

ORDINANCENO. _____**AN ORDINANCE CONCERNING PAVING CUTS AND EXCAVATION ON TOWN OF HORIZON CITY RIGHT-OF-WAY AND ESTABLISHING THE DESGN STANDARDS FOR CONSTRUCTION; REPEALING ORDINANCENO. 0040; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, REPEALER, AND SEVERABILITY**

WHEREAS, the Ordinance No. 0040 concerning Paving Cuts and Excavation was formally adopted by the City Council on February 11, 1992, to assure and excavation are permitted and properly backfilled, compacted and blacktop replaced with the appropriate material mix; and

WHEREAS, the Town has determined that it is necessary to update the policy and standards for paving cuts and excavation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY:

SECTION 1 – PURPOSE AND APPLICABILITY

The provisions of this ordinance are to assure that all street cuts and excavations conducted by a Person or Utility or its authorized agent, including, but not limited to, any contractor or service provider, within the City’s Right-of-Way are conducted and restored in accordance with the City’s Design Standards for Construction.

SECTION 2 - DEFINITIONS

- A. “City Right of Way” means any street, alley, sidewalk, parkway, or driveway within the right-of-way within the city limits of the Town of Horizon City.
- B. "Design standards for construction" ("DSC") means the most recent edition of the regulations of the Town Engineer providing design standards for the construction or restoration of any cut or excavation in the City Right-of-Way, which may be approved or amended by the City Council by resolution.
- C. “Emergency” means an occurrence or imminent threat of widespread or serious damage, injury to the health or safety of the public, or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, oil spill or other water contamination, epidemic, air contamination, drought,

infestation, explosion, extreme heat, freeze or other public calamity requiring Emergency Work.

- D. "Emergency Work" means those operations and repairs in City Right-of-Way necessary to prevent damage or injury to the health or safety of the public, or any person and the work necessary to address a service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not considered Emergency Work.
- E. "Facilities" means the plant, equipment, and property, including but not limited to lines, poles, valves, mains, pipes, conduit, ducts, cables, and wires located under, on, or above the surface of the ground within the City Right-of-Way, and related facilities and equipment used or useful for the provision of Utility services.
- F. "Normal city work hours" means city workdays from 8:00 a.m. to 3:00 p.m. Saturday, Sunday and official city holidays are not included in city workdays.
- G. "Parkway" means the area of the City Right-of-Way from the back of the curb to the right-of way line.
- H. "Permittee" means the Person, or Utility that has received a permit pursuant to this chapter.
- I. "Person" means an individual, governmental entity or business entity who is the Property owner, or their tenant, contractor, service provider, agent or authorized representative, but not including a Resident as defined herein.
- J. "Property" means a parcel of land having a property or parcel identification number issued by the Central Appraisal District.
- K. "Public Utility" or "Utility" means any privately or publicly owned entity (i) created, operated and/or regulated by federal, state or local law which uses public rights-of-way to furnish to provide certain services to the public, including, without limitation, sanitary sewer, storm water, gas, electricity, water, telephone, wireless, cable television, communications, telecommunications, gas or petroleum products, telegraph, **or** (ii) which operates in the city limits under a franchise from the city or state or pursuant to federal law, together with equipment, structures, and appurtenances, belonging to such entity and located within and near the right-of-way,. Poles are regulated herein only as specifically set forth in this Chapter.

- L. "Resident" means an individual Property owner of a single family residence who is not required to register as a contractor in the City under Ordinance No. ____ or similar ordinance.
- M. "Temporary Traffic Control" means stationary traffic control Work exempt from the requirement to submit a Traffic Control Plan that is performed between 6:00 am and 8:00 pm at one (1) work zone for more than 1 hour within a single daylight period. Such temporary Work will comply with approved design **traffic** control standards (DTSC).
- N. "Traffic Control Plan" means a plan required pursuant to Section 4 describing traffic control measures to be used for facilitating users through a work zone in a City Right-of-Way. Traffic Control Plans for Work that will require closures of City Right-of-Way in excess of one (1) day and which are required under this ordinance shall be signed by an engineer licensed to practice in the state of Texas.
- O. "Work" means any cut or excavation in the City Right-of-Way and/or any construction activities within the City Right-of-Way, including but not limited to public works projects by governmental entities, but shall not include repair and maintenance activity conducted by the Town of Horizon City or its contractors.

