverages provisions outlined in Subsection A above shall apply.

- C. An Agency or Public Infrastructure Contractor that has registered and filed proof of insurance under Section 1-12 of this Ordinance is not required to furnish separate proof of insurance under this Section when obtaining a permit but must comply with all other requirements of this Section.
- D. The preferred method for proof of insurance is the Accord form Certificate of Insurance.
- E. The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Manager determines that changes in statutory law, court decisions, or the claims history of the industry, the Agency or Public Infrastructure Contractor require adjustment of the coverage.
- F. The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City.
- G. The Agency or Public Infrastructure Contractor shall furnish, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this Section to the City. If the City requests a deletion, revision or modification, the Agency shall exercise reasonable efforts to pay for and accomplish the change.
- H. The Agency or Public Infrastructure Contractor shall file and maintain proof of insurance with the Engineering Department. An insurance certificate obtained in compliance with this Section is subject to City approval. The City may require the certificate to be changed to reflect changing liability limits. An Agency or Public Infrastructure Contractor shall immediately advise the City Attorney of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify the City.
- I. Such insurance shall be kept in full force and effect during the period of time for which a permit shall be issued or the space occupied. Proof of insurance coverage must be available on a "per project" basis.
- J. An insurer has no right of recovery against the City. The required insurance policies shall protect the Agency or Public Infrastructure Contractor and include the City as an additional insured. The insurance shall be primary coverage for losses covered by the policies.
- K. The policy clause "Other Insurance" shall not apply to the City.

- L. The Agency or Public Infrastructure Contractor shall pay premiums and assessments. A company that issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by an Agency or Public Infrastructure Contractor must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.
- M. Each policy must include a provision that requires the insurance company to notify the City in writing at least thirty (30) days before canceling or failing to renew the policy or before reducing policy limits or coverages.
- N. The insurance requirements of this Section do not apply to an Agency operating Facilities or performing construction pursuant to a valid existing franchise or license approved by the City.

Sec. 1-13. Performance warranty/guarantee.

- A. Any warranty made hereunder shall serve as security for the performance of work necessary to repair the Public Rights-of-Way if the Agency or Public Infrastructure Contractor fails to make the necessary repairs or to complete the work under the permit.
- B. The Agency or Public Infrastructure Contractor, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and warrants and guarantees all work done for a period of one (1) year and agrees to maintain upon demand and to make all necessary repairs during the one-year period. This warranty shall include all repairs and actions needed as a result of:
 - 1. Defects in workmanship;
 - 2. Settling of fills or excavations;
 - 3. Any unauthorized deviations from the approved plans and specifications;
 - 4. Failure to barricade;
 - 5. Failure to clean up during and after performance of the work;
 - 6. Restoration of improvements including, but not limited to, landscaping and irrigation; or
 - 7. Any other violation of this Ordinance or the ordinances of the City.
- C. The one-year warranty period shall run from the date of the City's acceptance of the work which shall be the date of the letter of acceptance issued by the City to the Agency or Public Infrastructure Contractor. If repairs are required during the one-year warranty period, those repairs need only be warranted until the end of the initial one-year period starting with the date of acceptance. It is not necessary that a new one-year warranty be provided for subsequent repairs after probationary acceptance.

- D. At any time prior to completion of the one-year warranty period, the City may notify the Agency or Public Infrastructure Contractor of any needed repairs. Such repairs shall be completed within 24 hours if the defects are determined by the City to be an imminent danger to the public health, safety, and welfare. Non-emergency repairs shall be completed within fifteen (15) calendar days after notice.

Sec. 1-14. Indemnification.

