



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Services Committee
FROM: Nora Gierloff, Community Development Director
Hari Ponnekanti, Public Works Director
BY: Kerry Murdock, Development Review Engineer
Seong Kim, Deputy Utilities Engineer
CC: Mayor Ekberg
DATE: November 4, 2022
SUBJECT: Tukwila Municipal Code 11.08 Ordinance Amendment

ISSUE

Amend sections of the Tukwila Municipal Code (TMC) Chapter 11.08 Permits (Right-of-Way Use) to improve permitting procedures and to align with the proposed Consolidated Permit Fee Ordinance for 2023-2024.

BACKGROUND

The City of Tukwila owns and is responsible for the property under, on, or above the streets, roadways, and sidewalks. This typically extends 10 to 20 feet beyond the roadway pavement and often will extend into what appears to be private property. Assets within the right-of-way may include the street, curb, gutter, sidewalks, vegetation, sewer and water lines, telephone, power, and other utility infrastructure.

The City requires a right-of-way permit for all activities that disrupt traffic, restrict access, or modify any infrastructure within the right-of-way or for private use of the public right-of-way. Right-of-way permits are also required for private use of the public right-of-way including replacement of, or modifications to driveways, sidewalk repairs, water or sewer main taps, utility line installations and utility pole installations or modifications and blanket activities.

Entities that hold a franchise with Tukwila, such as Water Districts and telecommunication companies, can obtain a blanket activities permit. "Blanket Activities" means work that does not include cutting, removing, or disturbing the pavement surface that include routine maintenance of existing utility owned infrastructure within the right-of-way. Blanket Activity permits are obtained on an annual basis and are intended to streamline the permitting requirements for routine maintenance work.

As part of the submittal for a right-of-way permit, a Traffic Control Plan (TCP) is required when the applied for activity modifies existing traffic or pedestrian patterns, e.g., closing a roadway lane or closing a sidewalk. The TCP ensures contractor, pedestrian, and motorist safety is ensured during the approved work hours of the project. When applicable, Temporary Erosion & Sediment Control Plans (TESC) & restoration plans are required when any hard surface disturbance (cuts) occurs within the right-of-way. This may include asphalt or concrete replacement, utility excavation, and trenching. The TESC ensures that sediment does not enter into the City's drainage system and that City assets such as asphalt are fully restored back to their original condition, extending the life of the pavement for long term use. In sum, requiring entities using the City's rights-of-way to obtain permits ensures that the right-of-way is maintained appropriately for its intended use – public access.

DISCUSSION

Existing TMC chapter governing right-of-way permits (TMC Chapter 11.08) lacked clarity and created a convoluted set of permit requirements that made it hard for City staff to implement and applicants to follow. City staff is in agreement that Chapter 11.08 needs to be updated to facilitate a successful permit experience for the applicant and the assigned reviewer. Additionally, engineering industry practices are constantly changing and are ever evolving; these revisions seek to align with and improve upon current industry standards.

Proposed updates to Chapter 11.08 Permits (Right-of-Way) look to consolidate the right-of-way permit subtypes into two categories – Right-of-Way Use Permit (ROWUP), and an Annual Activities Blanket Permit (AABP). Currently there are six different types of rights-of-way permits (A – F). The (ROWUP) would be required for both franchise holders and non-franchise holders performing any kind of work in the right-of-way. The (AABP) may be issued to franchise holders on an annual basis to undertake blanket activities as defined by the updated Chapter 11.08. Consolidating the number of permit types will reduce complexity and streamline the way permit applications are reviewed will ensuring the City’s ROWs are still adequately protected. Additionally, these revisions ensure all permit fees are captured.

FINANCIAL IMPACT

There is no direct financial impact to the City. The proposed revisions will ensure that permit fees are being collected for all permit types issued by the City and will reduce staff time related to reviewing and administering right-of-way permits.

RECOMMENDATION

Council is being asked to approve the Ordinance amending TMC Chapter 11.08 and consider this item at the November 14, 2022 Committee of the Whole and subsequent November 21, 2022, Regular Council Meeting.

Attachments: Draft Ordinance TMC 11.08 Revisions

DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON; REPEALING ORDINANCE NO. 2253 AND AMENDING ORDINANCE NO. 1995 §1 (PART), AS CODIFIED AT TUKWILA MUNICIPAL CODE (TMC) CHAPTER 11.08, "PERMITS," TO RETITLE TMC CHAPTER 11.08 AS "RIGHT-OF-WAY USE PERMITS," AND ESTABLISH NEW REGULATIONS RELATED TO ACTIVITIES WITHIN THE RIGHT-OF-WAY, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City is engaged in an ongoing effort to streamline code processes and improve permitting procedures; and

WHEREAS, the City desires to provide clarification on regulations related to Right-of-Way Use Permits and Annual Activities Blanket Permits; and

WHEREAS, the proposed revisions to Tukwila Municipal Code (TMC) Chapter 11.08 will align the TMC with current engineering industry standards and practices;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Repealer. Ordinance No 2253 as codified in Tukwila Municipal Code (TMC) Chapter 11.08, is hereby repealed in its entirety.

Section 2. Chapter Title. Ordinance No. 1995 §1 (part), as codified at TMC Chapter 11.08, is hereby amended to read as follows:

CHAPTER 11.08
RIGHT-OF-WAY USE PERMITS

Sections:

- 11.08.010 ~~Permit Requirements~~Purpose
- 11.08.020 ~~Right-of-Way Use Permits~~Definitions
- 11.08.030 ~~Application Contents~~Administration and Enforcement

- 11.08.040 ~~Permit—No Transfer or Assignment~~ [Permit Required](#)
- 11.08.050 ~~Emergency Work~~ [Right-of-Way Use Permits](#)
- 11.08.060 ~~Permit Fees and Charges~~ [Application Contents](#)
- 11.08.070 ~~Permit Exception~~ [Preconstruction Meeting Required](#)
- 11.08.080 ~~Revocation of Permits~~ [Permit Approval and Conditions](#)
- 11.08.090 ~~Renewal of Permits~~ [No Permit Transfer or Assignment](#)
- 11.08.100 ~~Insurance~~ [Emergency Work](#)
- 11.08.110 ~~Deposits, Fees and Bonds~~ [Permit Fees and Charges](#)
- 11.08.120 ~~Hold Harmless~~ [Permit Exception](#)
- 11.08.130 ~~Compliance with Specifications, Standards, and Traffic-Control Regulations~~ [Revocation or Suspension of Permits](#)
- 11.08.140 ~~Inspections~~ [Renewal of Permits](#)
- 11.08.150 ~~Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions~~ [Insurance](#)
- 11.08.160 ~~Failure to Conform to Design Standards~~ [Deposits, Fees and Bonds](#)
- 11.08.170 ~~Warning and Safety Devices~~ [Hold Harmless](#)
- 11.08.180 ~~Clearance for Fire Equipment~~ [Compliance with Specifications, Standards, and Traffic-Control Regulations](#)
- 11.08.190 ~~Protection of Adjoining Property—Access~~ [Inspections](#)
- 11.08.200 ~~Preservation of Monuments~~ [Violations and Unsafe Conditions](#)
- 11.08.210 ~~Protection from Pollution and Noise~~ [Warning and Safety Devices](#)
- 11.08.220 ~~Impact of Work on Existing Improvements~~ [Clearance for Fire Equipment](#)
- 11.08.230 ~~Restoration of the Public Right-of-Way~~ [Protection of Adjoining Property – Access](#)
- 11.08.240 ~~Recently Improved Streets~~ [Preservation of Monuments](#)
- 11.08.250 ~~Coordination of Right-of-Way Construction~~ [Protection from Pollution](#)
- 11.08.260 ~~Relocation of Structures in the Public Right-of-Way~~ [Impact of Work on Existing Improvements](#)
- [11.08.270 Restoration of the Right-of-Way](#)
- [11.08.280 Recently Improved Streets](#)
- [11.08.290 Coordination of Construction and Notification](#)
- [11.08.300 Relocation](#)
- [11.08.310 Abandonment and Removal of Facilities](#)
- [11.08.320 Record Drawings](#)
- [11.08.330 Joint Excavation](#)
- [11.08.340 Additional Ducts or Conduits](#)
- [11.08.350 Undergrounding](#)
- [11.08.360 Hazardous Substances](#)
- [11.08.370 Utility Locates](#)
- [11.08.380 Moving of Building\(s\) and/or Equipment](#)
- [11.08.390 Tree Trimming](#)

Section 3. Regulations Established. TMC Section 11.08.010 is hereby established to read as follows:

11.08.010 Purpose

A. The purpose of this chapter is to establish minimum rules and regulations to govern activities within the right-of-way in the City of Tukwila; and to provide for the fees, charges, warranties, and procedures required to administer the permit process. To the extent the provision of any current franchise or other written agreement conflicts with any provision of this chapter, the applicable provision of the franchise or other written agreement shall prevail.

