lawful and shall subject the owner or the operator of said facility to a penalty of $200.00 per day during the continuance of the violation. The city shall have the right to remove each noncomplying facility after the passage of ten days following the date of noncompliance and shall have the right to institute a civil suit for damages, costs of removal and restoration, and attorney fees against the owner or the operator of said noncomplying facility. The existence of any penalty and costs levied against an owner or an operator of a facility shall serve as a bar to the future issuance, to the owner or the operator, of a permit provided by this article until all such penalties and costs are paid in full.
(Ord. No. 91-1157, § 1, 8-14-91)

Secs. 40-301—40-310. Reserved.

ARTICLE XIII. SPECIAL RACING EVENTS

Sec. 40-311. Nature of the events and definitions.

The city council desires that there be an opportunity to hold special racing events in the city and to encourage and facilitate the promotion of such events upon such terms and conditions as the city council may approve by written agreement.
(Ord. No. 97-1055, § 2, 9-3-97)

Sec. 40-312. Definitions.

As used in this article, the following words and terms shall have the meanings herein ascribed, unless the context of their use clearly indicates another meaning:

Promoter shall mean the person principally responsible for holding the special racing event and who is authorized to enter into a written agreement with the city regarding the conduct of the special racing event and setting forth the responsibilities of the parties.

Racecourse area shall mean the property within a perimeter to be defined by written agreement between the promoter and the city that contains the track or racecourse and the structures and facilities necessary for the conduct of the special racing event.

Sanctioning body shall mean a statewide, national or international organization that regularly engages in the governance, supervision or sanctioning of any form of auto racing.

Special racing event shall mean an auto race or races held within a consecutive period of time specified by written agreement between the promoter and the city and that is held under the auspices or with the approval of a sanctioning body.
(Ord. No. 97-1055, § 2, 9-3-97)

Sec. 40-313. Terms for conducting special racing events.

(a) Notwithstanding any ordinance, code, rule or regulation of the city to the contrary, a special racing event may occupy and utilize the racecourse area and any public property, facilities or structures therein for purposes of conducting the special racing event for a temporary period and under such terms and conditions as may be specified in one or more written agreements between the promoter and the city. Such terms and conditions may authorize, without limitation, charging of admission to race events, sale of food, beverages or merchandise, street improvements or alterations, temporary removal or alteration of structures within the racecourse area, temporary construction of fences, viewing stands, signage, concession structures, storage or maintenance structures or any other structure, service or facility reasonably necessary to promote and conduct the special racing event. This subsection shall not be construed to prohibit the inclusion in such an agreement of interested parties other than the promoter and the city or to prohibit other agreements between any parties relating to the special racing event, provided that no provision of any such agreement shall conflict with any provision of this article.

(b) Any structure or facility for storing or dispensing fuel or other potentially dangerous materials, any temporary electrical service equipment or facility utilized in the special racing event and/or any temporary structures such as viewing stands, booths, decks, barriers, towers or poles shall be subject to inspection and approval by both the building official and the fire marshal or

their authorized inspectors but otherwise shall not be subject to the city's ordinances, codes, rules or regulations.

(c) Upon written permission of the traffic engineer, a portion of the street and sidewalk rights-of-way may be temporarily obstructed for a period not to exceed 60 consecutive days preceding the special racing event and for no more than 15 days after the special racing event. The approval shall be limited to rights-of-way within the racecourse area or rights-of-way adjacent to the racecourse area whose partial temporary obstruction is required for safety or traffic reasons and shall be limited to the minimum period and the minimum portion of right-of-way necessary to reasonably accommodate setting up, conducting and dismantling the special racing event and its facilities, and shall be given only to the extent that the traffic engineer determines that the proposal will not pose an undue hazard to vehicles and pedestrian travel by the public.

(d) Upon written permission of the traffic engineer, street and sidewalk rights-of-way may be temporarily closed for a period not to exceed five consecutive days preceding the special racing event and for a reasonable period during and after the special racing event, provided, that the total period involving street closure shall not exceed 15 consecutive days. The approval shall be limited to rights-of-way within the racecourse area or rights-of-way adjacent to the racecourse area whose temporary closure is required for safety or traffic reasons and shall be limited to the minimum period and the minimum portion of right-of-way necessary to reasonably accommodate setting up, conducting and dismantling the special racing event and its facilities, and shall be given only to the extent that the traffic engineer determines that the proposal will not pose an undue hazard to vehicles and pedestrian travel by the public.
(Ord. No. 97-1055, § 2, 9-3-97)

Sec. 40-314. City parking facilities.

Notwithstanding the charges established in chapter 12 of this Code for the use of parking facilities operated or managed by the convention and entertainment facilities department, the convention and entertainment facilities department director is authorized to impose fees that are based upon market conditions during a special racing event. Alternatively, the said director may lease any portion of the parking facilities to the promoter as authorized by section 40-313(a) of this Code and may allow the promoter to impose fees for the parking that are approved by the convention and entertainment facilities director.
(Ord. No. 97-1055, § 2, 9-3-97)

Secs. 40-315—40-330. Reserved.

ARTICLE XIV. GRANT OF PRIVILEGES TO TELECOMMUNICATIONS PROVIDERS TO PLACE TELECOMMUNICATIONS FACILITIES ACROSS, ALONG OR UNDER PUBLIC WAYS

Sec. 40-331. Definitions.

As used in this article, the following words and terms shall have the meanings provided below, unless the context of their usage clearly indicates another meaning:

Access line means a unit of measurement representing (1) each switched transmission path of the transmission media within the public way extended to the end-user customer's premises network interface within the city that allows delivery of services within the city; (2) each termination point or points of a non-switched telephone or other circuit consisting of transmission media connecting specific locations identified by, and provided to, the end-user for delivery of non-switched services within the city; or (3) each loop provided to any person used for the provision of services. Interoffice transport and other transmission media that do not terminate at an end-use customer's network interface device are not access lines that would be separately identified and counted.

Cable services shall have the meaning defined for such term in the Cable Communications Policy Act of 1984, as amended.

City engineer means the city engineer for the city or a designee thereof.

Director means the director of the city's department of finance and administration, or another person such director may designate.

Director of public works and engineering means the director of the city's public works and engineering department, or its successor department, including the director's designee.

Grantee means the grantee under a right-of-way ordinance.

Line fee means the fees provided for payment by a grantee as provided in this article.

Network facilities means conduits, ducts, manholes, vaults, tanks, towers, wave guides, optic fiber, microwave, dishes, and any associated converters, electrical lines, communications lines, transmission lines, cables, wires, amplifiers, switches, utility equipment, or other such object, device or facilities, including attachments and encasements containing such facilities, whether underground or overhead, which are designed, installed and constructed within the public way for the purpose of producing, receiving, amplifying, switching, transmitting or distributing audio, video, or other form of electronic or optical signals to or from customers, subscribers or locations within city limits of the city in providing services. Network facilities do not include such facilities to the extent that they are solely used to provide cable services or security monitoring.

Public way means property of the city and/or public grounds or public street rights-of-way located in the city; including the entire area between the boundary lines of every way (including but not limited to roads, streets, alleys, highways, boulevards, bridges, tunnels or similar thoroughfares, and public utility easements) held by the city, whether acquired by purchase, grant, or dedication and acceptance by the city, or that has been opened to the use of the public for purposes of vehicular travel; and shall include any designated state or federal highway or road or any designated county road under the administrative control of the city for maintenance, repair, or vehicular traffic control purposes. The term public way shall also include the entire area within the boundary lines of every stream, lake, river, bayou, creek, ditch or other body or course of water that is owned by the city, dedicated to or open to the use of the public, or maintained by the city.

Right-of-way ordinance means an ordinance adopted pursuant to this article granting a telecommunications provider authority to make use of the public ways as provided therein.

Services means telecommunication services provided by a grantee through its network facilities, excluding cable services, but including without limitation (a) access lines provided to end users or to other telecommunications companies for the purpose of voice, data or non-cable video transmission; (b) the provision of non-switched telephone circuits consisting of transmission media connecting specific locations identified by, and provided to, the end-user for delivery of non-switched services within the city; (c) the provision of switched access lines for the distribution of voice, data and non-cable video transmission; or (d) any other telecommunication services authorized by State or Federal law.

Private or *commercial purposes* means any purposes, other than public purposes.

Telecommunications provider means a person who offers services to customers through network facilities located in the public ways.
(Ord. No. 98-593, § 1, 7-22-98)

Sec. 40-332. Declaration of policy.

(a) The policy of the city regarding granting the right to any person to lay, construct, operate, lease or make any use whatsoever of any network facility for private or commercial purposes, across, along, over, above or under any public way within the city is stated in this article. Except as otherwise specifically provided, this article shall be administered by the director.

(b) It is not the policy or intention of this article to prohibit, regulate, license or franchise the provision of any services within the city, and no provision of this article shall be so construed; any terms or conditions contained in this article or any right-of-way ordinance relate to the rights of a person to make use of the public ways, not in

limitation of any rights granted by the Texas Public Utility Commission, the Federal Communications Commission, or their successors.
(Ord. No. 98-593, § 1, 7-22-98)

Sec. 40-333. Rights to be granted by ordinance.

As provided by section 17 of article II of the city charter, the rights referred to in section 40-334 of this Code shall only be granted by ordinance passed in the manner, with the formalities and subject to all of the terms and conditions stated in that section of the charter.
(Ord. No. 98-593, § 1, 7-22-98)

Sec. 40-334. Network facilities required to be authorized.

(a) It shall be unlawful for any person to lay, construct, operate, offer for lease or make available for any use whatsoever of any network facilities across, along, over, above, or under any public way within the limits of the city for any private or commercial purpose unless the right to do so has been granted to such person by a right-of-way ordinance in accordance with this article.

(b) A person desiring a right-of-way ordinance shall make written application upon a form promulgated by the director. The applicant shall set forth upon the application a detailed description of existing or proposed network facilities, along with the proposed number of linear feet and location thereof, the nature of the business or use to be transacted in the public way and such other information as may be required by the director, under the charter or any other city ordinance, to determine the advisability of granting a right-of-way ordinance and to establish the capacity of the applicant to meet its financial or other obligations thereunder.