SECTION 3 - PERMIT REQUIRED

- A. No Person shall make and perform any Work, or cause to be made, any cut or excavation in or under the City Right-of-Way without having first obtained a permit as required in this chapter. A Permittee who obtains a permit issued pursuant to this chapter which allows sidewalk cuts will not be required to obtain an additional separate sidewalk permit pursuant to the requirements of Ordinance No. 0039.
- B. Every Public Utility having permanent installations in or under streets, alleys, Parkways or any other City Right-of-Way or city owned Property, including all those authorized by local or state law or franchise, or by a special privilege license approved by the city shall obtain permits as required in this ordinance.
- C. A separate permit shall be obtained for each cut (address) or excavation to be made.
- D. When an Emergency occurs that requires an excavation, no permit shall be required prior to beginning Emergency Work needed to respond to the emergency. All other Work shall not proceed until a permit has been issued. The Public Works Director or designee shall be notified of the Emergency as soon as possible. Limitations on hours of work in this Ordinance shall not apply to Work required in response to an Emergency. A permit shall be submitted as soon as possible but no later than noon of the first city business day following the day the Emergency occurred.

- E. Permits shall be required for any public works projects performed by any city, county, state or federal agency, provided that no permit fee shall be required for such projects.

SECTION 4 - PERMIT – APPLICATION AND REQUIREMENTS

- A. The application for the permit required by this chapter shall be made in writing and in person on a form approved by the Public Works Director and shall be signed by the applicant or an individual who is authorized in writing to act as the agent of the applicant. The application and accompanying documentation shall be submitted to the City for the review and approval of the Public Works Director or designee based on the standards set forth in this ordinance and shall include the following:
1. The name, address, telephone numbers and e-mail address of the applicant and the Person or its agent or contractor responsible for performing the Work under the permit, and
 2. Location where the Work will be performed including the street address of the Property or adjacent Property(ies) and the parcel identification number(s) of the Central Appraisal District given to such Property(ies), and
 3. The duration and schedule of the Work, and
 4. The description of the Work, including but not limited to drawings showing the dimensions and characteristics of the proposed cut/excavation and restoration, a plan view of the Work area, cross-sections of the backfill requirements and such other design information as may be required by the Public Works Director or designee, and
 5. A traffic control plan, and
 6. Certificates of insurance and permit bond, and
 7. The one call system verification number for the Work related to the permit, and
 8. The name of the barricade company responsible for setting up the perimeter of the traffic control area, if applicable.
- B. An applicant requesting a permit under this ordinance shall be responsible for contacting the current utility locator service system servicing the area and will be required to furnish a verification number confirming that such request has been made as part of the application for permit. A permit issued under this chapter shall be denied for the failure of the applicant to contact the current utility locator service system servicing the area, and to provide a verification number confirming that such contact has been made by the applicant. This requirement, however, shall create no duty, express or implied, on the part of the city to verify that the applicant notified the current utility locator service system and received a verification number.

