

Cherry Hills Village Municipal Code

CHAPTER 11

Streets, Sidewalks and Public Property

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ARTICLE I

Streets and Sidewalks

**Sec. 11-1-10. Repair and maintenance.**

The owner, occupant, lessee or person in possession or control of any premises or property shall maintain the sidewalks adjoining such premises or property in good repair and in a safe, unobstructed condition, free of snow, weeds and debris. (Ord. 9 §1, 2003)

**Sec. 11-1-20. Snow and ice removal from sidewalks.**

(a) Every owner or occupant of any premises within the City having a sidewalk on or adjacent to the premises shall have the duty to keep the sidewalk clean of snow and ice.

(b) All snow and ice shall be removed within twenty-four (24) hours of accumulation.

(c) For purposes of this Section, *premises* shall mean any lot, parcel, outlot or other subdivision of real property, whether occupied or not, and whether or not a structure exists on the lot, parcel, outlot or other subdivision. (Ord. 9 §1, 2003)

**Sec. 11-1-30. Landscape maintenance.**

It shall be the responsibility of the owner, agent or lessee of any real property abutting a public right-of-way or other City property to provide landscape maintenance, including but not limited to mowing of all right-of-way area between the property line and the curblineline or edge of the roadway or right-of-way; provided, however, that the City shall maintain landscaping and shall be responsible for mowing all of the rights-of-way that comprise Quincy Avenue, Clarkson Street, Colorado Boulevard, Holly Street and Happy Canyon Road and all state rights-of-way. The vegetation in said areas shall be maintained to the same levels required under Section 7-3-20 of this Code. (Ord. 5 §1, 2010)

**Sec. 11-1-40. Public right-of-way and public easement encroachments prohibited.**

Except as provided in Section 11-2-40 of this Chapter, no person shall erect or maintain any building, structure, fence, barrier, post, mailbox, landscaping, obstruction or other encroachment within, under, above or upon any public right-of-way, path, alley or public easement without first obtaining the required permits from the City. (Ord. 5 §2, 2010)

ARTICLE II

Public Right-of-Way Permits

**Sec. 11-2-10. Purpose and objectives.**

(a) Purpose. The purpose of this Article is to establish principles, standards and procedures for the placement of facilities, construction, excavation, encroachments and work activities within, under or upon any public right-of-way, and to protect the integrity of the City's street system.

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(b) Objectives. Public and private uses of public rights-of-way should, in the interests of the general welfare, be accommodated; however, the City must ensure that the primary purpose of the public right-of-way, passage of pedestrian and vehicular traffic, is protected. The use of the public rights-of-way by private users is secondary to these public objectives. This Article has several objectives:

- (1) To minimize public inconvenience.
- (2) To protect the City's infrastructure investment by establishing repair standards for the pavement, facilities and property in the public rights-of-way.
- (3) To standardize regulations and thereby facilitate work within the rights-of-way.
- (4) To maintain an efficient permit process.
- (5) To conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the City.
- (6) To establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
- (7) To promote cooperation among permittees and the City in the occupation of the public rights-of-way, and work therein, in order to:
  - a. Eliminate duplication of facilities that is wasteful, unnecessary or unsightly;
  - b. Lower the permittees' and the City's costs of providing services to the public; and
  - c. Minimize street cuts.
- (8) To protect the public health, safety and welfare. (Ord. 10 §1, 2005)

### Sec. 11-2-20. Definitions.

For purposes of this Article, the following words shall have the following meanings:

*Access structure* means any structure providing access to facilities in the public right-of-way.

*Approved alignment* means the designed horizontal and vertical alignment of facilities to be installed in the public right-of-way which is approved by the City at the time the permit is issued, plus any alignment variance tolerances set forth in the Construction and Excavation Standards, plus any alignment variances approved by the City in accordance with the Construction and Excavation Standards.

*City* means the City Manager for the City of Cherry Hills Village or his designee.

*Construction and Excavation Standards* means the document entitled *Construction, Excavation Standards and Permit Fees for Work in Public Rights-of-Way*, as adopted by resolution of the City Council and amended from time to time.

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*Contractor* means a person, partnership, corporation or other legal entity which undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate or add to any improvements or facilities in the public right-of-way, or which requires work, workers and/or equipment to be in the public right-of-way in the process of performing the above-named activities.

*Developer* means the person, partnership, corporation or other legal entity improving a parcel of land within the City and being legally responsible to the City for the construction of infrastructure within a subdivision or as a condition of a building permit.

*Emergency* means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, and damaged electrical and communications facilities.

*Equipment* means any materials, trailers, storage units, waste collection containers or any other equipment typically used to perform construction activities within the City's right-of-way.

*Excavate or excavation* means to dig into or in any way remove or penetrate any part of a public right-of-way, including trenchless excavation such as boring, tunneling and jacking.

*Facilities* means any pipe, conduit, wire, cable, amplifier, transformer, fiber-optic cable, antenna, pole, streetlight, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering and providing utility and other services, whether above or below ground.

*Infrastructure* means any public facility, system or improvement, including but not limited to water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks and public safety equipment.

*Landscaping* means grass, groundcover, shrubs, vines, hedges, trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

*Major installation* means work in the public right-of-way involving an excavation exceeding three hundred (300) feet in length.

*Permit* means an authorization for use of the public rights-of-way granted pursuant to this Article.

*Permittee* means the holder of a valid permit issued pursuant to this Article.

