

# Legislative

## Chapter 8 ENCROACHMENTS

- 8-8-1: TITLE AND APPLICATION AND PURPOSE:
- 8-8-2: DEFINITIONS:
- 8-8-3: PERMIT AND FEE REQUIREMENTS:
- 8-8-4: SECURITY INSTRUMENTS:
- 8-8-5: LIABILITY PROTECTION:
- 8-8-6: COMMENCEMENT AND COMPLETION OF ENCROACHMENT:
- 8-8-67: CONSTRUCTION/EXCAVATION ENCROACHMENT REQUIREMENTS AND REGULATIONS:
- 8-8-78: BUS SHELTERS AND BENCHES:
- 8-8-89: RELOCATION AND REMOVAL REQUIREMENTS:
- 8-8-910: PUBLIC SAFETY:
- 8-8-1011: APPEALS OF PERMIT DENIALS:
- 8-8-1112: VIOLATIONS:
- 8-8-13: ENFORCEMENT:
- 8-8-14: SUSPENSION AND REVOCATION OF PERMIT BY CITY ENGINEER:
- 8-8-15: STOP WORK ORDER:
- 8-8-16: ABATEMENT; NOTICE TO SURETY; EXPENDITURE OF CASH GUARANTEE:
- 8-8-17: PENALTIES:

### 8-8-1: TITLE AND APPLICATION AND PURPOSE:

- A. Title: This chapter shall be known and may be cited as the *ENCROACHMENT REGULATIONS OF THE CITY*. (2001 Code § 72-3-101)
- B. Application:
  - 1. The provisions of this chapter shall not apply to any officer or employee of the city in the discharge of his or her official duties.
  - 2. Work performed by any person under contract with, or at the request of, the city shall be exempt from the fee and security requirements of this chapter.
  - 3. The provisions of this chapter shall apply to public rights of way.
- C. Purpose: The purpose of this chapter is to regulate encroachments in the right of way, for the purpose of: 1) minimizing the disruption of traffic, 2) protecting the city's investment in its infrastructure by preserving the serviceable life of its streets, sidewalks, curbs, gutters and other improvements, 3) promoting the efficient flow of traffic, and 4) generally promoting the public safety and welfare of the residents of, and visitors to, the city. Accordingly, all construction and excavation in, and obstruction of, the right of way shall be subject to the procedures and requirements of this chapter. 2001 Code § 72-3-102; amd. 2009 Code; Ord. 14-\_\_, 03-26-2014)

## 8-8-2: DEFINITIONS:

As used in this chapter, the following words and phrases shall have the meanings given in this section:

**APPLICANT:** Any person who proposes to encroach upon a right of way and has applied for a permit for the proposed encroachment pursuant to the provisions of this chapter.

**CITY ENGINEER:** The engineer of the city who shall be so designated by the city council.

**COMPETITIVE UTILITY PROVIDER:** Each person who provides public utility services within the city in competition with one or more persons providing the same or similar services.

**EMERGENCY:** Any unforeseen circumstances or occurrence, the existence of which constitutes a clear and immediate danger to persons or property, or which causes interruption of utility services

**ENCROACH AND ENCROACHMENT:** Going upon, over, under, within, or using or doing work upon, any right of way so as to prevent, obstruct or interfere with the normal use of the right of way. "Encroach" and "encroachment" shall include the performance of any of the following acts on, over, under or within a public right of way:

- A. Excavating or placing embankments or stockpiling any material;
- B. Placing or leaving any rubbish, brush, earth or other material of any nature;
- C. Constructing, placing or maintaining any pathway, sidewalk, curb, gutter, driveway, surfacing, culvert, drainage facility, pipe, conduit or cable;
- D. Erecting or maintaining any post, pole, fence, guardrail, wall, loading platform, or any other structure;
- E. Planting or removing any tree, shrub, grass or growing thing;
- F. Taking, placing, moving or using any vehicle, or combination of vehicles, or other object of a dimension, weight or other characteristic prohibited without a permit by the state transportation code;
- G. Preparing commercial motion or still picture photography;
- H. Locating, drilling or plugging test holes for seismological exploration or any other similar purpose;
- I. Conducting land surveying operations or making traffic counts in such a way that it is necessary to excavate or in any way interfere with the normal flow of traffic;
- J. Construction activity on adjacent public right of way or private property which impacts the public's use of the public right of way; and
- K. ~~An Any unusual event or activity that, which will alter or disrupt traffic, such as a parade or party, a truck haul route in or through the city, or other event.~~

**ENCROACHMENT PERMIT:** A permit issued by the city engineer pursuant to the provisions of this chapter.

**FACILITY OR FACILITIES:** Wires, lines, cables, coaxial cables, conduit, manholes, ducts, pipelines, tunnels, vaults, ditches, tracks, poles, antennas, transceivers, amplifiers, switches, electronic devices, structures or other improvements of any kind or nature, whether fixed or movable.

MAJOR WORK: Any reasonably foreseeable work in the right of way that will: a) affect the right of way for more than ten (10) calendar days, b) involve a street cut of more than one hundred feet (100') in length, or c) involve a street cut of more than two hundred (200) square feet.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD): The latest edition of the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.

NEW STREET: A street that has received new subbase, the reworking of existing pavement or subbase and the application of new surfacing, or the addition of equal to or greater than two inches (2") of new pavement surfacing overlay.

PERMITTEE: A person who proposes to encroach upon a right of way and has been issued a an encroachment permit for the proposed encroachment by the city engineer pursuant to the provisions of this chapter.

PUBLIC HIGHWAY: The part of a right of way which is improved for use as a public road, street, way, lane or alley, including shoulders and excluding park strips and sidewalks.

PUBLIC IMPROVEMENT STANDARDS, SPECIFICATIONS, AND PLANS: The latest version of the engineering regulations, or standard specifications and details for municipal construction published by the city.

RESURFACED STREET: Any street that has received a bituminous pavement overlay, slurry seal, chip seal, fog seal or microsurface application of less than two inches (2") of thickness.

RIGHT OF WAY: Any land, or interest therein, which, by deed, conveyance, agreement, dedication, usage, or other process of law, has been reserved for or dedicated to the city for the use of the general public for public purposes.

TELECOMMUNICATION FACILITIES: All equipment and personal property used in connection with the provision of telecommunication services either within or outside of the City, including without limitation all conduits, wiring, cables, fiber optic cables, switches, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment and related appurtenances.

USER: A person or entity engaging in any lawful activity within the right of way.

WORK ZONE: All affected area(s) within the right-of-way including, but not limited to, the trench area(s), the travel path or route, and all area(s) occupied by equipment, traffic control, storage, spoils and waste material. (2001 Code § 72-3-201; amd. 2009 Code; Ord. 14-\_\_\_, 03-26-2014)

### **8-8-3: PERMIT AND FEE REQUIREMENTS:**

#### **A. Permit Required; Exceptions:**

1. It shall be unlawful for any person, agency or entity to encroach, or to make or cause to be made any encroachment, upon, over, under or within any public right of way in the city without first obtaining a permit from the city engineer.
2. An owner, lessee, or person in control of property under active agricultural use and immediately abutting the right of way may, without obtaining a permit, use the untraveled portion of the right of way abutting such property for the growing and maintenance of agricultural crops and the burning of weeds so long as such use does not interfere with vehicular or pedestrian traffic, or drainage of the right of way.