SECTION 5 - PERMIT TERMS AND CONDITIONS

- A. A Permittee shall submit Traffic Control Plans at least 14 calendar days before the Work begins. Failure to submit and obtain approval of a traffic control plan for the Work that is subject of a permit issued under this Ordinance shall result in the revocation of a permit issued pursuant to this Ordinance. Traffic Control Plans required for Emergency Work are not subject to the 14 day requirement; however, they shall be submitted at the time of application.
- B. A Permittee shall request appointments for inspections by city inspectors for backfill, two sack, asphalt or concrete placement by calling the Public Works Director or designee. Requests shall be made on or before the city work day prior to the day the Permittee wishes the inspection to take place. Appointments shall be made subject to the availability of the city inspectors. Inspections not performed during normal city work hours shall be subject to the after-hours inspection fee in Section 5.
- C. A Permittee shall begin the permitted Work within thirty (30) consecutive calendar days after the date the permit was issued, and shall pursue completion of the Work with reasonable diligence. In the event that Permittee fails to begin work or reasonably pursue completion, the permit shall expire and a new permit will be required. The permit shall clearly identify the expiration date of the permit. If a Permittee does not complete the Work by the permit expiration date, the Permittee must apply for and may be granted a permit extension for an additional thirty (30) consecutive calendar days. An application for the extension of the term of the permit must be submitted to the city for approval by the Public Works Director or designee prior to the expiration date.

SECTION 5 – FEES, BONDS AND INSURANCE

- A. FEES. The established fees shall be as follows:
 - 1. Permit fee. The permit fee shall be charged for each permit issued, unless exempted in this ordinance. The permit fee shall be paid when the permit is issued, and shall not be refunded.
 - 2. Exemption from payment of permit fee. No permit fee will be charged to a Utility that pays franchise fees under a franchise agreement with the city or pursuant to state law, a Utility exempt for payment of fees under state or federal law, a city departments, or for any public works project performed by a city, county, state, or federal agency (“Exempt Entity”). Contractors applying for a permit to perform Work on behalf of an Exempt Entity shall not be required to pay the permit fee when the applicant provides (a) the Utility’s verification to the City that such contractor is the agent and authorized representative of the Utility for the permit Work, or (b) a governmental entity’s verification that such contractor is the agent or authorized representative working on the county, state, or federal public works project under the permit.
 - 3. Initial inspection fee: The permit fee includes the city's cost of up to three inspections of the permitted Work during normal city work hours by city employees.

4. Permit extension fee: The permit extension fee shall be forty percent (40%) of the original permit fee and shall be charged for each thirty-day extension of the permit. Permit extension fees shall be paid prior to issuance of each extension. No permit extension fee will be charged to Exempt Entities. Each permit extension includes one additional inspection of the permitted Work during normal city work hours by city employees.
 5. Additional inspection fee. Permittees shall pay an additional inspection fee that shall be charged for each inspection by the City that is in addition to the three inspections included in the initial inspection fee and any additional inspections paid for through permit extensions.
 6. After hours inspection fee. An inspection fee for inspections performed by city employees during hours other than normal city work hours shall be charged for a minimum of two hours and any portion of an hour thereafter.
- B. Insurance and Bond requirements. No permit shall be issued under this ordinance to any Person, or Utility applying for a permit until such applicant or its authorized agent has registered with the City as a contractor and has provided the required Bond and Insurance requirements as set forth in Ordinance No. 0069.
1. Applicants who have provided certificates of insurance to the city pursuant to the requirements of an Ordinance other than this Ordinance that meet all of the requirements established in this chapter shall not be required to obtain an additional insurance but are required to provide such certificates of insurance showing present coverage as required in this chapter.
 2. When the Work permitted under this chapter is performed by the employees of a governmental agency, the insurance requirements of this section may be met by providing certification that government agency obtaining the permit is self-insured or the authorized agent is a registered contractor. Any Work permitted under this chapter performed by a contractor acting as an agent or authorized representative of a governmental agency shall provide the insurance required herein.

SECTION 6 – WARRANTY AND MAINTENANCE REQUIREMENT

Any Permittee shall agree and warrant to maintain the excavated area for a period of two (2) years after the completion of the restoration of the City Right-of-Way, as approved by the city. Maintenance of the excavated area shall include the repair of any type of failure, including, but not limited to, the area Permittee was required to repave. Repairs during the warranty period shall meet the standards of the DSC. The city may conduct inspections of the restored area throughout the two-year warranty period and require maintenance and correction of the Work by the Permittee. Failure of the Permittee to correct the Work shall constitute a violation of this chapter.

