

- (8) All portions of all buildings in single-family residential districts shall be located within a three hundred foot hose lay from fire lane or public roadway having a fire hydrant spacing meeting the requirements of these regulations.
- (9) All portions of all buildings in all other districts shall be located within a three hundred foot hose lay from fire lane or public roadway having a fire hydrant spacing meeting the requirements of these regulations.
- (10) The hose lay shall be measured as a fire hose would be laid from the fire lane or roadway along aisles that are at least 24-feet wide and that are not obstructed by fences, buildings, stored materials, railroads or other obstructions.

**Sec. 10.507 Sanitary sewer facilities standards**

(a) Adequate sewage facilities. Sanitary sewer facilities serving the subdivision, development or addition shall connect to the town's sanitary sewer system or other public sewerage treatment facility, except as provided in subsection (d). Sewage systems shall be installed to adequately serve each lot and shall be sized accordingly. All additions to the sanitary sewer system shall conform to the town's "master sewer plan" and other requirements of the town. The town may require a sanitary sewer study, including adequate engineering data, to support projected sewer flows before final plan approval. The proposed wastewater discharge of a proposed development shall not exceed the capacity of the wastewater system based upon required studies.

(b) Design and construction requirements. Design of sanitary sewers shall be in accordance with the town's Engineering Design Manual. No sewer system will be constructed unless all plans have been reviewed and approved by the town to assure compliance with these requirements. All design and construction will be done under the inspection of the town and in accordance with established town policies and practices.

(c) Extension policy. The developer shall extend all sanitary sewer mains and appurtenances necessary to connect the development with the town's wastewater system. Sanitary sewer mains shall be extended to all property lines of the subdivision or development to allow connection to these facilities by adjacent property owners in accordance with approved plans. Authority to extend wastewater mains to serve newly subdivided or platted land shall be granted by the town only upon a determination by the administrator that all facilities necessary to adequately serve the development are in place or will be in place prior to the issuance of occupancy permits for structures developed on such land.

(d) On-site treatment.

- (1) The owner and/or developer of the subdivision or development shall construct the necessary water facilities to serve the subdivision. If it is practical to construct sanitary sewer facilities and connect to a sanitary sewer facility with approved treatment facilities, then the owner and/or developer shall construct the necessary sanitary sewer facilities to properly serve the subdivision.

- (2) The town has determined that it is practical to construct off-site sanitary sewer lines to connect existing sanitary sewer lines according to the following equation:

$$L = 300 \times n^{0.6}$$

where:

L = Length of off-site sanitary sewer line that must be constructed (feet).

n = Number of equivalent residential connections in the entire development. An equivalent residential connection generates 300 gallons per day of wastewater on an average day.

- (3) On-site wastewater treatment systems may not be used if the distance from the nearest corner of the development to an existing sanitary sewer having sufficient capacity to serve the development is less than that calculated from the formula above. Lift stations may be required when gravity service is not available. On-site wastewater system may not be used for any lot smaller than one acre.
- (4) If the town deems that it is not practical to connect to a sanitary sewer facility that will treat the sewage for the subdivision, then the area may be served by an approved on-site sewerage facility for the individual lots as specified in the engineering design manual and approved by regulatory authorities having jurisdiction over such facilities. The town may require a study to make such determination.

#### Sec. 10.508 Roadway facilities standards

(a) Streets and thoroughfares.

- (1) Responsibility for adequacy of streets and thoroughfares. The property owner shall assure that the subdivision or development is served by adequate streets and thoroughfares, and shall be responsible for the costs of rights-of-way and street improvements, in accordance with the following policies and standards, and subject to the town's participation in the costs of oversize facilities.
- (2) General adequacy policy. Every subdivision or development shall be served by streets and thoroughfares adequate to accommodate the vehicular traffic to be generated by the development. Proposed streets shall provide a safe, convenient and functional system for traffic circulation, and shall be properly related to the town's thoroughfare plan, road classification system, master plan and any amendments thereto, and shall be appropriate for the particular traffic characteristics of each development.

(Ordinance 340 adopted 5/29/01)

- (3) Road network. New subdivisions and developments shall be supported by a road network having adequate capacity, and safe and efficient traffic circulation. The adequacy of the road network for developments of more than 75 dwelling units, or for developments involving collector or arterial streets not appearing on the town's adopted thoroughfare plan, shall be demonstrated by preparation of a traffic impact analysis prepared in accordance with subsection (d) of this section, which takes into

consideration the need to accommodate traffic generated by the development, land to be developed in common ownership and other developed property. In the event that the property to be developed is intended as a phase in a larger development project, or constitutes a portion of the land to be ultimately developed, the town may require a demonstration of adequacy pursuant to this section for additional phases or portions of the property as a condition of approval for the proposed plat. (Ordinance 340 adopted 5/29/01; Ordinance 419B, sec. 4, adopted 4/10/06)

- (4) Approach roads and access. All subdivisions or developments must be connected to the town's improved thoroughfare and street system by two or more approach roads of such dimensions and approved to such standards as are hereinafter set forth. Connection of a subdivision to the town's street system with only one approach will require special approval by the town. Requirements for dedication of rights-of-way and improvement of approach roads may be increased depending on the density or intensity of the proposed development if such need is demonstrated by traffic impact analysis. Access to all lots therein must be suitably improved or secured by provisions contained in these regulations.
- (5) Off-site improvements. Where traffic impact analysis demonstrates the need for such facilities, the property owner shall make such improvements to off-site collector and arterial streets and intersections as are necessary to mitigate traffic impacts generated by the development or related developments. The town may participate in the costs of oversize improvements with the subdivider or developer pursuant to article 10.600.
- (6) Street dedications.
  - (A) Dedication of right-of-way. The property owner shall provide all rights-of-way required for existing or future streets, and for all required street improvements, including perimeter streets and approach roads, as shown in the thoroughfare plan or other valid development plans approved by the planning and zoning commission or council.
  - (B) Perimeter streets. Where an existing half-street is adjacent to a new subdivision, development or addition, the other half of the street shall be dedicated and improved by the developer of the subdivision, development or addition.
  - (C) Slope easements. The dedication of easements, in addition to dedicated rights-of-way shall be required whenever, due to topography, additional width is necessary to provide adequate earth slopes. Such slopes shall not be in excess of three (3) feet horizontal to one (1) foot vertical.
  - (D) Access to public facilities. In cases where a subdivision or development contains or abuts a school, park or playground site, the subdivider shall provide and dedicate a normal residential street and provide for the cost of paving the street and the full cost of all utilities necessary.
- (7) Intersection improvements. Intersection improvements and traffic control devices shall be installed as warranted in accordance with the traffic impact analysis, where required by these regulations, subject to participation standards in article 10.600.

- (b) Types of streets.
- (1) Alley. A private street for secondary or service access to individual parcel of property.
  - (2) Arterial. A street intended for continuous travel between communities and urban centers. Arterials are generally four (4) or more lanes wide.
  - (3) Collector streets. A street which is continuous through parts of a residential or nonresidential neighborhood for distances of up to a mile and which provides low speed links between local and arterial streets.
  - (4) Country lane. A rural collector or local street.
  - (5) Cul-de-sac. A street which terminates at one (1) end with a turnaround.
  - (6) Freeway or expressway. A limited access, high-speed roadway providing continuous travel between communities or urban centers.
  - (7) Industrial or commercial street. A street intended primarily to serve traffic within an area of industrial or commercial development.
  - (8) Local street. A low speed, low volume roadway which is intended primarily to provide access to individual parcels.
  - (9) Parkway. An arterial street with heavy emphasis on landscaping in the median and outer right-of-way.
- (c) Design standards.
- (1) Generally. All streets and thoroughfares shall be designed in accordance with these regulations, applicable standards as established in the town engineering design manual, and the transportation element of the town's comprehensive plan. Street and thoroughfare geometrics, driveway standards, pavement design and permanent land markings shall be in accordance with the design standards established in the town engineering design manual.
  - (2) Street intersection. The design of street intersections shall be as specified in the engineering design manual.
  - (3) Minimum right-of-way. The minimum right-of-way width for streets shall be as provided in the transportation element of the town's comprehensive plan and in the engineering design manual.
  - (4) Blocks, dead end streets, cul-de-sacs and courts.
    - (A) Dead-end streets are not permitted. Cul-de-sacs may be permitted where the form or contour of the land or the shape of the property makes such street design appropriate, in accordance with specifications in the engineering design manual.

- (B) The length, width and shapes of blocks shall be as specified in the engineering design manual.
- (5) Relation to adjoining streets and land. The system of streets designated for the subdivision or development, except in unusual cases, must connect with streets already dedicated in adjacent subdivisions; and where not platted, must in general be the reasonable projection of streets in the nearest subdivided tracts, and must be continued to the boundaries of the tract subdivided, so that other subdivisions may connect therewith. Reserve strips of land controlling access to or egress from other property to or from any street or alley or having the effect of restricting or damaging the adjoining property for subdivision purposes or which will not be taxable or accessible for special improvements shall not be permitted in any subdivision.
- (4) Half-streets. Half-streets shall be prohibited.
- (5) Traffic circulation. Some means of traffic circulation must be provided for all subdivisions. However, streets shall be so laid out that use for through traffic will be discouraged. This may be accomplished through the use of curved streets and cul-de-sacs.
- (6) Street construction. Construction of all streets shall be in accordance with the town engineering design manual and the transportation element of the town comprehensive plan and shall be mandatory before the street surfacing is accepted for maintenance by the town.
- (7) Street posts and markers. The developer shall pay for the cost of purchasing and installing street posts and markers at each street intersection, which posts and markers shall be of the same type used throughout the town, and as specified in the town addendum to the NCTCOG Standard Specifications for Public Works Construction.
- (8) Street lighting. The subdivider shall provide at no expense to the town and as a part of the street improvements, street lighting in accordance with the following standards and such standards as designated in the zoning regulations and as specified in the town addendum to the NCTCOG Standard Specifications for public works construction.
- (9) Alleys.
  - (A) Alleys shall be designed to allow fire department and waste collection vehicles to travel without impediment. A standard SU-20 design vehicle shall be able to negotiate all turns and intersections.
  - (B) Access to residential property for required off-street parking shall be from the alley wherever paved alley access is available. Access from the alley shall not exclude another means of access from the front or side. No side lot or rear lot access to residential property shall be allowed from any arterial street as defined herein.