(c) A right-of-way ordinance shall authorize the specific use that the grantee shall be permitted to make of the public ways. No facility shall be located, or made use of, in any public way in a manner not expressly stated in the right-of-way ordinance. No right-of-way ordinance shall be construed to grant access to city land owned in fee simple, other than streets or thoroughfares, unless specifically included therein. No grantee shall make any use of a public way or allow any other person to make use of the grantee's network facilities in a public way, that is not stated in the grantee's right-of-way ordinance. A grantee shall not permit any other person to make use of the grantee's network facilities in the public ways without demonstration that the person is authorized to make the contemplated use by any required right-of-way ordinance duly granted pursuant to this section by the city and that the person holds a permit for the construction issued in accordance with this article. Notwithstanding the foregoing, a right-of-way ordinance is not required for any person engaging solely in resale of a grantee's services or the provision of service by unbundled network elements obtained from a grantee, provided that the applicable right-of-way ordinance covers the network facilities involved and the person does not own or operate any network facilities in the public ways.

(d) This article shall not apply to any telecommunications provider already specifically franchised by the city on the effective date of this ordinance; provided that upon the termination of such franchise, the telecommunications provider shall be subject hereto in the same manner as any other telecommunications provider. In addition, nothing in this article shall be construed to diminish the right or ability of the city to require any other user of the public ways to secure appropriate city authorization, including without limitation cable services providers, or security monitoring services.
(Ord. No. 98-593, § 1, 7-22-98)

Sec. 40-335. Right-of-way ordinance fees.

(a) *Statement of policy.* The compensation to be paid under any right-of-way ordinance in which the grantee provides access lines shall be determined under this section. Each year, the director shall determine the total annual amount of compensation payable cumulatively from all such grantees, based on the total number of linear feet of public ways occupied by telecommunications providers that have facilities in the public ways within the city, then convert the amount into monthly line fees payable by each grantee as provided in this section. The compensation to be

paid by grantees not providing any access lines are not covered by this section and shall be determined by the director and approved by ordinance by city council, in accordance with applicable law in a competitively neutral manner.

(b) *Total annual amount of compensation payable.* The total annual amount of compensation payable by all grantees cumulatively shall be based on the total number of linear feet of the public way occupied by all telecommunications providers within the corporate limits of the city multiplied by an amount per linear foot. The amount per linear foot shall be: $1.18 for the 12-month period beginning October 1, 1998; $1.32 for the 12-month period beginning October 1, 1999; $1.46 for the 12-month period beginning October 1, 2000; and $1.60 for the 12-month period beginning October 1, 2001. For the 12-month period beginning October 1, 2002, and each subsequent 12-month period thereafter, the amount per linear foot shall be adjusted by multiplying the linear foot rate for the period beginning October 1, 2001, by a growth factor. The growth factor shall be calculated by dividing the Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) for the month of March immediately preceding the anniversary of the effective date of this ordinance by the CPI-U in effect for the month of March 2002.

(1) No later than August 1 of each year, each grantee shall file with the city secretary, on a form promulgated by the director, the total number of linear feet of public way which it occupied within the city as of June 30 of the previous year.

(2) If the number of linear feet related to a grantee cannot be precisely determined, the director will determine a reasonable method of estimating the number of linear feet and that method shall be delineated in the grantee's right-of-way ordinance. The information required by the right-of-way ordinance to derive the estimate shall be filed with the city secretary no later than August 1 of each year.

(c) *Monthly line fees.* Each grantee shall remit to the city the total annual amount of compensation payable pursuant to a line fee for each access line activated at month-end for use by an end use customer of the grantee or activated for the end use customer of another person that uses the grantee's network facilities for the provision of telephone or other service located within the city; provided that grantees shall not be obligated to pay the city for any access lines for which revenues remain uncollectible.

(1) For the 12-month period beginning October 1, 1998, monthly line fees shall be:

$ 1.34 for residential access lines

$ 4.55 for non-residential access lines

$ 14.50 for each termination point of a non-switched telephone or other circuit consisting of transmission media connecting specific locations identified by, and provided to, the end-user for delivery of non-switched services within the city.

(2) For each subsequent 12-month period, the monthly line fees shall be recalculated pursuant to the applicable linear foot charge stated in subsection (b), the number of linear feet as of June 30 and the number of access lines as of June 30, adjusted by an amount of over- or under-collection pursuant to subsections (c)(3) and (4) below.

(3) The amount of over- or under-collection for the nine month period beginning October 1, 1998, shall be computed by subtracting the compensation collected for the nine month period beginning October 1, 1998, from 75 percent of the total amount of compensation payable for the 12-month period beginning October 1, 1998, based on the amount per linear foot set forth in subsection (b) above, multiplied by the total number of linear feet as of June 30, 1998. The over- or under-collection amount shall be added to the compensation payable for the 12-month period beginning October 1, 1999, calculated pursuant to subsection (b) above.

(4) The amount of over- or under-collection for the 12-month period beginning July 1, 1999, shall be computed by subtracting the compensation collected for the 12-

month period beginning July 1, 1999, from the total amount of compensation payable for the 12-month period beginning July 1, 1999, based on the amounts per linear foot set forth in subsection (b) above multiplied by the total number of linear feet as of June 30, 1999. The over- or under-collection amount shall be added to the compensation payable for the 12-month period beginning October 1, 2000, calculated pursuant to subsection (b) above. The amount of over- or under-collection for subsequent 12-month periods shall be determined by repeating the process described in this subsection.

(5) With each quarterly remittance, all grantees shall file a report on a form promulgated by the director showing the number of access lines at the end of each month in the quarter that the grantee provided that are used to serve premises within the city. Such report shall specifically identify access lines owned, operated or maintained by the grantee that are leased and/or used by persons who are not end use customers. Such report shall show the number of access lines by category, to the extent known, as set forth in item (1), above. The report shall be used solely for the purposes of verifying the number of the grantee's access lines serving premises within the city.

(6) For purposes of this section only, lines terminating at customers with "Lifeline," "Tel-Assistance," or other service that is similarly discounted for the purpose of advancing universal service to the economically disadvantaged shall not be included in the count of access lines upon which the line fee is remitted.

(7) With respect to any person leasing, reselling, or otherwise using grantee's access lines, if the grantee does not have sufficient information to determine the appropriate rate to apply, then the higher line fee shall apply until such time as the person using the access lines provides to the grantee sufficient written information to determine the correct line fee.

(d) *Reports and records.* The forms required to be filed in subsection (a), (b), and (c) shall each be accompanied by a certified statement from an authorized officer or duly authorized representative of the telecommunications provider stating that the information contained in the report is true and correct to the best of the officer or representative's knowledge and belief after due inquiry. A copy of the completed forms and the accompanying certified statements filed with the city secretary shall be provided to the director. The forms provided shall be treated in the same manner as provided for the disclosure of confidential information in the applicable right-of-way ordinance. Upon written request, telecommunications providers shall verify the information contained in the forms and, upon reasonable advance notice, all non-customer specific records and other documents required for verification shall be subject to inspection by the city, expressly excluding any records, documents, or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. Sec. 2701, et. seq.

(e) *Notification of line fees.* The city will provide to grantees in writing the adjusted line fees calculated pursuant to this section on or before September 1 of each year. The adjusted line fees shall be implemented by grantees effective October 1 of each year. All grantees are responsible for obtaining or verifying the adjusted line fees, and the failure of any grantee to receive the written notice described herein shall not affect the obligations of the grantee to remit the proper line fees.

(f) *Payment due date.* Each grantee shall remit fees on a quarterly basis together with the certified statement required in subsection (d). Payment shall be made on or before the 45th day following the close of each calendar quarter for which the payment is calculated and shall be paid by wire transfer to an account designated by the director. Upon showing of good cause, this wire transfer requirement may be waived by the director. Late payments shall incur interest beginning on the date due at the rate of ten percent per annum, compounded daily.

(g) *Circumvention of line fee prohibited.* Telecommunications providers shall not circumvent payment of compensation for use of the public way or evade payment of fees by bartering, transfer of rights, or by any other means that result in undercounting of the number of access lines or linear feet of network facilities in the public way within the city. Capacity or services may be bartered if the imputed access lines are reported in accordance with this article.

(h) *Leased network facilities.* Other provisions of this article notwithstanding, a grantee shall not include in its monthly count of access lines, and shall not be required to remit a line fee to the city on, those access lines that are leased or otherwise provided to another person for consideration if:

(1) the person has a current right-of-way ordinance from the city under this article; and

(2) the person has furnished the grantee adequate proof that (A) the person intends to include the leased access lines in its monthly count to the city, (B) the person intends to remit to the city a line fee on those access lines and (C) the city has approved of the arrangement.

(i) Line Fees paid pursuant to this section shall constitute compensation to the city for all of the grantee's network facilities located in the public ways, including inter-office transport and other transmission media that do not terminate at an end-user customer's network interface device, even though those types of lines are considered as a part of the linear foot calculations.
(Ord. No. 98-593, § 1, 7-22-98)

Sec. 40-336. Conditions of right-of-way ordinance.

The rights granted to any grantee under this article shall incorporate the terms of this article and be further subject to the following specific provisions, unless city council specifically provides otherwise in the right-of-way ordinance:

(a) *Enforcement.* The city attorney, or the city attorney's designee, shall have the right to enforce all legal rights and obligations under the right-of-way ordinance without further authorization. The grantee shall provide the city access to all documents and records the director or the city attorney deem reasonably necessary to assist in determining the grantee's compliance with the right-of-way ordinance; provided that any documents that would be privileged under the Texas Rules of Civil Procedure shall not be required to be provided to the city.

(b) *Interference with public use prohibited.* The grantee shall lay, construct, operate, lease, maintain, repair and replace the network facilities so as not to unreasonably interfere with use of the public way. Insofar as it is practical to do so, the grantee shall use existing network facilities in the provision of the services. The grantee shall provide any information reasonably related to location or operation of the network facilities or services determined to be necessary by the city engineer or the director. The grantee shall maintain the network facilities in good order and condition, subject to ordinary wear and tear.

