

TITLE 8A

PUBLIC PROPERTY AND FACILITIES

CHAPTER 8A-01. RESERVED FOR FUTURE CITY CEMETERY ORDINANCE

CHAPTER 8A-02. STREETS AND PUBLIC WAYS

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8A-02-010. Supervision And Duties.

The Public Works Superintendent shall have general supervision of all the streets, rights of way, bridges, sidewalks and other public ways that lie within the corporate boundaries of Fruit Heights City. The public works superintendent shall comply with and enforce the provisions of this Chapter and every other ordinance which shall relate to the maintenance and use of streets, rights of way, culverts, ditches, bridges, curbs, gutters, sidewalks, drains, waterways or any other public ways. The public works superintendent shall supervise, inspect and control the construction, maintenance and/or repair of all streets, rights of way, culverts, ditches, bridges, curbs, gutters, sidewalks, drains, waterways and other public ways within the boundaries of Fruit Heights City. The powers and duties of the public works superintendent, as specified herein, may be delegated by the public works superintendent to authorized designees. When used in this Chapter, public works superintendent shall include the reference to such authorized designees.

8A-02-020. Standards And Specifications.

The City Council, upon the recommendation of the City engineer and public works superintendent, shall establish and adopt certain standards and specifications for the construction of streets and public improvements within the City ("standards and specifications"). Any installation, construction, alteration, repair, maintenance or other work on the streets and public improvements within the City, or within any public right of way, shall comply with the standards and specifications.

8A-02-030. Street Excavations.

Prior to commencement of any excavation work within the public right of way, an excavation permit shall be obtained from the City in accordance with the provisions of Chapter 5 of this Title. It shall be unlawful for any person to perform such excavation work within the public right of way without obtaining an excavation permit from the City. All excavation work shall comply with the standards and specifications adopted by the City and the provisions of Chapter 5 of this Title.

8A-02-040. Franchise Required.

Except as otherwise expressly provided herein or exempt under federal or state law, any person or entity desiring to install improvements or facilities within any public right of way under the jurisdiction of the City shall be required to enter into a franchise agreement or other acceptable rights of way use or license agreement with the City authorizing the use of the public right of way for such improvements or facilities and specifying the terms and conditions of such use of the public right of way. It shall be unlawful for any person to place, construct or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, utility or any other structure, facility or object of any kind

or character within the public rights of way within the jurisdiction of the City without obtaining such a franchise agreement or other acceptable rights of way use or license agreement from the City in accordance with the provisions of this section. Telecommunications improvements or facilities installed within the public rights of way under the jurisdiction of the City shall be governed by the provisions of Title 9, Chapter 4 of this code, regarding telecommunications systems. Regulation of the City rights of way as provided herein shall be subject to and comply with the provisions of Utah Code Annotated Title 72, Chapter 7, as amended, entitled the protection of highways act.

8A-02-050. Conformance With Application.

No person shall misrepresent any material fact in any application for an excavation permit, and no person shall excavate on, into, or under any street, sidewalk or other public way in excess of the dimensions listed on the application for an excavation permit for such excavation. Any violations of any provision of this Chapter shall be a class B misdemeanor punishable by fine, imprisonment or both, as prescribed by the applicable statutes of the state of Utah. In addition to this criminal penalty, the City attorney may bring suit in an appropriate court to enjoin any person from excavating without a permit and/or seek any other legal or equitable relief for violation of this Chapter. The provisions of this Chapter shall not apply to excavations of any kind within any City streets or rights of way which are conducted by City personnel under the direction of the City Manager.

8A-02-060. Restrictions On Road Use Because Of Adverse Conditions.

The City Council may, by resolution or ordinance, prohibit the operation of vehicles upon any City street or impose restrictions as to weight for a total period of not to exceed ninety (90) days in any one calendar year when any said highway or street, by reason of deterioration, rain, snow or any other climatic or adverse conditions, will be seriously damaged or destroyed, unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. Upon passage of such a resolution or ordinance, the City Council shall erect or cause to be erected and maintained, signs prescribing the weight limitation as set forth in the ordinance or resolution. It shall be unlawful for any person to drive a vehicle on such a posted highway with a weight in excess of the posted limit.

8A-02-070. Restrictions On Road Use By Oversized Vehicles And Loads.

It shall be unlawful for any person to operate any vehicle standing by itself and/or containing a load in excess of twelve feet (12') in height above the road surface on any City street without first obtaining a permit from the City. Motor homes and camping trailers are exempt from this permit requirement.

8A-02-080. Signs.

The requirements of Title 10 Chapter 16 of this code shall apply to all signs within or over any street or public way.

8A-02-090. Sidewalk Construction, Maintenance And Use.

(a) Construction: All sidewalks shall be constructed in accordance with specifications and regulations as provided in Section 8A-02-020 of this Chapter. It shall be unlawful for any person, either as owner, agent, contractor or employee, to construct any sidewalk in Fruit Heights City unless such sidewalk be constructed to lines and grades approved by the City. No permanent sidewalk shall be constructed within the City without having first obtained from the City a permit as required in Section 8A-02-030 of this Chapter. The acceptance of such permit shall be deemed an agreement on the part of such person to construct the sidewalk in accordance with specifications and grades approved by the City.

(b) Sidewalk Maintenance And Repair: All owners of real property abutting or fronting upon any street, highway or alley within the City are required to keep the public sidewalks, and private drive approaches connecting with the public sidewalk across or immediately abutting their property in good order and repair. Each such owner shall be liable to the City for all losses to the City or recoveries from

the City for damages to persons or property caused by such owner's failure, or that of his agents, to repair and keep in good order and reasonably safe all such sidewalks abutting or fronting owner's property upon any street, highway or alley within the corporate limits of the City.

(1) It shall be the responsibility of each owner to notify the City when repair of a public sidewalk is needed. In addition, the City may, on its own initiative or at the request of others, determine if sidewalk repairs shall be performed. Conditions to be considered by the City to decide if a sidewalk shall be repaired pursuant to this section shall include, but not be limited to, any one of the following:

(A) Broken sidewalk panels;

(B) Sidewalk panels having different elevation at the junction thereof;

(C) Sidewalk panels with a deteriorated surface;

(D) A finding that the condition of the sidewalk is hazardous for anticipated users thereof; or

(E) A finding that inclusion of the proposed repairs in a special improvement district is not practical or desirable.