- A. To the extent authorized by law, each Agency or Public Infrastructure Contractor placing Facilities in the Public Rights-of-Way shall agree to promptly defend, indemnify, and hold the City harmless from and against all damages, costs, losses, or expenses (i) for the repair, replacement or restoration of City's property, equipment, materials, structures, and Facilities that are damaged, destroyed, or found to be defective as a result of the Agency's or Public Infrastructure Contractor's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any Agency or Public Infrastructure Contractor (including, but not limited to, any Person, its agents, officers, employees, and subcontractors, City's agents, officers, and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, damage to property or loss of income or wages to any Person (including, but not limited to, the agents, officers, and employees of the Person, Person's subcontractors and City, and third parties), arising out of, incident to, concerning, or resulting from the negligent or willful act or omissions of the Agency or Public Infrastructure Contractor, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this Ordinance.
- B. An Agency that is a certificated telecommunications provider as defined in Chapter 283 of the Texas Local Government Code, as amended, agrees to give to the City the indemnity provided in Section 283.057, Texas Local Government Code, as amended.
- C. This indemnity provision shall not apply to any liability resulting from the negligence or willful misconduct of the City, its officers, employees, agents, contractors, or subcontractors.
- D. The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity.

Sec. 1-15. General rights-of-way use and construction.

- A. Minimal Interference. Work in the Public Rights-of-Way shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Agency's or Public Infrastructure

Contractor's Facilities shall be constructed or maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other Facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Agency's or Public Infrastructure Contractor's Facilities shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic.

B. Responsibilities Under Permit; Location of Facilities.

1. A permit does not relieve an Agency or Public Infrastructure Contractor of the responsibility to coordinate with other utilities and to protect existing facilities. An Agency or Public Infrastructure Contractor working in the Right-of-Way is responsible for obtaining line locates from all affected utilities or others with facilities in the Right-of-Way prior to any excavation. Use of the Geographic Information System or the plans of record does not satisfy this requirement.
2. In performing location of Facilities in the Public Rights-of-Way in preparation for construction under a permit, Agency or Public Infrastructure Contractor shall compile all information obtained regarding its or any other Facilities in the Public Rights-of-Way related to a particular permit and shall make that information available to the City in a written and verified format acceptable to the City Engineer.
3. Protection of Utilities. Before beginning excavation in any Public Right-of-Way, an Agency or Public Infrastructure Contractor shall contact the Texas One-Call System or any other company operating under the One-Call Statute and, to the extent required by Chapter 251 of the Texas Utilities Code, make inquiries of all ditch companies, utility companies, districts, local government departments, and all other agencies that might have Facilities in the area of work to determine possible conflicts.
 - a. Field locations shall be marked prior to commencing work. The Agency or Public Infrastructure Contractor shall support and protect all pipes, conduits, poles, wires, or other apparatus that may be affected by the work from damage during construction or settlement of trenches subsequent to construction.

C. Underground Construction and Use of Poles.

1. As required by the Subdivision Ordinance of the City and the Comprehensive Zoning Ordinance and when required by general ordinances, regulations or rules of the City or applicable State or Federal law, Agency's or Public Infrastructure Contractor's new Facilities within subdivisions shall be placed underground at Agency's or Public Infrastructure Contractor's expense. Agencies and Public Infrastructure Contractors may require developers or other third parties to bear this expense. Placing Facilities underground does not preclude the use of ground-mounted appurtenances. Related equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules, including all visibility easement requirements. In areas where existing Facilities are aerial, the Agency or Public Infrastructure Contractor may install aerial Facilities if doing so does not violate any other City ordinance.
 2. The City will not require existing Facilities to be placed underground.
 3. For above-ground Facilities, the Agency shall utilize existing poles wherever possible. Facilities shall be maintained in an appropriate manner.
 4. Should the City desire to place its own Facilities in trenches or bores opened by the Agency or Public Infrastructure Contractor, the Agency or Public Infrastructure Contractor shall cooperate with the City in any construction by the Agency or Public Infrastructure Contractor that involves trenching or boring, provided that the City has first notified the Agency or Public Infrastructure Contractor in some manner that it is interested in sharing the trenches or bores in the area in which the Agency's or Public Infrastructure Contractor's construction is occurring. The Agency or Public Infrastructure Contractor shall allow the City to place its Facilities in the Agency's or Public Infrastructure Contractor's trenches and bores, provided the City incurs a pro-rata share of costs to any increase in cost of the trenching and boring. The City shall be responsible for maintaining its respective Facilities buried in the Agency's or Public Infrastructure Contractor's trenches and bores under this paragraph.
- D. Joint Trenching. The Public Rights-of-Way have a finite capacity for containing Facilities. The City Engineer may require an Agency or Public Infrastructure Contractor to share trench space to minimize the disruption of vehicular or pedestrian traffic.
1. All Facilities shall meet any applicable local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Agency or Public Infrastructure Contractor and the other joint user. Agency or Public