SECTION 7 - PERMIT—LIMITATIONS

- A. Each permit shall specify the location of each cut or excavation allowed in the permit and the dates during which the City Right-of-Way or any portion thereof may be cut or excavated at each such location. The time for each cut or excavation allowed in the permit shall not exceed thirty consecutive calendar days, provided that if the Work for a cut or excavation is not completed within the time allowed in the permit, the Permittee shall obtain a permit extension. A work schedule for each such location not completed as required in the original permit shall be submitted with the application for the permit extension. Each permit extension shall not be issued for more than thirty consecutive calendar days.
- B. Permits shall not be assignable. No Person or Utility shall use the name of another in obtaining a permit, and no Person or Utility shall allow his name to be used by another in obtaining a permit, except in the case of an authorized agent acting for his principal.

SECTION 8 – EXCAVATION AND CUT LOCATION LIMITATIONS

The Public Works Director or designee may restrict the area in which a cut or excavation may occur. In granting permission for a cut or excavation, the Public Works Director or designee shall consider the need for the proposed cut or excavation, amount of traffic at the location in question and safety factors, including but not limited to the hazards likely to be created by such cut or excavation. The Public Works Director or designee shall have the authority to require a location of the cut or excavation other than the location requested by the applicant when one or more alternative locations are available to the applicant. The Public Works Director or designee's determination of required location shall be based on the following information: the amount and pattern of traffic, nature and condition of the right of way and safety factors, including but not limited to reduced risk to the traveling public.

SECTION 9-- PROTECTIVE MEASURES

- A. While the cut or any part thereof is open, and while any part of the City Right of Way Right-of-Way or City Property is obstructed by rubbish or material, the Permittee shall erect and maintain traffic control devices as required by the standards in the DSC or an approved traffic control plan and shall maintain safe passage for pedestrian and vehicular traffic.
- B. If substantially the full width of any City Right-of-Way or city Property is excavated, the Permittee shall maintain a driveway or walkway across the excavation until the area has been restored and resurfaced. The driveway or walkway, as applicable, shall be specified in the plans submitted with the application for the permit and such driveway and/or walkway shall meet specifications approved by the Public Works Director or designee.
- C. If the Permittee fails to take any protective measures herein required, the Public Works Director or designee may, in his discretion, authorize the Work to be done by city forces or

by contract. Permittee shall pay the city for its costs of protective measures within ten city working days of receiving an itemized statement for such costs.

- D. Steel plates. Requirements for providing and maintaining steel plates are contained in the DSC.

SECTION 10 - SPECIFICATIONS

- A. All Work, including but not limited to cutting of paving, excavation, backfill, bedding, base course and placement and compaction of pavement shall be done pursuant to the standards and specifications in the city's Design Standards for Construction or successor standards for construction in effect at the time of the issuance of the permit or as specified in the permit by the Public Works Director or designee. The DSC governs the construction and restoration of the streets, sidewalks, parkways, driveways, and related infrastructure within the City's Right-of-Way and does not apply to the construction related to Utility infrastructure within the City Right-of-Way.
- B. MINIMUM PATCHING REQUIREMENTS. The minimum area that shall be patched pursuant to the standards in the DSC and any provision specified in the permit, includes:
1. FOR EXCAVATIONS OR CUTS ACROSS THE STREET WITHIN CITY RIGHT-OF-WAY: patching (a) the excavated or cut area; and (b) two feet from each side of the excavation or cut area; and (c) no more than ten feet in each direction from the areas patched pursuant to (a) and (b) of this paragraph, PROVIDED, HOWEVER, that (i) patching need not extend across a median when the excavation does not extend across the median; (ii) if the area patched under (a), (b) and (c) of this paragraph extends into an area that was patched prior to the excavation, the patching required shall be extended to include all of the area of the prior patch, as shown in the illustrations in the DSC; and (iii) that the fifth (5th) cut by the same Person or Utility (or more than five initially or after the repaving of the entire street curb to curb) within a one-block radius, the Work shall include the paving of the City street block from curb to curb that encompasses existing patches within the City block.
 2. FOR EXCAVATIONS OR CUTS ALONG THE LENGTH OF THE STREET WITHIN CITY RIGHT-OF-WAY:
 - a. In traffic lanes:
 - (1) Restoration width.
 - (a) Where the excavated area or cut is not more than fifty percent of the width of the City Right-of-Way the excavated area shall be patched (restored and resurfaced) and the patching shall extend to the next existing original paving joint, provided that patching shall always be no less than to the center of the wheel path in all lanes in which the excavation occurs.