B. This code is enacted to protect and preserve the public health, safety, and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

C. It is expressly the purpose of this code and any procedures adopted hereunder to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code or any procedures adopted hereunder.

Section 4. Regulations Established. TMC Section 11.08.020 is hereby established to read as follows:

11.08.020 Definitions

A. “Applicant” means a person who has submitted a complete application pursuant to the terms and conditions of this Chapter.

B. “Blanket Activities” means work that does not include cutting, removing, or disturbing the pavement surface including:

1. Simple service disconnects for customers;
2. Repair or replacement of standard crossarms, insulators, and/or other existing equipment on poles or bundles;
3. Replacement of blown fuses or limiters on cutouts;
4. Replacement of existing faulted, broken, or damages overhead service drops;
5. Repairs or splices to existing overhead primary and secondary wires;
6. Replacement of damaged poles with similar dimensioned stock;
7. Operation of existing overhead primary switches, i.e. the open and closing of overhead primary switches as necessary;
8. Disconnection of existing services due to non-payment;
9. Changing wire type;

10. Installation of secondary conductors;

11. Accessing existing vaults;

12. Maintaining hydrants/vaults;

13. Raising or adjusting valves;

14. Vegetation management;

15. Replacing above-ground meters;

16. Installing water sampling stations;

17. Flushing activities, and lining pipes.

C. **“City”** means the City of Tukwila.

D. **“Department”** means the City of Tukwila’s Public Works Department

E. **“Director”** means the City of Tukwila Public Works Director or designee.

F. **“Emergency”** shall mean any unforeseen circumstance or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

G. **“Facility”** or **“Facilities”** means any plant, equipment and/or property, including but not limited to, overhead and underground water, gas, electric, and telecommunication facilities and appurtenances such as cables, wires, conduits, transformers, conduit, substation, pad-mounted J boxes, switch cabinets, ducts, pedestals, antennas, electronics, vaults, poles, meter boxes, sewers, pipes, drains, and tunnels.

H. **“Franchise Holder”** means a person that was issued a franchise agreement by the City and which franchise is not expired.

I. **“Permittee”** means a person that has applied for and received a permit pursuant to TMC Chapter 11.08.

J. **“Person”** means any individual, association, partnership, corporation or legal entity, public or private, and includes the agents, contractors, and assigns of such person, including registered agents thereof.

K. **“Preconstruction Meeting”** means a meeting between the designated City staff and the applicant’s contractor or designee prior to beginning any construction activity on the site or within the right-of-way to discuss project approval conditions and preliminary requirements.

L. **“Public Improvement”** means any capital improvement, maintenance, or repair that is undertaken by or on behalf of the City within the franchise area and is funded by the City (either directly or indirectly), including any capital improvement within the City’s adopted Transportation Improvement Plan or Capital Improvement Program.

M. **“Right-of-Way”** or **“Rights-of-Way”** means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.

N. “Right-of-Way Use Permit” means any permit issued pursuant to TMC Chapter 11.08.

O. “Right-of-Way User” means any person with any facility in the Right-of-Way.

Section 5. Regulations Established. TMC Section 11.08.030 is hereby established to read as follows:

11.08.030 Administration and Enforcement

A. The Director, under the authority of the City Administrator, shall have the following administrative and enforcement powers:

1. Prepare and adopt procedures as needed to implement this chapter and to carry out the responsibilities of the Department. Such procedures do not require approval of the City Council to be initially implemented; however, the Council may take Council action directing that procedures, guidelines, fees, or other aspects of the permitting system be amended or modified to the satisfaction of the Council.

2. Administer and coordinate the enforcement of this chapter and all procedures adopted under this chapter relating to the use of rights-of-way.

3. Carry out such other responsibilities as required by this chapter or other codes, ordinances, resolutions, or procedures of the City.

4. Request the assistance of other City departments to administer and enforce this chapter, as necessary.

5. Render interpretations of this chapter or assign the responsibility for interpretation and application of specified procedures to such designees as may be deemed appropriate.

Section 6. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.010, “Permit Requirements,” is hereby amended to recodify this section as TMC Section 11.08.040, which shall read as follows:

~~11.08.010~~11.08.040 Permit ~~Requirements~~Required

A. It is unlawful for ~~anyone~~any person, except the Department or its agent, to perform work of any kind in ~~a public~~the right-of-way, or to make private use of any ~~public~~ right-of-way without obtaining a right-of-way use permit ~~issued by the City~~pursuant to this chapter.

B. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

1. The capacity of the ~~public~~ right-of-way to accommodate the facilities or structures proposed to be installed in the ~~public~~ right-of-way.

2. The capacity of the ~~public~~ right-of-way to accommodate wire, ~~in addition to~~ cables, conduits, pipes or other facilities or structures of other existing users of the ~~public~~ right-of-way, such as electrical power, telephone, gas, surface water, sewer, and water.

3. The damage or disruption, if any, of public or private facilities, improvements, or landscaping previously existing in the ~~public~~-right-of-way.

4. The public interest in minimizing the cost and disruption of construction ~~caused by numerous excavations of~~in the ~~public~~-right-of-way.

C. The issuance of a permit for use of a right-of-way is subject to the use and needs of the City and the general public, whether such needs are temporary or permanent, or for public or private purposes (i.e., utility construction work in the right-of-way by private service provider), and is a grant of a temporary revocable privilege to use a portion of the ~~public~~-right-of-way to serve and benefit the general public. The applicant shall have the burden to prove that any proposed use will enhance and further the public interest consistent and not in conflict with the use of the right-of-way by the general public and the City for other authorized uses and activities.

Section 7. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.020, “Right-of-Way Use Permits,” is hereby amended to recodify this section as TMC Section 11.08.050, which shall read as follows:

~~11.08.020~~11.08.050 **Right-of-Way Use Permits**

A. The following classes of right-of-way use permits are hereby established:

1. **Public Works Permit.** These permits may be issued to applicants who do not hold a current franchise with the City.

2. **Public Works Franchise Permit.** These permits may be issued to applicants who do not hold a current franchise with the City.

3. **Annual Blanket Activities Permit.** These permits may be issued to franchise holders on an annual basis to undertake blanket activities as defined by this chapter.