3. Encroachments for which permits are not required shall be subject to removal by the city under the procedure and penalties set forth in this the code. (2001 Code § 72-3-301)

B. Application Form; Filing:

1. Application shall be ~~on~~ made in a form acceptable to the city engineer, which form and shall contain, at a minimum, the following:

a. The applicant's name and address;

b. The contractor's name, license number, and place of business; and

c. Sufficient detail as, in the judgment of the city engineer, is necessary to show the purpose, location, and dimensions of the proposed encroachment and the Work Zone.

2. The application form shall be completed, signed by the applicant, and filed with the city engineer, together with the fees, security, certificate of insurance, and any other documents required by this chapter or the city engineer. (2001 Code § 72-3-302; amd. 2009 Code)

C. Accompanying Exhibits May Be Required: When required by the city engineer, the applicant shall attach to, or enclose with, the application the following:

1. a plan and profile map, plot, sketch drawing to scale, diagram, or similar exhibit which plainly shows any and all information necessary to locate, delineate, illustrate and identify the proposed encroachment. The scale shall be 1"=50' or less. The city engineer may require the plans to be stamped by a civil engineer licensed in the state of Utah. (2001 Code § 72-3-303; amd. 2009 Code)

2. a traffic control plan that conforms to the latest edition of MUTCD; and

3. a proposed work schedule.

D. Emergency Work:

1. Any person maintaining pipes, lines or other facilities in the right of way may proceed with work upon existing facilities without a permit when emergency circumstances demand the work to be done immediately, provided a permit could not reasonably and practicably have been obtained beforehand.

2. If emergency work is commenced on or within any right of way during regular business hours M-F 8:00 am to 5:00 pm, the city engineer shall be notified within one-half (1/2) hour from the time the work is commenced. The person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall ensure that work is accomplished according to the engineering regulations, Public Improvement Standards, Specification and Plans, the manual on uniform traffic control devices, and other applicable laws, ordinances, regulations and generally accepted industry practices.

3. Any person commencing emergency work in the right of way during non-business hours without a permit shall notify the on-call staff member within one-half (1/2) hour from the time work is commenced and shall also notify the city engineer during the first hour of the first regular business day on which city offices are open for business after such work is commenced.

4. Any user performing emergency work shall be required to apply for a permit, and a permit may be issued, retroactive to the date when the work began.

- ~~D. Schedule Of Fees: The schedule of fees to be paid to the engineering department shall be as adopted by resolution of the city council. (2001 Code § 72-3-304; amd. 2009 Code)~~
- E. Fees; Refunds:
1. Before a permit is issued, the applicant shall pay to the city all fees as adopted by resolution of the city council.
  2. Fees shall not be refunded unless no permit is issued or unless the permit issued is rejected by the permittee because of special conditions imposed therein. Fees shall be refunded without interest, which shall be retained by the city as reimbursement for administrative costs. (2001 Code § 72-3-305; amd. 2009 Code)
  3. Any person found to be causing an encroachment in the right-of-way without having a valid and unexpired encroachment permit shall be required to pay a fee equal to two times the normal encroachment permit fee.
- F. Issuance Of Permit; Denial For Good Cause: Upon receiving an application in the proper form, together with fees, security, and all other required items, the city engineer shall issue a written encroachment permit subject to the conditions set forth in the permit, this chapter, and required by law. The city engineer may deny the permit for good cause shown, including but not limited to the following: (2001 Code § 72-3-306; amd. 2009 Code)
1. The applicant is not a responsible person. In determining whether or not the applicant is a responsible person, the city engineer may consider the reports of other persons as to the applicant's reputation for faithfully completing construction projects; or
  2. The encroachment will not be in the public interest or will be detrimental to the public health, safety or welfare. (2001 Code § 72-3-309)
  3. The applicant does not have a current franchise or similar agreement with the city.
- G. Permittee Acceptance Of Terms And Conditions: By accepting the permit, the permittee agrees to be bound by all the terms and conditions set forth in the permit and in this chapter. (2001 Code § 72-3-307)
- H. Additional Requirements:
1. In addition to the requirements set forth in this chapter, the city engineer may adopt such orders, rules and regulations as are reasonably necessary to accomplish the purposes of this chapter and are consistent herewith.
  2. The city engineer may provide in the encroachment permit any requirements which he or she finds will substantially aid in the protection of the right of way, the improvements therein and the traveling public. The city engineer may establish special provisions for the work to be done under the permit, including but not limited to length of trench, the equipment to be used, the type of backfill, paving, traffic signs or devices, hours of work, flagmen, lights and inspections. The city engineer may add such requirements and conditions by rubber stamp or attachments to the permit, or both, and they shall become an integral part of the permit. (2001 Code § 72-3-308; amd. 2009 Code)
  3. All encroachments shall conform to standards established by the city engineer. (2001 Code § 72-3-610; 2009 Code § 8-8-6J)
- ~~I. Grounds For Denial: The city engineer may refuse to issue a permit on the following grounds:~~

1. The applicant is not a responsible person. In determining whether or not the applicant is a responsible person, the city engineer may consider the reports of other persons as to the applicant's reputation for faithfully completing construction projects; or

2. The encroachment will not be in the public interest or will be detrimental to the public health, safety or welfare. (2001 Code § 72-3-309)

J. Revocation Of Permit:

1. If any of the provisions of the permit or this chapter are violated, a designated enforcement official may issue an emergency order and notice of violation to the permittee, requiring that the permittee correct the violation within twenty four (24) hours of service of the emergency order. The emergency order may also require that all activity associated with the encroachment shall stop until the violation is corrected. If, after twenty four (24) hours from the delivery of the notice, the violation is not corrected or there is no evidence that diligence is being used to correct the violation, the designated enforcement official may revoke the encroachment permit, subject to the right of the permittee to request a hearing according to title 1, chapter 14, article C of this code.

2. Action taken administratively pursuant to the provisions of this section shall not constitute a bar to criminal proceedings provided for in this chapter. (2001 Code § 72-3-310; amd. 2009 Code)

3. All proceedings in connection with a notice of violation and an emergency order may be as provided in title 1, chapter 14, article C of this code.

K.I. Changes In Authorized Work Encroachment: No changes shall be made in the location, dimensions, character or duration of the encroachment as granted by the permit, except on written authorization by the city engineer. (2001 Code § 72-3-311; amd. 2009 Code)

L.J. Display Of Permit: The permittee shall keep any the issued encroachment permit issued pursuant to the provisions of this chapter, or a copy thereof, at the site of the encroachment, or in the cab of the vehicle when movement thereof on a public highway is involved, and the permit shall be shown to any authorized representative of the city engineer or law enforcement officer upon demand. (2001 Code § 72-3-312)

M.K. Nontransferable: The encroachment permit shall not be transferable or assignable to any other person. Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than as specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit, provided however, that the permittee shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this chapter and under said permit. (2001 Code § 72-3-313; amd. 2009 Code)

N.L. Permits To Move Certain Vehicles And Objects:

1. Before a vehicle or combination of vehicles or object of a weight or dimension or characteristic prohibited by law without a permit is moved on any public highway, a permit to do so shall first be granted by the state department of transportation, the state highway patrol, or by the city engineer, as applicable. In all cases where the international building code, as adopted by the city, requires the owner of any premises to obtain a relocation permit to move any building or structure onto the premises, the city engineer shall not grant an encroachment permit for moving such building or structure until the applicant furnishes to the city engineer evidence that such owner has obtained the relocation permit has been obtained.