(2) It shall be the sole prerogative of the City to determine if repairs shall be performed. Upon rendering of such determination, the owner of real property bounding, abutting, upon or adjacent to a sidewalk which is to be repaired pursuant to this section shall pay a portion of the costs of repair as determined by the City public works superintendent. It shall be initially presumed that the proper allocation of costs will be fifty percent (50%) payment by the abutting owner and fifty percent (50%) by the City; however, this allocation may be modified by the public works superintendent based upon the facts of each particular case and any applicable regulations of the City. If the sidewalk has been damaged by the acts or omissions of the abutting owner or his agents, etc., the entire cost of such damage shall be paid by the owner. All costs not allocated to the property owner shall be paid by the City.

(3) The City public works superintendent, or his designee, shall, within thirty (30) days of any request or upon his own initiative, determine as described in subsection (b)(2) of this section, if the sidewalk shall be repaired and shall make the allocation described in subsection (b)(2) of this section between the landowner and the City of the reasonable costs of repair of defective sidewalk.

(4) The owner(s) obligation of payment described in subsection (b)(2) of this section shall not commence until thirty (30) days after the City has mailed written notice (unless the same has been waived in writing) to the owner of real property, which notice shall contain not less than the following:

(A) A description of the sidewalk which has been or is proposed to be repaired and the reason therefor;

(B) The cost of the repair and the allocation of that cost between the property owner and the City; and

(C) A statement that the property owner may appeal any claim by the City for payment and a description of the time and manner in which the same may be done.

(5) Any person directly affected by a decision of the City public works superintendent, or his designee, may appeal the same within thirty (30) days after the mailing date of the written notice described in subsection (b)(4) of this section. Appeals shall be in writing

and filed with the City recorder requesting that the City Council hear the matter. The City recorder shall then put the matter on the next available City Council agenda and notify the property owner of the date and time of the hearing. The appeal hearing shall be informal and need not be reported. At such hearing, the owner may present such evidence and argument as is pertinent to appealing the decision of the City public works superintendent. The City Council shall also permit the presentation of evidence or argument by the City public works superintendent and other interested parties. Thereafter, within not more than fifteen (15) days, the City Council shall render its written decision, a copy of which shall be mailed to or served upon the property owner. The property owner shall be subject to the terms of the decision.

(6) The City may agree to reasonable terms, including the payment of interest, for the payment of the share of costs to be paid by the property owner. The City may bring a civil action and collect any unpaid sum, including interest, costs and a reasonable attorney fee which is owed pursuant to this section. In addition, should the property owner fail to make payment to the City for the property owner's share of the costs of repair, said portion of the costs of repair shall constitute a lien against the real property of owner. If such lien is not satisfied within sixty (60) days after being filed of record, the City may seek to foreclose the lien in the manner provided in Utah Code Annotated Title 38, for the enforcement of mechanics' liens.

(7) The purpose of this section is to avoid liability to Fruit Heights City and to the owners of private property because of defective sidewalks.

(8) This section shall not apply to the new construction of sidewalks in subdivisions or other places within the City. This section shall not prohibit the repair of sidewalks for reasons other than those described in subsection (b)(1) of this section if the same is done at the property owner's sole expense and according to applicable law and City specifications.

(c) **Obstructions In Street Or Public Way:** It shall be unlawful for any person owning, occupying or having control of any premises to place or permit to be placed on or in or over the sidewalk, parking area, gutter, street or any other public way next to such premises:

(1) Any building materials, dirt, refuse, dead trees, tree stumps, fencing, lumber, merchandise or any other thing which will obstruct such public streets, gutters, parking and areas, sidewalks or any other public way except as expressly authorized by ordinance and for the two (2) week period prior to spring cleanup;

(2) Any recreational equipment or facilities, including basketball standards, backboards, nets or other sports equipment or structures of any kind which will obstruct such public streets, gutters, parking areas, sidewalks or any other public way, or which require persons to occupy the street or public way in order to use such structures or facilities.

(d) **Snow Removal:** It shall be the duty of the owner, occupant, lessor or agent of any property abutting on any sidewalk to remove or cause to be removed from such paved sidewalk all hail, snow or sleet falling thereon, within a forty eight (48) hour period after the hail, snow or sleet has ceased falling.

(e) **Sweeping Of Business Sidewalks:** It shall be the duty for the owners or occupants of places of business within the City to cause the sidewalks abutting thereon to be kept swept or cleaned.

(f) **Driving, Riding On Sidewalks:** It shall be unlawful for any person to drive a self-propelled vehicle, other than snow removal equipment, or to ride any animal upon any sidewalk, except at established crossings.

(g) **Obstructing Free Passage:** It shall be unlawful for any person or persons to congregate, loiter or remain standing, lying or sitting on any sidewalk for a longer period than two (2) minutes in such a manner as to obstruct the free passage of pedestrians thereon, or to willfully remain standing, lying or

sitting thereon for more than one minute after being requested to move by any police officer, or to willfully congregate or remain on any sidewalk in such a manner as to obstruct the free passage of any person or vehicle into or out of property abutting upon the sidewalk or any property having access to such sidewalk.

8A-02-100. Frontage Maintenance.

It shall be the duty of each owner of real property abutting or fronting upon any street, highway, or alleyway within the City to maintain the frontage area adjacent to their property out to the edge of the road asphalt in a safe and clean condition and to keep the frontage free of weeds and debris at all times. It shall be the duty of each owner of real property abutting or fronting upon any street, highway or alley within the City to prevent any soil, sand, silt or debris from migrating from or leaving the owner's property into any street, highway or alley adjacent thereto. It shall be a class B misdemeanor to violate any provision contained in this section. In addition to other remedies available at law, upon any violation of this section, the City zoning administrator or the City building inspector shall have the right to stop any construction or activities upon the owner's property which may be causing deposit of material within the City street or right of way by issuing a stop work order, citation or other directive to the property owner.

8A-02-110. Vacation Of Street Or Public Right of Way.