- (C) Alley drive approaches shall have a radius of five (5) feet to assist ingress and egress to the lot and provide motorists passing one another with additional paved area.
- (d) Traffic impact analysis. Whenever these regulations require a traffic impact analysis, the following elements shall be included:
  - (1) General site description. The traffic impact analysis shall include a detailed description of the roadway network within one (1) mile of the site, a description of the proposed land uses, the anticipated stages of construction, and the anticipated completion date of the proposed land development. This description, which may be in the form of a map, shall include the following items:
    - (A) All major intersections;
    - (B) All proposed and existing ingress and egress locations;
    - (C) All existing roadway widths and rights-of-way;
    - (D) All existing traffic signals and traffic-control devices; and
    - (E) All existing and proposed public transportation services and facilities within a one (1) mile radius of the site.
  - (2) Proposed capital improvements. The traffic impact analysis shall identify any changes to the roadway network within one-half (0.5) mile of the site, proposed by any governmental agency. This description shall include the above items as well as any proposed construction project that would alter the width and/or alignment of roadways affected by the proposed development.
  - (3) Roadway impact analysis.
    - (A) Transportation impacts.
      - (i) Trip generation. The average weekday trip generation rates (trip ends) and the highest average hourly weekday trip generation rate between 4 p.m. and 6 p.m. for the proposed use shall be determined based upon the trip generation rates contained in the most recent edition of the Institute of Transportation Engineers, Trip Generation Manual.
      - (ii) Trip distribution. The distribution of trips to arterial and collector roadways within the study area in conformity with accepted traffic engineering principles, taking into consideration the land use categories of the proposed development; the area from which the proposed development will attract traffic; competing developments (if applicable); the size of the proposed development; development phasing; surrounding land uses, population and employment; and existing traffic conditions identified.
    - (B) Adequacy determination. The roadway network included within the traffic impact analysis shall be considered adequate to serve the proposed

development if existing roadways identified as arterials can accommodate the existing service volume, the service volume of the proposed development, and the service volume of approved but unbuilt developments holding valid, unexpired building permits at level of service C.

- (4) Intersection analysis.
  - (A) Level of service analysis. For intersections within the roadway traffic impact analysis area described in subsection (1) herein, a level of service analysis shall be conducted for one day Tuesday through Thursday and Friday on all intersections, including site driveways within one (1) mile of a proposed site. The town may waive analysis of minor intersections within the one-mile radius. The highest average hourly peak volume between 4 p.m. and 6 p.m. shall also be recorded. The level of service analysis shall take into consideration the lane geometry, traffic volume, percentage of right hand turns, percentage of left-hand turns, percentage of trucks, intersection width, number of lanes, signal progression, ratio of signal green time to cycle time (G/C ratio), roadway grades, pedestrian flows, and peak hour factor.
  - (B) Adequacy analysis. The intersections included within the traffic impact analysis shall be considered adequate to serve the proposed development if existing intersections can accommodate the existing service volume, the service volume of the proposed development, and the service volume of approved but unbuilt developments holding valid, unexpired building permits at level of service C.
- (5) Effect of adequacy determination. If the adequacy determination for roadways and intersections indicates that the proposed development would cause a reduction in the level of service for any roadway or intersection within the study area below the level of service required, the proposed development shall be denied unless the developer agrees to one of the following conditions:
  - (A) The deferral of building permits until the improvements necessary to upgrade the substandard facilities are constructed, as shown in the town's capital improvements program;
  - (B) A reduction in the density or intensity of development;
  - (C) The dedication or construction of facilities needed to achieve the level of service required; or
  - (D) Any combination of techniques identified that would ensure that development will not occur unless the level of service for all roadways and intersections within the traffic impact analysis study are adequate to accommodate the impacts of such development.

**Sec. 10.509 Drainage facilities standards**

(a) General requirements.

- (1) Drainage facilities shall be designed and constructed at such locations, size and dimensions to adequately serve the development and the contributing drainage area above the development. The developer shall provide all the necessary easements and rights-of-way required for drainage structures including storm drains and open channels, lined or unlined.
- (2) Storm drainage released from the site will be discharged to a natural water course of an adequate size to control the peak runoff expected after development.
- (3) The developer shall be responsible for the necessary facilities to provide drainage patterns and drainage controls such that properties within the drainage area, whether upstream or downstream of the development, are not adversely affected by storm drainage from facilities on the development.
- (4) The requirements set forth herein are considered minimum requirements. The developer and his engineer shall bear the total responsibility for the adequacy of design. The approval of the facilities by the town engineer in no way relieves the developer of this responsibility.
- (5) No individual, partnership, firm, or corporation shall deepen, widen, fill, re-route, or change the course or location of any existing ditch, channel, stream, or drainage way, without first submitting engineering plans for approval by the town engineer, consistent with the floodplain reclamation and preservation provisions contained in sections 19.17 and 20.4 of the zoning ordinance. Such plans shall be prepared by a professional engineer, registered in the state, and experienced in civil engineering.

(b) Design of facilities.

- (1) Standards. Design of storm sewer systems shall be in accordance with the engineering design manual. Materials and construction shall conform to the standard specifications construction of the town. The design flows for the drainage system shall be calculated by the rational method in accordance with standard engineering practice and in accordance with the engineering design manual. Curbs, inlets, manholes, etc. shall be designed and constructed in accordance with the standard details. Plans shall be submitted with the plat.
- (2) Accommodation of upstream drainage areas. A culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision or development. The owner's engineer shall initially determine the necessary size of the facility, based on the provisions of the construction standards and specifications assuming conditions of maximum potential watershed development permitted by the zoning regulations, subject to approval by the town engineer.
- (3) Effect on downstream drainage areas. The owner's engineer, subject to approval by the town engineer, shall study the effect of each addition's storm runoff on the existing underground drainage facilities immediately downstream of the addition.

Where it is determined that existing capacity is not available immediately downstream, the owner's engineer shall design a drainage system, detention facility, or parallel system to mitigate the deficiency. The council may withhold approval of the plat until such mitigation has been provided. If oversize improvements are required, then the town may participate in the cost as prescribed by this chapter.

- (4) Detention facilities. Lakes, detention ponds, and retention ponds may be constructed in all areas provided they are approved by the town engineer. Easements shall be provided to ensure protection of these areas for maintenance purposes.
  - (5) Alternate facilities. Other innovative drainage concepts will be considered if approved by the town engineer.
- (c) Dedication of drainage easements.
- (1) General requirements. When a subdivision or development is traversed by a watercourse, drainage way, channel, or stream, there shall be provided a storm water or drainage easement conforming substantially to the line of such watercourse, and of such width and construction as will be adequate for the purpose. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width for maximum potential volume of flow.
  - (2) Access easements. The property owner must provide sufficient access on each side of and parallel to creeks or drainage ways for maintenance purposes. The access shall be above the base flood elevation and accessible to vehicles and equipment. Access must also be provided at a maximum 1200 foot spacing along streets or alleys. The location and size of the access easement shall be determined by the town engineer. The maximum width of the access easement shall be fifteen (15) feet. Permanent monuments, the type and locations of which to be determined by the town engineer, shall be placed along the boundaries of the access easement and private property. This access easement shall be included in the dedication requirements of this section.
  - (3) Drainage easements.
    - (A) Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within street rights-of-way, perpetual, unobstructed easements at least fifteen (15) feet in width, depending on slopes, for drainage facilities shall be provided across property outside the street lines and with satisfactory access to the street. Easements shall be indicated on the plat. Drainage easements shall extend from the street to a natural watercourse or to other drainage facilities.
    - (B) When a proposed drainage system will carry water across private land outside the subdivision or development, appropriate drainage easements must be secured by the developer.
    - (C) Drainage easements shall be provided where any type of drainage system, including swales are used to convey storm water across any lot or tract in the development from an adjacent lot or tract whether or not the lot or tract is within the development or off-site.

(D) All areas within any subdivision located in the one hundred (100) year floodplain of any river, creek or tributary stream shall be dedicated as a drainage and utility easement. The form and wording of the easement shall be approved by the town administrator.

(d) Grading. Site, street or development grading shall conform to the specifications in the engineering design manual, and to the floodplain reclamation and preservation provisions contained in sections 19.17 and 20.4 of the zoning ordinance. All permeable surfaces within the development shall be graded to a smooth and uniform appearance that can be easily mowed with a small residential riding lawn mower.

(e) The developer shall provide plans and specifications and design calculations for all drainage structures. For flows in excess of an eighty-four inch (84") pipe, unlined, open channels with concrete pilot channel constructed may be used. All open channels which are not concrete lined shall be designed to prevent erosion. The types of methods used for prevention of erosion shall be specifically approved by the town engineer.

**Sec. 10.510 Utility standards**

(a) Easements.

(1) The property owner shall be required to furnish all easements and rights-of-way required to serve the development. Where reasonable, all utilities, both public and private, should be located within streets or alley rights-of-way. Notwithstanding the above developers may offer easements outside of street and alley rights-of-way. All utility facilities existing and proposed throughout the property shall be shown on the preliminary plat and accompanying development plans.

(2) Easements shall be provided for both municipal and private utilities. Municipal easements for water, sanitary sewer and storm sewer shall be a minimum of fifteen feet in width. All municipal easements may be wider as determined by the town engineer depending on the depth and the size of the utility. Private utility easements must be sized by the utility company. Proper coordination shall be established between the town's property owner and the applicable utility companies for the establishment of utility easements on adjoining properties.