2. Before issuing a permit for the movement of a vehicle or object with a rolling height of over sixteen feet (16'), the city engineer shall require evidence of approval of height clearance from the public utility companies having overhead lines crossing the proposed route. (2001 Code § 72-3-314; amd. 2009 Code; Ord. 12-10, 4-25-2012, eff. 7-1-2012; Ord. 14-\_\_\_, 03-26-2014)

#### **8-8-4: SECURITY INSTRUMENTS:**

##### **A. Cash Deposits:**

1. Restoration: Unless exempt, each applicant, before obtaining a permit, shall deposit with the city engineer a cash deposit consisting of cash or a certified or cashier's check in a sum to be fixed by the city engineer as sufficient to reimburse the city for restoring the right of way to its original condition. Such cash deposit may be used by the city for traffic control and emergency work on an as needed basis as determined by the city engineer.

2. Time: Where the size, nature, and location of the encroachment warrants, the city engineer may require an additional time completion deposit which shall be held by the city for the duration of the encroachment activity. The permittee shall forfeit to the city a portion of such deposit for each calendar day that the encroachment continues beyond the number of days specified on the encroachment permit. The daily amount to be forfeited shall be as adopted by resolution of the city council resolution. The remainder shall be released within thirty (30) calendar days of the city's receipt of a written request from the permittee. (2001 Code § 72-3-401; amd. 2009 Code)

B. Bonds: In lieu of the cash deposit required by the provisions of subsection A of this section, the applicant, with the approval of the city engineer, may file a surety bond issued by a company authorized to do a general surety business in the state, in an amount fixed by the city engineer as sufficient to reimburse the city for restoring the right of way to its original condition. Where the size and nature of the project warrant, the city engineer may require an additional cash deposit of one thousand dollars (\$1,000) for encroachments in collector and arterial rights of way and five hundred dollars (\$500.00) cash for other encroachments to be used by the city, as needed in the discretion of the city engineer, for traffic control or emergency work. (2001 Code § 72-3-402; amd. 2009 Code)

~~C. Escrow Agreement Or Letter Of Credit: In lieu of the cash deposit required by the provisions of subsection A of this section, the applicant, with the approval of the city engineer, may file an escrow agreement or letter of credit in an amount fixed by the city engineer as sufficient to reimburse the city for restoring the right of way to its original condition. The escrow agreement or letter of credit shall be in a form approved by the city attorney. (2001 Code § 72-3-403; amd. 2009 Code)~~

~~DC. Annual Bonds: In lieu of the submitting a cash deposit, or bond for each encroachment, escrow agreement, or letter of credit required by the provisions of subsections A through C of this section, the applicant may, with the approval of the city engineer, annually file with the city engineer a surety bond issued by a company authorized to do a general surety business in the state, in a sum fixed by the city engineer as sufficient to reimburse the city for restoring the right of way to its original condition, in accordance with the fees adopted by the city council. (2001 Code § 72-3-404)~~

~~E. Insurance Certificates: In addition to any deposit or bond required by the provisions of this chapter, an applicant for a permit to move a vehicle shall file with the city engineer a certificate of insurance, in a form acceptable to the city attorney, issued by a company authorized to do a general insurance business in the state, reflecting coverage in the amounts specified in this chapter, which insurance shall cover restoration of the right of way to its original condition in case of damage caused by moving any vehicle. (2001 Code § 72-3-405; amd. 2009 Code)~~

- ~~FD.~~ Additional Bonds And Cash Deposits: The city engineer may at any time require an additional bond or cash deposit upon finding that the amount of a bond or cash deposit is insufficient to cover the cost of restoring the right of way in accordance with city standards and the fees adopted by the city council. (2001 Code § 72-3-406)
- ~~GE.~~ Release Of Deposits And Bonds: Except as otherwise provided in this chapter any Any deposit or bond required by the city engineer pursuant to the provisions of this chapter shall be payable to or for the benefit of the city and shall be filed or deposited with the city engineer. No less than ~~ninety (90) days~~ three (3) years after the satisfactory completion of all activity associated with the encroachment, and the fulfillment of all conditions of the permit, the city council ~~engineer~~ shall release the deposit or bond upon the application of the permittee. Release shall be in writing, signed by the city ~~manager~~ engineer or designee. (2001 Code § 72-3-407; amd. 2009 Code)
- ~~H.~~ ~~Expiration Date Of Deposits: No bond, insurance, escrow agreement, letter of credit, or other form of indemnification shall be acceptable which bears an expiration date not subject to release by the city. (2001 Code § 72-3-408)~~
- ~~IF.~~ Exemptions To Bond Requirements: Public utilities operating under the jurisdiction of the public utilities commission of the state, utilities holding a franchise from the city, and governmental agencies may be relieved by the city engineer of the obligation of furnishing a restoration bond if the city engineer is satisfied that proper restoration will be made. (2001 Code § 72-3-409; amd. Ord. 14-\_\_\_, 03-26-2014)

### **8-8-5: LIABILITY PROTECTION:**

- A. Liability For Roadway Damages: The permittee shall indemnify the city for any and all damages caused to the right of way or improvements therein as a result of acts or omissions of the permittee or arising out of activities performed pursuant to the encroachment permit. (2001 Code § 72-3-501; amd. 2009 Code)
- B. Nonliability Of City For Damages: The permittee shall indemnify, defend and hold the city harmless from any claims or judgments for damages or other relief against the city as a result of acts or omissions of the permittee or its contractor, or arising out of or related to the encroachment or other operations under the permit, whether the condition giving rise to the claim or judgment was created in whole or in part by the permittee or its contractor. (2001 Code § 72-3-502; amd. 2009 Code)
- C. Liability Insurance: The permittee shall maintain public liability insurance, including, but not limited to, motor vehicle insurance, sufficient to cover any claims for damages for personal injury, including death, and for damage to property which may arise from the encroachment or other operations under the permit, whether such encroachment or other operations are by the permittee, or by any agent, or by anyone directly or indirectly employed by the permittee or permittee's agents. Certificates of insurance shall be filed with the city engineer and shall be subject to approval for adequacy of protection. No permit shall be issued under this chapter unless the applicant has submitted a certificate of insurance from a company authorized to issue insurance in the state, evidencing that the applicant has, at a minimum, comprehensive general liability and property damage coverage, that includes contractual liability coverage, with minimum limits of ~~one~~ two million dollars (~~\$1~~ \$2,000,000.00) for injuries, including accidental death, to any one person; in an amount not less than three million dollars (\$3,000,000.00) on account of injuries sustained in any one accident; and property damage insurance in an amount not less than five hundred thousand dollars (\$500,000.00) for each accident. (2001 Code § 72-3-503)