(a) Petition For Vacation, Narrowing Or Change Of Name Of Street Or Alley; Hearing; Ordinance: Upon payment of a fee to be set by the City Council and upon petition by a person owning a lot in the City, praying that a street or alley in the immediate vicinity of such lot may be vacated, narrowed or the name thereof changed, the governing body of the City may, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation or narrowing, that it will not be detrimental to the general interest, and that it should be made, declare by ordinance such street or alley vacated, narrowed or the name thereof changed. The governing body may include in one ordinance the change of name, or the vacation, or the narrowing of more than one street or alley.

(b) Vacation, Narrowing Or Change Of Name Of Alley Without Petition; Ordinance: When there are two (2) or more streets or alleys of the same name in the City, the governing body may, by ordinance and without petition thereof, change the name of any such street or alley, so as to leave only one to be designated by the original name. When, in the opinion of the governing body of the City, there is good cause for vacating or narrowing a street or alley, or any part thereof, and that such vacation or narrowing will not be detrimental to the general interest, it may, by ordinance, and without petition thereof, vacate or narrow such street or alley, or any part thereof.

(c) Notice Required; Exception: Notice of the intention of the governing body to vacate any street or alley, or part thereof, shall in all cases be given as provided in subsection (d) of this section, except when there is filed with the governing body written consent to such vacation by the owners of the property abutting the part of the street or alley proposed to be vacated, in which case such notice shall not be required.

(d) Notice; How Given: No street or alley shall be so vacated, unless notice of the pendency of the petition and prayer thereof, and the date of the hearing thereon, if such petition is filed, or of the intention of the governing body of the City to vacate, and the date of the hearing on such question if no petition is filed, be given by publishing in a newspaper published or of general circulation in the City once a week for four (4) consecutive weeks preceding action on such petition or intention, or, where no newspaper is published in the City, by posting the notice in three (3) public places therein four (4) consecutive weeks preceding such action, and by mailing such notice to all owners of record of land abutting the street or alley proposed to be vacated addressed to the mailing addresses appearing on the rolls of the county assessor of Davis County. Action thereon shall take place within three (3) months after completion of the notice.

(e) Effect Of Vacation Or Narrowing Of Street Or Alley: The action of the governing body vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating ordinance,

as a revocation of the acceptance thereof, and the relinquishment of the City's fee title therein by the governing body, but the right of way and easements therein, if any, of any lot owner and the franchise rights of any public utility shall not be impaired thereby.

8A-02-120. Street Lighting.

The City may, but shall not be obligated to, operate and maintain street lighting within Fruit Heights City as deemed appropriate by the City Council. The City shall also have the right to contract with utility companies and/or other entities to provide operation and/or maintenance of street lighting within the City.

8A-02-130. Cleaning City Streets And Facilities.

(a) Single Lot Or Parcel Residential Construction: In order to reduce the amount of debris and materials impacting City streets and entering the City's storm drain system, City streets should be cleaned periodically, together with the storm sewer facilities of the City receiving stormwaters from the street system. During construction periods, including new construction and remodeling, the City will provide street sweeping once each month. No dirt ramps shall be constructed over curbs during construction periods. In order to fund the cleaning and maintenance, the City Council, by resolution, may adopt and require payment of fees for street sweeping and/or related services. All fees adopted by the City Council may be amended from time to time as determined appropriate in the discretion of the City Council. Required street cleaning fees shall be paid to the City by the owners of real property abutting any street or public way within the City prior to the issuance of a building permit for any new construction and/or remodeling.

(b) Multi-Lot Residential Construction And Nonresidential Construction: For all new development, developers of multi-lot residential properties and owners of nonresidential properties within the City shall be responsible to clean paved streets within any subdivision and/or nonresidential development, together with those portions of paved streets located up to one thousand feet (1,000') off site from said subdivision and/or development. Cleaning shall begin at the commencement of any such development and shall continue until the beginning of the warranty period. Maintenance shall include cleaning of inlet boxes and sweeping of paved streets. An improvement bond in a form satisfactory to the City shall be required to be posted by the developer or owner in an amount estimated by the City engineer to be adequate to cover the cost of such cleaning and maintenance during construction and development periods. Projects having streets which are not cleaned and maintained may be halted until compliance occurs. No dirt ramps shall be constructed over curbs during construction periods. In the event the required cleaning is not provided, the City may, at its discretion, call the bond at any time and utilize the proceeds therefrom to pay for cleaning. Calling of the bond shall not excuse the developer or owner from providing the required cleaning specified hereunder. In the event the bond proceeds are insufficient to provide the necessary cleaning, the developer or owner shall be liable for any deficiency and administrative expenses incurred by the City in performing the cleaning.

CHAPTER 8A-03. FLOOD CONTROL PROPERTIES AND FACILITIES

- 8A-03-010. Definitions.**
- 8A-03-020. Safeguarding Flood Control Structures.**
- 8A-03-030. Safeguarding Emergency Floodway.**
- 8A-03-040. Exceeding Permission.**
- 8A-03-050. Strict Liability.**
- 8A-03-060. Penalties.**

8A-03-010. Definitions.

For purposes of this Chapter:

(a) **EMERGENCY FLOODWAY:** Any channel expected to be used in times of a flood emergency for the carrying or transporting of floodwater or debris flows, including the public rights of way in Mountain Road, Nicholls Road, Green Road, and such other locations and ways as may be designated from time to time by resolution of the City Council.

(b) **FLOOD CONTROL STRUCTURE:** Any earthen berm, channel, wall, spillway or other manmade facility, improvement or device designed for the management or handling of water or mud for the purpose of preventing or mitigating damage.

8A-03-020. Safeguarding Flood Control Structures.

No person shall alter, remove, disable or significantly affect any flood control structure without first obtaining express, written permission from the City and any other governmental entity having jurisdiction over the same and upon review by its engineer and specifying the nature and extent of the alteration, removal or disablement.

8A-03-030. Safeguarding Emergency Floodway.

No person shall dig into or in any way alter or affect the surface of the ground in the emergency floodway, including the sides of the emergency floodway, without first obtaining express, written permission from the City upon review by its engineer and specifying the nature and extent of the digging, alteration or affect. Without limiting the generality of this section, the acts it prohibits specifically include any digging, undermining, diminution or other alteration of any earthen berms along the sides of an emergency floodway.