(c) *Permit fees included in line fee.* In addition to the portion of line fees intended to compensate the city for a grantee's use of the public ways, a portion of the line fee payments due hereunder constitutes compensation to the city for the cost of permits and inspections, or other similar approvals or submissions required by a grantee for its work in the public ways authorized by an appropriate right-of-way ordinance. As a result, no additional fees shall be charged to the grantee therefor. On at least an annual basis, the directors of the departments of finance and administration and public works and engineering shall determine the amount of the customary fees that would have been charged to other persons for such activities and transfer the amount from the fund receiving the line fees into the proper fund from which such activities were provided. This subsection shall not be construed to waive any requirement relating to permitting, inspections or similar approvals or submissions other than the payment of separate fees therefor.

(d) *Permitting and plan approval.*

(1) *New construction permit.* Before commencing any work in the public way other than routine maintenance or emergency work

(as described in items (2) and (3) below), the grantee shall apply for and obtain a new construction permit. The application shall include a written work description, including scale drawings with plan and profile, showing the network facilities' location (or proposed location) and estimated depth of the network facilities (existing and proposed) in the immediate area of the proposed new construction. Such drawings and specifications shall be prepared, executed and sealed by a registered professional engineer, as may be required by the Texas Engineering Practice Act or by the city engineer. Such drawings and specifications will be reviewed by the city engineer and any comments will be provided to the grantee as soon as practicable. The grantee shall make any changes to the drawings and specifications requested by the city engineer.

(2) *Routine maintenance.* The director of public works and engineering may promulgate rules and procedures for routine maintenance of existing network facilities located in the public ways, including but not limited to notices that the grantee shall provide, standards for street and curb repairs, and inspection of facilities and street repairs. When routine maintenance or repair is performed on existing network facilities located in the public ways, the work shall be performed in a manner that is consistent with then-applicable city standards as promulgated by the director of public works and engineering.

(3) *Emergency repairs.* When an emergency occurs that could not reasonably have been foreseen and requires immediate work other than routine maintenance located in the public way, repairs may be performed by the grantee and notice shall be given in writing to the director of public works and engineering within 24 hours following the commencement of such emergency repairs. Such notice shall state the nature of the emergency repairs and the length of time estimated necessary to complete the emergency repairs. The grantee shall apply for the required approvals, including those required under section 40-446(f)(2) as soon as reasonably practicable, and any work performed that is not consistent with then-applicable city standards shall be corrected upon notice thereof from the city.

(4) *Payment of fees required.* The city is not required to grant any permit or approval to the grantee unless and until all fees due and payable pursuant to the right-of-way ordinance have been paid in full.

(5) *Other licenses and fees.* The grantee shall obtain and pay the cost of all licenses, permits, and certificates required by any statute, ordinance, rule or regulation of any state or federal regulatory body having jurisdiction over the conduct of its operations hereunder. The grantee shall give notice to the director of any revocation or failure to obtain any such license, permit or certificate affecting its performance hereunder within 15 days of such revocation or of the day upon which the grantee received actual or constructive notice of its failure to obtain such license, permit or certificate.

(6) *City engineer's procedures.* Notwithstanding the above, the city engineer may promulgate procedures, applicable to all similarly situated grantees, that provide for pre-approval of work in the public ways by a grantee in circumstances that do not require detailed review of the proposed work.

(e) *Work standards.* All work in the public way shall be performed in accordance with the city's Standard Construction Specifications and Standard Construction Details, as such may be amended from time to time, and shall be subject to the regulation, control and direction of the director of public works and engineering. All work done in connection with the laying, construction, operation, maintenance, repair and replacement of the network facilities shall be in compliance with all

applicable laws, ordinances, rules and regulations of city, the applicable county, the state, and the United States.

(f) *Work in the public way.* Any work that constitutes an obstruction of a street for which a permit is required under section 40-362 of this Code shall only be performed in accordance with a permit issued under article XVII of this chapter.

(g) *Restoration.*

(1) At its sole cost and expense, the grantee shall repair, clean up and restore the public way disturbed or affected during the maintenance, construction, repair, replacement or removal of the network facilities and shall warrant the repair and restoration of such public way and other surfaces for a period of two years from the date of completion of same. The director of public works and engineering shall require a bond as may be required under then-current city regulations; in the absence thereof, the grantee shall provide a surface correction bond in an amount estimated by the city engineer to be the cost of repair of the public way. The terms and conditions of the bond will be substantially similar to those required by the city of other persons performing similar work in the public way. Such repairs, clean up and restoration shall be carried out pursuant to standards promulgated by the director of public works and engineering, and shall return the public way and other disturbed surfaces to substantially the same condition as before the grantee's work began.

(2) Any excavation in any portion of the public way shall be replaced with materials of the same kind as those removed unless the director of public works and engineering approves of some other type of fill or material. Without limitation of the above, if after refilling an excavation the earth within the excavated area settles so as to leave a depression, and the depression is related to the grantee's work, the grantee shall make further necessary fills or other repair work from for a period of two years from the date of completion of grantee's work to correct the problem as ordered by the director of public works and engineering. The determination that the public way and other surfaces have been returned to substantially the same condition shall be within the reasonable exercise of the director of public works and engineering's discretion.

(h) *Relocation or removal.* The grantee may be required to lower, relocate or remove any network facilities in any public way without cost to the city if reasonably necessary as determined by the city engineer to abate a condition actually or potentially dangerous to the public health or safety, or as may be reasonably necessary to accommodate any public works project (including Metropolitan Transit Authority (METRO), and any other publicly funded projects within the city) in the public way including, without limitation street construction and widening, water, sanitary sewer, storm drains, street lights and traffic signal conduits, or any other public facilities in or under the public way. In the alternative, where the city engineer determines it to be feasible, the grantee may be allowed to pay any additional costs incurred for the design or construction of such public works project in a manner that will avoid the relocation or removal of the network facilities. In determining the feasibility, the city engineer shall be guided by the principles of economic waste.

(i) *Timely completion.* If the grantee fails to either (i) commence or thereafter to diligently prosecute any repair, refilling, lowering, relocation, or other work required by the city, or (ii) diligently complete any work that disturbs the public way, the city may cause the work to be done or completed at the expense of the grantee and may recover all such expense from the grantee together with all costs and reasonable attorney fees.

(j) *Subsequent rules and regulations.* The city council or the director of public works and engineering may make such other reasonable rules and regulations for the placement and manner of the network facilities as they may deem appropriate for the protection of the public and the public way and to avoid unreasonable interference with

other uses or contemplated uses of the public way. Without limitation of the above, the city council may amend the rules or regulations to require that all network facilities constructed after the effective date of such amended rules be placed underground.

(k) *Inspections.* The city engineer may perform inspections of any network facilities located in the public way from time to time as the city engineer may deem appropriate. The grantee may have a representative present during such inspection.

(l) *Abandonment of obsolete network facilities.* The grantee shall remove aerial facilities and/or facilities in conduits when such facilities are obsolete and no longer in service. When permanent structures in the public ways are removed or abandoned, the city engineer shall be notified in writing of such removal or abandonment. The city engineer may direct such remedial measures as the city engineer may determine are necessary for the public safety and the integrity of the public ways.

(m) *Abandonment of public way.* If the city conveys, closes, abandons, or releases its interest in any public way containing network facilities installed or operated pursuant to the right-of-way ordinance, any such conveyance, closure, abandonment or release shall be subject to the rights of the grantee under the right-of-way ordinance.

(n) *Bonding.* The grantee shall comply with all applicable requirements relating to the provision of bonds or other security to the city in connection with its work in the public way.

(o) *Reserved.*

(p) *Temporary rearrangement of aerial wires.* Upon request, the grantee shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, excluding the city and METRO projects within the city, and the grantee may require payment in advance. The grantee shall be given time as approved by the city engineer, but not less than four working days (96 hours) advance notice to carry out such temporary rearrangements. All wires and cables, except drop or service wires and cables, shall be not less than that distance required by law, above the traveled surface of any city street, alley or sidewalk and above the surface of any city parks or playgrounds.

(q) *Tree trimming.* The right, license, privilege and permission is hereby granted to the grantee, its contractors and agents, to trim trees upon and overhanging the public ways and public places of the city so as to prevent the branches of such trees from coming in contact with the grantee's fiber or cables. At the option of the city, said trimming shall be done under the supervision and direction of the city or of any city official to whom said duties have been or may be delegated.

(r) *Indemnification and insurance.* The right-of-way ordinance shall contain indemnity and insurance provisions in a form acceptable to the city attorney.

(s) *Default and termination; valuation.* The right-of-way ordinance shall contain provisions relating to default and termination. For purposes of compliance with article II, section 17 of the charter of the city, unless the right-of-way ordinance provides otherwise, there shall be no requirement that the network facilities be purchased by the city upon termination thereof.

(t) *Other terms and conditions.* The right-of-way ordinance may contain such other terms and conditions as the director and the city attorney may prescribe not inconsistent herewith.
(Ord. No. 98-593, § 1, 7-22-98; Ord. No. 02-974, § 8, 10-30-02; Ord. No. 04-498, § 6, 5-26-04)

Sec. 40-337. Penalty for unauthorized use of the public ways.

It shall be unlawful to make use of the public ways in violation of the terms of this article. Without limitation of other remedies available to the city, persons making use of the public ways in violation of this article, or otherwise without valid consent of the city, shall be liable for all fees authorized by this article dating back to the inception of such use.
(Ord. No. 98-593, § 1, 7-22-98)

Secs. 40-338, 40-339. Reserved.

ARTICLE XV. ALLEYS

DIVISION 1. GENERALLY

Sec. 40-340. Scope of article; application; definitions.

(a) This article shall govern the improvement and use of the types of alleys, as defined herein, whether such improvement or use shall be for public use or pursuant to private rights of access.

(b) The provisions of this article shall apply only to alleys, as herein defined, but shall not apply to alleys platted, dedicated, and/or constructed subsequent to September 19, 1982, or dedicated and/or improved in conformity with Chapter 42 of this Code.