- D. Responsibility Of Subsequent Owners: All obligations, responsibilities and other requirements of the permittee, as set forth in this chapter, shall be binding on subsequent owners of the encroachment. Each subsequent owner shall be required to apply for and receive an encroachment permit modification, including the new owner's information. (2001 Code § 72-3-504; amd. 2009 Code; Ord. 14-\_\_\_, 03-26-2014)

### **8-8-6: COMMENCEMENT AND COMPLETION OF ENCROACHMENT:**

- A. Time: The permittee shall commence and complete the encroachment as stated in the permit. If the encroachment is not completed within forty-five (45) days or within such shorter time as stated in the permit, the permit shall be void unless, prior to its expiration, the time for completion has been extended in writing by the city engineer. (2001 Code § 72-3-602; 2009 Code § 8-8-6)
- B. Notices Of Commencement: At least 48 hours prior to commencing any encroachment, the permittee shall notify the city engineer of the time of commencement and provide the name, address, telephone number, and license number of the contractor, if any, who will perform work related to the encroachment. Additional time may be required by the city engineer as stated in the encroachment permit. (2001 Code § 72-3-603; 2009 Code § 8-8-6)
- C. Notice Of Completion Of Encroachment: Upon completion of the work, the permittee shall give written notice of completion to the city engineer. The work may be deemed to be incomplete until written notice of completion. (2001 Code § 72-3-604; 2009 Code § 8-8-6)
- D. Delay Of Completion: Failure to complete the encroachment within the time specified in the permit shall be a violation. The time for completion will not be extended if the city engineer finds that delay in commencing or prosecuting the encroachment is caused by lack of diligence on the part of the permittee. (2001 Code § 72-3-608; 2009 Code § 8-8-6)
- E. Inspection Upon Completion: Upon receipt of the notice of completion of the encroachment, the city engineer shall inspect the site of the encroachment within three (3) working days and ascertain whether or not the permittee has complied with all the conditions and requirements imposed in the permit and the provisions of this chapter. The permittee shall be advised in writing of the results of the inspection. If the city engineer determines that the permittee has not complied with all such conditions and requirements in performing the encroachment, the city engineer may order the permittee to correct the work immediately. If the permittee fails to correct the work within ten (10) days after being ordered to do so in writing, the city engineer may correct the work. The permittee shall reimburse the city for the work performed. (2001 Code § 72-3-605; 2009 Code § 8-8-6) (Ord. 14-\_\_\_, 03-26-2014)

### **8-8-6 7: CONSTRUCTION/EXCAVATION ENCROACHMENT REQUIREMENTS AND REGULATIONS:**

- A. Permit Required: Any person desiring to perform any construction or excavation work in the right of way shall first apply for and obtain a permit for such work. It is unlawful for any person to commence work in the right of way until the city engineer has approved the application and until a permit has been issued for such work, except as specifically provided to the contrary in this chapter.
- B. Persons Eligible For Permit: No person shall be eligible to apply for or receive an encroachment permit for construction or excavation, except the following:
1. Contractors licensed by the State as general contractors;
  2. Public utility companies;

3. The city;

4. Local governments, districts, and other political subdivisions of the State;

5. Residents installing, replacing, or maintaining less than five hundred (500) square feet or one hundred (100) linear feet of sidewalk, curb and gutter, driveway approach, or other work approved by the City Engineer, upon a portion of the public right of way adjacent to their residence.

C. Exemptions

1. It is lawful for a city, county, or state employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefor.

2. A permit is not required for hand-digging excavations for installation or repair of sprinkler systems and landscaping within the unpaved areas of the right of way. However, conformance to all city specifications is required.

A.D. Inspections; Charges: If, in the judgment of the city engineer, it appears desirable to maintain an inspector to determine whether work is being done in compliance with the encroachment permit, the city engineer shall assign an inspector, and the permittee shall pay the city in accordance with the fees adopted by resolution of the city council. The provisions of this section shall be applicable to all permittees, including governments, districts and other political subdivisions. (2001 Code § 72-3-601; amd. 2009 Code)

B. Commencement Of Encroachment: The permittee shall commence the encroachment within sixty (60) days from the date of issuance of the permit, unless a different period is stated in the permit. If the encroachment is not commenced within sixty (60) days or within the time stated in the permit, the permit shall be void unless, prior to its expiration, the time for commencement has been extended in writing by the city engineer. (2001 Code § 72-3-602)

C. Notices Of Commencement: Before commencing any encroachment, the permittee shall notify the city engineer of the time of commencement and provide the name, address, telephone number, and license number of the contractor, if any, who will perform work related to the encroachment. (2001 Code § 72-3-603)

D. Notice Of Completion Of Encroachment: The permittee shall complete the encroachment within the time specified in the permit. Upon completion of the work, the permittee shall give a written notice of completion to the city engineer. The work shall be deemed to be incomplete until written notice of completion. (2001 Code § 72-3-604)

E. Inspection Upon Completion: Upon receipt of the notice of completion of the encroachment, the city engineer shall inspect the site of the encroachment within three (3) working days and ascertain whether or not the permittee has complied with all the conditions and requirements imposed in the permit and the provisions of this chapter. The permittee shall be advised in writing of the results of the inspection. If the city engineer determines that the permittee has not complied with all such conditions and requirements in performing the encroachment, the city engineer may order the permittee to correct the work immediately. If the permittee fails to correct the work within ten (10) days after being ordered to do so in writing, the city engineer may correct the work. The permittee shall reimburse the city in accordance with the fees adopted by the city council. (2001 Code § 72-3-605)

E. Project Site Management.

1. The Permittee shall keep the work site and haul routes to and from the work site, clean and free from rubbish, debris and mud at all times.

2. The Permittee shall clean up the work site within twenty four (24) hours after receiving written notice from the City. Should the Permittee not clean up the site as required, the City may perform the cleaning and recover the full cost of cleaning from the Permittee.

F. Compliance With Specifications, Standards And Traffic-Control Regulations.

1. The work performed in the right of way shall conform to the requirements of the engineering regulations, design standards, construction specifications and traffic-control regulations of the city.

2. All excavations shall be conducted in a diligent and expeditious manner resulting in a minimum amount of interference or interruption of street and pedestrian traffic. All-weather pedestrian access to businesses shall be provided. Permittee shall supply barricades or equivalent structures where necessary to provide safe and efficient traffic flow, and to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and the right of way restoration has been completed. From sunset to sunrise, all barricades and excavations must be clearly delineated with adequate lighting. The engineering department, the police department and the fire department shall be notified at least forty eight (48) hours in advance of any planned excavation requiring street closure or traffic detour.

FG. Filing Of Maps And Drawings: Every The city engineer may require any person owning, using, controlling, or having an interest in any pipe, conduit, duct or tunnel under the surface of any right of way for supplying or conveying gas, electricity, communication facilities, water, steam, ammonia or oil, or for any other purpose, shall to file in the office of the city engineer, within sixty (60) days after the complete installation, a corrected set of maps or drawings drawn to a scale of not more than two hundred feet to one inch (200' = 1") fifty feet to one inch (50' = 1") showing the complete installation of all such pipes, conduits, ducts or tunnels. The same shall may be required showing the location in detail of such pipes, conduits, ducts or tunnels when such are abandoned or altered. Maps Scaled maps and drawings submitted periodically by public utilities shall be deemed in compliance with the intent of this section. If required, all maps and drawings shall be submitted in electronic PDF or CAD format. (2001 Code § 72-3-606)

G.H. Completion Of Work; Restoration Of Rights Of Way:

1. Upon completion of an encroachment, the right of way shall be restored by replacing, repairing or rebuilding it to its original condition before the encroachment was commenced, including the completion of any work necessary to restore the right of way to a safe and usable condition as directed by the city engineer. All obstructions, materials and debris upon the right of way shall be removed. Where excavations occur within areas already paved, the city engineer may require temporary paving and temporary traffic markers to be installed within twenty four (24) hours after the excavated area is backfilled.