8A-03-040. Exceeding Permission.

No person having permission to alter or perform work affecting a flood control structure or emergency floodway shall exceed the limits or conditions of that permission in any way that affects either a flood control structure or emergency floodway.

8A-03-050. Strict Liability.

Except as otherwise specifically provided herein, any person violating any provision of this Chapter may be found guilty without regard to fault, knowledge, intent or the state of mind of the person committing the violation.

8A-03-060. Penalties.

Any person violating this Chapter shall be guilty of a class B misdemeanor. A violation of Section 8A-03-020 of this Chapter shall be deemed a separate offense from a violation of Section 8A-03-030 of this Chapter, and each day in which a prohibited act or its effects continue shall be a separate offense.

CHAPTER 8A-04. PARKS

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8A-04-010. Parks.

The City may purchase, lay out, establish and maintain parks and playgrounds for the benefit of the citizens of the City. For purposes of this Chapter, a “park” shall be defined as real property owned, leased or controlled by Fruit Heights City and operated and maintained by Fruit Heights City and set apart for the use of the general public, whether developed or undeveloped, and which is usually, or may be, planted with trees, lawns and other landscaping, and which may include within its boundaries facilities for sport, entertainment, dancing, recreation, picnicking or swimming, or is planned for such future use.

8A-04-020. Regulations.

The City may promulgate rules and regulations relating to the City parks and may amend such rules and regulations from time to time by resolution of the City Council. Any park rules and regulations adopted by resolution of the City Council shall be incorporated herein by this reference and any violation of such park rules and regulations shall be deemed a violation of this section, subject to citation and eviction as provided elsewhere in this Chapter.

8A-04-030. Motor Vehicles.

(a) Motor Vehicles Specified: For purposes of this section, motor vehicles include, but are not limited to, automobiles, trucks, off road vehicles, motorcycles, motorbikes, snowmobiles and any and all other self-propelled mechanical vehicles, excepting vehicles moved solely by human power and motorized wheelchairs.

(b) Locations: No motor vehicles may be driven at any place within a City park, other than in those areas specifically designated and posted as allowing such vehicles. This shall not apply, however, to motorized or self-propelled equipment or emergency vehicles used within the park by officers or

employees of the City in the performance of their official duties.

(c) **Snowmobiles And Off Highway Vehicles:** It shall be unlawful to operate or drive any snowmobile or other off highway vehicle within any area of any City park or recreation area at any time.

(d) **Speed:** It shall be unlawful to operate or drive any motor vehicle within any City park or recreation area at a speed in excess of that speed posted on the particular road, trail or pathway within the park. In the absence of a posted speed limit, no motor vehicle may be operated within any City park at a speed in excess of fifteen (15) miles per hour.

(e) **Manner Of Operation:** No motor vehicles, even though operated within the speed permitted on the places provided for such vehicles, shall be operated in a careless or reckless manner to such an extent that it will endanger the peace, health and safety of any other person within the City park area.

8A-04-040. Bicycles And Skateboards.

Except as otherwise posted, self-propelled vehicles such as bicycles, skateboards, roller skates, rollerblades, scooters, or motorized wheelchairs, and similar types of vehicles may be used within public parks. No self-propelled vehicles or motorized wheelchairs shall be operated in a careless or reckless manner to such an extent that it will endanger the peace, health and safety of any other person within the City park area or in any way that will damage the facilities, plants or property within the park.

8A-04-050. Golf.

It shall be unlawful to play or practice golf within any City park except as part of classes or programs approved by the City.

8A-04-060. Skiing.

It shall be unlawful to ice skate or ski within any City park, except in specific areas as designated by the City.

8A-04-070. Paths, Trails Or Roads.

When a trail, path or road is designated for any specific purpose or purposes, such as an equestrian trail, bicycle path or other use, then such trail may, unless the City shall otherwise permit, only be used for the specific purposes designated or for incidental uses in connection therewith which are necessary to accomplish the use permitted.

8A-04-080. Animals.

(a) **Certain Animals Prohibited:** Except as provided herein, the only animals permitted within the City parks are cats and dogs. Except as provided herein, no person shall bring or let loose any animal, other than a cat or a dog, at any time within a City park.

(b) **Animal Control:** No person shall bring or drop off any animal in any City park for the purpose of allowing such animal to urinate or defecate upon the park property. If any animal deposits its feces on any park areas, the owners of such animal shall immediately clean up and remove such feces from the park premises. Patrons attending the City park for any reason shall keep any animal on a leash during the time such animals are within the park. Unattended or unlicensed animals found within any City park are subject to pick up by the animal control officer.

(c) **Tethering Animals:** No person shall hitch or fasten any animal to any tree or any other place or structure on park property.

8A-04-090. Firearms, Crossbows, Bow & Arrows And Explosives.

No person shall carry or discharge any firearms, crossbows, bows & arrows, firecrackers, rockets, or any other fireworks or explosives within a City park, except persons who have obtained a special permit from the City to put on a fireworks show.

8A-04-100. Fire Making.

No person shall make or kindle a fire within a City park for any purpose, unless such person shall do the same in designated areas and at designated times where a fireplace or other facility intended to contain a fire is available. The City Council shall designate permitted hours and seasons for permissible fireplace or fire facility use within City parks in the parks rules and regulations or other resolution of the City Council.

8A-04-110. Camping.

No person shall camp or lodge in any City park or playground. This section shall not apply to authorized City personnel for official City business or security purposes.

8A-04-120. Defacing Or Destruction Of Property.

Except as permitted by the City, no person shall remove, injure, deface, destroy or disturb any wood, turf, grass, soil, sand, gravel, tree, shrub, plant, rock, building, sign, fence, bench or other structure, apparatus or property within a City park; or cut, take or remove any plant, or mark or write upon any building, sign, fence, bench or other structure within a City park.

8A-04-130. Littering.

No dumping or littering shall be allowed on any City park premises. No garbage generated outside of the park premises shall be transported to or dumped within the park or within any garbage receptacles belonging to the City and located within the park. Any garbage generated through use of the park premises shall be deposited within designated garbage receptacles.

8A-04-140. Restroom Facilities.

No male person over six (6) years of age and no female person over such age shall enter or use any restroom designated and marked for use by members of the opposite sex in a City park or playground, except that City personnel may for maintenance purposes enter any restroom.