(c) The following words, terms and phrases used in this article shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

Alley shall mean the entire width between property lines forming any public right-of-way and which is designed primarily for secondary access to abutting properties having their primary access from an adjacent street or an approved or compensating open space or courtyard which has direct access to a public street.

Applicant shall mean a person who owns real property abutting an alley and seeks to improve such alley for motorized vehicular traffic use either by the public or pursuant to private rights of access.

Improve or *improvement* shall mean the filling, grading, raising, paving, re-paving, surfacing or other work done to change or alter the surface of, or drainage for, any alley, including any work, or the application of any material of whatever type, in, upon or to the surface or subsurface of an alley for the purpose of rendering such alley accessible by or usable for motorized vehicular purposes.

Paving shall mean the construction of any improvements to, or upon, any alley, including drainage or other similar work and the preparation and construction of both the subsurface and ultimate wearing or top surface of any alley, pursuant to the minimum standards set forth in section 40-343 of this Code.

Private rights of access shall mean those private rights of ingress and egress recognized by Texas law as being appurtenant to the purchase of real property by reference to a map or plat showing streets or alleys abutting such real property.

Public use shall mean a use or right of use available to the public in general, as distinguished from a particular individual or group of individuals. Public use alleys shall refer to alleys available for vehicular use and travel by the general public.
(Ord. No. 99-379, § 3, 4-21-99)

Sec. 40-341. Purpose, interpretation; type of alley covered; determination.

(a) The purpose of this article is to prescribe:

(1) Rules and regulations governing the improvement of certain alleys in the city; and

(2) Minimum standards and criteria for the improvement, including paving, of alleys that are to be improved and maintained for motorized vehicular or pedestrian use by the public.

(b) The terms and provisions of this article shall be interpreted and applied as minimum requirements adopted for the protection of the public health, safety and welfare and shall be applied to the alleys covered hereby, unless specifically provided otherwise herein.

(c) The department of public works and engineering will determine whether an alley has been dedicated to and accepted for use by the city, based upon its records, and to the extent necessary, the records of other city departments and applicable county records.
(Ord. No. 99-379, § 3, 4-21-99)

DIVISION 2. PUBLIC USE ALLEYS

Sec. 40-342. Initiating improvement of alley for public use; criteria.

(a) *Procedure.* The improvement of an alley for public use may be initiated by:

(1) Any person(s) owning real property abutting an alley who agree(s) to obtain the permit required by section 40-344 of this Code and comply with all requirements applicable to such alley, as provided in this article, including payment of all costs of improving such alley for public use; or

(2) The filing of a petition with the city engineer, signed by at least 75 percent of the property owners abutting such alley, wherein such abutting owners agree to pay their share of the costs to improve such alley through the city's usual paving assessment procedures.

(b) *Determination by city engineer.* No alley shall be improved or maintained for public use unless the city engineer authorizes the issuance of an appropriate permit after determining that:

(1) The improvement of such alley for public use will serve a bona fide public purpose and need;

(2) The traffic entering upon or exiting from such alley to an adjacent public street will not result in a significant impediment to existing traffic flow or constitute a traffic hazard;

(3) The condition or location of underground or above-ground utilities:

(i) will not be damaged or otherwise adversely affected by the opening of such alley; or;

(ii) if existing utilities would be adversely affected, the applicant agrees to relocate such utilities, at applicant's sole cost and expense;

(4) The condition and location of underground or above-ground utilities are such that it is unlikely that any paving or other surface improvements to be constructed or installed in such alley will be disturbed to replace, repair or upgrade such utilities within the succeeding five years; and

(5) Any applicant seeking a permit to improve such alley for public use has demonstrated the financial ability to fully comply with the requirements of this article, including, without limitation, the improvement of the alley to the standards prescribed in section 40-343 of this Code, if applicable.

(c) *Minimum requirements.* The following requirements shall apply in connection with the improvement for public use of any alley:

(1) A minimum right-of-way width of ten feet shall be available within such alley;

(2) Alleys with a right-of-way width of 20 feet or less shall be restricted to one-way traffic and shall connect two public streets;

(3) The junction of the alley and any connecting public street shall be at right angles, except as otherwise approved by the city engineer;

(4) The alley shall be constructed and improved in accordance with the standards, specifications and requirements set forth in section 40-343 of this Code;

(5) Minimum paving widths shall be 12 feet for alleys with a right-of-way width of 15 feet or more and eight feet for alleys with a right-of-way width of less than 15 feet; and

(6) An applicant must obtain the permit and post the bond (or cash deposit) required by this article.

(Ord. No. 99-379, § 3, 4-21-99)

DIVISION 3. MINIMUM STANDARDS; PERMIT

Sec. 40-343. Paving standards.

Alleys to be improved and maintained for public use shall be paved to the minimum standards

and specifications, including the types of materials allowed, set forth in Public Works Drawing No. 7879-A.
(Ord. No. 99-379, § 3, 4-21-99)

Sec. 40-344. Permit required.

It shall be unlawful for any person to do, or cause to be done, any work to improve an alley for public use without a permit having been issued to such person as provided in section 40-55 et seq. of this Code.
(Ord. No. 99-379, § 3, 4-21-99)

Sec. 40-345. Bond; cash deposit.

No work to improve an alley for public use shall be commenced until the bond required by section 40-59, or a cash deposit in lieu of such bond, as authorized by section 40-60 of this Code, has been filed or deposited with the city engineer.
(Ord. No. 99-379, § 3, 4-21-99)

DIVISION 4. USE OF ALLEYS FOR PRIVATE ACCESS

Sec. 40-346. Use of alley.

(a) *Use.* Any alley not improved or maintained for public use may be improved and used pursuant to private rights of access held by the owners of abutting lots or property, under the terms and conditions provided by this section.

(b) *Application.* Any abutting property owner may apply to the city engineer for permission to improve and use an alley for private access from a public street to such applicant's property.

(c) *Requirements.* An applicant seeking the private use of an alley must:

(1) Be the fee simple owner of land abutting the alley;

(2) Obtain a permit pursuant to section 40-86 of this Code to connect such alley to any public street;

(3) Prepare and construct the surface of the alley so as to prevent the drainage of storm or surface water or runoff onto adjacent property;

(4) Assure drainage of stormwater and other runoff along the alley and into the intersecting street or drainage facilities; and

(5) If an applicant elects to post signs in connection with the private use of an alley, which election may be made in the applicant's sole discretion, such signs must be of a size, color and with wording and printing that is approved by the city engineer, must be posted at both sides of the street entrance to the alley as required by chapter 41 of this Code, and such signs must state that the alley is being used for private access and is not maintained by the city.

(d) *Materials.* Alleys to be used for private rights of access may be improved, constructed and/or surfaced with shell, gravel, asphalt, concrete or other materials, at the option of the applicant.

(e) *Non-liability of city.* With respect to any alley used or to be used for private rights of access, the city shall have no liability for:

(1) Maintenance of the alley;

(2) Patrolling the alley; or

(3) Drainage of stormwater or other surface runoff from such alley onto abutting properties.

(f) *No bond required.* The provisions of sections 40-59 and 40-60 of this Code shall not be applicable in the instance of any public alley improved or used pursuant to private rights of access.
(Ord. No. 99-379, § 3, 4-21-99)

Secs. 40-347—40-350. Reserved.

ARTICLE XVI. SITTING AND LYING UPON PUBLIC SIDEWALKS

Sec. 40-351. Definitions.

As used in this article, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless the context of their use clearly indicates another meaning:

Central Business District means the area beginning at the intersection of the centerline

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of U.S. 59 and the centerline of I.H. 45; thence in a northwesterly and northerly direction along the centerline of I.H. 45 to its intersection with the centerline of I.H. 10; thence in an easterly direction along the centerline of I.H. 10 to its intersection with the centerline of U.S. 59; thence in a southwesterly direction along the centerline of U.S. 59 to its intersection with I.H. 45, the point of beginning.

Designated area means the following areas finally approved and designated by the city council under section 40-353 of this Code:

(1) *The Central Business District.*

(2) *Midtown Area:* The area described in Exhibit A to Ordinance No. 2004-825, a copy of which is on file in the office of the city secretary.

(3) *Old Sixth Ward Area:* The area described in Exhibit A to Ordinance No. 2006-9221, a copy of which is on file in the office of the city secretary.

(4) *Avondale Area:* The area described in Exhibit A to Ordinance No. 2006-9232, a copy of which is on file in the office of the city secretary.

(5) *Greater Hyde Park Area:* The area described in Exhibit A to Ordinance No. 2006-9243, a copy of which is on file in the office of the city secretary.

Sidewalk means that portion of the public street that is between the curblines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for or is ordinarily used for pedestrian travel.

(Ord. No. 02-504, § 4, 6-12-02; Ord. No. 04-825, § 4, 8-3-04; Ord. No. 06-922, § 4, 9-6-06; Ord. No. 06-923, § 4, 9-6-06; Ord. No. 06-924, § 4, 9-6-06)

Sec. 40-352. Sitting and lying down on sidewalks.

(a) It shall be unlawful for any person to sit or lie down on a sidewalk or on a blanket, stool, or any other object placed upon a sidewalk between the hours of 7:00 a.m. and 11:00 p.m. in a designated area.

(b) It shall be unlawful for any person to place or deposit any item of bedding materials or personal possessions, including but not limited to any blanket, bag, package, or container of personal possessions on a sidewalk between the hours of 7:00 a.m. and 11:00 p.m. in a designated area.

(c) It is an affirmative defense to any prosecution under subsection (a) or (b) of this section that the person is:

(1) Sitting or lying down on a sidewalk because of a medical emergency;

(2) As the result of a disability, utilizing a wheelchair, walker, or similar device to move about the sidewalk;

(3) Operating or patronizing a commercial establishment or service or governmental function conducted on the sidewalk pursuant to a permit or authorization issued under this Code or under the laws of this state;

(4) Participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event lawfully conducted on the public street or a sidewalk;

(5) Sitting on a chair or bench located on the sidewalk that is supplied by a governmental agency or the abutting private property owner; or

(6) Sitting or has placed materials on a sidewalk while waiting for public or private transportation or waiting for access to enter any building.