2. In the event that the right of way is not promptly restored, as provided in this section, or should the nature of any damage to the right of way require restoration before the person performing the encroachment can be notified or can respond to notification, the city engineer may, at his or her option, make the necessary restoration. The permittee shall reimburse the city for the total cost of restoration in accordance with the fees adopted by the city council. (2001 Code § 72-3-607)

H. Delay Of Completion: If the encroachment is not completed within the time specified in the permit, or if at any time the city engineer finds that delay in commencing or prosecuting the encroachment is caused by lack of diligence on the part of the permittee, the city engineer may cancel the permit and restore the right of way to its original condition before the encroachment was commenced. The permittee shall reimburse the city in accordance with the fees adopted by the city council. (2001 Code § 72-3-608)

~~I.~~ ~~Emergency Work; Notices:~~ The provisions of this chapter shall not prevent any person from performing emergency maintenance on any pipe or conduit lawfully on or under any public right of way, or from making an emergency use as may be necessary for the preservation of life or property when an urgent necessity arises. The person making an emergency use or encroachment of a right of way shall apply for a written permit therefor on the first working day thereafter. Any person requiring an emergency use or encroachment shall notify the city engineer's office immediately. Notification during the hours the city offices are closed shall be given to the police department. (2001 Code § 72-3-609; amd. 2009 Code)

~~J.~~ ~~Conformance To Standards:~~ All encroachments shall conform to standards established by the city engineer. (2001 Code § 72-3-610)

~~K.I.~~ Storage Of Materials:

1. All Storage of excavated soil or other materials excavated from trenching or other encroachment operations in the right of way shall be piled compactly, kept trim, and maintained in such a manner as not to endanger either ~~shall not be permitted unless included in the encroachment permit~~ Where permitted, materials shall be stored in accordance with the permit, and the permittee shall be responsible for the safety of the workers or ~~and the general public, and to cause as little inconvenience as possible to those using the right of way or~~ The permit shall not create any right to use property adjacent to the right of way, and permittee shall be responsible for coordination with owners of adjacent property.

2. In areas too narrow to permit the proper storage of materials, the city engineer may require that the permittee remove the materials from the encroachment site. (2001 Code § 72-3-611)

~~E.J.~~ Monuments: A monument set for the purpose of preserving survey points, lines or elevation shall not be removed or disturbed without first obtaining permission from the city engineer ~~and Salt Lake County Surveyor~~. The replacement of a removed or disturbed monument shall be done by a registered civil engineer or a licensed surveyor and shall be at the expense of the permittee ~~in accordance with Salt Lake County requirements~~. (2001 Code § 72-3-612)

~~M.K.~~ Open Trenches: In any trenching operation, the open trench shall not be in excess of ~~one day's work~~ three hundred feet (300') ahead of the trench work proper, unless specifically authorized by the city engineer. When any excavation is commenced, the work of making and refilling shall be prosecuted diligently until completion. (2001 Code § 72-3-613)

~~N.L.~~ Interference With Drainage: If the encroachment interferes with ~~the established~~ drainage, the permittee shall provide for proper drainage in a manner approved by the city engineer. (2001 Code § 72-3-614)

~~O.M.~~ Small Pipes: Laterals, services, and other small diameter pipes shall be jacked, bored, or driven beneath a paved surface unless other methods are approved by the city engineer. (2001 Code § 72-3-615)

~~P.N.~~ Covering Pipes And Conduits: The minimum cover over any pipe or conduit installed under any public highway right of way shall be thirty inches (30") of material measured from the existing or proposed flow line of the nearest gutter to the top of the pipe or conduit. If a gutter flow line is not established, the cover shall be thirty inches (30") of material measured from the surface of the nearest outermost edge of the traveled way to the top of the pipe or conduit. Where there are existing curbs and gutters or where curbs and gutters are under construction, utilities may maintain a minimum ~~sixteen~~ thirty inches (46" 30") of cover starting one foot (1') back of the curb line in the parkway or sidewalk area. Maximum cover shall be seventy two inches (72"). The city engineer may permit the installation of pipes or conduits at lesser or greater depths where the required cover cannot be provided. (2001 Code § 72-3-616)

Q-O. Backfilling: The backfilling and compaction of an excavation shall be in accordance with standards established by the city engineer, both as to materials and methods. The backfilling shall commence within forty eight (48) hours after the work in a trench is completed. (2001 Code § 72-3-617)

R-P. Paving By City: The city engineer shall have the power to order the paving by city employees of any excavation up to one hundred feet (100') in length. The permittee shall reimburse the city in accordance with the fees adopted by the city council. (2001 Code § 72-3-618)

S-Q. Cleanup:

1. Except for materials properly stored, the permittee shall at all times keep the public highway clear of all materials, earth and debris. ~~Immediately after completion of the work, the permittee shall clean up and remove all materials, earth and debris of any kind.~~ If the permittee fails to do so within twenty four (24) hours after having been notified by the city engineer, the work may be done by the city engineer and the permittee charged in accordance with the fees adopted by the city council.

2. When a pole, guy stub or similar timber is removed and not replaced, the entire length thereof shall be removed from the ground and the hole backfilled and compacted.

R. Coordination Of Major Work Within The Right of Way.

1. The City Engineer may, on or prior to January 1 of each year, publish a schedule identifying the location and anticipated start date and completion date of major work anticipated to be performed within and by the city during the period beginning on the next succeeding January 1. The schedule may be updated every six months and shall be available for inspection at the office of the City Engineer.

2. Applications for encroachments involving major work shall be accepted by the city engineer on or before November 1 of each calendar year for the next year period beginning on the next succeeding January 1. The application must be on a form approved by the city engineer and must include a construction schedule which identifies, in reasonable detail, the location and anticipated start date and completion date of all anticipated major work.

3. Permit issuance may be denied or delayed by the city engineer where the person requesting a permit fails to timely apply or does not accurately identify the major work as set forth in this section. Among other things, the city engineer will consider excavation restrictions and other major work when determining the denial or delay.

4. It shall be the general policy of the City Engineer to facilitate coordination of major work by disclosing application information to other applicants. Any requests to maintain the confidentiality of information submitted pursuant to this section will be considered by the city in accordance with the provisions of the Utah government records, access and management act.

5. In issuing or conditioning a permit for major work, the city engineer may do any or all of the following: 1) schedule work in the right of way in the order in which applications are filed, and without regard to other work in the right of way; 2) delay or accelerate the commencement date of major work so that such work is performed simultaneously; or 3) delay or accelerate the commencement date of major work so that such work is performed in sequence, or is separated by a reasonable period of time.