Infrastructure Contractor may, at its option, correct any attachment deficiencies and charge the joint user for its costs.

- E. Excavation Safety. On construction projects in which excavation will exceed a depth of five (5) feet, the Agency must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with State law and Occupational Safety and Health Administration (OSHA) standards and regulations.
- F. Erosion Control. The Agency shall be responsible for storm water management erosion control that complies with city, state and federal guidelines. All installations shall be in accordance with the design and construction standards adopted by the City of Wylie, as amended, unless an alternative location has been approved by the City Engineer.
- G. On-Site Requirements. Agencies and Public Infrastructure Contractors subject to this Ordinance must have a minimum of one English-speaking representative at the site where work is being performed at all times. Additionally, each of Agency's or Public Infrastructure Contractor's vehicles shall bear a sign identifying the Agency or Public Infrastructure Contractor that owns the vehicles.

Sec. 1-16. No directional boring zones.

In the City, the public infrastructure must be maintained and protected by all Agencies and Public Infrastructure Contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no Person, Agency, or Public Infrastructure Contractor will be allowed to directionally bore within five feet longitudinally with water mains that are larger than twelve inches (12") and sewer mains that are twelve inches (12") or larger unless approved by the City Engineer. The installation of Facilities in the Public Rights-of-Way or easements will be installed by open excavation to assure the protection of the City's water and sewer system, unless approved by the City Engineer. The City has available mapping that identifies such mains. The Agency or Public Infrastructure Contractor is responsible for obtaining and using this information in the design of new Facilities.

**Sec. 1-17. Joint planning and construction; coordination of excavations.
(Reserved)**

Sec. 1-18. Minimizing the impacts of work in the rights-of-way.

- A. Noise, Dust, Debris, Hours of Work. Each Agency and Public Infrastructure Contractor shall conduct work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the work, the Agency or Public

Infrastructure Contractor shall take appropriate measures to reduce noise, dust, and unsightly debris. Except in an emergency or as provided in Section 1-20 Traffic Control, permitted work shall be done between the hours of 6:00 a.m. and 7:00 p.m., Monday through Saturday. Permitted work that needs to be performed outside the above work hours must be approved by the City Engineer in writing, twenty-four (24) hours in advance.

B. Trash and Construction Materials.

1. Each Agency and Public Infrastructure Contractor shall maintain the work site so that:
 - a. Trash and construction materials are contained so that they are not blown off of the construction site.
 - b. Trash is removed from a construction site often enough so that it does not become a health, fire, or safety hazard.
 - c. Trash dumpsters and storage or construction trailers are not placed in the street without written approval of the City Engineer.
2. Agency or Public Infrastructure Contractor must comply with applicable local, state, and federal regulations concerning trash disposal when working in the Public Rights-of-Way.

C. Deposit of Dirt and Material on Roadways. Each Agency and Public Infrastructure Contractor shall eliminate the tracking of mud or debris upon any street or sidewalk. Equipment and trucks used during construction, excavation, or work activity shall be cleaned of mud and debris prior to leaving any work site.

D. Protection of Trees and Landscaping. Each Agency and Public Infrastructure Contractor shall protect trees, landscape, and landscape features as required by the City and shall be responsible for supplemental maintenance and watering during construction and until restoration is complete and in accordance with the performance warranty made by the Agency or Public Infrastructure Contractor under this Ordinance. All protective measures shall be provided at the expense of the Agency or Public Infrastructure Contractor.