~~A. **Type A – Short-Term Nonprofit.**~~

~~1. Type A permits may be issued for use of a right-of-way for 72 or less continuous hours for nonprofit purposes, which do not involve any physical disturbance of the right-of-way.~~

~~2. This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 hours, these uses will be considered Type D, long-term. If any of these uses are for profit, they are considered Type B.~~

~~3. Type A permits include but are not limited to the following, when for nonprofit purposes:~~

~~a. Assemblies.~~

~~b. Bike races.~~

~~c. Block parties.~~

~~d. Parades.~~

~~e. Parking.~~

~~f. Processions.~~

~~g. Nonmotorized vehicle races.~~

~~_____ h. Street dances.~~

~~_____ i. Street runs.~~

~~_____ **B. Type B – Short-Term Profit.**~~

~~_____ 1. Type B permits may be issued for use of right-of-way for 72 or less continuous hours for profit purposes, which do not involve the physical disturbance of the right-of-way.~~

~~_____ 2. This type of use may involve disruption to pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 consecutive hours, these uses will be considered Type D, long-term.~~

~~_____ 3. Type B permits include, but are not limited to the following when they are for profit purposes:~~

~~_____ a. Fairs;~~

~~_____ b. House or large structure moves other than those, which require a Type E permit.~~

~~_____ c. Temporary sale of goods.~~

~~_____ d. Temporary street closures.~~

~~_____ **C. Type C – Infrastructure and Grading on Private Property and City Right-of-Way and Disturbance of City Right-of-Way.**~~

~~_____ 1. Type C1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property.~~

~~Type C2 permits shall be required for infrastructure work and grading within the public right-of-way. Type C1 and C2 permits may be issued for a period not in excess of 180 continuous days, for activities that may alter the appearance of or disturb the surface or subsurface of the City right-of-way.~~

~~_____ 2. Type C1 and C2 permits include, but are not limited to:~~

~~_____ a. Boring.~~

~~_____ b. Culverts.~~

~~_____ c. Curb cuts.~~

~~_____ d. Paving.~~

~~_____ e. Drainage facilities.~~

~~_____ f. Driveways.~~

~~_____ g. Fences.~~

~~_____ h. Landscaping.~~

~~_____ i. Painting/Striping.~~

~~_____ j. Sidewalks.~~

~~_____ k. Street trenching.~~

~~_____ l. Utility installation, repair, replacement.~~

~~_____ **D. Type D – Long-Term**~~

~~_____ 1. Type D permits may be issued for use of a right-of-way, for any period in excess of 72 hours, for activities occurring for extended periods of time but which will not physically disturb the right-of-way.~~

~~_____ 2. The use of the right-of-way for structures, facilities, and uses that involve capital expenditures and long-term commitments of use require this type of permit.~~

~~_____ 3. Type D permits include, but are not limited to:~~

~~_____ a. Air rights and aerial facilities.~~

~~_____ b. Bus shelters and stops.~~

~~_____ c. Access to construction sites and haul roads.~~

~~_____ d. Loading zones.~~

~~_____ e. Newspaper sale, distribution, and storage facilities.~~

~~_____ f. Recycling facilities.~~

~~_____ g. Sales structures.~~

~~_____ h. Sidewalk cafes.~~

~~_____ i. Special and unique structures, such as awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture.~~

~~_____ j. Underground rights.~~

~~_____ k. Utility facilities.~~

~~_____ l. Waste facilities.~~

~~_____ **E. Type E – Potential Disturbance of City Right-of-Way.**~~

~~_____ 1. Type E permits may be issued for use of a right-of-way, for a period not in excess of 180 continuous days, for those activities that have the potential of altering the appearance of, or disturbing the surface or subsurface of, the right-of-way.~~

~~_____ 2. Type E permits include, but are not limited to:~~

~~_____ a. Frequent use hauling involving an average of six loaded vehicles per hour during any eight-hour period in one day, for two or more consecutive days.~~

~~_____ b. Any hazardous waste hauling.~~

~~_____ 3. Type E permits may be issued to a general contractor to authorize construction and fill activities by the said general contractor and by subcontractors.~~

~~_____ **F. Type F – Blanket permits.**~~

~~_____ The Director may issue blanket permits to any person to make utility service connections, to locate trouble in utility conduits or pipes, for making repairs thereto, or for~~

~~emergency purposes. Blanket permits shall be issued for a period of 365 days (one year), and shall only authorize work referred to in this chapter.~~

Section 8. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.030, “Application Contents,” subparagraphs A and B, are hereby amended to recodify this section as TMC Section 11.08.060, which shall read as follows:

~~11.08.030~~11.08.060 **Application Contents**

A. To obtain a right-of-way use permit, the applicant shall submit, in the format and manner specified by the Director, an application ~~with the City’s Permit Center~~ to the City.

B. Every application shall contain, as applicable:

1. The name, address, telephone ~~and facsimile~~-number, and email address of the applicant. Where an applicant is not the owner of the facility to be installed, maintained or repaired in the ~~public~~-right-of-way, the application shall also include the name, address, telephone ~~and facsimile~~-number, and email address of the owner. Where the applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Director their authorization to act on behalf of the owner.

2. A description of the location, including the address and GPS coordinates, nature and extent of the work proposed, ~~proposed use of the public right-of-way, method of excavation, surface and subsurface area of the proposed excavation, and method of restoration.~~

3. A site plan showing the ~~proposed~~ location of the proposed work ~~and dimensions of the excavation; the facilities to be installed, maintained, or repaired in connection with the excavation; and such other details as the Department may require.~~

4. ~~A copy or other documentation of the~~ If the applicant holds a franchise, easement, encroachment permit, license or other legal instrument with the City that authorizes the applicant or owner to use or occupy the ~~public~~-right-of-way for the purpose described in the application, the applicant shall attach a copy of that document to the application. ~~Where the applicant is not the owner of the facility or facilities to be installed, maintained or repaired, the applicant must demonstrate in a form and manner specified by the Director their authorization to act on behalf of the owner.~~

5. The proposed start date and duration of the ~~use or excavation~~ work, which shall include the restoration of the right-of-way physically disturbed by the work.

~~6. The proposed duration of the use or excavation, which shall include the duration of the restoration of the public right of way physically disturbed by the excavation.~~

7~~6~~. Written acknowledgment that the applicant ~~and owner are in compliance~~ will comply with all terms and conditions of this title, the orders, regulations, and standard plans and specifications as promulgated by the Director; and that the applicant ~~and owner are~~ is not subject to any outstanding assessments, fees or penalties that have been finally determined by the City or a court of competent jurisdiction.

~~87.~~ A current business license ~~issued by~~ through the Washington State Department of Revenue with an endorsement for the City of Tukwila.

~~98.~~ Evidence of insurance as required by TMC Section 11.08.100 ~~11.08.150~~.

~~109.~~ A ~~deposit~~ financial guarantee as required by TMC Section 11.08.110 ~~11.08.160~~.

~~110.~~ A traffic control plan to be approved by the ~~Department~~ Director.

~~111.~~ Any other information that may be reasonably required by the ~~Department~~ Director.

~~112.~~ An estimate of the value of the project. The Director may also require an applicant to submit separate cost estimates for each item of improvement.

13. An application fee as required by TMC Section 11.08.060 ~~11.08.110~~.

C. The Director may allow an applicant to maintain documents complying with TMC Sections 11.08.030 ~~11.08.060~~ B., subparagraphs 4, ~~B-8~~, ~~B-9~~ and ~~B-10~~ on file with the Department, rather than requiring submission of such documents with each separate application.

Section 9. Regulations Established. TMC Section 11.08.070 is hereby established to read as follows:

11.08.070 Preconstruction Meeting Required

A preconstruction meeting may be required at the Director's discretion.

Section 10. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.030, "Application Contents," subparagraphs C and D, are hereby amended to recodify this section as TMC Section 11.08.080, subparagraphs A and B, which shall read as follows:

Section 11.08.080 Permit Approval and Conditions

~~C. The Director or his/her designee shall examine each application submitted for review and approval to determine if it complies with the applicable provisions and procedures of this chapter. Other departments that have authority over the proposed use or activity may be requested to review and approve or disapprove the application.~~

A. If the Director finds that the application conforms to the requirements and procedures of this chapter and ~~the procedures adopted under this chapter and title~~, that the proposed use of such right-of-way will not unduly interfere with the rights and safety of the public, and if the application has not been disapproved by another department with authority, the Director may approve the permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety, and to mitigate any impacts resulting from the use. Such conditions may include but are not limited to:

1. Compliance with all applicable provisions of TMC Title 11;

2. Compliance with applicable provisions of the Infrastructure Design and Construction Standards Manual;

3. Limitations on the hour, the day and the period of the year in which the work may be performed;

4. Requirement of a traffic control supervisor onsite during approved working hours;

5. Installation and maintenance of temporary erosion control measures, as applicable;

6. Pre-construction storm drainage patterns shall be met during and after construction; and

7. Compliance with all applicable provisions of TMC Chapters 8.45 and 14.30.

B. Additionally, if at any time conditions unforeseen at the time of issuance of the permit are discovered which could, in the opinion of the Director, cause unforeseen damage to public or private property or a hazard to life or property or become a public nuisance, the Director may stop any further work under the permit until the permit conditions have been modified by the Director in such a manner as to protect from or eliminate the potential damages, hazards or nuisances enumerated in this chapter.