6. Each applicant shall use all available information to coordinate, in good faith, its major work in the right of way with work proposed by the city and other users.

S. Excess Capacity.

1. Each competitive utility provider applicant must determine the size of facilities required to provide the capacity reasonably anticipated to satisfy the needs of such applicant for a minimum of five (5) years following installation and present its determination to the city.

2. Facilities must be designed and constructed to provide the capacity described above, or such lesser capacity as reasonably approved by the city engineer.

T. Excavation Restrictions.

1. The city engineer may, from time to time, impose excavation restrictions on portions of the right of way. The City Engineer will not issue a permit for any portion of the right of way subject to an excavation restriction, except as set forth in this section.

2. The duration of the excavation restrictions will be as follows:

a. seven (7) years following the completion of a new street or portion thereof;

b. three (3) years following the resurfacing of a street or portion thereof;

c. five (5) years following the completion of any excavation work in the right of way. The city engineer may impose the restriction solely on the user who performed the work, or on such owner and other prospective permittees or class of permittees as the city engineer determines.

d. until excess capacity no longer exists, for any portion of the right of way where excess capacity exists.

3. The excavation restrictions may include, but are not limited to, one or more, or a combination of the following:

a. a limited restriction prohibiting excavation by one user or type of user that does not preclude excavations by different users or types of users;

b. a comprehensive restriction prohibiting all excavation and construction activity in the affected portion of the right of way;

c. a restriction defining methods and standards of excavation or construction activity within the affected portion of the right of way.

4. The nature, scope and duration of the restriction will be consistent with the terms described in the notice provided for in this section. The nature, scope and duration of each excavation restriction shall be evidenced in writing, which writing shall be available for inspection during regular business hours at the office of the city engineer.

U. Notice of Excavation Restrictions.

1. The city engineer shall publish, or cause to be published, annual notice advertising his/her intent to impose excavation restrictions relating to portions of the right of way which will be under construction during the next succeeding calendar year. The notice shall be published at least once each week for three (3) consecutive weeks in a newspaper of general circulation within the city, which is used by the city for the publication of legal notices; provided that the first publication shall be on or before December 31. In addition, such notice shall be mailed by the City Engineer to each person who has made written request therefor. The notice shall describe the following:

- a. the nature of the project giving rise to the restriction;
- b. the portion of the right of way affected by the restriction;
- c. the effective date of the restriction;
- d. the duration of the restriction; and
- e. the nature of the restriction.

2. The notice shall invite those to whom the restriction will apply to participate in the project in the manner described by the city engineer, which may include any or all of the following:

- a. locating facilities in the same trench as an applicant;
  - b. sharing the cost of joint facilities with an applicant;
  - c. collocating facilities within a common conduit;
  - d. entering into lease arrangements with the applicant;
  - e. constructing separate facilities in the project area within the same time frame;
  - f. otherwise cooperating in a manner mutually agreeable to the users; or
  - g. participating in the project in such manner as the city engineer determines to be in the best interests of the city.
- h. the notice shall further provide that all interested users must file a permit application with the city engineer not later than six (6) weeks prior to the estimated date of commencement of construction of the proposed project. Nothing herein shall require the city engineer to publish notice of an excavation restriction which applies to only one user, provided that written notice of such excavation restriction is mailed or otherwise provided to such user.

V. Suspension of Excavation Restrictions. The City Engineer may temporarily or permanently suspend an excavation restriction for any of the following reasons:

1. To permit work to be performed by the city;
2. To permit emergency repair work, or, in the discretion of the city engineer, work which could not reasonably have been anticipated by the applicant at the time of publication of the notice of excavation restrictions;
3. Excess capacity no longer exists in the restricted portion of the right of way;
4. To permit the installation of service laterals, the need for which could not have been reasonably anticipated at the time of publication of the notice of excavation restrictions; or
5. Suspension of the restriction is otherwise in the city's best interest. (2001 Code § 72-3-619; 2009 Code §8-8-6, amd. Ord. 14-\_\_\_, 03-26-2014)

## 8-8-7 8: BUS SHELTERS AND BENCHES<sup>1</sup>:

- A. Improvements: All street improvements (i.e., curb, gutter, and sidewalk) shall be in place, prior to the installation of a bus bench or bus shelter.
- B. Location: Bus benches or shelters shall be located behind the sidewalk, on private property, and only at bus stops designated by the Utah transit authority (UTA); provided, that: 1) a physical barrier exists behind the sidewalk which prevents the placement of a bench or shelter at that location; or 2) the property owner refuses to grant approval for the placement of the bench or shelter behind the sidewalk; and 3) there is adequate depth in the park strip so that the bus bench or bus shelter will not encroach on the sidewalk and there is a minimum distance between the front edge of the bench or shelter and the face of the adjacent curb of forty eight inches (48") on state roads and twenty four inches (24") on city streets. Any person requesting approval to locate a bus bench or bus shelter in a street right of way shall first submit written documentation from the property owner that approval to locate the shelter or bench behind the sidewalk has been refused. Nonetheless, bus benches and bus shelter signs shall not be located in clear vision areas at intersections and shall not obstruct sidewalks, roadways or other locations where the structures may pose a hazard to motorists or pedestrians. Benches installed by UTA which carry no message may be located within a public right of way, however, However, bus benches or bus shelters proposed to be located adjacent to state roads shall comply with all applicable state provisions governing the location and site development standards for such benches or shelters.
- C. Construction And Materials: The following provisions shall govern the construction and materials for bus benches and bus shelters:
1. Bus bench backs and seats shall be constructed of metal, fiberglass or rigid plastic/vinyl materials and shall be kept in good repair. Bench legs shall be constructed of reinforced concrete. The design and materials of bus shelters shall be approved by the city prior to issuing permits.
  2. A concrete pad shall be required for all bus benches and bus shelters. The minimum pad size for bus benches shall be four feet by six feet (4' x 6'), and the minimum pad size for a bus shelter shall be two feet (2') wider than the width of the shelter and two feet (2') longer than the length of the shelter. Additional space should also be designed for persons in wheelchairs and/or to provide additional waiting area for bus patrons.
  3. The minimum pad area for a bus bench or bus shelter may include part of a sidewalk. However, no bus bench or bus shelter shall infringe upon or obstruct any sidewalk, other pedestrian path, or driveway without adding paving which meets passage standards established by the Americans with disabilities act (ADA).
  4. Bus benches and bus shelters shall be securely fastened to the concrete pad. Upon removal of a bench or shelter, the concrete pad shall be repaired by the owner of the bench or shelter, including removal of attachment bolts and repair of all holes in the concrete pad.
- D. Shelter Design: Bus shelters shall be designed to meet the following requirements:
1. A minimum four foot three inch by fifteen foot (4'3" x 15') concrete pad for each shelter, with interior seating and patron waiting area;
  2. A minimum five foot by eight foot (5' x 8') ADA landing pad in park strip (when required);
  3. Interior room for wheelchair passengers;
  4. Minimum three foot (3') wide entry;