E. Protection of Paved Surfaces from Equipment Damage. Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles with grousers are not permitted on paved surface unless specific precautions are taken to protect the surface. Agency or Public Infrastructure Contractor shall be responsible for any damage caused to the pavement by the operation of such equipment and shall repair such surfaces. Failure to do so will result in the use of the Agency's or Public Infrastructure

Contractor's performance warranty/guarantee by the City to repair any damage, and, possibly, the requirement of additional warrantee(s).

- F. Protection of Property. Each Agency and Public Infrastructure Contractor shall protect from injury any Public Rights-of-Way and adjoining property by providing adequate support and taking other necessary measures. Agency or Public Infrastructure Contractor shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the work and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the Public Rights-of-Way.
- G. Clean-Up. As the work progresses, all Public Rights-of-Way and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All clean-up operations shall be done at the expense of the Agency or Public Infrastructure Contractor. Agency or Public Infrastructure Contractor shall restore any disturbed area to its original condition.
- H. Vehicle Parking. Each Agency and Public Infrastructure Contractor shall make provisions for employee and construction vehicle parking so that neighborhood parking adjacent to a work site is not impacted.
- I. Walkways. Each Agency and Public Infrastructure Contractor shall maintain an adequate and safe unobstructed walkway around a construction site or blocked sidewalk in conformance with City Code.

Sec. 1-19. Facility locations.

- A. All Facilities in new developments shall be located in accordance with the design and construction standards adopted by the City of Wylie, as amended, unless an alternative location has been approved by the City Engineer. Such utility locations are hereby adopted as standard locations for utilities in new developments. The intent of these items is that they serve as a standard, not only to Agencies and Public Infrastructure Contractors working under City permit, but also to all City agencies whose routine business requires the installation, repair or relocation of utilities.
- B. New Facilities to be installed in previously developed streets should be located in accordance with the design and construction standards adopted by the City of Wylie, as amended. If that location is already being used by another Facility, the new Facility shall be located such that it does not interfere with other Facilities, both existing and future. With the exception of street lights, no new Facilities shall be located longitudinally in a median or under existing or proposed pavement. No overhead Facilities shall be placed in streets or Thoroughfares. The City Engineer shall have final decision over the location of all Facilities located in Public Rights-of-Way.

- C. Guy wires, anchors, pedestals, boxes, and other above ground Facilities shall not encroach within a sidewalk area, including a vertical clearance of seven and one-half (7.5) feet above the sidewalk. No above-ground Facilities shall be located closer than three (3) feet from the back of street curbs or edge of alley or within the sight visibility area unless approved by the City Engineer.
- D. Above-ground Facilities such as pedestals, switching boxes and similar Facilities shall be located no less than three (3) feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway or alleys. They shall also not be located in front of residential lots creating an unreasonable visual or aesthetic impairment for the property owner. Above-ground Facilities located in Public Rights-of-Way shall be no larger than six (6) feet wide by four (4) feet six (6) inches high by two (2) feet deep. In the event that an Agency or Public Infrastructure Contractor needs to install above-ground Facilities that are larger than such size for traffic signals, street lights, etc., approval of the City Engineer is required. All other such Facilities larger than the size previously stated in this paragraph shall be considered buildings and must be placed on private property and comply with all requirements of the City's Building Code, including receipt of a building permit prior to installation.
- E. Temporary utilities may be located in non-standard locations, if written approval of the City Engineer is obtained in advance. Paragraph A above shall govern, if applicable. For purposes of this section, a temporary utility is any Facility, as defined, that is installed for a period of not greater than sixty (60) calendar days and is subsequently removed by the responsible owner of the Facility.

Sec. 1-20. Traffic control.

- A. When it is necessary to obstruct traffic four more than four hours, a traffic control plan shall be submitted to the City Engineer prior to starting construction, except in an emergency. No permit will be issued until the traffic control plan is approved by the City Engineer. No Agency or Public Infrastructure Contractor shall block access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital equipment unless the Agency or Public Infrastructure Contractor provides the City with written verification of written notice delivered to the owner or occupant of the facility, equipment, or property at least 48 hours in advance. If a proposed construction project is to be made in the Public Right-of-Way dedicated to the State of Texas, a City permit shall be required in addition to any and all permits required by the State.
- B. When necessary for public safety, the Agency or Public Infrastructure Contractor shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the City Engineer.