(3) When topographical or other conditions are such as to make impractical the inclusion of utilities within the rear of residential lot lines, perpetual unobstructed easements at least fifteen (15) feet in width shall be provided along selected side lot lines for satisfactory access to the street or rear lot lines. Easements shall be indicated on the plat.

(4) Water, sewer or drainage easements shall not straddle lots unless approved by the town engineer.

(5) Electric, gas, telephone and cable TV easements shall meet the requirements of the respective utility company and shall not conflict with or be coincident with water or sewer easements.

(b) Damage. The contractor and owner shall be responsible for all damage to existing public improvements caused during construction of new public improvements.

**Sec. 10.511 Public lands requirements**

(a) Reservation of land. Development plats, preliminary plats and final plats shall reserve land for future public use as designated in the comprehensive plan and associated plans for future public facilities and utilities. These uses include, but are not limited to: parks, recreation and open space areas, schools, libraries, police and fire stations, pump stations, water storage tanks, and lift stations. Land reserved shall be of a suitable size, dimension, topography, and character for the designated purpose.

(b) Procedure for reserving land. All final plats and development plats shall provide for the necessary reservation of land for future public use. All plats submitted for approval shall indicate sites to the town for public use. Boundaries of land reserved for public use may be adjusted subject to the approval of the council unless otherwise provided by agreement.

(Ordinance 340 adopted 5/29/01)

**Sec. 10.512 Underground utilities**

(a) All subdivision and development plats shall demonstrate compliance with the following underground utility standards:

(1) Except as otherwise herein provided, telephone lines, cable television utility lines, and all electric utility lines and wires shall be placed underground. In special or unique circumstances or to avoid undue hardships, the town council may authorize exceptions from this requirement and permit the construction and maintenance of overhead electric utility lateral or service lines and of overhead telephone cable television lines and may approve any plat or site plan with such approved exceptions, in accordance with the standards in section 10.310.

(2) Final plats shall display signature approval by utility companies. No building permits shall be issued until such approval is obtained and recorded on the plat.

(3) Where electrical service is to be placed underground, circuits for street and site lighting, except street lighting standards, also shall be placed underground.

(4) Electrical, cable television and telephone support equipment (transformers, amplifiers, switching devices, etc.) necessary for underground installations in subdivisions shall be pad mounted or placed underground.

(5) All underground utilities, whether publicly or privately owned, shall be backfilled and compacted according to the town's specifications. Utility companies and contractors shall obtain a street cut permit before disturbing any pavement in public right-of-way.

(b) Nothing herein set forth shall prohibit or restrict any utility company from recovering the difference between the cost of overhead facilities and underground facilities. Each utility whose facilities are subject to the provisions of this article shall develop policies and cost reimbursement procedures with respect to the installation and extension of underground service.

(c) The electric utility company may plan and construct overhead feeders and/or lateral lines over, under, across, on or along a state highway, county road or municipal street or alley, or other public property where such municipal street, alley or public property was dedicated prior to the development for which the service is to be provided, without obtaining an exception. Telephone and cable television lines may be constructed overhead where overhead electric utility lines are permitted.

(d) Nothing in this section shall prevent provision of temporary construction service by overhead utility lines and facilities and no exception shall be necessary to provide such temporary services.

(e) As used in this section, the terms "feeder lines," "lateral lines," and "service lines" shall have the following meanings:

- (1) Feeder lines. Those electric lines that emanate from substations to distribute power throughout an area.
- (2) Lateral lines. Those electric lines that emanate from feeder lines and are used to distribute power to smaller areas of electric consumers. These electric lines are normally connected to a feeder line through a sectionalizing device such as a fuse or disconnect switch.
- (3) Service lines. Those electric lines which through a transformer connect a lateral line to a customer's service entrance.

(f) All installations regulated by the provisions set forth herein shall be in conformance with the intent of this section and shall conform to any regulations and/or specifications that the various public utility companies may have in force from time to time.

(g) Nothing in this section shall be construed to require any existing facilities to be placed underground; provided, however, that where overhead lines exist on land that is to be platted, they shall be removed before the final plat is filed.

(Ordinance 419B, sec. 3, adopted 4/10/06)

**Sec. 10.513 Provision of amenities**

Amenities shall be required where approved pursuant to a cluster option development plan or planned residential overlay districts developed under the Sunnyvale zoning regulations. Where these amenities are owned and maintained by property owners in common or through an association of property owners, or where the amenities are to be dedicated to the town and are to be maintained publicly or privately through agreement with the town, the town may require any or all of the following:

- (1) Plans and illustrations of the proposed amenities;
- (2) Cost estimates of construction, maintenance and operating expenses;
- (3) Association documents, deed restrictions, contracts and agreements pertaining to maintenance of the amenities, if appropriate; and

- (4) Provision of surety as required for maintenance and other expenses related to the amenities, if appropriate.

**Sec. 10.514 Protection of drainage and creek areas**

(a) Definitions and methodology for determining the floodway management area FMA. The definitions for "floodway" and "floodway fringe" shall correspond to those set forth by the Federal Emergency Management Agency (FEMA). For purposes of the National Flood Insurance Program, the concept of a floodway is used as a tool to assist the local community in the aspect of floodplain management. Under this concept, the area of the 100 year flood is divided into a floodway and floodway fringe. The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment in order that the 100 year flood may be carried without substantial increases in flood heights as defined by FEMA. The area between the floodway and boundary of the 100 year flood is termed the floodway fringe. The floodway fringe is the area which can be used for development by means of fill according to FEMA and town engineering criteria.

For the purposes of this chapter, the Floodway Management Area (FMA) will correspond to the Floodway as defined by FEMA.

(b) Areas where an FMA is required. All drainage areas or regulated floodways as referenced by the current panel number(s) on the Floodway and Flood Boundary Map (FIRM Maps) shall be included in the FMA. If FEMA does not specify a floodway zone in any of the above creeks or their tributaries, it shall be the developer's responsibility to establish and identify the FMA. The determination shall be made by a registered professional engineer and in accordance with the flood hazard prevention article and approved by the town engineer. Where improvements to a drainage area are required by other sections of this chapter or other ordinances of the town for the purpose of safety or other reasons related to drainage, those sections or ordinances shall also be observed. The FMA is intended to apply to a creek or channel which is to remain open or in its natural condition. The creek shall remain in its natural state unless improvements are permitted by the town due to the pending development of properties adjacent to or upstream of the required improvements.

(c) Ownership and maintenance of the FMA. The area determined to be the FMA shall be designated on and as part of the final plat. Approximate locations shall be shown on zoning change requests and preliminary plats. The town, at its option, may place utility lines in the area designated as the FMA. The FMA may qualify under parkland dedication requirements or other open space requirements, if authorized in the town's zoning regulations or other ordinances. At the town's option, the FMA shall be protected by one of the following methods:

- (1) Dedication. Dedicated to the town; or
- (2) Easement(s). Creeks or drainageways in tracts which have private maintenance provisions, other than single-family or attached housing platted lots, can be designated as the FMA by an easement to the town on the final plat. Subdivisions with platted single-family or attached housing lots may designate the FMA by easement provided there is adequate maintenance provisions, but no lots or portions of lots may be platted in the easement unless specifically allowed by the town. The area designated as FMA may be identified by a tract number; or

- (3) Recreational uses. Certain recreational uses normally associated with or adjacent to flood prone areas, except for uses involving structures, may be allowed in the FMA, such as golf courses. The uses allowed shall be in conformance with the zoning regulations and approved by the planning and zoning commission and town council.

Prior to acceptance of any drainage way as an FMA by the town, the area shall be cleared of all debris. floodway management areas dedicated to the town shall be left in a natural state except those areas designated for recreational purposes.

- (d) Design criteria. The following design criteria shall be required for development adjacent to the FMA:

- (1) Adequate access must be provided along the FMA for public or private maintenance. An unobstructed area a minimum of twenty feet (20') wide with a maximum 5:1 slope (five feet horizontal to one foot vertical), the length of the floodway shall be provided adjacent to one side or within the FMA. On the opposite side of the drainage area, an unobstructed area having a minimum width of five feet (5') shall also be provided, if possible.
- (2) Lots in residential zoning districts shall not be platted in the FMA. If lots back to an FMA, at least two reasonable points of access to the FMA, a minimum of twenty feet in width, shall be provided. Streets and alleys may qualify as access points. All areas of the FMA must be accessible from the access points. Lots used for attached housing may be platted in the FMA if the FMA is identified as an easement and is maintained as open space for use by the residents.
- (3) Public streets may be approved in the FMA by the planning and zoning commission and town council (if they conform to applicable engineering standards).
- (4) Whenever possible, public streets shall be constructed adjacent to the FMA to allow access for maintenance or recreational opportunities.

(e) Drainage areas which have been altered and are not in a natural condition can be exempted from an FMA and this section at the discretion of the town council upon recommendation of the town engineer.

(f) All floodplain reclamation shall be according to the town's floodplain reclamation and preservation provisions contained in sections 19.17 and 20.4 of the zoning ordinance.

## **ARTICLE 10.600 PARTICIPATION POLICIES AND ESCROW POLICIES**

### **Sec. 10.601 General standards**

(a) Town's share of improvement costs. The town shall participate in the costs of public improvements which are not for the primary benefit of the development and which have been oversized to serve developments other than that for which the plat has been submitted for approval, only to the extent and according to the standards state in this article and pursuant to the procedures herein set forth and only if a development agreement is entered into between the town and owner as provided in these regulations which conforms to the requirements of Texas Local Government Code, ch. 252, and sections 212.071 through 212.074. In no event shall the town participate in the cost of facilities which have not been oversized.

(b) Owner's responsibility.

- (1) The property owner shall be responsible for the entire costs of designing and installing all public improvements which primarily serve the subdivision or development. Facilities required by these regulations, unless listed in section 10.307, shall be considered as primarily serving the subdivision or development unless otherwise determined by the town.
- (2) The property owner shall also be responsible for its share of the costs of oversized or off-site public improvements needed to assure adequacy of public facilities and services for the addition or subdivision, subject to participation and escrow policies contained in this article.
- (3) The property owner shall be responsible for extending streets, water, sewer or drainage facilities off-site to his/her property as required by the council and/or required to ensure adequacy of public facilities.