5. City name and logo on both ends of the shelter;
  6. Name and service number to call for service of shelter;
  7. Twenty four (24) hour interior illumination;
  8. The shelter is to be bolted to a concrete pad;
  9. All electrical wiring is to be located underground; and
  10. All shelters shall include a trash receptacle of a matching color and design.
- E. Insurance: For any bus bench or bus shelter sign, the company or person responsible for the bus bench or shelter sign shall enter into an agreement with the city, which must be approved by the city attorney. This agreement will require, among other things, that the company or person responsible for the bus bench or bus shelter sign provide to the city proof of liability insurance in the minimum amount of one million dollars (\$1,000,000.00), name the city as an additional insured, and indemnify and hold harmless the city from any and all injuries and defense costs arising from the placement or use of the bus bench or bus shelter sign.
- F. Violation: Failure to comply with the bus bench and bus shelter provisions shall constitute a violation of this chapter.
- G. Removal: The city engineer may require removal of a bus bench or bus shelter that does not comply with the requirements of this section. The city engineer shall mail notice, postage prepaid, to the address provided in the agreement. The notice shall state the nature of the non-compliance and the date by which remediation or removal shall be complete, which date shall be no less than thirty (30) calendar days after mailing. Failure to remediate or remove the bus bench or bus shelter within the notice period shall be a separate violation for each day the bus bench or bus shelter remains in place. (2001 Code § 89-6-1108; amd. 2009 Code, §8-8-7; Ord. 14-\_\_\_, 03-26-2014)

## **8-8-8 9: RELOCATION AND REMOVAL REQUIREMENTS:**

- A. Expense Of Permittee Owner: If any city construction or other maintenance work in a right of way requires the relocation or removal of an encroachment or facility located over, under, in or through any right of way, the permittee owner shall relocate or remove the encroachment or facility at permittee's owner's sole expense. The provisions of this section are not intended in any way to supersede or override any prior right which otherwise exists in favor of the permittee owner.
- B. Written Demand By City: When removal or relocation is required, the city engineer shall give the permittee owner a written demand: 1) specifying that the encroachment or facility shall must be relocated or removed from the right of way; and 2) stating a reasonable time within which the encroachment or facility shall must be relocated or removed. If the permittee owner fails to comply, the city may relocate or remove the encroachment or facility at the expense of the permittee owner in accordance with the fees adopted by the city council.
- C. Reasonable Time Defined: In determining what is a reasonable time for the purposes of this section, the city engineer shall will take into consideration the nature of the encroachment or facility, the urgency of the need for its removal, the cost of its removal, the difficulty of its removal, the value of the intact property of the owner, and other facts peculiar to the particular situation.

- D. Restoration: When an encroachment or facility is removed and not replaced, the entire encroachment or facility shall must be removed from the right of way and the hole backfilled and compacted and returned to its preexisting condition unless the city engineer permits otherwise. The city engineer may designate a reasonable area for relocation within the right of way. (2001 Code § 72-3-701; amd. 2009 Code; §8-8-8; Ord. 14-\_\_\_\_, 03-26-2014)

## **8-8-9 10: PUBLIC SAFETY:**

- A. Interference With Use Of Highways: All encroachments shall be planned and executed in such a manner that they will not unreasonably interfere with the safe and convenient travel of the general public. At no time shall a public highway be closed or the use thereof denied to the general public without the approval of the city engineer. (2001 Code § 72-3-801)

- B. Safety Devices:

1. In the conduct of the encroachment, the permittee ~~shall~~ must provide and maintain such safety devices, including, but not limited to, lights, barricades, signs ~~and watchmen, flagmen and message boards,~~ as are necessary to protect the public. Any omission on the part of the city engineer to specify in the permit what safety devices ~~shall~~ must be provided by the permittee ~~shall~~ will not excuse the permittee from complying with all laws and regulations relating to the protection of persons under the circumstances. If the city engineer finds that suitable safeguards are not being provided, he or she may provide, maintain and relocate such safety devices as are deemed necessary, or he or she may revoke the permit, subject to appeal as provided in this chapter, and restore the right of way in accordance with existing city standards, charging the permittee in accordance with the fees adopted by the city council.

2. A permittee making any excavation or leaving any obstruction which could be a hazard to persons using a right of way shall provide and maintain warning lights far enough away from the excavation or obstruction to give adequate warning to such persons, and at spacing of not more than fifty feet (50') along the excavation or obstruction, from one-half ( $1/2$ ) hour before sunset of each day to one-half ( $1/2$ ) hour after sunrise the next day, until the work is completed and the right of way is made safe for use.

3. All safety devices shall conform to the requirements of the encroachment permit and requirements of the city engineer. (2001 Code § 72-3-802; amd. 2009 Code)

- C. Visibility Aids: When the location or position of an encroachment impairs visibility to vehicular traffic, the city engineer may require that the encroachment be painted or equipped with reflectors or other aids to visibility, or the city engineer may require the encroachment to be relocated at the sole expense of the permittee. No encroachment shall be maintained across any sidewalk area or shoulder of a public highway. No encroachment of any nature shall be permitted or maintained which impedes, obstructs, denies or impairs the sight distance for safe pedestrian or vehicular traffic.

- D. Tampering With Traffic Barricades. It is unlawful for any person maliciously or wantonly or without authorization and legal cause to extinguish, remove or diminish any light illuminating any barricade or excavation or to tear down or remove any rail, fence or barricade protecting any excavation or other construction site. (2001 Code § 72-3-803; 2009 Code §8-8-9, amd. Ord. 14-\_\_\_\_, 03-26-2014)

### **8-8-10 11: APPEALS OF PERMIT DENIALS:**

- A. Appeals; Form: Any person aggrieved by the refusal, suspension or revocation of a permit may appeal to the city manager within ~~thirty (30)~~ ten (10) days after the date of such action. The appeal shall be in the form of a written notice filed with the city clerk-recorder and signed by the applicant or permittee. The notice shall have attached a copy of the application and shall recite and include copies of such other items as have been filed. The notice shall state clearly and concisely the grounds upon which the applicant relies in the appeal.
- B. Hearing: The city manager shall set the matter for a hearing on the closest practicable date after the notice is filed and shall notify the applicant and the city engineer of the hearing date.
- C. City Manager Action: At the hearing, the applicant shall establish to the satisfaction of the city manager that he or she is entitled to the issuance of a permit pursuant to the provisions of this chapter. The city engineer may present grounds for the denial of the permit. The city manager decision shall be final. (2001 Code § 72-3-901; amd. 2009 Code; Ord. 12-10, 4-25-2012, eff. 7-1-2012; §8-8-10, Ord. 14-\_\_\_\_, 03-26-2014)

### **8-8-11 12: VIOLATIONS:**

Failure to comply with any provision of this chapter, or the encroachment permit, or any order of suspension, revocation or stop work shall be deemed a violation of this chapter. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying. (2001 Code § 72-3-1001; amd. 2009 Code; §8-8-11, Ord. 14-\_\_\_\_, 03-26-2014)

### **8-8-13: ENFORCEMENT:**

- A. Authority: The public works department shall enforce all of the provisions of this chapter, employing all legal means available to do so. The public works director may designate any department employee as an enforcement official.
- B. Enforcement proceedings: Unless otherwise provided, this chapter may be enforced through administrative procedures, or by filing civil or criminal actions as provided by law. The city has sole discretion to decide whether to file a civil or criminal case for a violation. The city may file both or one or the other. The possibility of an administrative remedy shall in no way interfere with the city's right to prosecute violations of this chapter as criminal offenses, or to seek any civil remedy to enjoin, prevent, or abate the violation. If the city chooses to file both civil and criminal charges for the same violation on the same day, no civil fines shall be assessed, but all other remedies shall be available. (Ord. 14-\_\_\_\_, 03-26-2014)