(d) Prior to taking any action to enforce the provisions of this article, any law enforcement officer observing a violation of this article shall first notify the person engaged in the prohibited conduct that he or she is in violation of this article. It is an affirmative defense to a prosecution under this article that any person so notified promptly ceased, within a time reasonable under the circumstances, to engage in the prohibited conduct following such notification.

(Ord. No. 02-504, § 4, 6-12-02)

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Sec. 40-353. Creation of designated areas.

(a) This section shall govern the creation of a designated area within the city other than the central business district.

(b) Residents of the city may petition the city council to designate any area within the city as a designated area under this article.

(c) Any such petition must meet the following requirements to be considered by the city council:

(1) Describe the proposed area by street boundaries;

(2) Contain the signatures of property owners whose property represents 20 percent of the total area to be designated;

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(3) Contain the signatures of at least 100 citizens residing within the proposed area, each of whom was above the age of 18 years old when signing the petition;

(4) Indicate that the signatures thereon were collected within a 60-calendar-day period; and

(5) Indicate that the signatories thereon desire the area to be designated as an area subject to this article.

(d) Any such petition must be submitted to the city secretary within 90 calendar days of the date of the first signature thereon.

(e) Following the filing of any such petition with the city secretary, the city council shall, within 45 days of the date of filing, conduct a public hearing to consider the merits of the petition.

(f) The city secretary shall give notice as to the filing of any such petition and the date, time,and place of the city council hearing by posting same at least 14 days in advance of such hearing at a place convenient to the public at the City Hall. Any interested person shall have the opportunity to participate in any hearing conducted under the provisions of this section and to present any relevant evidence and testimony.

(g) The chief of police shall be requested to cause the proposed area to be investigated with regard to the existence of conduct in the proposed area that would be violative of this article if the proposed area were to be designated, along with any incidents of criminal misconduct in the proposed area, and to report the results of such investigation to the city council at or prior to the public hearing.

(h) Following such hearing and upon review of the report of the chief of police, the city council shall establish the designated area as requested if it determines that:

(1) The petition complies with the requirements of this section;

(2) The proposed area exhibits the kinds of conduct and adverse impact on use of the sidewalks and adverse impact on adjacent properties that this article was intended to address; and

(3) Designation of the proposed area would best serve the health, safety, and welfare of the public.

(i) This section shall not be construed to limit the authority of city council consistent with the provisions of this section to designate other areas without a public petition; provided, that the city council receives evidence, substantiated by the police department, that a particular area within the city exhibits a significant incidence of the kinds of conduct addressed by this article and makes the findings required under subsection (h)(2) and (h)(3) of this section.
(Ord. No. 02-504, § 4, 6-12-02)

Secs. 40-354—40-360. Reserved.

ARTICLE XVII. SIDEWALK AND ROADWAY OBSTRUCTIONS AND IMPAIRMENTS*

DIVISION 1. GENERAL

Sec. 40-361. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Central business district or *CBD* means the area beginning at the intersection of the centerline of U.S. 59 and the centerline of I.H. 45; thence in a northwesterly and northerly direction along the centerline of I.H. 45 to its intersection with the centerline of I.H. 10; thence in an easterly direction along the centerline of I.H. 10 to its intersection with the centerline of U.S. 59; thence in a southwesterly direction along the centerline of U.S. 59 to its intersection with I.H. 45, the point of beginning.

*Editor's note—Ord. No. 04-498, § 2, adopted May 26, 2004, amended Ch. 40, Art. XVII, in its entirety. Formerly said article pertained to pedestrian way and impairment and derived from Ord. No. 02-974, § 2, adopted 10-30-02.

Crosswalk means an area upon a roadway that has been designated by the traffic engineer with striping and/or signage as a place for pedestrians to cross the street. The term includes both crosswalks that have been designated at street intersections and those that have been designated between intersections.

Emergency means an unforeseen occurrence that creates a condition of substantial hazard or threat of damage or injury to life or property.

General permit means a permit issued for intermittent short-term (less than 24 hours) obstructions undertaken by utilities or public employees. An obstruction may not occur at the same location for more than seven consecutive days.

Impairment includes an excavation or removal of a sidewalk or portion thereof or an obstruction of a sidewalk or portion thereof.

Local street means a street that is not a major thoroughfare or major collector street.

Major collector street has the meaning ascribed in section 1-2 of this Code.

Major thoroughfare has the meaning ascribed in section 1-2 of this Code.

Obstruction means any vehicle, equipment, fence, structure, bulk waste container, building or construction materials or debris, barricade, cone, sign, barrel, or other thing or object that is placed, planted, left or erected in or upon a roadway or sidewalk that would in any manner prevent or restrict public use of or access to any part of the roadway or sidewalk or restrict the drainage system of the roadway or sidewalk.

Peak traffic hours. This term is limited in its application to pedestrian and vehicular traffic on sidewalks and roadways on major collector streets and major thoroughfares and in the central business district and means the following hours on Mondays through Fridays, excepting holidays other than Veterans' Day that are observed by the closure of city offices: 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.

Permit means a current and valid permit issued under division 2 of this article.

Public employee means an employee of the state or a political subdivision of the state; the term also includes employees of contractors of the state and its political subdivisions when retained to perform public infrastructure maintenance contract functions, such as water and sewer line point repairs, pothole repairs, traffic signal maintenance and other functions that relate to the ongoing repair, public right of way enhancements including lane line striping, preservation, and cleaning of existing public facilities.

Roadway means the portion of a street that is paved or otherwise improved, designed, or ordinarily used for vehicular travel and/or for on-street parking. In the event a street includes two or more separate roadways, the term "roadway" shall refer to any such roadway.

Sidewalk means the portion of a street within the central business district that is between the curblines or lateral lines of the roadway and the adjacent property lines and is improved for or ordinarily used for pedestrian travel. Where a street has two sidewalks, the term shall apply separately to each.

Street means the entire width between the boundary lines of every way that is publicly maintained, including sidewalks and crosswalks, provided that the term does not include any street that is primarily maintained by the Texas Department of Transportation or by any political subdivision other than the city.

Utility means a public utility operating under a franchise from the city or a certificated telecommunications provider operating pursuant to Chapter 283 of the Texas Local Government Code.

Vehicle includes a vehicle whether motorized or not and/or a vehicle trailer.

(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-362. Impairments and obstructions unlawful.

(a) It shall be unlawful for any person to place, cause, or allow any impairment or obstruction of a sidewalk or roadway, except as authorized by a permit.

(b) It is a defense to prosecution under this section that the impairment or obstruction is or consists of:

(1) A vehicle that is lawfully standing, stopped, or parked in compliance with applicable provisions of this Code and state traffic laws.

(2) A vehicle that has been rendered inoperable by a mechanical or other systems failure or by an accident and is stopped pending police investigation and/or towing or recovery services.

(3) A public transit facility, traffic control device, sign, street light, public trash receptacle, bicycle rack, or other structure or object lawfully placed by or on behalf of the state or a political subdivision of the state.

(4) A sign or display that is being utilized as part of a lawfully conducted demonstration or rally provided that the object does not obstruct or impair vehicular or pedestrian traffic and further provided that it is used and displayed only during the period of time that the demonstration or rally is attended and ongoing and the attendees remove the sign or display at the conclusion of the demonstration or rally.

(5) Equipment and materials related to work actively being performed by a utility or public employee that has obtained a general permit.

(6) Trees, grass, shrubbery, and landscaping that is placed and maintained in a manner conforming to applicable requirements of chapters 32 and 45 of this Code and regulations issued thereunder.

(7) A parade lawfully conducted under chapter 45 of this Code.

(8) A sidewalk cafe authorized under section 40-10.1 of this Code, street function authorized under section 40-27 of this Code, or newspaper vending apparatus placed as authorized under section 40-10 of this Code.

(9) A valet zone as authorized under section 46-402 of this Code.

(10) Equipment and materials relating to public infrastructure maintenance work performed, outside of the general permit requirements, by public employees, provided that the work is performed in accordance with a time, place, and manner protocol approved by the traffic engineer.

(11) Solid waste containers and heavy trash items of the type and size authorized for residential service of the nature provided by the city and city contractors under chapter 39 of this Code that are placed for collection in a manner that does not obstruct the roadway or impair pedestrian use of the sidewalk; however, this defense does not extend to bulk containers of the "dumpster" or "roll-off" type that are typically used to service multifamily residential properties, commercial properties, and construction sites.

(12) Poles, distribution boxes, and related structures of utilities, provided that they are not placed in such a manner as to obstruct or impair vehicular or pedestrian use of the roadway or sidewalk.

(13) Postal deposit and delivery boxes, provided that they are not placed in such a manner as to obstruct or impair vehicular or pedestrian use of the roadway or sidewalk.

(14) A building encroachment or other permanent obstruction for which the abutting owner has a current and valid permit or other authorization as obtained from city council.

(15) Equipment relating to a sidewalk activity as authorized under article XI of this chapter.

(16) An emergency as defined in section 40-376 of this Code.

(c) Under the authority granted in section 40-366 of this Code, the director of public works and engineering may issue rules and regulations regarding the application of the defenses set forth in subsection (b), above. It is a required element of

any defense asserted under subsection (b) that the actor is in compliance with any applicable rules and regulations.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-363. Inactivity during permit period; revocation.

(a) As a condition of a permit, it is the responsibility of the permit holder to diligently prosecute the work for which the permit was obtained; without limitation of the foregoing, the permit holder shall ensure that there is no period of 15 consecutive days or more during which the work site is inactive.

(b) The foregoing inactivity prohibition is inapplicable to:

(1) A delay that arises from causes beyond control and without fault or negligence of the permit holder. Examples of these causes are:

a. Acts of God or of the public enemy.

b. Acts of government in its sovereign capacity.

c. Fires, floods, or unusually severe weather.

d. Epidemics or quarantine restrictions.

e. Strikes or freight embargoes.

f. Discovery of pollutants at the site which requires cessation of activity pursuant to a federal, state, or local law.