**Sec. 10.602 Facilities eligible for town participation**

The developer shall be responsible for the entire initial cost of installing public facilities, including oversizing. As funds become available, the town shall participate in the costs of installing public improvements as follows:

- (1) Generally. The town will pay only the cost of oversizing facilities larger than those required to serve the development alone. Payment will not be made for oversized facilities unless the oversizing has been approved by the town council.
- (2) Proportionate share studies. Where a traffic impact analysis, water study, sanitary sewer study, or drainage study has been required by these regulations and accepted by the town in order to determine the proportionate costs of facilities attributable to the development, participation by the town in the costs of such facilities will be limited to those costs not attributable to impact from the subdivision.
- (3) Criteria. Eligibility and the terms of payment will be made in accordance with the town's impact fee ordinances, pro rata ordinances or facilities studies, as provided in subsection (c), and shall be incorporated in a developer's agreement prior to final plat approval.

**Sec. 10.603 Limitation and exceptions**

Notwithstanding section 10.602, the town shall not participate in the following costs:

- (1) Those portions of the costs of any public improvements not expressly described in section 10.602.
- (2) Costs of constructing streets built wider than called for in the comprehensive plan.
- (3) Costs of street lights, decorative finishes or other similar expenses, unless required by the town engineer.
- (4) Costs of retention/detention ponds or slope protection, except rip-rap under a bridge.

- (5) When reimbursing the property owner or developer pursuant to this article, the town shall pay a maximum of 6% of the town's participation cost for engineering fees, which includes surveying, construction staking and supervision, and the town shall not be responsible for any other costs associated with surveying, design, geotechnical investigations, quality controls or other construction costs.

**Sec. 10.604      Procedures for town participation**

(a) Development contract. The developer must enter into a development contract in which the following information must be provided by the developer:

- (1) Owner's name, address, phone number
- (2) Contractor's name, address, phone number
- (3) Three lowest competitive bids, prepared in accordance with state law regarding competitive bidding, Tex. Loc. Gov't Code, Ch. 252.

(b) Town engineer determination. The town engineer shall determine the town's participation in the cost of public improvements, in accordance with the criteria in section 10.601 through 10.603.

(c) Final determination of town participation. Upon completion of the work and acceptance by the town, final construction will be determined. Town participation will then be calculated based on measurements in the field and applying the standards in sections 10.601 through 10.603.

(d) Reimbursement. Reimbursement of the town's share of the public infrastructure improvements will be made as funds become available. No payments will be made after ten years from the date of final acceptance of the subdivision.

**Sec. 10.605      Escrow policies and procedures**

(a) Request for escrow. Whenever these regulations require a property owner to construct a public improvement, the property owner may petition the town to construct such improvement in exchange for deposit of escrow as established in this section. The council shall determine whether escrow is to be accepted in lieu of the obligation to construct the improvement.

(b) Deposit with town. Whenever the town agrees to accept escrow deposits in lieu of construction by the owner of the property under these regulations, the property owner or developer shall deposit an amount equal to his share of the costs of design and construction in escrow with the town. Such amount shall be paid prior to release of construction plans by the town engineer. The obligations and responsibilities of the property owner shall become those of property owner's transferees, successors and assigns; and the liability therefor shall be joint and several.

(c) Determination of escrow amount. The amount of the escrow shall be determined by using the average of the comparable bids awarded by the town in the preceding six (6) months or, if none exist, then in the preceding year or, if none exists current market value of construction as determined by an estimate by the town engineer. Such determination shall be made as of the time the escrow is due hereunder.

(d) Termination of escrow. Escrows which have been placed with the town under this section which have been held for a period of ten (10) years from the date of such payment or agreement, in the event that the town has not authorized the preparation of plans and specifications for construction of such roadway facilities for which the escrow was made, shall upon written request be returned to the record property owner, with accrued interest, as limited by subsection (f). Such return does not remove any obligations of the owner for construction of the required facilities if a building permit has not been issued on the subject lot or if a new building permit is applied for.

(e) Refund. If any public improvement for which escrow is deposited for, is constructed, or is reconstructed by another governmental authority at no cost to the town, the escrowed funds and accrued interest shall be refunded to the property owner or developer after completion and acceptance of the public improvements. In the event that a portion of the cost is borne by the town and the other portion of the cost by another governmental authority, the difference between the owner's actual proportionate cost and the escrowed funds, including accrued interest, if any, shall be refunded after completion and acceptance of the improvements.

(f) Interest limitation. If money is refunded within six months of deposit, only the principal will be refunded. Monies returned after this date will be refunded with interest accrued, calculated at 1% less than the rate of actual earnings.

(g) Sample forms. The following are samples of forms to be used for purposes of this article.

### PROFORMA OWNER'S CERTIFICATE

#### OWNER'S CERTIFICATE

[Insert property legal description here]

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That XYZ Development Corporation (Owner), acting by and through its duly authorized officers does hereby adopt this plat, designating the herein above described property as XYZ ESTATES, an addition to the Town of Sunnyvale, Dallas County, Texas, and does hereby dedicate and convey, in fee simple, to public use forever, the streets and alleys as shown hereon. The easements shown thereon are hereby reserved for the purposes indicated. The easements and fire lanes shall be open to the public, fire and police units, garbage and rubbish collection agencies, and all public and private utilities for each particular use. The maintenance of paving on the utility easements and fire lanes is the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements, obstructions, or growths shall be constructed, reconstructed or placed upon, over or across the easements and fire lanes as shown. Said easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same. The Town of Sunnyvale shall have the right to remove and keep removed from fire lanes, all or parts of any building, fences, trees, shrubs, or other improvements, obstructions, or growths which in any way may endanger or interfere with access of fire units to fire protection facilities or equipment. All and any public utility shall have the right to remove and keep removed all or parts of any building, fences, trees, shrubs, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective system on the easements, and all public utilities shall at all times have the full right of ingress and egress to or from and upon the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its

respective systems without the necessity at any time of procuring the permission of anyone. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance or service required or ordinarily performed by that utility).

Owner hereby grants and conveys to the Town of Sunnyvale and the general public use forever an access easement for ingress, egress, park and recreation use in, on and under all Open Space shown hereon. Owner hereby grants and conveys to the Town of Sunnyvale and the general public a drainage easement in, on and under all Open Space shown hereon. The Town of Sunnyvale shall have the right but not the obligation to maintain drainage facilities, public trails and landscaped areas within all said easements.

Owner hereby grants the Town of Sunnyvale the irrevocable option which option is coupled with an interest, runs with the land and which option shall expire twenty (20) years from the date of this plat, to receive by dedication in fee simple for park recreation and drainage purposes all Open Space shown hereon, landscaped buffers and trail improvements associated therewith at no cost to the Town of Sunnyvale. This option may be exercised by notice from the Town to Owner or its successors or assigns.

The easement, rights, and privileges granted by this conveyance are exclusive, and Owner covenants not to convey any other easement or conflicting rights in the area covered by this grant. The easements shown hereon shall be perpetual. Owner's heirs, personal representatives, successors, and assigns are and shall be bound to warrant and forever defend the easement and rights conveyed in this instrument against every person lawfully claiming or to claim all or any part of the interest in the Property.

Water main and wastewater easement shall also include additional area of working space for construction and maintenance of the systems. Additional easement area is also conveyed for installation and maintenance of manholes, cleanouts, fire hydrants, water services and wastewater services from the main to the curb or pavement line, and description of such additional easements herein granted shall be determined by their location as installed.

This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the Town of Sunnyvale, Texas.

WITNESS, my hand at Dallas, Texas, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

XYZ Development Corporation

\_\_\_\_\_

By: John Doe, President

THE STATE OF TEXAS

COUNTY OF DALLAS

Before me, \_\_\_\_\_, a Notary Public in and for Dallas County, Texas, on this day personally appeared John Doe, President of XYZ Development Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed



**ARTICLE 10.700 STREET CUT AND USES OF PUBLIC RIGHT-OF-WAY**

**Sec. 10.701 Definitions**

In this article:

Backfill:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, or other material to fill an excavation.

Closure. A complete or partial closing of one or more lanes of traffic of a thoroughfare for any period of time.

Construction. Any of the following activities performed by any person within a public right-of-way:

- (1) Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.
- (2) Modification or alteration to any surface, subsurface or aerial space within the public right-of-way.
- (3) Performance, restoration, or repair of pavement cuts or excavations.
- (4) Reconstruction of any of the work described in subsections (1)–(3) above.
- (5) Other similar construction work.

Director. The director of public works or any designated representative.

Emergency activity. Circumstances requiring immediate construction or operations by a public service provider to:

- (1) Prevent imminent damage or injury to the health or safety of any person or to the public right-of-way; or
  - (a) Restore service; or
  - (b) Prevent the loss of service.

Excavation. The removal of dirt, fill, or other material in the public right-of-way, including but not limited to the methods of open trenching, boring, pipe bursting, tunneling or jacking.

Facilities. The plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, and appurtenances of a public service provider and includes property owned, operated, leased, licensed used, controlled, or supplied for, by, or in connection with the business of the public service provider.

**Major project.** Any construction that requires a pavement cut of a length of 300 feet or greater within any single street or alley.

**Pavement cut.** A cut made into the paved surface of the public right-of-way.

**Pavement cut and repair standards manual.** A manual published by the town that contains engineering, technical, and other special criteria and standards established by the director for pavement cut, excavation, backfill, restoration, and repair activities in the public right-of-way.

**Permittee.** The person applying for or receiving a permit to perform construction within the town's right-of-way under the terms and conditions of this article. The term includes:

- (1) Any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the permittee; and
- (2) Any contractor or subcontractor of the permittee, for purposes of compliance with the town's pavement cut and repair standards manual and the traffic control, construction, and maintenance requirements of this article.