- C. Unless approved by the City Engineer or in an emergency, the Agency or Public Infrastructure Contractor shall not impede rush hour traffic on Thoroughfares during the morning or evening rush hours. No construction shall be performed nor shall any traffic lane be closed to traffic during the hours of 6:00 a.m. to 9:00 a.m. or 4:00 p.m. to 7:00 p.m., Monday through Friday, without the written approval of the City Engineer.
- D. Lane closures on Thoroughfares shall be kept to a minimum duration at any time outside of the morning and evening rush hours unless approved by the City Engineer.
- E. Traffic control devices and barricades, as defined in the *Texas Manual on Uniform Traffic Control Devices*, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices and barricades are to be supplied by the Agency or Public Infrastructure Contractor. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights.
- F. The *Texas Manual on Uniform Traffic Control Devices*, or any successor publication thereto, shall be used as a guide for all maintenance and construction signing. The Agency or Public Infrastructure Contractor shall illustrate on the permit the warning and control devices proposed for use. At the direction of the City Engineer, such warning and control devices shall be modified.
- G. The City Engineer may refuse to issue a permit if proposed construction activity will substantially interfere with vehicular traffic flow on Thoroughfares or is inconsistent with procedures of this Ordinance.

Sec. 1-21. Requirements for street cuts and repairs.

- A. Except in the case of an emergency, which is governed by Section 1-10(B)(3) of this Ordinance, when a street or sidewalk cut is required, the permittee must obtain a Standard Permit from the City Engineer. All requirements of the City's Engineering Department shall be followed. Repairs of all street and sidewalk cuts must be made promptly and in such a manner as to avoid a hazard to vehicular and pedestrian traffic until permanently repaired.
 - 1. When emergency repairs are deemed necessary by the City Engineer to correct a situation that is hazardous to the public, the Agency or Public Infrastructure Contractor that is responsible for the cut shall be notified immediately. If the Agency or Public Infrastructure Contractor does not provide an acceptable schedule for making the emergency repair within six (6) hours of being notified, the repairs will be performed by the City, and the Agency or Public Infrastructure Contractor will be billed for the actual cost of the repairs necessary to complete the project, which shall

include clean up and the cost of removing City employees and/or workers from other projects.

2. Agency or Public Infrastructure Contractor will be required to maintain the interim cut repair until they have completed final repairs.
 3. Traffic bearing steel plates shall be utilized on all concrete paving cuts until required curing is accomplished. Asphalt shall be used to provide smooth ramps at the edges. Plates or asphalt may be used for temporary repairs.
- B. All damage caused directly or indirectly to the street surface or subsurface outside the pavement cut area shall be regarded as a part of the street cut. These areas, as established by the City Inspector, will be included in the total area repaired.
- C. The Agency or Public Infrastructure Contractor shall notify the Public Works Department immediately of any damage to other utilities, either City- or privately-owned.
- D. Construction Standards and Methods:
1. The design and construction standards adopted by the City of Wylie, as amended, shall govern the cutting and restoration of street and alley pavements in the City. These requirements shall apply equally to any Person, Public Infrastructure Contractor, Agency or City department who makes cuts and repairs to streets and alleys in the City of Wylie.
 2. Permanent repairs of utility cuts in existing streets, alleys or easements will be completed by the Agency or Public Infrastructure Contractor within fourteen (14) calendar days of beginning the work. If an Agency or Public Infrastructure Contractor does not believe that it will be able to meet this schedule, the Agency or Public Infrastructure Contractor must contact the City Engineer concerning an alternative schedule for the repairs. Any alternative schedule must be approved by the City Engineer prior to the beginning of the work. The Agency or Public Infrastructure Contractor will be responsible for any maintenance of the repair for a period of one (1) year after the repair is complete. Failure to do so will result in the use of the Agency's or Public Infrastructure Contractor's performance warranty/guarantee by the City to repair any damage, and, possibly, the requirement of additional warrantee(s) and/or the denial of future permits.
 3. Steel plates left in the right-of-way after repairs are completed will be removed by the City and become the City's property.