### **8-8-14: SUSPENSION AND REVOCATION OF PERMIT BY CITY ENGINEER:**

- A. Permit Revocable: Under the provisions of this chapter, the issuance of a permit grants only a revocable privilege of encroachment and confers no vested rights of any kind or nature upon a permittee. Every encroachment permit issued by the city may be revoked or suspended for the following:
  - 1. Failure by the permittee or agents, officers, employees or contractors to comply with any provision of the encroachment permit, this chapter, a stop work order or any other applicable ordinance or law relating to the encroachment. The permittee shall be strictly responsible for conformance of the encroachment with all applicable laws;
  - 2. Fraud or misrepresentation of a material fact in the procurement of the encroachment permit;

3. Failure to pay when due any fee, charge or penalty provided in city ordinance;

4. The existence of any condition or doing of any act which does constitute, may constitute, or cause a condition endangering life, health or property; or

5. Any other reason expressly provided for in this chapter, or any act or failure to act identified as a violation in this chapter.

B. Authority: The city engineer may revoke or suspend the encroachment permit without a hearing for reasons provided in this chapter; however, the suspension or revocation will not take effect until the time period for appealing the decision as set forth in this chapter has passed. Written notice of the suspension or revocation will be given by personal service or registered mail to the permittee. The written notice shall state: the reasons for such decision; that continuation of the encroachment after the effective date of the suspension or revocation is a class B misdemeanor and a violation of this chapter; that the decision may be appealed; and a general summary of the appeal procedure. If the violation results in a danger to life, health, or property, a stop work order will also be issued.

C. Effect of Revocation or Suspension:

1. After revocation, the permittee must reapply for a new encroachment permit and pay the application fee. Except for activity specifically described in the order of revocation as required to remove the encroachment, any encroachment or activity that occurs prior to issuance of a new encroachment permit will be a violation of this chapter and punishable as such.

2. A suspension will be in effect for no less than 2 and no more than 10 days. The reinstatement fee will be as adopted by city council or if no reinstatement fee is adopted, fifty percent (50%) of the application fee as adopted. Except for activity specifically described in the order of suspension as required to remove the encroachment during the suspension period, any encroachment or activity that occurs during the suspension period will be a violation of this chapter and punishable as such. (Ord. 14-\_\_\_\_, 03-26-2014)

### **8-8-15: STOP WORK ORDER:**

A. Issuance of stop work order: A stop work order may be issued for any of the following: causing any encroachment in the right of way without a valid and unexpired encroachment permit; violation of this chapter; failure to comply with any other city ordinance or law related to the encroachment; existence of any condition or doing of any act which does constitute, may constitute, or cause a condition endangering life, health or property.

B. Authority: A stop work order may be issued by the city engineer or engineering inspector directed to any person or persons causing the encroachment, violation or dangerous condition.

C. Effect: The stop work order will take effect immediately upon delivery to any person performing work or encroaching in the right-of-way or immediately upon posting of a stop work order at the location of the encroachment. If an encroachment permit has been issued, a copy of the stop work order should, within one business day, be sent by email, facsimile, hand delivery or any mail or delivery service to the address indicated by the permittee on the encroachment permit. Defective mailing or failure to receive delivery, regardless of cause, will not render the stop work order ineffective. The stop work order will remain in effect until the city engineer or engineering inspector has verified remediation of conditions and compliance with requirements for which the stop work order was issued. Except for activity

specifically described in the stop work order as required to abate the violation or condition for which the stop work order was issued, any encroachment or activity that occurs during the stop work period will be a violation of this chapter and punishable as such. Failure to comply with a stop work order may result in suspension or revocation of the encroachment permit. (Ord. 14-\_\_\_, 03-26-2014)

## **8-8-16: ABATEMENT; NOTICE TO SURETY; EXPENDITURE OF CASH GUARANTEE:**

### **A. Notice to Surety:**

1. If a surety bond has been provided, the surety may be given written notice of a violation with a copy provided to the principal. The written notice shall state the nature of the violation, the work to be done to correct the violation, the estimated cost thereof, and the period of time in which the work must be completed.

2. Work must be commenced and diligently pursued, or the surety shall indemnify the city for the cost of doing the work, as set forth in the notice, within a reasonable time following the giving of such notice. In determining a reasonable time, the following will be considered: the exigencies of the situation; the nature of the work; the requirements of public safety; and protection of persons and property.

3. If the work is not commenced and pursued, and the city is not indemnified as set forth in this section, the city may perform the work, cause the work to be performed by contract or both, at the discretion of the city engineer. Suit may be brought against the surety and principal and such other persons as may be liable, to recover the entire amount due to the city, including attorney's fees.

### **B. Expenditure of Cash Guarantee:**

1. If a cash guarantee has been provided, the permittee may be given written notice of a violation stating the nature of the violation, the work to be done to correct the violation, the estimated cost thereof, and the period of time in which the work must be completed.

2. Work must be commenced and diligently pursued within a reasonable time following the giving of such notice. In determining a reasonable time, the following will be considered: the exigencies of the situation; the nature of the work; the requirements of public safety; and protection of persons and property.

3. If the work is not commenced and pursued as set forth in this section, the city may expend the cash guarantee to perform the work, cause the work to be performed by contract or both, at the discretion of the city engineer. If the cash guarantee is insufficient, suit may be brought to recover the balance due.

### **C. Judgment for Costs: In the event city's expenses must be made in court, the city will sue and receive judgment for all expenses incurred in the restoration of the property, together with reasonable attorneys' fees, interest, and court costs. The city shall execute upon such judgment in the manner provided by law. (Ord. 14-\_\_\_, 03-26-2014)**

## **8-8-17: PENALTIES:**

### **A. Criminal:**

1. Unless otherwise provided herein or by state or federal law, a violation of this chapter is a Class B misdemeanor. Each day that the violation is committed or permitted to continue constitutes a separate offense, and is punishable as such.

2. Any person, either by himself/herself, his/her agents, his/her employees or his/her contractor who barricades a right-of-way, or begins to construct or do any digging, ditching, excavation, trenching or tunneling in, along or across a right-of-way without having in his/her possession a valid encroachment permit is guilty of a Class B misdemeanor. Each day that an excavation, or ditch, trench digging or tunnel along, in or across a right-of-way continues without a valid encroachment permit constitutes a separate offense and is punishable as such.

### **B. Civil: Civil penalties for encroachments occurring without a valid, unexpired encroachment permit are as follows:**

1. For an encroachment on a residential street, the penalty is \$1,500 per day.

2. For an encroachment on a collector street, the penalty is \$2,500 per day.

3. For an encroachment on an arterial street, the penalty is \$5,000 per day. (Ord. 14-\_\_\_\_, 03-26-2014)

**Footnotes** - Click any footnote link to go back to its reference.

Footnote 1: See also subsection 12-3-3C of this code for sign permit requirements.