**Person.** A natural person, a corporation, a public service provider, a governmental entity or agency (including the town), a limited liability company, a joint venture, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

**Public right-of-way.** Any area of land within the town that is acquired by, dedicated to, or claimed by the public or town in fee simple, by easement, or by prescriptive right or that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, highway, street, sidewalk, alley, or utility access easement. The term includes the area on, below, and above the surface of the public right-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved. The term applies to any right-of-way shown on any preliminary plat or final plat that has been filed with the town.

The term does not include airwaves above the public right-of-way that fall under the exclusive jurisdiction of the United States government.

**Public service provider.** Any wholesale or retail electric utility, gas utility, telecommunications company, cable company, water utility, storm water utility, or wastewater utility, regardless of whether the public service provider is publicly or privately owned or required to operate within the town pursuant to a franchise.

**Spoils or excavated material.** Construction waste, construction supplies, or excavated dirt, fill, or other similar material that is stored or placed upon the surface of a public right-of-way.

**Town.** The Town of Sunnyvale and the town's officers and employees

**Subdivision.** "Subdivision" as defined in town's subdivision ordinance.

**Thoroughfare.** A public traffic arterial, parkway, collector, or country lane as designated in the town's transportation system diagram as shown in the town's comprehensive plan.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.702 Director's authority; enforcement; offenses**

- (a) The director is authorized to administer and enforce the provisions of this article, and to promulgate regulations including but not limited to engineering, technical, and other special criteria and standards, to aid in the administration and enforcement of this article that are not in conflict with this article, this code, or state or federal law.
- (b) The director is authorized to enter upon a construction site for which a permit is granted under this article or, where necessary upon private property adjacent to the construction site, for purposes of inspection to determine compliance with the permit or this article.
- (c) A person commits an offense if he:
  - (1) Performs, authorizes, directs, or supervises construction without a valid permit issued under this article;
  - (2) Violates any other provision of this article;
  - (3) Fails to comply with restrictions or requirements of a permit issued under this article; or
  - (4) Fails to comply with an order or regulation of the director issued pursuant to this article.
- (d) A person commits an offense if, in connection with the performance of construction in the public right-of-way, he:
  - (1) Damages the public right-of-way beyond what is incidental or necessary to the performance of the construction;
  - (2) Damages public or private facilities within the public right-of-way; or
  - (3) Fails to clear debris associated with the construction from a public right-of-way after construction is completed.
- (e) It is a defense to prosecution under subsection (d)(2) of this section if the person complied with all of the requirements of this article and state law and caused the damage because the facilities in question:
  - (1) Were not shown or indicated in a plan document, plan of record, record construction drawing, or field survey, staking, or marking; and
  - (2) Could not otherwise be discovered in the public right-of-way through the use of due diligence.
- (f) A person commits an offense if, while performing any construction or other activity along a public right-of-way, whether or not a building or other permit is required for the activity, the person:
  - (1) Damages the public right-of-way or public or private facilities located within the public right of way; or

- (2) Fails to clear debris associated with the construction or other activity from a public right-of-way.
- (g) It is a defense to prosecution under subsections (f)(1) and (f)(2) of this section that the person was performing all of the construction or other activity along the public right of way in compliance with any permit issued for the construction or activity.
- (h) A culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued authorized, directed, or permitted. An offense under subsections (d)(3) or (f)(2) is punishable by a fine of not less than \$500 or more than \$2,000. Any other offense under this article is punishable by a fine of \$500.
- (i) This article may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the town has for a violation of this article.
- (j) Prior to initiation of civil enforcement litigation, the permittee or any other person who has violated a provision of this article must be given the opportunity to correct the violation within the time frame specified by the director. This subsection does not prohibit the director or the town from taking enforcement action as to past or present violations of this article, notwithstanding their correction.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.703 Registration; other requirements**

- (a) Nothing in this section relieves a public service provider from obtaining permit under this article to perform work in the public right-of-way.
- (b) In order to protect the public health, safety, and welfare, a public service provider maintaining or operating existing facilities in the public right-of-way must register with the director in accordance with the following requirement:
  - (1) The registration must be on a form furnished by the director and made in the name of the public service provider that owns the facilities.
  - (2) Registration expires December 31 of every other year after the calendar year in which the first registration occurs. If a registration is not renewed by the expiration date, the facilities of the public service provider will be deemed to have been legally abandoned.
  - (3) If information provided as part of the registration changes, the public service provider must inform the director in writing not more than 30 days after the date the change occurs.
  - (4) The public service provider shall also include the following with the registration:
    - (A) The name of the public service provider using the public right-of-way, including any business name, assumed name, or trade name the public service provider operates under or has operated under within the past five years.

- (B) If the public service provider is a certificated telecommunications provider, the certificate number issued by the state public utility commission.
- (C) The ordinance number of any franchise or license issued by the town that authorizes the public service provider to use the public right-of-way.
- (D) The names, addresses, and telephone numbers of at least two persons who will be general, day-to-day contacts for the public service provider. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.
- (E) The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider.
- (F) The name, address, and telephone number of any contractor or subcontractor, if known, who will be working in the public right-of-way on behalf of the public service provider.
- (G) The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the town having to pay a long distance telephone or toll charge.
- (H) Proof of existing insurance that complies with the following requirements:
  - (i) The minimum insurance coverage for a public service provider must be commercial general liability insurance, or any combination of general liability and umbrella/excess insurance, (including, but not limited to, premises operations personal and advertising injury, products/completed operations, and independent contractors and contractual liability) with a minimum combined bodily injury (including death) and property damage limit of \$25,000,000 per occurrence, \$25,000,000 products/completed operations aggregate, and \$25,000,000 general aggregate. The liability insurance policy must also include coverage for explosion, collapse, and underground hazards. The insurance coverage must be written by a company or companies approved to conduct business in the state. The town must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.
  - (ii) The insurance filed by a public service provider must also meet the same requirements as insurance filed by a permittee under subsections 10.706(a)(3)-(7). A public service provider has the same duties, obligations and liabilities as a permittee under subsections 10.706(a)(3)-(7), except that a public service provider does not have to file separate proof of insurance every time it obtains a permit to perform work in the public right-of-way.
  - (iii) If the public service provider is an entity that has a tangible net worth ratio of 3 to 1 (assets to liabilities) with a minimum tangible net worth of at least \$100,000,000, proof of self-insurance sufficient to meet the

coverage required in this subparagraph is sufficient to satisfy the insurance requirements of this subsection.

- (iv) The insurance requirements of subsection (b)(4)(H) of this section do not apply to:
  - a. Construction or other activity performed by the town's own forces or by contractors hired by the town and working on town-owned facilities within the public right-of-way; or
  - b. A public service provider operating facilities or performing construction pursuant to a valid existing franchise or license approved by the town council.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.704 Plans of record**

(a) Any public service provider with facilities in the public right-of-way shall submit plans of record in accordance with the following requirements:

- (1) On or before September 30, 2004, a public service provider shall submit to the director a schedule to provide complete plans of record that show all of its facilities existing in the public right-of-way as of the date the plans of record are submitted to the director in compliance with this section. The schedule must provide for all plans of record for existing facilities to be furnished to the director on or before September 30, 2005.
- (2) On or before January 1 of each calendar year following the initial submittal of its plans of record a public service provider shall provide to the director plans of record that show all installations of new facilities, and all changes, additions, abandonments, and relocations relating to existing facilities, completed in the previous calendar year.
- (3) The plans of record must be provided in a format specified by the director and must contain such detail and accuracy as are required by the director. Plans of record must be submitted in computerized or digital format.

(b) If plans of record submitted under this section include information expressly designated by the public service provider as a trade secret or other confidential information protected from disclosure by state law, the director may not disclose that information to the public without the consent of the public service provider, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Open Records Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a public service provider to designate all matters in its plans of record as confidential or as trade secrets.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.705 Permit required – Exceptions; conditions; denial and revocation**

(a) A person shall not perform any construction, except for an emergency activity, within a public right-of-way without first obtaining a permit from the director prior to the start of

construction. A person who undertakes any work outside of the public right-of-way that will cut, break, or otherwise damage the public right-of-way shall also obtain a permit under this section.

(b) A permit is not required under the above subsection if the activity in the public right-of-way consists exclusively of:

- (1) A connection of real property to a retail utility service on the same side of the public right-of-way, if the connection does not require a pavement cut; or
- (2) The replacement of a single damaged pole.

(c) The following procedures and requirements govern the application for and issuance of a permit for construction within the public right-of-way:

- (1) A permit application must be made in writing on a form approved by the director. The application must be signed and submitted by the owner of the facility for which the permit is requested or, if the work does not involve a facility, by the owner of the improvement for which the permit is requested.
- (2) Except in the case of a major project, a permit application must be submitted to the director not less than two business days before commencement of the proposed construction unless emergency activity is required, in which case immediate notice, including the reasons for the emergency activity, must be given to the director.
- (3) A permit application for a major project must be submitted enough time in advance of the commencement of the proposed construction to allow the director at least 30 business days for review. During this project submission review period, schedules, alternatives to cutting the street, utility assignments, special repair requirements, and all other questions will be resolved. Adjustments to time limits specified in the pavement cut and repair standards manual may be granted by the director for major project work. The proposed construction on the project may commence upon issuance of the permit by the director.
- (4) A permit application must include a statement by the applicant that the applicant has collected all available plans for existing town underground facilities and other public and private utilities and has included those facilities and utilities in the applicant's design, showing no apparent conflict. The statement must also affirm that the applicant will perform field verifications as necessary during construction to locate all town and other existing underground facilities.
- (5) The permit application on any project must include submittal of plans to the director. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state. The plans must include the horizontal alignment of all proposed facilities in relation to all existing public and private facilities in plan view. If the project is a major project that is located within the central business district, crosses street intersections, or involves crossing proposed facilities over or under existing facilities, the plans must also include a representation of the vertical alignment of the facilities in profile view. Each sheet of the plans must have a note instructing the contractor to verify the location of underground utilities at least 100 feet in advance of all proposed utility crossings, and also at locations where the proposed facilities are shown to be running

parallel to existing facilities within five feet. The plans must be half size (11" X 17") at a scale no smaller than 1" = 40' in plan view and 1" = 5' in profile view. Each project must be assigned a project number, which must appear on each sheet.