~~— D. All applications for permits will be submitted at least 30 days before the planned need for the permit. If unforeseen conditions require expedited processing, the City will attempt to cooperate, but additional fees to cover additional costs to the City may be charged to the applicant.~~

Section 11. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.040, “Permit – No Transfer or Assignment,” is hereby amended to recodify this section as TMC Section 11.08.090, which shall read as follows:

~~11.08.040~~11.08.090 **Permit—No Permit Transfer or Assignment**

Permits issued pursuant to this chapter shall not be transferable or assignable unless prior written consent is received from the City, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit; provided, ; however, ~~that~~ the holder of the permit shall be and remains responsible for the performance of the work under the permit, and responsible for all bonding, insurance and other requirements of this title and under said permit.

Section 12. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.050, “Emergency Work,” is hereby amended to recodify this section as TMC Section 11.08.100, which shall read as follows:

~~11.08.050~~11.08.100 **Emergency Work**

A. ~~Any authorized permit or franchise holder maintaining pipes, lines, or facilities in the public right-of-way may proceed with work upon existing facilities without a permit when emergency circumstances demand that work be done immediately, provided that a permit cannot be reasonably and practicably obtained beforehand.~~ In the event that an emergency necessitates work in the right-of-way for the protection of public or private property, a person may conduct the work after the person performing the work has notified the City's Police and Fire Departments of such work and an application for a permit as provided in this chapter shall be made on the next succeeding business day whether or not the emergency work has been completed.

B. ~~In the event that emergency work is commenced on or within any public right-of-way of the City during regular business hours, the Director or City Engineer shall be notified within ½ hour from the time the work commences. The permit or franchise holder~~ The person commencing and conducting such emergency work shall take all necessary safety precautions for the protection of the public, the direction and control of traffic, and shall insure that work is accomplished according to City standards, regulations, the Manual on Uniform Traffic Control Devices, and other applicable laws, regulations or generally recognized practices in the industry.

C. Nothing contained in this chapter shall be construed to prevent any ~~permit or franchise holder~~ person from taking any action necessary for the preservation of life or property or for the restoration of interrupted service ~~provided by a municipal or utility excavator~~ when such necessity arises during days or times when the City is closed. ~~Department is closed. In the event that any permit or franchise holder takes action to excavate or cause to be excavated the public right-of-way, such permit or franchise holder shall apply for an emergency permit within 24 hours after the Department's offices first open. The applicant for an emergency permit shall submit a written statement that addresses the basis of the emergency action, and describes the excavation performed and work remaining to be performed.~~

Section 13. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.060, "Permit Fees and Charges," is hereby amended to recodify this section as TMC Section 11.08.110, which shall read as follows:

~~11.08.060~~ **11.08.110 Permit Fees and Charges**

A. ~~The Director shall be responsible for the plan review, plan approval, inspection and acceptance of all construction within any public right-of-way and all public works improvement projects, such as streets, sidewalks and walkways, street lighting systems, storm drainage systems (public and private), water systems (public and private), sewer systems (public and private), and utilities; and shall make a charge therefor to the developer.~~

~~B. The fee for these services.~~ The permit and inspection fees for any permit issued pursuant to this chapter shall be set forth in a fee schedule to be adopted by motion or resolution of the Tukwila City Council and as amended from time to time.

~~C. Type A, B, D, E and F permit fees will be a flat rate.~~

~~— D. Type C1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property. The total fees for Type C1 permits shall consist of the following parts:~~

~~—— 1. An Application Base Fee, which is associated with establishing the necessary files;~~

~~—— 2. A fee associated with the plan review and approval of the construction plans;~~

~~—— 3. A fee associated with the issuance of the permit and the required inspection of the construction, the fee amount to be determined from the value of the construction on private property; and~~

~~—— 4. A Grading Plan Review.~~

~~— For Type C1 permits, the developer shall submit separate cost estimates for each item of improvement. The Department will check the accuracy of these estimates.~~

~~— E. Type C2 permits shall be required for infrastructure work and grading performed within the City right-of-way. The total fees for Type C2 permits shall consist of the following parts:~~

~~—— 1. An Application Base Fee, which is associated with establishing the necessary files;~~

~~—— 2. A fee associated with the plan review and approval of the construction plans, the fee amount determined from the value of the construction within the public right-of-way;~~ B. As applicable, additional fees may be imposed as follows:

31. A fee associated with the issuance of the permit and the required inspection of the construction (Permit Issuance and Inspection Fee), which is, ~~the fee amount to be determined from the value of the construction within the public right-of-way;~~

42. A Grading Plan Review fee.

3. A pavement mitigation fee associated with the loss of pavement life from ~~the~~ any proposed excavation in the ~~public~~-right-of-way, the fee amount determined from the square footage of excavation being performed and the age of the pavement; ~~and~~

~~—— 5. A Grading Plan Review.~~

F4. ~~A non-refundable deposit, equal to the fee associated with an application base fee and the review and approval of construction plans, is due and payable prior to starting the review, with the balance of the total fee due and payable prior to issuance of the permit. Two reviews of the construction plans are included in the above referenced fee, an original review and a follow-up review associated with a correction letter. Each additional re-review~~ revision review, which is attributed to the developer's action or inaction, shall be charged as a separate transaction fee in accordance with the fee schedule adopted by resolution of the City Council. ~~Should additional fees for re-review be imposed, they~~ These fees will be added to the balance due and be payable prior to issuance or final of the permit.

Section 14. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.070, “Permit Exception,” is hereby amended to recodify this section as TMC Section 11.08.120, which shall read as follows:

~~11.08.070~~11.08.120 **Permit Exception**

Permits under this chapter shall not be required for public use; i.e., persons using the right-of-way as pedestrians or while operating motor and non-motorized vehicles for routine purposes such as travel, commuting, or personal business.

Section 15. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.080, “Revocation of Permits,” is hereby amended to recodify this section as TMC Section 11.08.130, which shall read as follows:

~~11.08.080~~11.08.130 **Revocation or Suspension of Permits**

A. The Director may revoke or suspend any permit issued under this chapter whenever:

1. The activity or work does not proceed in accordance with the permit plans as approved, in accordance with conditions of approval, or is not in compliance with the requirements of this chapter or procedures, or other City ordinances, or State laws;

2. The City has been denied access to investigate and inspect how the right-of-way is being used;

3. The permittee has misrepresented a material fact in applying for a permit (a material fact is a fact which, had the truth been known at the time of the issuance of the permit, the permit would not have been granted);

4. The City believes the permitted activity is, or will be, endangering the public, adjoining property, the street, or infrastructure in the street. ~~The progress of the permitted activity indicates that it is — or will be — inadequate to protect the public and adjoining property or the street or utilities in the street, or any excavation or fill endangers — or appears reasonably likely to endanger — the public, the adjoining property or street, or utilities in the street.~~

B. Upon suspension or revocation of a permit, all use of the right-of-way shall cease, except as authorized by the Director.

C. Continued activity following revocation or suspension under this section shall be subject to the enforcement provisions in TMC Chapter 8.45. ~~subject each and every violator to the maximum penalties provided by this chapter, with every day constituting a new violation.~~

Section 16. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.090, “Renewal of Permits,” is hereby amended to recodify this section as TMC Section 11.08.140, which shall read as follows:

~~11.08.090~~11.08.140 **Renewal of Permits**

Each permit shall be of a duration as specified on the permit. A permit may be renewed at the discretion of the Director, if requested by the permit holder before expiration of the permit; provided, however, that the use or activity is progressing in a satisfactory manner as reasonably determined by the Director.