- (b) Where the excavated area or cut is more than fifty percent of the width of the City Right-of-Way the excavated area shall be patched (restored and resurfaced) and the patching shall extend from curb to curb.
- (2) All patching (restoration and resurfacing) shall include the application of an asphalt based sealer consisting of a blend of asphalt, selected mineral fillers and/or acrylics, designed specially to increase the life expectancy of asphalt pavements. The sealer shall be applied in accordance with the specifications in the Design Standards for Construction.
 - b. In parking and other lanes such as bike lanes.

Patching (restored and resurfaced) shall extend two feet from each side of the length of the excavation area or cut and patching to the curb or original paving joint, whichever is the greater distance, provided that patching shall always be not less than to the center of such lane, as shown in the illustrations in the DSC.
- 3. FOR EXCAVATIONS OR CUTS OF OTHER AREAS: The requirements for patching (restoration and resurfacing) other areas within the city parkway, including but not limited to sidewalk and curb repair, are set forth in the DSC.

SECTION 11 – RESPONSIBILITY OF PERMITTEE

- A. The Permittee shall be responsible for, and shall hold the city harmless against, all damages to persons or property resulting from the making or repair of the cut or excavation, whether done by himself or by the city; and the taking out of the permit shall be deemed a contractual acceptance of this obligation by the permittee in a condition of the issuance of the permit. The person making the cut or excavation shall continue to protect it and be responsible for its condition until the Work allowed in the permit is completed as required in the permit.
- B. If the Permittee fails to complete any Work required of him hereunder as promptly as reasonably possible consistently with good construction practice, or if the Permittee fails to take any protective measure required of him by this chapter, the Work may, in the discretion of the Public Works Director or his designee be completed by city forces or by contract whether requested or not; and the proper charge shall be made against the Permittee in accordance with this section.

Failure of a Permittee to comply with the requirements set forth in this Ordinance shall serve as grounds to deny future permit requests by the City.

SECTION 12 – APPEAL

Any applicant or Permittee aggrieved by the decision of the Public Works Director or designee concerning the issuance, denial, revocation or suspension of a permit may appeal such decision to the City Council. A request for an appeal shall be made to the City Clerk within 10 consecutive calendar days of the Public Works Director or designee's decision.

SECTION 13 – AUTHORITY TO ISSUE CITATIONS

The Public Works Director or designee is authorized to enforce the provisions of this Ordinance and shall have the power to issue misdemeanor citations to any persons violating the provisions of this ordinance.

SECTION 14 – VIOLATION – PENALTY

Any Person who shall violate any provision of this ordinance shall, upon conviction, be guilty of a misdemeanor and punished by a fine not exceeding five hundred dollars (\$500.00). Each day the violation occurs shall constitute a separate offense.

SECTION 15. EFFECTIVE DATE

This Ordinance shall become effective at 12:01A.M. MST on January 1, 2018.

PASSED AND ADOPTED this, the ____ day of _____, 2017.

TOWN OF HORIZON CITY

By: _____
Ruben Mendoza, Mayor

ATTEST:

By: _____
Elvia Schuller, City Clerk

APPROVED AS TO FORM:

Bertha A. Ontiveros, Asst. City Attorney