- (6) A permit is required even if other authority has been granted by the director to make a pavement cut or excavation in a public right-of-way as part of a town construction project.
- (7) The director shall state on the permit the activity for which the permit is issued and include any additional restrictions or requirements determined necessary by the director.
- (8) The permittee has the exclusive responsibility to coordinate with other public service providers to protect all existing facilities in the public right-of-way in which the construction occurs.
- (9) The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the pavement cut and repair standards manual and with all other town ordinances and state or federal laws or regulations affecting the permitted activity.
- (10) The director shall notify public service providers that registered under section 10.703 during the previous calendar year of pavement surfaces to be reconstructed or resurfaced by the town during the next calendar year.
- (11) A public service provider planning construction within the public right-of-way shall notify the director by March 1 of each year of all then-known facility expansion or replacement projects planned for the next fiscal year that may require pavement cuts or excavations.
- (12) The director may require any permittee to use trenchless technology or boring, instead of disturbing a public right-of-way surface, if it is:
  - (A) In the best interest of the town;
  - (B) Technically, commercially, and economically feasible; and
  - (C) Not in violation of federal or state regulations or industry safety standards.
- (13) In using trenchless technology or boring the permittee must:
  - (A) Obtain and have at the construction site recent plans from the town's water utilities department, and, where available, plans from owners of all other underground facilities, showing the horizontal and vertical placement of the underground facilities, if the permittee's proposed facilities will:
    - (i) Cross other existing facilities; or
    - (ii) Be located within five feet of existing facilities at any point;

- (B) Locate all water main lines by potholing if the permittee's proposed facilities will:
  - (i) Cross other existing facilities; or
  - (ii) Be located within five feet of existing facilities at any point; and
- (C) Be able to locate the bore head at all times in accordance with the latest technologies and provide the location of the bore to the director upon request.
- (14) The permittee shall maintain the construction area in a public right-of-way in a manner that avoids dust, other health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way is permanently repaired.
- (15) When making a pavement cut or excavation, or placing spoils or excavated material in or along a public right-of-way, the permittee shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the cut, excavation, spoils, or excavated material in compliance with the latest edition of the state manual on uniform traffic devices, as amended; published by the state department of transportation.
- (16) The director may require the permittee to share trench space to minimize the disruption of vehicular and pedestrian traffic or to provide space for needed town facility installations if such sharing is:
  - (A) Technically, commercially, and economically feasible; and
  - (B) Not in violation of state or federal regulations or industry safety standards.
- (d) The following additional procedures apply if it is necessary to close, in whole or in part, a public right-of-way for purposes of making a pavement cut or an excavation:
  - (1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting one day or less, the permittee shall conspicuously mark its vehicles with the permittee's name and telephone number.
  - (2) Any closure of a traffic lane or blocking of a sidewalk or alley lasting longer than one day must be identified by a sign that is clearly legible to the traveling public. The sign must be posted at or in close proximity to the worksite and must contain:
    - (A) The name of the permittee;
    - (B) The name of the person performing the construction on behalf of the permittee, if any; and
    - (C) A local 24-hour contact number that can be used in case of emergency or to answer any questions.
  - (3) The requirements of the above subsections are in addition to any other signage, barricades, or warning devices required by law or ordinance. The sign information

required by subsection (d)(2) of this section may be included on barricades or warning devices.

- (4) When permitted construction will last longer than two weeks the permittee shall give written notification to all adjacent property occupants by conspicuously posting the notification on each adjacent property at least 72 hours before commencement of construction, unless the director determines that an emergency exists.
  - (5) If a street or alley must be totally closed for any duration, the permittee shall provide for reasonable alternative access to the adjacent property by the property's occupants and invites, which access must include but is not limited to deliveries to the property.
  - (6) If construction on a partially closed thoroughfare stops for the day, all thoroughfare lanes must be reopened to traffic, unless an extended time of closure is expressly granted by the permit.
  - (7) If a pavement cut is to be covered, the permittee shall use steel plates, or equivalent plates, of sufficient strength and thickness to support all traffic.
  - (8) Plates must be sufficiently secured in place so as not to become dislodged or in any way cause a hazard to any traffic. Asphalt transitions must be placed as required to provide a reasonably smooth riding surface.
  - (9) Plates must be marked with the name of the person performing the construction and with a local 24-hour contact number that can be used in case of an emergency, unless a sign complying with subsection (d)(2) of this section is posted at or in close proximity to the worksite.
- (e) Unless it becomes necessary to conduct emergency activity, a permittee shall not cause or allow interference with traffic flow on a thoroughfare during the hours of 6:30 a.m. through 9:30 a.m. and 3:30 p.m. through 6:30 p.m., Monday through Friday.
- (f) A temporary repair may not remain on public right-of-way for more than 14 calendar days after the completion of the repair or installation of the underground structure or facility unless a time extension has been granted by the director. The town may, at the expense of the permittee or other responsible person, remove any temporary repair remaining in the public right-of-way beyond the 14-day time limit and make permanent repairs. Any exception to the 14-day time limit, other than a relocation of a facility in advance of a town construction project in the public right-of-way, must be approved by the director prior to expiration of the time limit.
- (g) If no construction has commenced under a permit within 120 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in right of way. An extension to a permit may be granted by the director only before the permit expires.
- (h) The director may refuse to issue a permit if:
- (1) The proposed construction will substantially interfere with vehicles or pedestrians and no procedures, or procedures inconsistent with this article, have been implemented to minimize the interference;

- (2) The proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing facilities already in the public right-of-way;
  - (3) The proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the latest edition of the state manual on uniform traffic control devices, as amended;
  - (4) The proposed construction, incidental traffic control, or other permitted activity, or the manner in which it is to be performed, will violate a town ordinance or regulation or a state or federal statute or regulation;
  - (5) The permittee:
    - (A) Failed to furnish all the information required by this article;
    - (B) Knowingly or intentionally furnished materially false or incorrect information to the director;
    - (C) Failed, except for good cause shown, to file the application on the approved form within the time limits prescribed by this section;
    - (D) Failed or refused to submit plans of record as required under section 10.704;
    - (E) Was convicted of violating a provision of this article twice within the two year period immediately preceding the date of application;
    - (F) Failed to furnish or have on file with the director the insurance required under this article;
    - (G) Is not in compliance with applicable requirements of an existing permit issued under this article; or
    - (H) Has not obtained a current copy of the pavement cut and repair standards manual from the director.
- (i) The director may suspend construction or revoke an issued permit on the same grounds on which a permit may be denied under subsection 10.705(h)(5)(H) or if the permittee:
- (1) Commences or performs construction in violation of an applicable requirement of this article or the permit;
  - (2) Creates or is likely to create a public health or safety hazard by performance of the construction in question;
  - (3) Fails to comply with an order or regulation of the director;
  - (4) Fails to comply with restrictions or requirements of other town ordinances or state or federal laws or regulations applicable to the construction; or

- (5) Commences or performs work without having prior knowledge and understanding of the applicable repair standards or without having obtained a current copy of the pavement cut and repair standards manual from the director.
- (j) The director shall provide written notice of a suspension or revocation to the permittee or the person hired by the permittee to perform the construction. Construction that is suspended may not resume until the director determines that permittee has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been revoked may be reinstated by the director if the director determine that:
  - (1) The permittee has corrected the violation noncompliance, or hazard that caused the revocation; and
  - (2) The healthy or safety of the public is not jeopardized by reinstating the permit.
- (k) Any variance from the requirements of this article must be approved in advance by the director. The director may grant a variance only if an extreme hardship exists and the public health, safety, welfare, and convenience is not adversely affected by granting the variance. The director may not approve any variance that would give a competitive advantage to one public service provider over another public service provider providing the same or similar service. The director may not grant a variance from the indemnity requirements of section 10.706(d).

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.706 Insurance and indemnity requirements**

- (a) As an express precondition to being granted a permit to perform construction within a public right-of-way, the permittee shall furnish the director proof existing insurance in accordance with the following requirements:
  - (1) If the construction will require a pavement cut or excavation not more than 18 inches in depth and 300 feet in length, the permittee must provide proof of commercial general liability insurance (including, but not limited to, premises operations, personal and advertising injury products/completed operations, and independent contractors and contractual liability) with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence, \$500,000 products/completed operations aggregate, and \$500,000 general aggregate. The insurance coverage must be written by a company or companies approved to conduct business in the state. The town must be named as an additional insured on the policy by endorsement CG 20 26 or broader.
  - (2) If the construction will require a pavement cut or excavation exceeding either 18 inches in depth or 300 feet in length, the permittee must provide proof of commercial general liability insurance, or any combination of general liability and umbrella/excess insurance, (including, but not limited to, premises operations, personal and advertising injury, products/completed operations, and independent contractors and contractual liability) with a minimum combined bodily injury (including death and property damage limit of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate and \$2,000,000 general aggregate. The liability insurance policy must also include coverage for explosion, collapse, and underground hazards. The permittee shall obtain, pay for and maintain an excess

liability umbrella insurance policy for an amount of not less than \$5,000,000 combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required hereinabove. The insurance coverage must be written by a company or companies approved to conduct business in the state. The town must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.