Section 17. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.100, "Insurance," is hereby amended to recodify this section as TMC Section 11.08.150, which shall read as follows:

~~11.08.100~~11.08.150 **Insurance**

A. Unless the Director determines that there is not a probability of injury, damage, or expense to the City arising from an applicant's proposed use of the right-of-way or public place, ~~the permittee or the applicant holds a current franchise with the City, the applicant shall obtain and~~ maintain in full force and effect, throughout the term of the permit, ~~or as long as the permittee has facilities in the right-of-way,~~ an insurance policy ~~or policies~~ issued by an insurance company ~~or companies~~ satisfactory to the Director, ~~having a policyholders' surplus of at least \$20,000,000, or if insurance is written by more than one company, each company shall have policyholders' surplus of at least 10 times the amount insured. Policy or policies shall afford insurance covering all operations, vehicles, and employees with the following limits and provisions:~~insuring both the applicant and the City against claims for injuries to persons, death or damages to property that may arise from, or in connection with, the exercise of the rights, privileges and authority granted to the applicant under this chapter:

1. ~~Comprehensive~~Commercial general liability insurance written on an occurrence basis. The insurance policy shall be endorsed to provide a per project general aggregate and there shall be no exclusive for liability arising from explosion, collapse, or underground property damage. The policy shall have limits not less than:~~with limits of not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability; personal injury; explosion hazard, collapse hazard, and underground property damage hazard; products; and completed operations.~~

a. \$3,000,000 for bodily injury, property damage, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract;

b. \$6,000,000 general aggregate, per project aggregate and products-completed operations aggregate.

2. Business automobile liability insurance with limits not less than ~~\$1,000,000~~\$2,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired auto coverage, as applicable.

3. ~~Contractors' pollution~~Pollution liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, and \$2,000,000 in the aggregate.~~and any deductible not to exceed \$25,000 each occurrence.~~

4. Worker's compensation within statutory limits and employer's liability insurance, with limits of not less than \$1,000,000.

5. Excess or umbrella liability policy shall be excess over and at least as broad in coverage as the commercial general liability and automobile liability insurance, with limits not less than \$5,000,000 per occurrence and annual aggregate.

~~46.~~ Said policy or policies shall include the City and its officers, officials (appointed and elected), ~~and~~ employees, and agents jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered there under, and shall provide for severability of interests.

~~57.~~ Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

~~68.~~ The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy

~~79.~~ Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

~~810.~~ Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested sent to the City.

~~911.~~ Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers, officials (appointed and elected), ~~and~~ employees, and agents against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by ~~Permittee~~permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.

~~1012.~~ Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers, officials (appointed and elected), ~~and~~ employees, and agents against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to, falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and the right-of-way is opened for public use.

B. The permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.

C. If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this chapter.

D. The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all ~~of~~ the requirements stated herein.

E. A property owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this section.

Section 18. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.110, "Deposits, Fees and Bonds," is hereby amended to recodify this section as TMC Section 11.08.160, which shall read as follows:

~~11.08.110~~11.08.160 **Deposits, Fees, and Bonds**

A. ~~Except as noted in this chapter, each applicant, before being issued a permit, shall provide the City with an acceptable security (this may include a corporate surety bond, cash deposit or letter of credit) in the amount of 150% of the value of the work being performed within the public right-of-way in order to guarantee faithful performance of the work authorized by the permit granted pursuant to this chapter. The amount of the security required may be increased or decreased at the discretion of the Director whenever it appears that the amount and cost of the work to be performed may vary from the amount of the security otherwise required under this chapter.~~Before a permit pursuant to the provisions of this chapter may be issued, the applicant may be required, unless otherwise provided in a current franchise, to execute to the City a financial guarantee in a form as approved by the City for the proper protection of the City and conditioned that obligors of the financial guarantee will pay to the City the costs and expenses incurred by the City should the person obtaining the permit fail, neglect or refuse to properly complete the work authorized by the permit within the time limit specified by said permit. Such financial guarantees are as follows:

1. **Performance Financial Guarantee** – In a sum as shall be designated by the Director (but not less than 150% of the estimated cost of the improvements within the right-of-way). This financial guarantee shall be released upon acceptance of the work and the receipt of a maintenance financial guarantee. Otherwise, it will be released under the same time frame as outlined in TMC Section 11.08.160.A.2.

2. **Right-of-Way Occupation Financial Guarantee** – In a sum of not less than \$5,000. Permits allowing right-of-way obstructions, not including the take up, breaking, excavating, tunneling, undermining, or cutting in any right-of-way in the City, may be allowed to provide a financial guarantee pursuant to this subsection. The Director may

release the financial guarantee, without requiring a subsequent maintenance financial guarantee per TMC Section 11.08.160.A.3, once the work has been accepted as complete by a city inspector and the permit is finalized and closed.

3. Maintenance Financial Guarantee – In a sum as shall be designated by the Director (but not less than \$5,000 or 10% of the estimated cost of the improvements within the right-of-way, whichever is greater). This financial guarantee will be in force for 2 years after the City accepts the work if no repair work is identified within that 2-year period. If the City identifies any repair work, the financial guarantee will extend to either 1 year after the repair is accepted by the City or the end of the original 2-year time period, whichever is longer. At the Director’s discretion, this maintenance financial guarantee may be waived if the Director documents in writing a decision that a financial guarantee is not necessary to protect the interests of the City.

4. The amount of the ~~security~~ financial guarantees required above may be increased or decreased at the discretion of the Director whenever it appears that the amount and cost of the work to be performed may vary from the amount of the security otherwise required under this chapter.

B. Public utilities ~~franchised holding a current City franchise by the City~~ shall not be required to file any ~~security~~ right-of-way financial guarantee if such requirement is expressly waived in the franchise documents, however public utilities franchisees shall guarantee workmanship and materials through a maintenance financial guarantee.

~~C. The applicant shall provide a Maintenance Bond that guarantees workmanship and materials for a period of two years following the completion of the work, with reasonable wear and tear excepted. Notwithstanding the foregoing, utilities shall guarantee workmanship and materials;~~

~~D.~~ The security required by this section shall be conditioned as follows:

1. That the permittee shall fully comply with the requirements of the City ordinances and regulations, specifications and standards promulgated by the Department relative to work in the ~~Public~~ right-of-way, and respond to the City in damages for failure to conform therewith;

2. That after work is commenced, the permittee shall proceed with diligence and shall promptly complete such work and restore the ~~public~~ right-of-way to City standards, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

3. That unless authorized by the Director on the permit, all paving, resurfacing or replacement of street facilities on principal arterial, major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to City standards. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the permittee shall submit a detailed construction schedule

for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

D. In lieu of a financial guarantee to cover particular work, an applicant may maintain with the City a general bond in the sum of \$100,000 conditioned and used for the same purpose as the financial guarantee described in TMC Section 11.08.160.A and covering all work to be done rather than any particular work, provided, however, that the total work being performed shall not exceed a cumulative total of \$100,000. The applicant shall track and submit with each new permit the applicant's approved permits that are covered by this financial guarantee and include: permit number, date of approval, and date work is complete.

Section 19. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.120, "Hold Harmless," is hereby amended to recodify this section as TMC Section 11.08.170, which shall read as follows:

~~11.08.120~~**11.08.170** **Hold Harmless**

Unless the permittee holds a current franchise with the City, Asas a condition to the issuance of any permit under this chapter, the permittee shall be required to execute a written agreement to forever hold and save the City free and harmless from any and all claims, actions or damages of every kind and description that may accrue to or be suffered by any person by reason of the use of such public place or the construction, existence, maintenance, use or occupation of any such structure, services, fixtures, equipment and/or facilities on or in a public place pursuant to this chapter. In addition, such agreement shall contain a provision that the permit is wholly of a temporary nature, and that it vests no permanent right whatsoever.