8A-04-150. Prohibited Conduct.

No person shall engage in fighting or indulge in riotous, boisterous, intoxicated, threatening, promiscuous or indecent conduct or use any abusive, threatening, profane or indecent language in a City park. No person shall conduct any activity within a City park that poses a risk to public health and safety or which endangers the peace, health and safety of any other person within the City park area.

8A-04-160. Hunting.

No person shall hunt in any City park

8A-04-170. Park Hours.

Unless otherwise provided by ordinance or resolution of the City Council, City parks may be used between sunrise and sunset. In any event, City parks shall not be used or occupied between the hours of

eleven o'clock (11:00) P.M. and five o'clock (6:00) A.M., except by special permission of the City.

8A-04-180. Concessions.

No person may sell food, drinks, or other items in City parks, except as may be permitted by special permit approved by the City Council.

8A-04-190. Alcoholic Beverages.

No person shall consume, sell or have in their possession any alcoholic beverage within a City park.

8A-04-200. Violations.

Any person who violates any provisions of this Chapter shall be guilty of a class B misdemeanor, subject to fines, forfeitures, penalties and/or imprisonment as provided by law.

8A-04-210. Eviction.

In addition to other remedies provided by law, any person violating any of the instructions, signs or rules established by the City may be forthwith evicted from the park by any police officer of the City.

8A-04-220. Park Reservations.

Certain facilities and areas within the City parks as designated by the City may be reserved by any person upon payment of an applicable park reservation fee established by the City. Park reservation policies may be adopted and amended from time to time by resolution of the City Council.

8A-04-240. Vandalism, Destruction, or Defacing, Damaging Park Facilities, City Equipment or other Improvements.

See City Title 13 Criminal Code for criminal penalties for damage to City Property.

CHAPTER 8A-05. RIGHT OF WAY ENCROACHMENT, USAGE OR EXCAVATION PERMITS

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- 8A-05-050. Permit Required.**
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8A-05-010. Title.

This Chapter shall be known as and may be referred to as the *FRUIT HEIGHTS CITY EXCAVATION PERMIT ORDINANCE*.

8A-05-020. Authority.

This Chapter is adopted pursuant to and in accordance with applicable provisions of state law regarding a municipality's right to regulate its rights of way and under the City's police power to establish procedures and standards for the safe use of its right of way, including, but not limited to, the provisions set forth in Utah Code Annotated sections 10-8-11, 10-8-13, 10-8-23 and 10-8-84, as amended, and provisions of the protection of highways act, as set forth in Utah Code Annotated section 72-7-101 et seq., as amended.

8A-05-030. Administration.

This Chapter shall be administered and enforced by the public works superintendent, or his or her authorized designees.

8A-05-040. Definitions.

(a) **APPLICANT:** Any person who makes application for an excavation permit under the provisions of this Chapter.

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

(c) MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES: The manual on proper barricading and traffic control practices, as published by the federal government.

(d) PERMITTEE: Any person which has been issued a permit and thereby has agreed to fulfill the requirements of this Chapter.

(e) PERSON: An individual, partnership, association, trust, corporation, firm, company, organization or entity of any kind.

(f) PROPERTY OWNER: Any person or persons who have legal title to property and/or equitable interest in the property.

(g) PROVIDER: Any person providing utility, cable or telecommunications services to another through the use of a system of facilities and infrastructure which uses the public rights of way, or any person who owns or operates such a system and leases it to another for the purpose of providing utility, cable or telecommunications services to another, or any public utility company which uses the public rights of way for purposes of providing gas, electrical, water or other utility product or services for the use by the general public.

(h) PUBLIC RIGHT OF WAY: Means and includes all municipal streets, alleys, roads, lanes, footpaths, walkways, sidewalks and easements within the City dedicated to the public; provided rights of way shall not include any real or personal property of the City that is not specifically described herein and shall not include utility easements not within rights of way of the City.

(i) STANDARDS AND SPECIFICATIONS: The latest version of the Fruit Heights City standard details for construction of public improvements and other construction within the public rights of way as adopted by the City.

8A-05-050. Permit Required.

(a) Any person desiring to perform work of any kind in a public right of way, other than the City or its authorized employees and agents, shall be required to apply for and obtain an excavation permit from the City. For safety purposes, dumpsters are not allowed on the street. Any contractor or developer installing a service connection within the public right of way shall be required to obtain an excavation permit in accordance with the terms and conditions of this Chapter. Any person performing work in the public right of way, including, but not limited to, use of dump trucks, cement trucks, cranes, pumper trucks and landscaping trucks, shall be required to apply for and obtain an excavation permit from the City. The decision by the City to issue an excavation 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 multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the public right of way, such as electrical power, telephone, gas, 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 from numerous excavations of the public right of way; and

(5) Public safety.

8A-05-060. Permit Application Requirements.

(a) Filing: Application for a permit shall be filed with the public works superintendent on forms to be furnished by the City.

(b) Eligibility: Only the following persons or entities shall be eligible to receive an excavation permit to do work within the public rights of way of the City:

(1) Contractors licensed by the state of Utah as general contractors; or

(2) Providers.

(c) Plans, Details: All applications shall include excavation plans and details, showing the trench detail including the length, width and depth of the trench, the exact location and address of the trench, and the relationship of the trench to the right of way lines, traffic lanes, intersections, signals and structures. Trenches must meet OSHA standards.

(d) Compliance With Traffic Manual: All applications shall be in compliance with the "Manual On Uniform Traffic Control Devices".

(e) Fee, Bonds, Insurance: All applications shall include the requisite application fee, bonds and insurance certificates as more particularly set forth in this Chapter.

8A-05-070. Application Review And Approval.

(a) Review; Past Performance: The public works superintendent shall review all applications and may deny the issuance of permits to contractors, providers, utility companies or other permit applicants who have shown by past performance that in the opinion of the public works superintendent they will not consistently conform to the standards and specifications, or the requirements of this Chapter.