(2) A delay caused by an order to temporarily cease work issued by the traffic engineer or chief of police.

(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-364. Provisions cumulative.

(a) The provisions of this article are cumulative of all other applicable laws and ordinances. Compliance with this article shall not excuse compliance with any other requirement of laws or ordinances or the obtaining of any other license, permit, franchise, or other required authorization.

(b) Without limiting the foregoing, a separate permit is also required under article V of this chapter whenever the obstruction is for purposes of an excavation and the provisions of that article are applicable to the work. The director of public works and engineering shall coordinate the two permit processes.

(c) To the extent that any provision set forth in this article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, then this article shall be construed and applied in a manner that conforms to the state or federal law.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-365. Construction work in roadways or sidewalks; public work.

(a) With the exception of work addressed in sections 40-362(b)(5) or (b)(10) of this Code above, utilities, contractors of the city and other political subdivisions of the state who are performing construction, reconstruction, or repair work in the roadways or sidewalks or work that otherwise causes an impairment or obstruction shall be required to obtain a permit. Except as provided in section 40-373, nothing in this article shall be construed to authorize the imposition of restraints upon the contractor's work that are inconsistent with traffic control plans or other documents upon which the contracts for the work were bid or let, provided that the documents were reviewed and approved under subsection (b), below. However, the traffic engineer shall not be obliged to issue a permit hereunder for work to be performed at times not authorized in the contract documents or for the occupancy of areas of any roadway or sidewalk that are not expressly authorized to be occupied for the performance of the work under the contract documents.

(b) Traffic control plans and other bid/contract related documents proposed for public works by the city or other political subdivisions that are for construction projects in a roadway or sidewalk or that will otherwise cause any impairment or obstruction of a roadway or sidewalk shall be submitted to the traffic engineer for review and

approval by the public entity contracting for the work before bids are taken, or if the work is not let on bids, before the contract is negotiated.

(c) The defense set forth in section 40-362(b)(10) of this Code is not intended to excuse public employees from coordinating their work with the traffic engineer to ensure that impairments or obstructions conform to applicable requirements of this article, and the director of public works and engineering shall administratively adopt regulations for that purpose.

(d) Notwithstanding any provisions under this article to the contrary, the traffic engineer may issue a permit to a city department necessary to perform departmental functions without requiring a permit fee, release and indemnity provisions or evidence of insurance. The traffic engineer may adopt specific rules and regulations regarding time. Place and manner with regard to such city department permits, as deemed appropriate to ensure that traffic and mobility are not adversely affected.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-366. Regulations.

The director of public works and engineering is authorized to adopt rules and regulations for the administration of this article. To the extent practicable, as determined by the traffic engineer, the rules and regulations may provide for the filing and processing of permit documents by electronic means.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-367. Penalty.

Violation of this article is unlawful and shall be punishable as provided in section 1-6 of this Code.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-368. Hearing.

Any person who is aggrieved by a decision of the city, its officials, or employees with respect to a permit application, impairment or obstruction abatement action, or other matter or action under this article shall, upon written request, be entitled to a hearing to be conducted by hearing officer designated by the director of public works and engineering, who shall promulgate rules for hearings. The decision of the hearing officer shall be final. A hearing requested under section 40-126 of this Code may be consolidated with a hearing requested under this section.
(Ord. No. 04-498, § 2, 5-26-04)

Secs. 40-369, 40-370. Reserved.

DIVISION 2. PERMITS

Sec. 40-371. Administration and schedule of permit fees.

The traffic engineer shall issue and administer permits. The schedule of fees established pursuant to this section shall be applicable initially to the permits authorized to be issued pursuant to this article. The director of public works and engineering shall determine annually in connection with the city's fiscal year whether an increase or decrease in these fees is required for the sidewalk and roadway obstructions and impairments permit program, based on an analysis of the actual costs of administering and enforcing this program, and is hereby authorized to make adjustments annually to the schedule of fees. If the fee is increased, it may be increased only by the documented additional cost to administer and enforce this program. The traffic engineer shall not issue any permit unless and until the applicable fee has been paid, unless the applicant is exempt from paying a fee under city contract, including the "Adopt a Container" program, franchise agreement, or federal, state or local statutes or other applicable laws. Weekly fees shall not be prorated for obstructions lasting less than a full week. Persons who desire to obtain permits shall be charged a fee under the following conditions:

(1) For an impairment or obstruction of a roadway or sidewalk, the permit holder shall pay, on a weekly basis only, the applicable fee as shown in Table 40-371 below. Fees are based upon single lane closures of up to one week in duration. Multiple lane closure fees are assessed separately. Each hundred block or portion thereof (for instance the 100 block, the 200 block, etc.) constitutes a full hundred-block closure.

(2) Work areas include *transition areas, activity areas,* and *termination areas* as defined in the latest edition of Texas Manual of Uniform Traffic Control Devices.

(3) A utility or public employee may apply for a general permit. A general permit may be used for all street obstructions except as defined below (or defined as an emergency):

a. Obstructions may not be performed during peak traffic hours in the CBD and other high vehicle occupancy and transit corridors;

b. Obstructions may not reduce lane usage to less than two driving lanes in the CBD during off peak traffic hours;

c. Outside the CBD during off peak hours, obstructions may not reduce lane usage to less than one lane in each direction on roadways with four or more lanes, and not less than one lane on two-lane roadways;

d. Obstructions may not occur in conflict with special events or parades;

e. Sidewalk impairments in the CBD may not be performed under a general permit.

(5) Any fees or revenues generated by roadway obstruction or sidewalk impairments covered under this article shall be divided evenly between the transportation special revenue fund administered by the public works and engineering department and the police special services fund administered by the police department.

TABLE 40-371.
FEE SCHEDULE

Single lane closure on local street	$45.00 per lane, per block, per week
Single lane closure of roadway on major thoroughfare or major collector street outside CBD	$80.00 per lane, per block, per week during off peak traffic hours $100.00 per lane, per block, per week during peak traffic hours
Single lane closure of roadway on major thoroughfare or major collector street inside CBD	$100.00 per lane, per block, per week during off peak traffic hours $125.00 per lane, per block, per week during peak traffic hours or when lane usage is reduced to less than two lanes in the central business district
Partial sidewalk impairment or obstruction (maintaining three feet of pedestrian way)	$60.00 per block, per week
Full sidewalk impairment or obstruction	$90.00 per block, per week

(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-372. Application.

Persons who desire to obtain permits shall make application to the traffic engineer at least ten business days before the date on which the permit is required, unless the traffic engineer approves a shorter time, setting forth the following:

(1) The applicant's name, business street address and mailing address if different, and business telephone number. If the proposed impairment or obstruction involves efforts of two or more persons, such as a utility and a contractor or an abutting property owner and a contractor, then they shall join as coapplicants, and the required information shall be provided for each.

(2) The name and 24-hour telephone number of a person or persons whom the traffic engineer may contact if needed to resolve any issues that may arise with respect to the permit.

(3) The purpose for which the permit is requested.

(4) If the permit relates to construction or demolition work on abutting property, then the building permit number.

(5) If the permit is for an activity for which any other city permit is also required, then the permit number or evidence that the application therefor has been filed.

(6) If the permit is for street construction work, the name and description of the project, or if the city is the contracting agency, then the contract or job number.

(7) The duration, dates, and times of day of the proposed impairment or obstruction.

(8) A description of the proposed impairment or obstruction, including its size, material, and the location upon the roadway or sidewalk where it will be placed.

(9) The reasons why the work, function, or activity proposed requires an impairment or obstruction of a roadway or sidewalk and cannot otherwise reasonably be accomplished.

(10) A statement that if the permit is issued, the applicant as a permit holder accepts and obligates itself to the following release and indemnification provisions:

"RELEASE

PERMIT HOLDER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

INDEMNIFICATION

PERMIT HOLDER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

(i) PERMIT HOLDER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', PRINCIPALS', OR SUBCONTRACTORS OF PERMIT HOLDERS' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)—(iii), "PERMIT HOLDER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

(ii) THE CITY'S AND PERMIT HOLDER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PERMIT HOLDER IS IMMUNE FROM LIABILITY OR NOT; AND

(iii) THE CITY'S AND PERMIT HOLDER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PERMIT HOLDER IS IMMUNE FROM LIABILITY OR NOT.

PERMIT HOLDER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE PERMIT AND FOR FOUR YEARS AFTER THE PERMIT TERMINATES.

WHERE APPLICABLE, THE PROVISIONS OF SECTION 283.057 OF THE TEXAS LOCAL GOVERNMENT CODE SHALL CONTROL IN LIEU OF THE FOREGOING; ADDITIONALLY, TO THE EXTENT THAT THE APPLICANT HOLDS A CURRENT AND VALID UTILITY FRANCHISE FROM THE CITY, THE RELEASE AND INDEMNIFICATION PROVISIONS OF THE FRANCHISE SHALL CONTROL IN LIEU OF THE FOREGOING."

(11) If the roadway obstruction or sidewalk impairment is proposed during peak traffic hours on streets within the central business district, or on major thoroughfares or major collector streets, the reason why the activity cannot reasonably be performed at an other time.

(12) A detailed current traffic control plan for the impairment or obstruction, if required by the traffic engineer.

(13) If proposed during other than peak hours, standard operating procedures that will be used to remove impairments or obstructions during peak hours.

(14) A schedule of activities, if the work will occur for more than 14 days.

(15) Any other information required to determine compliance with the requirements of this article.

(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-373. Review, issuance, terms, revocation.

(a) The traffic engineer shall, subject to the provisions of this article, approve an application as submitted or modified subject to subsection (b) below and issue a permit, unless he determines that:

(1) The application is incomplete or materially untruthful;

(2) The proposed impairment or obstruction relates to work or an activity that can reasonably be accomplished by alternative methods that, even if they might be more costly, would not require impairment or obstruction of the roadways or sidewalks; or

(3) Based upon the scope and nature of the proposed impairment or obstruction and the anticipated vehicular or pedestrian traffic upon the roadway or sidewalk at the times requested, that the impairment or obstruction would substantially inconvenience the public in its use of the roadways or sidewalks and that the inconvenience would outweigh any public benefits from the work, function, or activity for which the impairment or obstruction is proposed.