Section 20. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.130, "Compliance with Specifications, Standards, and Traffic-Control Regulations," is hereby amended to recodify this section as TMC Section 11.08.180, which shall read as follows:

~~11.08.130~~**11.08.180** **Compliance with Specifications, Standards, and Traffic-Control Regulations**

A. The work performed in the ~~public~~-right-of-way shall conform to the requirements of the Department's Infrastructure Design and Construction Standards, Manual on Uniform Traffic Control Devices, King County Surface Water Design Manual, Part VIII, "Regulations for Use of Public Streets and Projections over Public Property," Uniform International Building Code, and the City's Tukwila Municipal Code as currently exists and as hereafter amended, ~~copies of which shall be available from the Department, kept on file in the office of the City Clerk and at the Permit Center for public inspection during office hours.~~

B. When a job is left unattended, before completion of the work, signage with minimum two-inch high letters shall be attached to a barricade or otherwise posted and maintained at the site, indicating the permittee's name, or company name, telephone number, and after-hours telephone number.

Section 21. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.140, “Inspections,” is hereby amended to recodify this section as TMC Section 11.08.190, which shall read as follows:

~~11.08.140~~11.08.190 **Inspections**

As a condition of issuance of any permit or authorization that requires approval of the Department, each ~~applicant~~permittee shall be required to consent to inspections by the Department or any other City department. Additionally, the permittee is obligated to request a final inspection to close out the permit.

Section 22. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.150, “Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions,” is hereby amended to recodify this section as TMC Section 11.08.200, which shall read as follows:

~~11.08.150~~11.08.200 ~~Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized~~Violations and Unsafe **Conditions**

A. Whenever the Director determines that any condition on any right-of-way is in violation of ~~or any right-of-way is being used contrary to any provision of, (i) this chapter, or (ii) procedures adopted under this chapter or other applicable codes or standards, or without a right-of-way use permit,~~ the Director may order the correction or discontinuance ~~of such condition or any activity causing such condition~~pursuant to this section.

B. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance ~~of any such conditions, or activities as the Director determines appropriate:~~

1. Service of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;

2. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within five days of notice, or such other reasonable period the Director may determine;

3. ~~Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served~~Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;

4. ~~Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work~~Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served;

5. Service of notice and order or service of a criminal citation to appear by a law enforcement officer upon the permittee or other responsible person who is in violation of this chapter or other City ordinances.

C. Any object that shall occupy any right-of-way without a permit is declared a nuisance. The ~~Department~~Director may attach a notice to any such object stating that if it is not removed from the right-of-way within 24 hours of the date and time stated on the notice, the object may be taken into custody and stored at the owner's expense. The notice shall provide an address and telephone number where additional information may be obtained. If the object is a hazard to public safety, the ~~City~~Director may remove it summarily. Notice of such removal shall be thereafter given to the owner, if known. This section shall not apply to motor vehicles.

D. All expenses incurred by the City in abating any violation or condition shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice or who own the object or who placed it in the right-of-way, which debt shall be collectible in the same manner as any other civil debt.

E. The City shall also have all powers and remedies whether legal or equitable that may be available under law or ordinance including but not limited to TMC Chapter 8.45, this chapter TMC Chapter 11.08, and procedures adopted under this chapter for securing the correction or discontinuance of any conditions specified by the City.

Section 23. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.160, "Failure to Conform to Design Standards," is hereby repealed.

~~— For failure to conform to the Design Standards and Regulations as identified in Section 11.08.130, the Director may:~~

- ~~1. Suspend or revoke the permit;~~
- ~~2. Issue a stop work order;~~
- ~~3. Order removal and replacement of faulty work;~~
- ~~4. Require an extended warranty period; and/or~~
- ~~5. Negotiate a cash settlement to be applied toward future maintenance costs.~~

Section 24. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.170, "Warning and Safety Devices," is hereby amended to recodify this section as TMC Section 11.08.210, which shall read as follows:

~~11.08.170~~11.08.210 **Warning and Safety Devices**

A. Warning lights, safety devices, signs, and barricades shall be provided on all rights-of-way when there might be an obstruction or hazard to vehicular or pedestrian traffic. All obstructions on rights-of-way shall have sufficient barricades and signs posted in such a manner as to indicate plainly the danger involved. Warning and safety devices may be removed when the work for which the right-of-way use permit has been granted is complete and the right-of-way restored to the conditions directed by the Department.

B. As a condition of the issuance of any ~~right-of-way use~~ permit issued pursuant to this chapter, the Director ~~or his/her designee~~ may require an applicant to submit a traffic ~~detour~~control plan showing ~~the~~any proposed detour routing and location and the type of

warning lights, safety devices, signs, and barricades intended to protect vehicular or pedestrian traffic at the site for which the right-of-way use permit is requested. If a traffic [control](#) plan is required, no ~~right-of-way use~~ permit shall be issued until after the traffic [control](#) plan is approved.

~~C. Unless otherwise specified in adopted right-of-way use procedures, the following standards manuals — as they currently exist and as hereafter amended — shall apply to the selection, location and installation of required warning and safety devices; provided, that the Director or designee may impose additional requirements if site conditions warrant such enhanced protection of pedestrian or vehicular traffic:~~

- ~~1. Manual of Uniform Traffic Control Devices for Streets and Highways;~~
- ~~2. City of Tukwila Infrastructure Design and Construction Standards;~~
- ~~3. Part VIII, “Regulations for Use of Public Streets and Projections over Public Property,” Uniform Building Code.~~

~~DC.~~ Any ~~right-of-way use~~ permit [issued pursuant to this chapter](#) that requires a partial lane or street closure may require a [traffic control supervisor](#); certified flag person, properly attired; or an off-duty police officer for the purpose of traffic control during ~~the~~ construction.

~~ED.~~ All decisions of the Director ~~or his/her designee~~ shall be final in all matters pertaining to the number, type, locations, installation and maintenance of warning and safety devices in the ~~public~~ right-of-way during any actual work or activity for which a duly authorized ~~right-of-way use~~ permit has been issued [pursuant to this chapter](#).

~~F. Any failure of a permit holder to comply with the oral or written directives of the Director or his/her designee related to the number, type, location, installation, or maintenance of warning and safety devices in the public right-of-way shall be cause for correction or discontinuance as provided in this chapter.~~

Section 25. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.180, “Clearance for Fire Equipment,” is hereby amended to recodify this section as TMC Section 11.08.220, which shall read as follows:

~~11.08.180~~[11.08.220](#) **Clearance for Fire Equipment**

Unless when specifically authorized by the Director, all excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free from obstructions at all times.

Section 26. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.190, “Protection of Adjoining Property – Access,” is hereby amended to recodify this section as TMC Section 11.08.230, which shall read as follows:

~~11.08.190~~[11.08.230](#) **Protection of Adjoining Property – Access**

~~The permittee~~ Right-of-way users shall at all times, and at the ~~permittee's~~ right-of-way user's expense, preserve and protect from injury adjoining property by complying with such measures as the Director ~~or designee~~ may deem reasonably suitable for such purposes. ~~The permittee~~ Right-of-way users shall at all times maintain access to all property adjoining the excavation or work site.

Section 27. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.200, "Preservation of Monuments," is hereby amended to recodify this section as TMC Section 11.08.240, which shall read as follows:

~~11.08.200~~ 11.08.240 **Preservation of Monuments**

~~The permittee~~ Right-of-way users shall not disturb any survey monuments or markers found on the line of excavation work until ordered to do so by the Director. All street monuments, property corners, benchmarks, and other monuments disturbed during the progress of the work shall be replaced by a licensed surveyor, at the expense of the ~~permittee~~ right-of-way user, to the satisfaction of the Director ~~or his/her designee~~.

Section 28. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.210, "Protection from Pollution and Noise," is hereby amended to recodify this section as TMC Section 11.08.250, which shall read as follows:

~~11.08.210~~ 11.08.250 **Protection from Pollution ~~and Noise~~**

~~The permittee~~ Right-of-way users shall comply with all State laws, City ordinances, and procedures adopted hereunder by the Director to protect the public from air and water pollution ~~and excessive noise~~. ~~The permittee~~ Right-of-way users shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work, and shall replace the same in as good or better condition as the ~~permittee~~ right-of-way user found them. ~~The permittee~~ Right-of-way users shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. ~~The permittee~~ Right-of-way users shall make provision to take care of all surplus water, muck, silt, or other runoff pumped from excavations or resulting from sluicing or other operations, and shall be responsible for any damage resulting from ~~permittee's~~ their failure to so provide.