(b) Plans, Sketches May Be Required: When necessary, in the judgment of the public works superintendent, to fully determine the relationship of the work proposed to existing or proposed facilities within the public rights of way, or to determine whether the work proposed complies with the standards and specifications, the public works superintendent may require the filing of engineering plans, specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

(c) Approval, Permit Required; Driveways: It shall be unlawful for any person to commence work upon any public right of way until the public works superintendent has approved the application and until an excavation permit has been issued for such work. Any installation of or modification to a driveway within the public right of way shall also require review and approval from the community development director or his or her designee.

(d) Appeals: The disapproval or denial of an application by the public works superintendent may be appealed by the applicant to the City Manager by filing of a written notice of appeal within ten (10) days of the action of the public works superintendent. The City Manager shall hear such appeal as soon as practicable, if written request therefor is timely filed, and render his or her decision within three (3) weeks following notice of such appeal. Any final decision of the City Manager issued hereunder may be appealed to the City Council by filing a written notice of appeal within ten (10) days from the date of the final decision issued by the City Manager. The City Council shall hear such appeal as soon as

practicable, if written request therefor is timely filed, and render its decision within three (3) weeks following notice of such appeal.

(e) **Limitation Of Authority:** In approving or disapproving work within any public right of way, or permits therefor, in the inspection of such work, in reviewing plans, sketches or specifications, and generally in the exercise of the authority conferred upon him/her by this Chapter, the public works superintendent shall act in such manner as to preserve and protect the public right of way and the use thereof, but shall have no authority to govern the actions or inaction of permittees and applicants or other persons which have no relationship to the use, preservation or protection of the public right of way.

(f) **Exception To Permit Requirement:** An excavation permit is not required for public utility providers providing routine maintenance, accessing their utility within the right of way, including exercising valves, checking manholes and other work that does not require road excavation and that is approved by the public works superintendent. However, all work within the right of way, including routine maintenance, shall be performed in accordance to the City standards and specifications, the "Manual On Uniform Traffic Control Devices" and other laws, regulations, and generally recognized practices of the industry.

8A-05-080. Franchise Required.

Any person, governmental entity or provider desiring to construct, maintain, repair, operate or use any improvements or facilities to be located within the public right of way shall be required to obtain a franchise or other acceptable rights of way use agreement or license agreement with the City authorizing the use of the public right of way for such improvements or facilities in accordance with the provisions of Section 8A-02-040 of this Title, as amended, in addition and prior to the issuance of any excavation permit for work within the public right of way.

8A-05-090. Emergency Work.

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

(b) **Regular Business Hours:** In the event that emergency work is commenced on or within any public right of way of the City during regular business hours, the public works superintendent shall be notified within one-half (1/2) hour from the time the work is commenced. The person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall ensure that the work is accomplished according to City standards and specifications, the "Manual On Uniform Traffic Control Devices" and other applicable laws, regulations or generally recognized practices in the industry.

(c) **Work Without Permit:** Any person commencing emergency work in the public right of way without an excavation permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which City offices are open for business after such work is commenced. An excavation permit for such emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the public works superintendent.

8A-05-100. Application And Permit Fees.

(a) **Payment Required:** The City shall charge and the applicant shall pay, upon filing of an application for an excavation permit, an application fee as more particularly set forth in the consolidated fee schedule. The City shall charge and the permittee shall pay, upon issuance of the excavation permit, permit fees for costs associated with the work performed under the excavation permit as outlined in the consolidated fee schedule. All application and permit fees shall be assessed in a nondiscriminatory manner.

(b) Waiver: The public works superintendent may waive permit fees or portions thereof provided for in this Chapter, when he or she determines that such permit fee:

(1) Pertains to construction or rehabilitation of housing for persons whose income is below the median income level for the City;

(2) Pertains to an encroachment on the public right of way involving a beautification project which furthers specific goals and objectives set forth in the City's strategic plan, master plans or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping; or

(3) Pertains to work that is performed for a public utility provider, is for the health, welfare or benefit to the City, and the applicant has worked with the City or provided services that offset the City's costs.

(c) Additional Charges: Additional charges to cover the reasonable cost and expenses of any required engineering review, professional services, inspection and work site restoration associated with each undertaking may be charged by the City to each permittee, in addition to the application and permit fees. A deposit for such charges may be required as a condition of permit approval.

8A-05-110. Permit; Contents, Duration And Extensions.

(a) Starting, Completion Dates: Each excavation permit application shall state the starting date and estimated completion date. Work shall be completed within five (5) days from the starting date or as determined by the public works superintendent. Such determination shall be based upon factors reasonably related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed, the following:

(1) The scope of work to be performed under the permit;

(2) Maintaining the safe and effective flow of pedestrian and vehicular traffic on the public right of way affected by the work;

(3) Protecting the existing improvements to the public right of way impacted by the work;

(4) The season of the year during which the work is to be performed, as well as the current weather and its impact on public safety and the use of the public right of way by the public; and

(5) Use of the public right of way for extraordinary events anticipated by the City.

(b) Notification Of Commencement: The public works superintendent shall be notified by the permittee of commencement of the work within twenty four (24) hours prior to commencing work. The excavation permit shall be valid for the time period specified in the permit.

(c) Extension: If the work is not completed during such period, prior to the expiration of the permit, the permittee may apply to the public works superintendent for an additional permit or an extension, which may be granted by the public works superintendent for good cause shown.

(d) Length Of Extension: The length of the extension requested by the permittee shall be subject to the approval of the public works superintendent.

8A-05-120. Permit; No Transfer Or Assignment.

Excavation permits shall not be transferable or assignable, 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 remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this Chapter and under said permit.

8A-05-130. Compliance With Standards And Specifications.

(a) Required: The work performed in the public right of way shall conform to the requirements of the standards and specifications and the "Manual On Uniform Traffic Control Devices", copies of which shall be available from the public works superintendent, kept on file in the office of the City recorder and open to public inspection during office hours.

(b) Signage: Where a job site is left unattended, before completion of the work, signage with minimum two inch (2") high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after hours telephone number.

8A-05-140. Boring Requirements.

Except as otherwise approved by the City, all lateral crossing excavations shall be placed by boring. If boring is impossible, a request for an exception may be made to the public works superintendent. Upon review and consideration of the submitted request and supporting information, the public works superintendent may approve the exception.

8A-05-150. Minimum Interference.