4. Excavation in street or alley pavements should begin with an air-hammer shovel, a pavement breaker or other equipment that will not damage the pavement outside an approximate width of the ditch prior to beginning trenching operations. All street excavations will be saw cut before the street is repaired. Full depth saw cuts are required.
5. If the excavation is to pass under where the curb is installed without dummy/expansion joint, the Agency or Public Infrastructure Contractor may saw cut a smooth line one (1) foot beyond each side of the disturbed base. If no damage to curb is evident to the City Inspector, the Agency or Public Infrastructure Contractor may pump concrete under curb and gutter on cuts less than one (1) foot wide. The City Inspector will make this determination prior to concrete being placed under existing curb and gutter.

Sec. 1-22. Standards for repair and restoration.

- A. Agency or Public Infrastructure Contractor Responsibility. The Agency or Public Infrastructure Contractor shall be fully responsible for the cost and actual performance of all work in the Public Rights-of-Way. The Agency or Public Infrastructure Contractor shall do all work in conformance with any and all engineering regulations, construction specifications, and design standards adopted by the City. These standards shall apply to all work in the Public Rights-of-Way unless otherwise indicated in the permit.
- B. All restoration shall result in a work site condition equal to or better than the condition in which the site existed prior to construction. Restoration must be approved by the City Engineer. In addition to the regulations, specifications, and standards referred to in Subsection A above, the following provisions shall apply to work in the Public Rights-of-Way of the City:
 1. Restoration must be to the reasonable satisfaction of the City Engineer. The restoration shall include, but not be limited to:
 - a. Replacing all ground cover with the type of ground cover damaged during work or better by sodding, as directed by the City;
 - b. Installation of all manholes and handholes, as required;
 - c. Backfilling of all bore pits, potholes, trenches or any other holes which must be done within seven (7) days after excavation of the bore pits, potholes, trenches or other holes, unless other safety requirements are approved by the City Engineer;
 - d. Leveling of all trenches and backhoe lines;

- e. Restoration of excavation site to City specifications;
 - f. Restoration of all landscaping, trees, shrubs, ground cover, and sprinkler systems; and
 - g. Repairing and replacing existing erosion control devices that have been damaged or destroyed as a part of the work.
2. All locate flags shall be removed during the clean up process by the Agency or Public Infrastructure Contractor at the completion of the work.
 3. Restoration must be made in a timely manner as agreed upon by the City Engineer and the Agency or Public Infrastructure Contractor. If restoration is not satisfactory and/or is not performed within the agreed upon timeframe, all work in progress, except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any permits not approved until all restoration is complete, or the City may complete the work and bill the Agency or Public Infrastructure Contractor for the repairs performed by the City.

Sec. 1-23. Construction and restoration standards for newly constructed or overlaid streets.

- A. No Agency or Public Infrastructure Contractor shall cause an open trench excavation or potholing of Facilities in the pavement of any Public Right-of-Way for a period of three (3) years from the completion of construction or resurfacing except in compliance with the provisions of this Section or as approved by the City Engineer.
- B. Criteria for Approval. No permit for excavation in the Right-of-Way of new streets shall be approved unless the City Engineer finds that all of the following criteria have been met:
 1. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts.
 2. Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable.
 3. The proposed excavation cannot reasonably be delayed until after the three-year deferment period has lapsed.
- C. Exemptions for Emergency Operations. Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer service. Agencies or Public Infrastructure Contractors with prior authorization from the City Engineer to perform emergency

maintenance operations within the Public Rights-of-Way shall be exempted from this Section. Any Agency or Public Infrastructure Contractor commencing operations under this Section shall submit detailed engineering plans, construction methods, and remediation plans no later than the next business day after initiating the emergency maintenance operation.