(b) The traffic engineer may impose reasonable limitations upon the time and manner in which a impairment or obstruction will be authorized, which shall be consistent with the nature and time of the impairment or obstruction and its anticipated effects upon vehicular and pedestrian use of the roadways or sidewalks. Without limiting the foregoing, the traffic engineer shall not authorize an impairment or obstruction during peak traffic hours if a practicable alternative time schedule could be used, unless he determines that traffic and mobility will not be adversely affected. Consistent with the foregoing criteria, the traffic engineer may require the permit holder to provide vehicular and pedestrian traffic control devices, alternative pedestrian walkways (covered or open), signage, and traffic control personnel at the permit holder's expense. The permit holder shall furnish any required traffic control personnel, such as flaggers or peace officers, in accordance with directives of the chief of police and at the permit holder's expense. To the extent that another person has previously requested or obtained a permit for all or part of the area subject to the application or the traffic engineer is aware of any other activity that will also affect traffic at the time and in the area affected by the application, the traffic engineer may require the persons to coordinate their impairments or obstructions or

may delay the effective date of the permit until a previous impairment or obstruction or activity will have been concluded.

(c) Each permit shall be issued in writing, shall set forth the location, beginning and ending dates, authorized days of the week and times of day, nature and authorized site of the authorized impairment or obstruction, and any requirements for traffic control devices, signage, or personnel. The permit shall not be valid for any impairment or obstruction except in strict accordance with its terms and shall be void if used in any other time, place, or manner.

(d) Permits are personal to the permit holder and may not be assigned or used by any other persons.

(e) Upon written notice to the holder, a permit may be withdrawn, suspended, or revoked if the director of public works and engineering or the traffic engineer determines that it was issued by error, that the impairment or obstruction is having unanticipated adverse effects upon vehicular or pedestrian traffic, or that the holder has not complied with any applicable term of the permit.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-374. Permits for suspension of metered parking.

A person who wishes to suspend the operation of metered parking must obtain a separate permit to do so pursuant to division 2 of article VII of chapter 45 of this Code.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-375. Insurance.

(a) As a condition of the issuance of a permit, the applicant shall provide evidence that the applicant holds a current policy of comprehensive general liability insurance covering the impairment or obstruction, with an endorsement for any liability assumed under this article and policy limits of not less than $100,000.00 for property damage, per occurrence, and of not less than $250,000.00, per person, and $500,000.00, per occurrence, for bodily injury or death. Each policy shall include a provision designating the city as an additional insured with respect to activities under the permit and shall also include a provision obligating the insurer to furnish to the traffic engineer at least 15 days prior written notice of any cancellation.

(b) The failure of the permit holder to continuously maintain any required coverage shall cause any permit covered thereby to become void. No work may be performed on any excavation at any time when any required proof of insurance coverage is not on file in the traffic engineer's office.

(c) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or permit holder.

(d) To the extent that any other city permit, license, or authorization is required for the impairment or obstruction, and insurance coverage is also required as a condition thereof, then the permit holder shall not be required to duplicate coverage and may provide one policy that meets all applicable requirements.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-376. Emergencies.

(a) The traffic engineer shall establish a means by which obstructions of an emergency nature may be commenced without obtaining a street obstruction permit unless work continues longer than 24 hours, at which time a full application shall be filed. Permit fees are waived for the duration of the emergency obstruction. The application shall include an explanation of the nature of the emergency, a description of the proposed impairment or obstruction, the duration, dates, and times of day of the proposed impairment or obstruction, and the name and emergency contact telephone number for the requestor.

(b) In addition to the defenses provided in section 40-362(b) of this Code, it is an affirmative defense to prosecution under section 40-362(a) that the impairment or obstruction was reasonably required to address an emergency. This affirmative defense shall only apply pending the timely submission of a permit application and shall not be valid if the application is denied.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-377. Posting at impairment or obstruction site.

(a) The permit holder shall post a copy of the permit at each impairment or obstruction site in accordance with the regulations issued under section 40-365 of this Code.

(b) In any prosecution under section 40-362 of this Code, it shall be presumed that no permit existed unless the permit is posted as required under subsection (a) of this section.
(Ord. No. 04-498, § 2, 5-26-04)

Sec. 40-378. Abatement.

Impairments or obstructions that are created without a permit or that are created in a time, place, or means that is inconsistent with a permit shall be subject to summary abatement upon order of or by the traffic engineer or any peace officer of the city. If the person causing the impairment or obstruction is present at the site, the traffic engineer or peace officer may, consistent with the nature of the impairment or obstruction and ambient traffic conditions, afford an opportunity to remove the impairment or obstruction. Otherwise, the impairment or obstruction shall be removed by city forces or contractors. Any costs of removing the impairment or obstruction shall be assessed to the person who caused it, if known, and, no additional permits shall be issued to that person until the city has been reimbursed for the costs. To the extent that an impairment or obstruction has an identifiable owner and an apparent value of $100.00 or more, the obstruction, unless of a perishable nature, shall be placed in storage for a period of 30 days, and the owner shall be notified and afforded an opportunity to have the return of the item, subject to payment of any removal and storage costs.
(Ord. No. 04-498, § 2, 5-26-04)

Secs. 40-379—40-390. Reserved.

ARTICLE XVIII. RELOCATION OF PRIVATELY-OWNED FACILITIES

Sec. 40-391. Definitions.

As used in this article, the following terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Director means the director of the public works and engineering department or his designee.

Facility means any structure, device or other thing whatsoever that is installed or maintained in, on, within, under, over or above a public right-of-way within the city.

Public right-of-way means any public street right-of-way located in the city, including the entire area between the boundary lines of every right-of-way (including but not limited to roads, streets, alleys, highways, boulevards, bridges, tunnels, or similar thoroughfares).

Public works project means any construction, reconstruction, improvement, repair or maintenance project undertaken by or on behalf of the city, including but not limited to projects included on the city's capital improvement plan regardless of source of funding.

Relocate means to move, remove or replace a facility.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-392. Registry of facilities and owners.

(a) The owner of any facility as defined in this article, other than a pipeline that is subject to the provisions of article IX of this chapter, shall provide to the director, and thereafter maintain, current: (1) contact information indicating the name and address of the owner of the facility and the individual at that address designated as a contact person for the owner; and (2) information describing and locating any facilities of the owner in the public right-of-way. The information shall be in the form prescribed by the director. If an owner does not have contact information on file, the owner shall provide the contact information at the time application is made for an excavation

permit pursuant to article V of this chapter. It shall be unlawful for any owner to fail to provide or maintain current information as required by this section.

(b) Any location information submitted under this section that is designated by the owner as "confidential," "trade secret," or "proprietary" will not be disclosed to the public by the city without the consent of the owner, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act ("TPIA") or by order a court having jurisdiction of the matter pursuant to applicable law. Upon receipt of a request for such location information, the city will notify the contact person of the request in writing. If the owner elects to protect the location information from disclosure, the owner shall immediately notify the city and submit to the Texas Attorney General a brief that: (1) identifies the legal exceptions that apply; (2) identifies the specific parts of each document that are covered by each exception; and (3) explains why each exception applies. The city shall have no obligation or duty to submit any argument or brief to the Texas Attorney General on behalf of the owner.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-393. Relocation required.

(a) Whenever the city engineer determines, in the exercise of sound engineering judgment, that a facility should be relocated for the accomplishment of a public works project, the owner of the facility shall relocate the facility at the owner's sole expense in accordance with this article. In the event that an owner's failure to timely relocate a facility in accordance with this article causes the city to incur expenses, damages or losses, including loss of grant funds, for any resulting delay, the owner of the facility shall be responsible for the city's expenses, damages or losses.

(b) It shall be the policy of the city to design public works projects to minimize the relocation of facilities, but the city shall not be obligated to design a public works project to avoid facility relocation and the determination of the city engineer of the appropriate design of the public works project shall be final.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-394. Notice of annual adopted capital improvement plan.

The city engineer shall provide notice of the passage of the annual adopted capital improvement plan for the city within 60 days of its passage by the city council. Notice shall be given by first class letter deposited into the United States postal service to the person and at the address on file with the city pursuant to section 40-392 of this Code and shall identify the location on the city's website or provide notice of other locations where the adopted capital improvements plan can be reviewed.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-395. City engineer's preliminary notice.

When during the design of a public works project the city engineer, based on information then available to him, determines that the presence of a facility in a public right-of-way may interfere with a public works project so that the relocation of the facility may be necessary, the city engineer shall provide the owner of the facility written notice of the planned public works project and the potential for relocation. The city engineer shall make this determination as soon as practicable, but no later than a reasonable period following receipt of a preliminary engineering report for the public works project, and shall give the notice to the owner as soon as practicable thereafter. The notice shall be given to the contact person identified pursuant to section 40-392 or section 40-232 of this Code, as applicable, by any means that requires proof of delivery. The notice shall identify the public works project and provide the owner with an opportunity to discuss with the city engineer the public works project and potential design alternatives that could avoid facility relocation. Notice pursuant to this and the preceding section of this Code is for the purpose of coordination only and is not a condition precedent

to the city's exercise of its rights and remedies under this article nor to the facility owner's obligations hereunder.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-396. City engineer's final determination and notice.

(a) The city engineer shall determine before completion of final design of a public works project whether the design of the public works project requires relocation of a facility and shall provide notice thereof to the owner of any facility required to be relocated. The notice shall be given in the manner provided in section 40-395 of this Code. In making a determination pursuant to this section, the city engineer or the director, as applicable, shall consider the purpose and complexity of the public works project and timetable for its construction, the number of facilities potentially affected by the project, the number of facility relocations required for the project, the cost and complexity of relocating each facility and any other factors he determines in the exercise of sound engineering judgement are relevant to the public works project.