All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the public right of way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the City; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the City. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The police department and fire department shall be notified at least twenty four (24) hours in advance of any planned excavation requiring street closure or traffic detour.

8A-05-160. Other Highway Permits.

(a) Scope: Holders of permits for work on highways owned or under the jurisdiction of other government entities, but located within the City limits, shall not be required to obtain an excavation permit from the City under the provisions of this Chapter, unless deemed necessary by the City. Any City permit shall not be construed to permit or allow work on a county road or on a state highway within the City without an applicable county or state permit.

(b) Authority Of City: The public works superintendent, in his or her discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the permittee of said governmental entity for the protection of traffic and safety of persons and property. Notwithstanding the foregoing, nothing in this Chapter shall be construed to impose any duty, implied or express, on the City or its employees, officers, agents or assigns, relative to the protection of traffic and safety of persons or property, arising out of the issuance of any permit issued by government entities other than the City, or arising out of any

work performed on any public right of way owned or within the jurisdiction of the City.

8A-05-170. Relocation Of Structures In Public Rights Of Way.

(a) **Direction Of Public Works Superintendent:** The public works superintendent may direct any person owning or maintaining facilities or structures in the public right of way to alter, modify or relocate such facilities or structures as the public works superintendent may require. Such facilities or structures include, but shall not be limited to, sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, cable, telecommunication and communication facilities, pressure irrigation lines, and power and telephone poles. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the City, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the City. In the event that such person 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. Such person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including design, engineering, construction, materials, insurance, court costs and attorney fees.

(b) **Considerations:** Any directive by the public works superintendent 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 public works superintendent to be structurally unsound or defective;

(2) The facility or structure constitutes a nuisance as defined under state statute or City ordinance (this section shall not, however, be deemed to diminish the vehicle impound authority of the police department);

(3) The authority under which the facility or structure was installed has expired or has been revoked;

(4) The facility or structure is not in conformity with public improvements consistent with the general plan of the City for the area;

(5) The public right of way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or

(6) The grades or lines of the public right of way are to be altered or changed.

(c) **Failure To Comply:** Any person owning or maintaining facilities or structures in the public right of way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the public works superintendent shall be guilty of a class B misdemeanor. All costs of alteration, modification or relocation shall be borne by the person owning or maintaining the facilities or structures involved.

8A-05-180. Impact Of Excavation On Existing Improvements.

(a) **Sidewalk Or Curb Ramp:** 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 and convenient for users, and consistent with City standards for such.

(b) **Gravel Surfaces:** Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.

(c) **Disturbance Of Property:** At any time a permittee disturbs the yard, residence or the real or personal property of a private property owner or the City, such permittee shall ensure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that

existed prior to the commencement of the work. The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the permittee.

(d) **Reimbursement For Damage:** A permittee shall reimburse a property owner, or the City, for any actual damage caused by the permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this subsection shall require the permittee to pay a subscriber or private property owner when that subscriber or private property owner requests that the permittee remove, replace or relocate improvements associated with the service provided by the permittee to the property owner and when the permittee exercises due care in the performance of that service, or when the subscriber or private property owner provided false information to the permittee on which the permittee relied to its detriment.

(e) **Drainage Channels:** 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 public works superintendent prior to the blockage of the channel. Permittee shall comply with all other stormwater drainage requirements and restrictions, including, but not limited to, applicable provisions of the stormwater ordinance as set forth in Title 8A of the Fruit Heights City Code, as amended.

(f) **Requirements Applicable To Subcontractors:** The requirements imposed upon the permittee extend to any subcontractor or independent contractor that the permittee might employ to perform the tasks pursuant to the permit.

(g) **Exception:** The requirements of this section shall not apply to the removal by a permittee of a permanent structure placed by a property owner in the public right of way, unless such property owner has received prior written permission from the City granting the property owner the right to install a permanent structure on or within the public right of way, and such written permission has been recorded in the office of the county recorder.

8A-05-190. Restoration Of Public Property.

(a) **Required:** The permittee shall, at its own expense, restore the surface of any public right of way to its original condition and replace any removed or damaged pavement. All restoration shall conform to the standards and specifications promulgated by the City and shall be accomplished within the time limits set forth in the permit, unless additional time is granted in writing by the public works superintendent.

(b) **Restoration By City:** The permittee doing the actual excavation work may request that the City restore the surface to its original condition. Approval of such request shall be made by the public works superintendent as part of the excavation permit approval. The fee for such resurfacing shall be determined by the public works superintendent in accordance with its reasonable costs for such work and shall be charged to the person, firm or corporation making the excavation. Payment for the estimated cost of said work shall be received by the City prior to issuance of the excavation permit. Actual cost of such work shall be paid to the City prior to release of the bond.

8A-05-200. Insurance Requirements.

(a) **Limits And Requirements:** Before a permit is issued, the applicant shall furnish to the City evidence that such applicant has a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions:

(1) A minimum of two million dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury and property damage, and not less than two million dollars (\$2,000,000.00) in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be in the

nature of broad form commercial general liability coverage. The City may increase minimum insurance limits, depending on the potential liability of any project. In no event shall insurance coverage be in amounts less than those set forth herein or less than federal or state statutory limits and requirements, whichever is greater, including, but not limited to, governmental immunity cap limits for municipal corporations, as set forth in Utah Code Annotated Section 63G-7-101 et seq., as amended. The permittee shall increase the limits of such insurance to at least the amount of the limitation of judgments described in Utah Code Annotated Section 63G-7-101 et seq., as amended, of the governmental immunity act of Utah, as calculated by the state risk manager every two (2) years and stated in Utah Administrative Code R37-4-3, as amended.

(2) All policies shall include the City, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the "City" shall include the City, its employees, officers, officials, agents, volunteers and assigns.

(3) The coverage shall be primary insurance as respects the City, its employees, officers, officials, agents, volunteers and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers and assigns shall be in excess of the permittee's insurance and shall not contribute to or with it.

(4) 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.

(5) Coverage shall state that the permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(6) 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.

(7) 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.

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

(9) Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees 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 the permittee, or 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.

(10) Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees 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 right of way is opened for public use.

(b) Rating Requirements: Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of "A7" or higher.

(c) Certificates: 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.

(d) **Unsatisfactory Policy:** 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.