Section 29. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.220, "Impact of Work on Existing Improvements," is hereby amended to recodify this section as TMC Section 11.08.260, which shall read as follows:

~~11.08.220~~ 11.08.260 **Impact of Work on Existing Improvements**

A. If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel, convenient for users, and consistent with City standards.

B. Each ~~permittee~~ right-of-way user shall cover an open excavation with non-skid steel plates ramped to the elevation of the contiguous street, pavement, or other ~~public~~ right-of-way, or otherwise protected in accordance with City standards.

C. All excavated material that is piled adjacent to any excavation shall be maintained in such a manner so as not to endanger those working in the excavation, pedestrians, or users of the right-of-way. When the confines of the area being excavated are too small to permit the piling of excavated material next to the excavation, the Director shall have the authority to require the ~~permittee~~ right-of-way user to haul the excavated material to a storage site and then return the excavated material to the excavation at the time of backfilling. It is the responsibility of the ~~permittee~~ right-of-way user to secure the necessary permission and make all arrangements for any required storage and disposal of excavated material.

D. At any time a ~~permittee~~ right-of-way user disturbs the yard, residence or the real or personal property of a private property owner or the City, such ~~permittee~~ right-of-way user shall insure, at the ~~permittee's~~ right-of-way user's expense, that such property is returned, replaced and/or restored to a condition that is comparable to or better than the condition that existed prior to the commencement of the work, as determined by the private property owner or the City.

E. Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the Director prior to the blockage of the channel.

Section 30. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.230, "Restoration of the Public Right-of-Way," is hereby amended to recodify this section as TMC Section 11.08.270, which shall read as follows:

~~11.08.230~~ 11.08.270 **Restoration of the ~~Public~~ Right-of-Way**

A. **Restoration.** ~~In any case in which the sidewalk, street, or other public right-of-way is or is caused to be excavated, the owner and permittee~~ If work is undertaken in the right-of-way, the right-of-way user shall restore ~~or cause to be restored such excavation~~ the right-of-way in the manner prescribed by the orders, regulations, and ~~Department~~ City standards.

B. ~~**Backfill, and replacement of pavement base.**~~ Backfilling in a right-of-way ~~opened or~~ excavated pursuant to a permit issued under the provisions of this chapter shall be compacted to a degree equivalent to that of the undisturbed ground in which the excavation was begun, unless the Director determines a greater degree of compaction is necessary to produce a satisfactory result. All backfilling shall be accomplished according to City standards and specifications. All backfills shall be inspected and approved by the Director ~~or his/her designee~~ prior to any overlaying or patching.

C. ~~**Pavement restoration.**~~ The ~~permittee~~ right-of-way user shall restore the surface of any ~~public~~ right-of-way to ~~its original condition~~ City standards, and replace any removed or damaged pavement with the same type and depth of pavement as that which is

adjoining, including the gravel base material. All restoration ~~shall conform to the City Standards and~~ shall be accomplished within the time limits set forth in the permit.

Section 31. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.240, “Recently Improved Streets,” is hereby amended to recodify this section as TMC Section 11.08.280, which shall read as follows:

~~11.08.240~~11.08.280 **Recently Improved Streets**

The ~~Department~~City shall not issue any permit to excavate in any recently improved street as defined at TMC Chapter 11.04; provided, however, that the Director may grant a waiver for good cause. The Director is specifically authorized to grant a waiver for an excavation that facilitates deployment of new technology as directed pursuant to official City policy. The Director may place additional conditions on a permit subject to a waiver. The Director’s decision regarding a waiver shall be final.

Section 32. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.250, “Coordination of Right-Of-Way Construction,” is hereby amended to recodify this section as TMC Section 11.08.290, which shall read as follows:

~~11.08.250~~11.08.290 **Coordination of ~~Right-Of-Way Construction~~ and Notification**

A. The permittee, at the time of receiving a Type C right-of-way use permit~~At the time of submitting an application for a permit, the applicant~~ shall notify all other ~~public and private utilities~~entities known to be using or proposing to use the same right-of-way as the applicant’s proposed construction, and the proposed timing of such construction. ~~A utility so~~Any such entity notified may, within seven days of such notification, request ~~of the Director~~a reasonable delay in the commencement of ~~any such~~ proposed construction for the purpose of coordinating other right-of-way construction with that proposed by the ~~permittee~~applicant.

B. The Director shall coordinate the approval of permits with City street improvements and maintenance and may defer or ~~may~~ delay the commencement date ~~of~~ for the ~~permittee’s~~ applicant’s right-of-way construction, until such time as such official deems proper. In all cases, any work of the City, its contractors, or employees for municipal purposes shall have precedence over all work of every other kind. except in emergencies, if the Director finds that such a delay will reduce the inconvenience to City right-of-way uses and if the Director finds that delay of the construction activities will not create undue economic hardship on the applicant.

C. Before commencing construction, the permittee shall provide notice to all adjoining properties that access onto the roadway work location, or are within 200 linear feet from the roadway work location. Notification shall be done no less than 3 days prior to the work commencing and shall be in the form of signage, door hangers, or door-to-door distribution of flyers. Notifications shall include contact information for the applicant or contractor doing the work.

Section 33. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.260, “Relocation of Structures in the Public Right-Of-Way,” is hereby amended to recodify this section as TMC Section 11.08.300, which shall read as follows:

~~11.08.260~~11.08.300 **Relocation of Structures in the Public Right-Of-Way**

A. ~~Unless otherwise provided for in a current franchise, The~~the Director may direct any ~~permit or franchise holder or any other entity~~right-of-way user owning or maintaining facilities ~~or structures~~ in the ~~public~~ right-of-way to alter, modify, or relocate such facilities or ~~structures~~ as may be required herein. ~~These facilities include, but are not limited to, sewers, pipes, drains, tunnels, conduits, vaults, trash receptacles, newspaper dispensers, overhead and underground gas, electric, telephone, telecommunication and communication facilities. The City shall notify the permit or franchise holder or other entity in writing no less than 60 days and no greater than 120 days in advance, except in the case of emergencies, of Tukwila’s intention to perform or have such work performed.~~

B. Within 30 days following written notice from the Director, the right-of-way user shall provide a schedule to the City indicating the estimated completion date for temporarily or permanently removing, relocating, changing, or altering (collectively the “relocation work”) the position of any facilities within the right-of-way whenever the Director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

1. A public improvement; or
2. The construction, repair, maintenance, or installation of any improvement in or upon the right-of-way as required by development approval; or
3. The operations of the City or other governmental entity in or upon the right-of-way.

C. The ~~permit or franchise holder or other entity~~right-of-way user owning or maintaining the facilities ~~or structures~~ shall, at their own cost and expense, promptly protect or promptly alter or relocate such facilities ~~or structures~~, or part thereof, ~~but in no event later than three working~~within 90 days following the original notice by the Director, unless a different duration is specifically authorized by the Director. ~~prior to the date Tukwila has notified the permittee, franchise holder or other entity, that it intends to commence its work, or immediately in the case of emergencies.~~

D. In the event that ~~such permit or franchise holder~~the right-of-way user refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities ~~or structures~~ without liability to ~~such person~~the right-of-way user. ~~Such person~~The right-of-way user shall pay to the City all costs incurred by the City in connection with such work performed by the City, including ~~also, but not limited to,~~ design, engineering, construction, materials, insurance, court costs, and attorney fees. Upon the ~~permittee, franchise holder or other entity’s~~right-of-way user’s failure to accomplish such work or reimburse the City of such costs, and after ~~three~~3 working days’ notice, all other ~~work~~ permits held by ~~permittee, franchise holder, or other entity,~~the right-of-way user may be ~~summarily~~ suspended, except in only

an emergency, until such time as the work required under this section is completed or the City has been reimbursed ~~form~~for work performed.