(b) Notwithstanding the notice provisions of this Code that are otherwise applicable, if the city engineer discovers during the construction of a public works project:

(1) That a facility located in the public right-of-way not previously known to the city engineer requires relocation; or

(2) That inaccurate information about the location of the facility was provided by or on behalf of the facility owner and relocation is required which was not previously anticipated;

the city engineer shall give notice of the necessity for relocation in the manner provided in section 40-395 of this Code.

(c) Except for facilities discovered under section 40-396 (b)(1) or (2), the owner of the facility shall have a period of 60 days following the date of the notice sent pursuant to subsection (a) of this section to submit a proposed schedule for relocation of the facility for approval by the city engineer. The city, through the city engineer, and the owner may enter into a memorandum of agreement, in a form approved by the city attorney, evidencing agreement on the relocation schedule. The city engineer for good cause may extend, for a period not to exceed an additional 60 days, the time for submission or re-submission of a relocation schedule. The owner of facilities discovered under section 40-396(b)(1) or (2) shall provide to the city engineer at the earliest possible date, but not later than five business days following the owner's receipt of notice under that section , a proposed schedule for relocation of the facility and shall diligently prosecute the relocation of such facility until completed.

(d) No schedule for the relocation of a facility shall provide a period for relocation of longer than 180 days without written approval of the director, who for good cause shown by the facility owner, may extend the period of time for relocation. The time allowed for relocation shall commence on the date agreed to by the city engineer and the facility owner, but no later than the date of the notice to proceed for the public works project, unless extended by the city engineer for good cause shown by the facility owner, and shall be suspended upon the occurrence, and extended for the duration of, an event of force majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage or other events, where the facility owner has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of the facility owner. For good cause shown by the facility owner, the city engineer may determine that the failure of the city to timely process a properly filed, complete application for a city permit or approval required for the facility relocation constitutes an event of force majeure.

In determining "good cause" as used in this section (excluding the failure of the city to act timely as set forth in the preceding paragraph) the director shall be entitled to consider such factors, not attributable to any fault or negligence of the facility owner, including, but not limited to the following:

1. Availability of materials or supplies required for a relocation.

2. Availability of sufficient labor or technical personnel to timely effect a relocation.
3. Any loss or damage to the public or users of the facility to be relocated.
4. The availability of any alternative means of providing to the public or other users the services of the facility to be relocated.

(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-397. Relocation authorized; other legal action.

(a) If upon the expiration of 60 days from the date of the city engineer's notice to the owner pursuant to subsection 40-396(a) of this Code, or five business days from the date of the city engineer's notice to owner pursuant to subsection 40-396(b) of this Code, or any extension of time approved by the city engineer, the city and the owner have not agreed upon a schedule for the relocation of the facility at the owner's expense, the city engineer is authorized to:

(1) Refer the matter to the city attorney for appropriate legal action; or

(2) Relocate the facility, or cause the facility to be relocated, on behalf of the owner and, subject to subsection (d) of this section, recover the cost of the relocation from the owner.

(b) If the city engineer determines that the owner has not timely complied with the terms of an agreed relocation schedule and that the unfinished relocation of the facility will delay completion of the affected city project, the city engineer is authorized to:

(1) Refer the matter to the city attorney for appropriate legal action; or

(2) Relocate the facility, or cause the facility to be relocated, on behalf of the owner and, subject to subsection (e) of this section, recover the cost of the relocation from the owner.

(c) No later than the date of the commencement of any construction activity for the relocation of any facility by the city pursuant to this section, the city engineer shall give notice of the date on which the relocation shall begin by first class letter deposited into the United States postal service to the person and at the address on file with the city pursuant to section 40-392 of this Code. Not less than three days before the transfer of service to a facility relocated pursuant to this section is feasible, the city engineer shall give notice of such fact by first class letter deposited into the United States postal service to the affected person and at the address on file with the city pursuant to section 40-392 of this Code. If the facility owner fails to commence the transfer of service within 24 hours after the expiration of the third calendar day following the giving of notice to the facility owner, the city may deem the original facility abandoned and cause it to be removed without further liability and, at the city's election, transfer such service to the relocated facility.

(d) Failure of a facility owner to provide a relocation schedule satisfactory to the city engineer, applying reasonable engineering judgment, within the initial 60 or 5 day period, whichever is applicable, or any extension thereof, shall constitute authorization for the city to assess damages, including expenses, damages or losses for project delay, and, subject to subsection (e) of this section, recover costs of relocating the facility from the owner and shall also constitute a waiver by the owner of any claim for damages against the city.

(e) Failure of a facility owner to comply with an agreed relocation schedule shall constitute authorization for the city to recover damages, including expenses, damages or losses for project delay, and recover costs of relocating the facility from the owner and shall also constitute a waiver by the owner of any claim for damages against the city.

(f) All relocations required under this article shall be at the sole expense of the owner of the facility, except to the extent provided otherwise in a current, valid city franchise held by the owner of the facility or by section 40-234(k) of this Code. In addition, if the city requires the relocation of a facility from a location approved by the city as part of a public works project pursuant to this article within five years following the date of a relocation of the facility pursuant to this article, the city shall bear the cost of the subsequent relocation of the facility. Nothing in this subsec-

tion shall preclude the application of funds from sources other than the city to the payment of relocation expenses on behalf of the owner of a facility.

(g) The city engineer's certification of the costs of relocation of any facility undertaken on behalf of an owner shall constitute prima facie evidence of the reasonableness of the costs chargeable to the owner.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-398. Notice after relocation.

If a facility is relocated under section 40-397 of this Code, the city engineer shall, within 30 days of the completion of the relocation, notify the owner of the facility that is relocated of the owner's right to a hearing under section 40-399 of this Code.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-399. Hearing upon written request.

The owner of a facility that is relocated under section 40-397 of this Code shall, upon written request within 10 days from the mailing of the city engineer's notice under section 40-398 of this Code, be entitled to a hearing on the issue of the reasonableness of the city's costs of relocation. The hearing shall be conducted by a hearing officer designated by the director, and the director shall promulgate rules for hearings. The hearing officer's decision on the issue of the reasonableness of the city's costs of relocation is final.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-400. Conflicts.

The provisions of article IX of this chapter shall control for those facilities governed thereby to the extent inconsistent with this article.
(Ord. No. 05-371, § 2, 4-13-05)

Sec. 40-401. Actions authorized to enforce article.

The city attorney is authorized to institute appropriate civil proceedings to compel the relocation of any facility whose relocation the city engineer determines to be necessary for a public works project and seek other relief consistent with this article.
(Ord. No. 05-371, § 2, 4-13-05)

Secs. 40-402—40-430. Reserved.

ARTICLE XIV. THE SALE OF USED MOTOR VEHICLES AT CERTAIN LOCATIONS*

Sec. 40-431. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Motor vehicle has the meaning ascribed in Section 502.001 of the Texas Transportation Code, as amended from time to time.

Police chief means the chief of the police department and any employees of the police department assigned by the chief to perform the duties prescribed in this article.

Residence has the meaning ascribed in section 28-201 of this Code, as amended from time to time.
(Ord. No. 06-29, § 2, 1-11-06)

Sec. 40-432. Motor vehicles for sale; penalties; towing

(a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to park a motor vehicle on public or private property having displayed thereon any writing indicating that such vehicle is for sale.

(b) The provisions of this section shall not apply to:

(1) A vehicle parked on private property having both a certificate of occupancy issued by the city and a license from the Texas Department of Transportation authorizing the sale of vehicles at that location;

***Editor's note**—Ord. No. 06-29, § 2, adopted January 11, 2006, provided for a new Art. XIV. Inasmuch as there is already an existing Art. XIV, at the request of the city, said article was redesignated as Art. XIX.

(2) A single vehicle legally parked on the premises of, or in the right-of-way immediately adjacent to a residence provided the vehicle is owned by or registered to the occupant of the residence; or

(3) A vehicle that is parked on either public or private property adjacent to a building or location to which the vehicle owner has traveled to perform his normal course of business or employment or on a personal errand.

(4) A vehicle located on private property that has affixed on the windshield a notarized statement from the property owner or authorized agent indicating that the vehicle owner has permission to sell the vehicle on the property. The notarized statement shall include the name, address and telephone number of the property owner or authorized agent. If the property owner is a partnership or corporation, the notarized statement shall include the name, address, and telephone number of one of the partners or one of the principals.

(c) A violation of this section shall constitute a class C misdemeanor.

(d) Subject to the provisions in subsection (e) of this section:

(1) A vehicle parked on public property in violation of this section shall be subject to immediate removal; or

(2) A vehicle parked on private property in violation of this section shall be subject to removal not sooner than two hours after the notice pursuant to section 40-433 of this Code is attached to the vehicle.

(e) Prior to causing a vehicle to be removed pursuant to subsection (d), the police chief shall attempt to contact the individual whose phone number appears on the "for sale" sign of the vehicle by phone to provide an opportunity for that individual to remove the vehicle. If contact is made, the individual shall have one hour to remove the vehicle from that location after the police chief has contacted him regarding the violation.
(Ord. No. 06-29, § 2, 1-11-06)

Sec. 40-433. Notice procedures.

The police chief may, without the consent of the owner or operator of a vehicle parked on private property in violation of this section, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the owner's or operator's expense if:

(1) The police chief has mailed to the owner or operator of the vehicle actual notice that the vehicle is in violation of this section and that it will be towed and stored at the vehicle owner's or operator's expense if it is not removed; or

(2) The police chief has caused a conspicuous notice to be attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:

a. That the vehicle is parked in violation of this section;

b. That the vehicle will be towed and stored at the expense of the owner of the vehicle not sooner than two hours after the notice is attached to the vehicle; and

c. A telephone number that is answered 24 hours a day to enable the owner of the vehicle to locate the vehicle.

(Ord. No. 06-29, § 2, 1-11-06)

Sec. 40-434. Procedures for towing; contesting a tow.

(a) All tows conducted pursuant to this article shall be performed in accordance with chapter 8 of this Code.

(b) The owner or operator of a vehicle has the right to contest the towing of the vehicle under chapter 685 of the Texas Transportation Code. A hearing under chapter 685 shall be in the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.
(Ord. No. 06-29, § 2, 1-11-06)