- (3) Each policy must include a provision that requires the insurance company to notify the town in writing at least 30 days before canceling or failing to renew the policy or before reducing policy limits or coverages.
  - (4) The permittee agrees, with respect to the insurance coverage required by this subsection, to waive subrogation against the town and its officers and employees for bodily injury (including death), property damage, or any other loss.
  - (5) The insurance coverage required by this subsection is considered primary insurance in regard to the town and its officers, employees, and elected representatives.
  - (6) Proof of insurance in the form of an ordinal industry standard certificate of insurance showing the town as an additional insured must be provided to the director prior to any commencement of work by the permittee. The certificate of insurance must be executed by the insurer or its authorized agent and must state specific coverage, limits, and expiration dates in accordance with the requirements of this subsection.
  - (7) The permittee shall make available to the director, upon request, a copy of the insurance policy, including any endorsements, riders, and amendments to the policy and any statements respecting coverage under the policy.
- (b) A permittee who is a public service provider who has registered and filed proof of insurance under section 10.703 of this article is not required to furnish separate proof of insurance under this section when obtaining a permit, but must comply with all other requirements of this section.
- (c) If the permittee is an entity that has a tangible net worth ratio of 3 to 1 (assets to liabilities) with a minimum tangible net worth of at least \$1,000,000, proof of self-insurance sufficient to meet the coverage required in subsection (a) of this section is sufficient to satisfy the requirements of that subsection.
- (d) The following indemnity provisions apply to a public service provider registered under section 10.703 and are also included by reference as express terms of a permit issued under this article:
- (1) A permittee who is a certificated telecommunications provider as defined in chapter 283, Texas Local Government Code, as amended, agrees to give to the town the indemnity provided in section 283.057 Texas Local Government Code, as amended.
  - (2) A permittee, other than a certificated telecommunications provider described in the above subsection (1), expressly agrees to fully and completely defend, indemnify, and hold harmless the town and its officers, agents, and employees, against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought,

suffered by any person or persons, that may arise out of or be occasioned by any negligent, grossly negligent, wrongful, or strictly liable act or omission of the permittee or its agents; employees, or contractors, in the performance of work or activity pursuant to the permit issued under this article, regardless of whether or not the negligence, gross negligence, wrongful act, or fault of the town or its officers, agents, or employees, contributes in anyway to the damage, injury, or other harm. The requirement of the permittee to defend the town also unconditionally applies regardless of whether or not the negligence, gross negligence, or fault of the town or its officers, agents, or employees contributes in any way to the damage, injury, or other harm. Nothing in this subsection may be construed as waiving any governmental immunity available to the town under state law. This provision is solely for the benefit of the permittee and the town and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- (e) This section does not apply to:
  - (1) Construction or other activity performed by the town's own forces or by contractors by the town and working on town-owned facilities within the public right-of-way;
  - (2) Construction or repair of a sidewalk or driveway approach for an abutting single-family residential property owner.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.707 Maintenance bond; letter of credit; escrow fund**

- (a) General. As an express precondition to being granted a permit to perform construction within a public right-of-way, the permittee shall furnish the director a maintenance bond, letter of credit, or escrow fund, complying with this section, for any project that involves pavement excavation or boring for the installation of a new facility or for a significant facility relocation other than an excavation or boring for a localized new service line installation or facility repair. Without exception, the town's forms must be used, and exclusive venue for any lawsuit is specified as Dallas county. A maintenance bond will automatically be increased by the amount of any change order, which increases the contract price with or without notice to the surety, but in no event may a change, which reduced the contract amount, reduce the penal sum of the bond.
- (b) Amount. A good and sufficient bond, letter of credit, or escrow fund in an amount not less than 100 percent of the total cost, as determined by the director, of those items of work associated with the temporary and permanent repair of the town's infrastructure, including, but not limited to backfill, pavement base, street pavement, curb and gutter, drive approaches, sidewalk, sod, irrigation, landscape, traffic control devices, signs, and pavement markings, guaranteeing the full and faithful execution of the work and performance of the contract in accordance with the plans, specifications, and contract documents, including any extensions thereof, for the protection of the town. The bond, letter of credit, or escrow fund must provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two years from the date of completion and acceptance of the work by the town. The permittee may choose to have the amount determined on a per project basis or an aggregate basis. If on an aggregate basis, the amount of a single bond, letter of credit, or escrow fund must be sufficient to cover all of permittee's projects outstanding at any one time. If the amount of the permittee's outstanding projects exceeds an existing bond, letter of credit, or escrow fund, the permittee shall immediately

increase it or post a new bond, letter of credit, or escrow fund to cover the project that has caused the deficiency.

(c) Sureties. No surety may be accepted by the town who is in default or delinquent on any bonds or who is interested in any litigation against the town. All bonds must be made on the forms furnished by the town and must be executed by not less than one corporate surety authorized to do business in the state and acceptable to the town. Each surety must be listed in the most current Federal Register Treasury List. The permittee and the surety shall execute each bond. The surety shall designate a resident agent in the Dallas county acceptable to the town to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. The town reserves the right to reject any and all sureties.

(d) Additional or substitute bonds. If at any time the town is or becomes dissatisfied with any surety on a maintenance bond, the permittee shall, within five days after notice from the town to do so, substitute an acceptable bond, or provide an additional bond, in such form and sum signed by such other surety as may be satisfactory to the town. The premiums on the bonds must be paid by the permittee without recourse to the town.

(e) Letter of credit. In lieu of a performance bond, a permittee may provide an irrevocable letter of credit. Each letter of credit must be made on a form furnished by the town.

(f) Escrow fund. In lieu of a performance bond, a permittee may establish an escrow fund, for the benefit of the town, pursuant to an agreement in a form acceptable to the town attorney.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.708      Miscellaneous requirements for street excavation and installations and trench safety**

(a) In addition to the other requirements of this article, a pavement cut, excavation, or repair necessitated by or as a result of construction inside or outside of the public right-of-way must comply with all of the requirements contained in this section.

(b) General.

(1) A pavement cut in the public right-of-way may be made prior to obtaining a permit only if a valid need to perform emergency activity exists. Immediate notice, including the reasons for the emergency activity, must be given to the director. Whenever an emergency activity cut is made, application for a permit must be made not later than the second business day following commencement of the emergency activity.

(2) A pavement cut that is made in a newly constructed, reconstructed, or resurfaced asphalt street that is not more than 60 months old will require that, in addition to repairs made in compliance with the Pavement Cut and Repair Standards Manual, a surface treatment must be applied that consists of slurry seal or micro-surfacing, or an equivalent method approved by the director, for the purposes of sealing the repair edges of the cut and maintaining uniformity in appearance with the surrounding street surfaces. No surface treatment is required if the repairs are made to match pavement color and are approved by the director. The application of slurry seal or micro-surfacing must be made to the entire block of the street in which a cut is made. For an

undivided street, the application must be made from curb to curb, and for a divided street, from median curb to outside curb.

- (3) The permittee and any person responsible for construction shall protect the public right-of-way surface, drainage facilities, and all other existing facilities and improvements from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature.
- (c) Two-year maintenance period.
- (1) All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this article, other town ordinances, and regulations promulgated by the director relating to construction within the public right-of-way.
  - (2) All construction performed under any permit granted to a permittee by the town under this article must be maintained to the satisfaction of the director for two years after the date of completion of the construction or repair.
  - (3) Any damage to, or any defect or other problem in, the permitted construction occurring at any time within two years after the completion of work under the permit must be corrected to the satisfaction of the director within 10 days after the director gives notice to the permittee to correct the damage, defect, or other problem.
  - (4) The opinion of the director as to the necessity of correcting any damage, defect, or other problem is binding on all parties.
- (d) Repairs.
- (1) All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the pavement cut or excavation area will be regarded as a part of the pavement cut or excavation and must be included in the total area repaired. If repaired by the town, the permittee shall reimburse the town for the actual direct and indirect costs of the repair.
  - (2) The director shall notify the permittee if the backfill on a permitted construction settles at any time during the two-year maintenance period required in subsection (c) of this section, causing subsidence in the pavement of one-half inch or more, vertically measured in any three-foot horizontal direction. Upon notification, the permittee shall schedule appropriate repair work and promptly notify the director of the anticipated dates of commencement and completion of the repair work. If the repair work is not commenced or completed within the agreed-upon time schedule, or if no response is received by the director within 24 hours after notification to the permittee, the repair work may be performed by the town. The permittee shall reimburse the town for the actual direct and indirect costs of any repair work performed by the town.
  - (3) The permittee shall notify the director at least 24 hours before commencing any repair operations under subsection (d)(2).

- (e) Trench safety.
- (1) Trench safety systems that meet U. S. Occupational Safety and Health Administration standards are required for construction in which trench excavation will exceed a depth of five feet.
  - (2) Subsection (e)(1) above does not apply to a construction contract entered into by a permittee that is subject to the safety standards adopted under chapter 121, Texas Utilities Code, as amended.
- (f) Tests.
- (1) The permittee will be required to provide a certified construction materials testing lab, or use a testing method approved by the director, to perform the appropriate tests, at the permittee's expense, to ensure quality control for the backfill and pavement construction phases. Backfill shall be tested at a frequency of one test per 400 feet of trench per foot of backfill depth. Test shall be performed at a location and depth as selected by the director's representative.
  - (2) Unless another method is approved by the director, tests must be made in accordance with the latest methods of the American Society of Testing and Materials. The results from tests for backfill compaction must be supplied to the town within three days of the backfill work completion and before pavement construction begins. The results from tests for pavement construction must be submitted within one week of completion of the project. Retesting after failure to pass the required tests will be at the expense of the permittee.
  - (3) Compaction testing is not required when flowable type backfill material is used and accepted.
  - (4) If the materials used for the street repairs do not meet the minimum requirements of the pavement cut and repair standards manual, they may be considered unacceptable and may be ordered to be removed and replaced at the permittee's expense. In cases where the repairs are unacceptable and the permittee refuses to make them acceptable, the work may be accomplished by the town, and all of the direct and indirect costs will be charged back to the permittee responsible for the work.
  - (5) The town at its expense may perform, or have performed, any material tests it deems necessary to verify conformance with the specifications set forth in subsection (6) below. If tests performed at the town's expense show cause for additional work or rework by the permittee, then further testing required to show conformance with the specifications will be at the expense of the permittee, including the cost of the original testing that showed the need for additional work or rework.
  - (6) Specifications for backfill compaction must meet the requirements contained in the pavement cut and repair standards manual. Specifications for pavement testing must meet the requirements contained in the applicable provisions of the Standard Specifications for Public Works Construction – North Central Texas.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.709 Restoration requirements**