(e) **Subcontractors Included:** The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

(f) **Deductibles:** Any deductibles or self-insured retentions shall be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its employees, officers, officials, agents, volunteers or assigns, or the permittee shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(g) **Exceptions:** A provider may be relieved of the obligation of submitting certificates of insurance if such company submits satisfactory evidence in advance that:

(1) It is insured in the amounts set forth in this Chapter, or has complied with state requirements to become self-insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and

(2) Said coverage provides to the City the same scope of coverage that would otherwise be provided by a separate policy as required by this Chapter; or

(3) The work to be performed under the permit issued to the applicant is performed by the City, in which case insurance requirement shall be negotiated between the City and the applicant by separate agreement.

8A-05-210. Bonds; When Required, Conditions, Warranty.

(a) **Required:** Except as noted in this Chapter, each applicant that will be excavating in the right of way, before being issued a permit, shall provide the City with an acceptable cash bond in the amount of one thousand dollars (\$1,000.00) and a corporate surety bond or another type of security in an amount and type as determined by the public works superintendent to guarantee faithful performance of the work authorized by a permit granted pursuant to this Chapter. The amount of the bond required may be increased or decreased at the discretion of the public works superintendent whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of bond otherwise required under this Chapter. The form of the bond and the entity issuing the bond shall be subject to the approval of the City.

(b) **Exception:** Public utilities franchised or authorized by separate agreement with the City shall not be required to file the cash bond or the corporate surety bond if such requirement is expressly waived in the franchise document or other acceptable right of way use agreement or license, or if such bond(s) has been provided with the franchise grant or other acceptable right of way use agreement or license.

(c) **Conditions:** The bonds required by this section shall be conditioned as follows:

(1) The permittee shall fully comply with the requirements of the City ordinances and regulations, the "Manual On Uniform Traffic Control Devices", and the standards and specifications promulgated by the City relative to work in the public right of way, and respond to the City in damages for failure to conform therewith;

(2) After work is commenced, the permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the public right of way to construction specifications, so as not to obstruct the public right of way or travel thereon more than is reasonably necessary;

(3) The permittee shall guarantee the materials and workmanship for a period of one year from completion of such work, with reasonable wear and tear excepted; and

(4) Unless authorized by the public works superintendent on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within two (2) calendar days from the time the excavation commences, and within five (5) 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 the standards and specifications. In winter, a temporary patch must be provided. In all excavations, restoration of pavement surfaces shall be made immediately after backfilling is completed or concrete is cured.

(d) Release: When no excavation work is being done in the right of way, at the discretion of the public works superintendent, the cash bond may be released when work is completed.

8A-05-220. Hold Harmless Agreement; Limitations On City Liability.

(a) Hold Harmless: The permittee agrees to save the City, its officers, employees, volunteers and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this Chapter shall constitute such an agreement by the permittee to this section.'

(b) Nonliability: This Chapter shall neither be construed as imposing upon the City, its officers, employees, volunteers and agents, any liability or responsibility for damages to any person injured by or by reason of the performance of any work within the public rights of way, or under a permit issued pursuant to this Chapter; nor shall the City, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

8A-05-230. Work Without Permit; Penalty.

(a) Stop Work Order: A stop work order may be issued by the public works superintendent, or his or her designee, directed to any person or persons doing or causing any work to be done in the public right of way without a permit.

(b) Fee: Any person found to be doing work in the public right of way without having obtained a permit, as provided in this Chapter, shall be required to pay a permit fee equal to two (2) times the normal permit fee. For replacement work, where a fee is not normally charged, the normal permit fee for new construction shall apply.

8A-05-240. Failure To Comply; Default In Performance.

(a) Reasons For Action: Any permit may be revoked or suspended and a stop work order issued by the public works superintendent, after notice to the permittee for any of the following reasons:

(1) Violation of any condition of the permit, the bond, or of any provision of this

Chapter;

(2) Violation of any provision of any other ordinance of the City or law relating to the work; or

(3) Existence of any condition or the doing of any act which may constitute or cause a condition endangering life or property.

(b) Immediate Effect: A suspension or revocation by the public works superintendent, and a stop work order, shall take effect immediately upon entry thereof by the public works superintendent and notice to the person performing the work in the public right of way. Notice to the person performing the work shall be accomplished when the public works superintendent has posted a stop work order at the location of the work and written notice has been mailed, return receipt requested, to the address indicated by the permittee on the permit.

(c) Notice: Whenever the public works superintendent finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the public works superintendent to be reasonably necessary for the completion of the work.

(d) Performance By City: In the event that the surety or principal, within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the City for the cost of doing the work, as set forth in the notice, the City may perform the work, at the discretion of the public works superintendent, with City forces or contract forces or both, and suit may be commenced by the City against the contractor and bonding company and such other persons as may be liable, to recover the entire amount due to the City, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

8A-05-250. Failure To Conform To Design Standards; Penalty.

For failure to conform to the design standards and regulations, the public works superintendent may:

- (a) Suspend or revoke the permit;
- (b) Issue a stop work order;
- (c) Order removal and replacement of faulty work;
- (d) Require an extended warranty period; and/or
- (e) Negotiate a cash settlement to be applied toward future maintenance costs.

8A-05-260. Appeal Of Suspension, Revocation Or Stop Work Order.

Any suspension, revocation or stop order by the public works superintendent may be appealed by the permittee by filing a written notice of appeal with the City Council within ten (10) days of the action of the public works superintendent. The City Council shall hear such appeal, if written request therefor is timely filed, as soon as practicable, and render its decision within a reasonable time following filing of notice of appeal.

8A-05-270. Tampering With Traffic Barricades.

It shall be unlawful for any person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

8A-05-280. Conflict With Governing Provisions.

Should there be a conflict between the provisions of this Chapter and the provisions of any other ordinance, agreement, franchise or other document governing the excavation of a public right of way, the more restrictive provisions of the aforesaid documents shall apply.

8A-05-290. Violation; Penalty.

Unless otherwise specified in this Chapter, a violation of any provision of this Chapter, or failure to comply with an order of suspension, revocation or stop work, shall be a class B misdemeanor. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this Chapter. Civil penalties may also be imposed in accordance with applicable ordinances regarding the same.