~~B. Any directive by the Director shall be based upon one or more of the following:~~

~~1. The facility or structure was installed, erected, or is being maintained contrary to law, or determined by the Director to be structurally unsound or defective.~~

~~2. The facility or structure constitutes a nuisance as defined under this chapter, the TMC or State statute.~~

~~3. The permit under which the facility or structure was installed has expired or has been revoked.~~

~~4. The public right-of-way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction.~~

~~5. The grades or lines of the public right-of-way are to be altered or changed.~~

~~C. Any directive of the Director under this section shall be under and consistent with the City's police power. Unless an emergency exists, the Director shall make a good faith effort to consult with the permit or franchise holder regarding any condition that may result in a removal or relocation of facilities in the public right-of-way, to consider possible avoidance or minimization of removal or relocation requirements; and the Director shall provide the directive as far enough in advance of the required removal or relocation to allow the permit or franchise holder a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.~~

~~D. This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the public right-of-way, if that prior private easement grants a superior vested right.~~

E. The City may, at any time, in case of fire, disaster or other emergency as determined by the City, cut or move any parts of the system and appurtenances on, over or under the ~~public~~ right-of-way, in which event the City shall not be liable therefore to a ~~permit or franchise holder~~the right-of-way user.

Section 34. Ordinance No. 1995 §1 (part), as codified at TMC Section 11.08.270, "Abandonment and Removal of Facilities," is hereby amended to recodify this section as TMC Section 11.08.310, which shall read as follows:

~~11.08.270~~11.08.310 **Abandonment and Removal of Facilities**

A. ~~**Notification of Abandoned Facilities.** Any permittee, franchise holder, or other entity~~Any right-of-way user that intends to discontinue use of any facilities within the ~~public~~ rights-of-way shall notify the Director, in writing, of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use (the date shall not be less than 30 days from the date such notice is submitted), and the method of removal and restoration of the rights-of-way. The ~~permittee, franchise holder, or other entity~~right-of-way user may not remove, destroy, or permanently disable any such facilities during said 30-day period without written approval of the Director. After ~~30~~60 days from the date of such ~~notice~~written approval from the

~~Director, the permittee, franchise holder, or other entity~~the right-of-way user shall remove and dispose of such facilities as set forth in the notice ~~and shall complete such removal and disposal within six months,~~ unless additional time is requested from and approved by the Director. The Director may place conditions upon the removal and restoration in order to protect public health and safety and the ~~public~~ rights-of-way.

B. ~~Conveyance of Facilities.~~ At the discretion of ~~Tukwila~~the City, and upon written notice from the Director within 30 days of the notice of abandonment, the ~~permittee, franchise holder, or other entity~~right-of-way user may abandon the facilities in place, and shall further convey full title and ownership of such abandoned facilities to ~~Tukwila~~the City. The consideration for the conveyance is ~~Tukwila's~~the City's permission to abandon the facilities in place. The ~~permittee, franchise holder, or other entity~~right-of-way user is responsible for all obligations as owner of the facilities, or other liabilities associated therewith, until conveyance to ~~Tukwila~~the City is completed. Conveyance of the abandoned facilities shall also automatically include all record information, including GIS data as available, or as agreed upon with the Director.

Section 35. Regulations Established. TMC Section 11.08.320 is hereby established to read as follows:

11.08.320 Record Drawings

Upon request by the City, a right-of-way user shall, within 10 business days, submit to the City, at no cost to the City, the right-of-way user's most current and accurate record drawings in use by the right-of-way user showing the location specified by the City in its request before final permit approval. Record drawings shall show all facilities including but not limited to power poles, guy poles and anchors, overhead transformers, pad-mounted transformers, submersible transformers, conduit, substation (with its name) pedestals, pad-mounted J boxes, vaults, switch cabinets, and meter boxes.

Section 36. Regulations Established. TMC Section 11.08.330 is hereby established to read as follows:

11.08.330 Joint Excavation

A. If an applicant submits a permit application to excavate for installation of its facilities, the City may request in writing that such applicant provide an opportunity to install City facilities within the excavation; provided, that:

1. Such joint use shall not unreasonably delay the work of the applicant's excavation; and

2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

B. To the extent reasonably possible, the applicant shall, at the direction of the City, cooperate with the City and provide other private utility companies with the opportunity to

utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic-related impacts.

Section 37. Regulations Established. TMC Section 11.08.340 is hereby established to read as follows:

11.08.340 Additional Ducts or Conduits

Any right-of-way user shall upon written request of the City, provide the City with additional duct or conduit space over and above the conduit or conduits planned to be constructed for the right-of-way user. Such additional ducts or conduits shall be of a size and configuration specified by the City and shall be dedicated to the City. The City shall have the right to use the ducts and conduits for any purpose including, but not limited to, leasing them to other entities. Except as otherwise applicable under RCW 35.99.070, the incremental costs of adding the specified ducts and conduits for the City shall be borne by the City.

Section 38. Regulations Established. TMC Section 11.08.350 is hereby established to read as follows:

11.08.350 Undergrounding

A. Subject to and in accordance with any applicable rates and tariffs on file with the Washington Utilities and Transportation Commission (WUTC) (or such other regulatory agency having jurisdiction), the right-of-way user shall cooperate with the City in promoting a policy of undergrounding facilities within the right-of-way.

B. If the City directs the right-of-way user to underground its facilities, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable rates and tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

C. In the event that the City undertakes any public improvement that would otherwise require, at the discretion of the Director, the relocation of the right-of-way user's aboveground facilities, the Director may, by written notice to the right-of-way user, direct that any such facilities be converted to underground facilities. Any such conversion shall be done subject to and in accordance with applicable schedules and tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

D. All new facilities installed within the City during the term of any permit or franchise shall be located underground to the extent technologically feasible as determined at the discretion of the Director.

Section 39. Regulations Established. TMC Section 11.08.360 is hereby established to read as follows:

11.08.360 Hazardous Substances

Right-of-way users shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and the right-of-way user shall not allow any of its agents, contractors, or any person under its control to do the same.

Section 40. Regulations Established. TMC Section 11.08.370 is hereby established to read as follows:

11.08.370 Utility Locates

Prior to doing any work in the rights-of-way, right-of-way users shall follow established procedures, including contacting the Utility Notification Center in Washington and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request by the City or a third party, the right-of-way user shall promptly locate its facilities in order for them to be surveyed or as required by Chapter 19.122 RCW. The right-of-way user shall provide enough detail to verify the vertical (depth) and horizontal location of its facilities. The City shall not be liable for any damages to the right-of-way user's facilities or for interruptions in service to right-of-way user's customers that are a direct result of the right-of-way user's failure to locate its facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 41. Regulations Established. TMC Section 11.08.380 is hereby established to read as follows:

11.08.380 Moving of Building(s) and/or Equipment

Right-of-way users shall, upon 7 days' notice, disconnect or move their facilities to allow for the moving of building(s) and/or equipment across or along any such street, alley or other public place; provided, that the advance notice may be reduced to 24 hours if the facilities are below the minimum clearance set by law or regulation or in the case of an emergency. The cost of the right-of-way user moving their facilities shall be borne as follows: (i) by the right-of-way user if the facilities are below the minimum vertical clearance required by State statutes, City ordinance, or rules of the Director; above the surface of the right-of-way, and no adjustment would be necessary if the minimum clearance had been maintained; and (ii) by the person desiring to move the building(s) and/or equipment under other circumstances.

Section 42. Regulations Established. TMC Section 11.08.390 is hereby established to read as follows:

11.08.390 Tree Trimming

Any right-of-way user required by State statute or regulation to trim or remove trees that may interfere with their facilities shall first obtain a permit and ensure that the work is accomplished in accordance with TMC Chapter 11.20, "Right-of-Way Vegetation," and TMC Section 18.52.100, "Maintenance and Pruning," as applicable.

Section 43. Corrections by City Clerk or Code Reviser Authorized. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 44. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 45. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2022.

ATTEST/AUTHENTICATED:

Christy O'Flaherty, MMC, City Clerk

Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____

Passed by the City Council: _____

Published: _____

Effective Date: _____

Office of the City Attorney

Ordinance Number: _____