- D. Construction and Restoration Standards for Newly Constructed or Overlaid Streets and Alleys. The streets shall be restored and repaired in accordance with design and construction standards adopted by the City and guaranteed in accordance with Section 1-13.

Sec. 1-24. Relocation of facilities for public improvements.

- A. In the exercise of governmental functions, the City has first priority over all other users of the Public Rights-of-Way. The City reserves the right to lay sewer, water, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in aerial Facilities in, across, along, over, or under a public street, alley, or Public Rights-of-Way occupied by an Agency or Public Infrastructure Contractor, and to change the curb, sidewalks, or the grade of streets.
- B. The Agency or Public Infrastructure Contractor must relocate its Facilities at its own expense prior to the start of construction of a City project for street widening, street straightening, other City project that is deemed to be essential for the public's health, safety or welfare. Failure to comply with this provision shall subject the Agency or Public Infrastructure Contractor to the enforcement provisions contained herein.
- C. Registration and a permit will be required when making Facility adjustments in preparation for City projects.

Sec. 1-25. "As Built" Plans.

- A. Right-of-Way users will provide the City Engineer with "As Built" plans within ninety (90) days of completion of Facilities in the Right-of-Way. The plans shall be provided to the City in a format used in the ordinary course of user's business to the extent they are prepared in the ordinary course of business.

- B. The City Engineer may, for good cause, waive all or portions of this requirement. The determination of good cause shall include, but not limited to, assessment of (i) the Right-of-Way user's ability to feasibly and economically remove customer specific, proprietary or confidential information from its plans, and (ii) the Right-of-Ways user's standard business practice relative to the preparation of construction and as-built plans. The City Engineer may reassess waivers from time to time to determine whether a Right-of-Way user's ability to provide as-built plans has changed.

Sec. 1-26. Abandonment and removal of facilities.

- A. If a registration is not renewed, and subject to sixty (60) days notification to the Agency, the City, in its own discretion, may: (i) deem all or a portion of the Facilities to have been abandoned and shall become the property of the City; or (ii) require the Agency or Public Infrastructure Contractor, at the Agency or Public Infrastructure Contractor's sole cost and expense, to remove all or a portion of the Facilities, without interfering with any other Right-of-Way Facility.
- B. Any Agency that intends to discontinue use of any Facilities within the Public Rights-of-Way shall notify the City Engineer in writing of the intent to discontinue use. Such notice shall describe the Facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than thirty (30) days from the date such notice is submitted to the City Engineer. Upon receipt of notice of discontinuance of use the City may: (i) have a right of first refusal to acquire Agency's Facilities, if the Agency has a valid or serious offer to purchase from a third party, at such cost as the offer received from the third party; (ii) accept dedication of the Facilities; or (iii) require the Agency or Public Infrastructure Contractor, at the Agency or Public Infrastructure Contractor's sole cost and expense, to remove all or a portion of the Facilities, without interfering with any other Right-of-Way Facility.

Section II. Savings/Repealing Clause. All provisions of the ordinances of the City of Wylie, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed upon the effective date of this Ordinance, except that nothing contained herein shall be considered as repealing any portion of, or any amendment thereto, the "The Subdivision Ordinance" or any ordinance relating to paving standards of the City of Wylie. All other provisions of the ordinances of the City of Wylie, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect. Any repeal of another ordinance shall not abate any prosecution for violation of the repealed ordinance nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance.

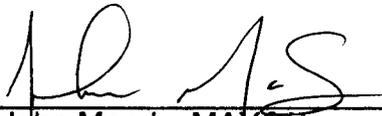
Section III. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed

this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

Section IV. Existing Franchise. If any provision of the Ordinance conflicts with an existing franchise agreement, the franchise agreement shall prevail until the expiration thereof.

Section V. Effective Date. This Ordinance shall become effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 11 day of December, 2001.



John Mondy, MAYOR

ATTEST:



Barbara Salinas, CITY SECRETARY

APPROVED AS TO FORM:

Richard Abernathy, CITY ATTORNEY