- (a) The pavement cut and repair standards manual and the requirements of this section govern the restoration of public right-of-way surfaces within the town. For those restoration activities not covered by the pavement cut and repair standards manual or this section, the applicable provisions of the Standard Specifications for Public Works Construction – North Central Texas will govern.
- (b) A permittee performing construction in the public right-of-way shall restore the public right-of-way to a condition that is equal to or better than the condition prescribed by the most recent version of the Pavement Cut and Repair Standards Manual or other applicable town design and construction standards.
- (c) Restoration work must be performed to the satisfaction of the director. Restoration work must include, but is not limited to, the following:
- (1) Replacement of all sod or ground cover with sod or ground cover equal to or better than the type damaged during the work, either by sodding or seeding as required by the director.
  - (2) Installation or reinstallation of all manholes and handholes, as required by the director.
  - (3) Backfilling and compaction of all completed bore pits potholes trenches, or other holes, which must be performed on a daily basis unless other safety requirements are approved by the director.
  - (4) Street, sidewalk, and alley repair that conforms with the standards for construction established in this article and by the director.
  - (5) Leveling of all trenches and backhoe lines.
  - (6) Restoration of the excavation site to the specifications and requirements established in this article and by the director.
  - (7) Restoration of all landscaping, ground cover, and sprinkler systems.
  - (8) Restoration of any damaged traffic control devices, including but not limited to imbedded loop detectors, pavement markings, underground conduits, and signs.
- (d) All location flags must be removed during the cleanup process by the permittee or the permittee's contractor at the completion of the work.
- (e) Restoration of special street, sidewalk, or drive approach surfaces designed to present unique visual images, color, or designs (regardless of the type, color, pattern, or texture of special material or process used) must be done so that the restoration matches the color, texture, and pattern of the surrounding special surfaces.
- (f) Restoration must be made in a timely manner. If restoration is unsatisfactory or not performed in a timely manner, then all of the permittee's work in progress on the project in question (except for that work related to the problem of unsatisfactory restoration) will be halted,

and no other permit will be approved until all restoration is complete. Any hold on the permittee's work will include work previously permitted but not completed.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.710 Clearance for street paving and storm drainage projects**

(a) A person making a pavement cut or excavation for the purpose of adjusting facilities at the request of the town in advance preparation for a town street paving or storm drainage project shall obtain a permit under this article, except that the time limits prescribed in subsections 10.705(c) and (g) do not apply.

(b) The permittee shall maintain the pavement cut or excavation until the work order authorizing the construction of the street paving or storm drainage project is issued by the town. Upon notification by the director of any problem with the maintenance of the cut or excavation, the permittee shall promptly correct the problem. The permittee shall notify the director of the anticipated date of correction. If the correction is not made by the anticipated date, or if no response is received by the director within 24 hours after the director gives notice to the permittee, the correction may be made by the town, and the permittee shall reimburse the town for the actual direct and indirect costs of the correction.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.711 Conformance with public improvements**

(a) Whenever the town or the director deems it necessary to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way due to the town's reconstruction, widening, or straightening of streets; replacement of water or wastewater facilities; installation of traffic signals, traffic signs, and markings; or construction of any other town public improvement project, the public service provider that owns the facilities shall conform its facilities with the project as prescribed by the director.

(b) The facilities must be conformed, at the public service provider's expense, within 90 days after the director issues notice to the public service provider, unless a different schedule for the work is approved by the director.

(c) Facilities of a public service provider that are not conformed within the 90-day notice period or within the approved schedule will be deemed abandoned, and the town will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the town described in this section.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.712 Improperly constructed facilities**

(a) A permittee shall:

(1) Properly construct, install, operate, repair, relocate, upgrade, and maintain its facilities existing within the public right-of-way; and

- (2) Repair or restore any damage to other facilities, the public right-of-way, or private property that occurs as a result of improper construction, installation, operation, repair, relocation, upgrade, or maintenance of the permittee's facilities.
- (b) Facilities will be considered to be improperly constructed, installed, operated, repaired, relocated, upgraded, or maintained if:
- (1) The construction, installation, operation, repair, relocation, upgrade, or maintenance endangers public health or safety or creates a public inconvenience;
  - (2) The facilities encroach upon private property or extend outside the right-of-way location designated in the permit;
  - (3) Above-ground facilities located within the right-of-way are less than one and one-half feet from the face of the curb or less than six inches from a sidewalk;
  - (4) The construction, design, or configuration of the facilities does not comply with applicable local, state, or federal laws or regulations;
  - (5) The construction, installation, operation, repair, relocation, upgrade or maintenance is conducted in a manner that damages private property or another public service provider's facilities;
  - (6) The facilities are not capable of being located or maintained using standard practices; or
  - (7) The facilities are placed in an area that interferes with another public service provider's facilities.
- (c) It is a defense to prosecution under subsections (b)(3) and (b)(4) that the facilities were constructed or installed in the public right-of-way before the effective date of this article.
- (d) Nothing in this section may be construed to diminish the authority of the director to require specific placement of specific facilities.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.713      Emergency repairs**

- (a) If the director determines during construction that an emergency repair to a public right-of-way is necessary to correct a situation that is hazardous to the public, the director shall immediately notify the permittee. If the permittee does not commence the emergency repair promptly, the director may, in his sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The permittee shall reimburse the town for the actual direct and indirect costs of the work necessary to correct the hazardous situation, including cleanup. The permittee shall maintain the emergency repair until the permittee completes final repairs.
- (b) If the director determines that a problem with a public service provider's existing facility in a public right-of-way requires an emergency repair to correct a situation that is hazardous to the public, the director shall immediately notify the public service provider. If the public service

provider does not commence the emergency repair promptly, the director may, in his sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The public service provider shall reimburse the town for the actual direct and indirect costs of the work necessary to correct the hazardous situation, including cleanup. The public service provider shall maintain the emergency repair until the public service provider completes final repairs.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.714 Driveways not to be within three feet of poles, etc.**

No person shall open up or construct any driveway or other way for the use of any character of vehicle on or across any sidewalk, parkway, or other space between any public improved roadway and any private property so as to include or to be within less than three feet of any telephone, telegraph, electric light, or other pole, anchor, or guy wire, or any water plug, mailbox, or other structure located in such portion of any public street in the town where such structure is so located by virtue of any franchise, license, permit, or other right. (Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.715 Removal of poles, etc., to permit construction of driveways--Required**

Wherever any person desires to locate any driveway and there is any structure that under section 10.714, would prevent the location of such driveway as desired, the person owning such structure or having the right to so maintain it shall move it as far as may be necessary to permit the desired location of such driveway, if the person desiring to locate the driveway first complies with all of the terms of this article. (Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.716 Same--Plans to be approved by director**

In the event any poles, structures, or improvements are to be located and installed in or upon any public street in the town or relocated for the convenience or necessity of the person maintaining them, the person desiring to construct, erect, install, or relocate such poles, structures, or improvements shall first submit to the director a sketch or blueprint of the plan of such construction or relocation for approval. The director shall immediately inspect the sketch or blueprint of the plan and, if satisfactory, the director shall approve the plan. Until such approval is given, no work may be done in that connection. If the plan of construction or relocation does not meet with the director's approval, the director shall return the plan to the person submitting it with any objections. The construction or relocation of all structures, improvements, and poles must be subject to the supervision of the director. (Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.717 Same--Allocation of costs for relocation**

(a) Any person desiring to locate or open a driveway, the location of which is prevented by reason of any structure described in section 10.714, and who desires to secure the shifting of the structure so as to permit such location shall, at the time of filing an application for a permit with the building official to construct, locate, or open such drive and prior to locating, constructing, or opening the drive, file a sketch, drawing, or map with the director that shows the location of the proposed drive or other way, and the relative location of the structure or structures in the way of the proposed driveway and the name of the person maintaining the structure obstructing the proposed driveway or preventing its location. The director shall immediately notify the person

maintaining the structure on the street, giving the name of the persons desiring the structure or structures moved.

(b) Immediately upon the filing of the drawing, sketch, or map under subsection (a) above, the director shall prepare or obtain a statement of the expense or cost of the removal of the structure. The person requesting the relocation of the structure shall pay the cost of relocation. Upon the ascertainment of the estimated cost or expense as found by the director, such person shall deposit the sum of money required with the director, and then the person maintaining the structure shall promptly remove the structure so as not to interfere with the proposed driveway. Upon completing movement of the structure, with all attachments, to the satisfaction of the director, the person moving or relocating the structure is entitled to receive the deposit.

(Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.718 Permit for driveway to be issued after poles, etc., removed**

As soon as the structure interfering with the construction, location, or opening of the proposed driveway has been moved out of the way, the building inspector shall issue a permit authorizing the location, construction, or opening of such way as may be desired upon compliance with all other applicable town ordinances. (Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.719 Appeals**

If either the person maintaining any pole or structure described in section 10.714 or the person desiring the structure or pole to be moved is dissatisfied with the estimate of the expense made or obtained by the director under this division or as to the location of the pole or structure, either or both of them may appeal from the decision by filing with the town controller a statement of their objections within five days from the date of the director's findings of the estimated expense or location. (Ordinance 397, sec. 2, adopted 6/14/04)

**Sec. 10.720 Fee where poles, etc., to be relocated**

At the time the person files the sketch seeking the removal of any obstructing structure described in section 10.714, he shall also pay the building inspector a fee of one dollar, which must be used in defraying the expense of carrying out the provisions of this article and for no other purpose. (Ordinance 397, sec. 2, adopted 6/14/04)