*Public right-of-way* means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use or maintained by the City except for those rights-of-way owned by the Colorado Department of Transportation within the City limits.

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*Routine maintenance* means maintenance of facilities or landscaping in the public right-of-way which does not involve excavation, installation of new facilities, lane closures, sidewalk closures or damage to any portion of the public-right-of-way.

*Work* means any labor performed within a public right-of-way and/or any use or storage of equipment or materials within a public right-of-way, including but not limited to:

- a. Excavation;
- b. Construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, streetlights and traffic signal devices;
- c. Tree trimming;
- d. Construction, maintenance and repair of all underground facilities, such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire or any other similar structure;
- e. Maintenance of facilities; and
- f. Installation of overhead poles used for any purpose.

Notwithstanding the foregoing, *work* shall not include routine maintenance. (Ord. 10 §1, 2005; Ord. 01 §1, 2006)

### **Sec. 11-2-30. Police power.**

(a) A permittee's rights hereunder shall at all times be subject to the police power of the City, which includes the power to adopt and enforce ordinances, including amendments to this Article, necessary for the safety, health and welfare of the public.

(b) The City reserves the right to exercise its police power, notwithstanding anything in this Article or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter. (Ord. 10 §1, 2005)

### **Sec. 11-2-40. Permit required.**

(a) No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work in a public right-of-way or place any equipment in a public right-of-way without first obtaining a permit from the City as set forth in this Article. Copies of the permit and associated documents shall be maintained on the work site and available for inspection upon request by any officer or employee of the City.

(b) No permittee shall perform work in an area larger, at a location different or for a period of time longer than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and within two (2) days shall file a supplementary application for the additional work.

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(c) Permits shall not be transferable or assignable without the prior written approval of the City.

(d) Upon oral or written notification from the City, any person conducting any work within the public right-of-way, without having first obtained the required permit, shall immediately cease all activity and obtain a permit before work may be resumed, except for emergency operations performed pursuant to Section 11-2-250.

(e) No private improvements are allowed within the City's right-of-way without the approval of the City, with the exception of placing and maintaining limited landscaping, such as sod or grasses, flowers and no more than four (4) bushes or small trees of a caliper not to exceed two (2) inches, that will not interfere with the public's use of the right-of-way. In no case shall trees or bushes be placed in drainage ditches/areas. All newly planted trees must be at least ten (10) feet from the actual road surface. Allowing the placement and maintenance of such limited landscaping in the right-of-way shall not be construed to abridge, limit or restrict the City in exercising its right to make full use of the City right-of-way encroached upon as public thoroughfares or public places, nor shall it operate to restrict utility companies or any other licensees in exercising their rights to construct, remove, operate and maintain their installations within the City's right-of-way, having first obtained the proper permits required.

(f) No improvements are allowed within any trail easement in the City unless there is an underlying utility easement. The placement of structures within a trail easement must be approved by the City before installation. If there is an underlying easement that predates the trail easement, such senior easement takes precedent. However, it is the intent of the City to work cooperatively with all utilities holding easements to allow for the full use of the easement granted.

(g) The public right-of-way permit process is to allow for work within the City's right-of-way. The permit may be used to cover the need to occupy the right-of-way for work outside of the right-of-way at the sole discretion of the City. (Ord. 10 §1, 2005; Ord. 5 §3, 2010)

### **Sec. 11-2-50. Developer installation of infrastructure.**

Construction of infrastructure necessary to serve new development is the responsibility of the developer. Once a public right-of-way has been dedicated to the City, all work in that public right-of-way, including the installation of new infrastructure by a developer, shall be subject to this Article. (Ord. 10 §1, 2005)

### **Sec. 11-2-60. Permit application.**

(a) An applicant for a public right-of-way permit shall file a written application on a form furnished by the City which includes the following information:

(1) The date of application;

(2) The name, address and telephone number of the applicant and any contractor or subcontractor who will perform any of the work;

(3) A plan showing the work site, the public right-of-way boundaries, all existing and proposed infrastructure in the area, as applicable, and identifying all improved landscape areas that will be disturbed;

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- (4) The purpose of the proposed work;
  - (5) A traffic control plan in accordance with the Construction and Excavation Standards;
  - (6) The dates for beginning and ending the proposed work, the proposed hours of work and the number of actual work days required to complete the project;
  - (7) If applicable, documentation of the approval required by Subsection 11-2-180(c); and
  - (8) The applicable permit fees as set by the Construction and Excavation Standards.
- (b) For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection (a) above, the application shall include the following information:
- (1) Copies of all permits and licenses (including required insurance, deposits, bonds and warranties) required to do the proposed work, whether required by federal or state law or City resolution, ordinance or regulation. When performing water or sewer taps, the applicant shall provide evidence that all applicable tap fees have been paid prior to submitting an application for a right-of-way permit.
  - (2) Copy of a site stormwater drainage quality assurance plan to keep sedimentation from entering any stormwater system within the City, including roadside ditches. No engineering is required, but instead a plan of what BMPs will be used for water quality during the project and until vegetation has been reestablished within the areas disturbed by the work. No stormwater quality assurance plan shall be required when the permitted work in the right-of-way will have no impact on stormwater quality.
- (c) An applicant for a public right-of-way permit for a major installation shall, in addition to the information required by Subsections (a) and (b) above, submit the following information: engineering construction drawings or site plans for the proposed work in a format acceptable to the City and signed by a professional engineer licensed in the State of Colorado, except that an applicant expressly exempt from the signature requirement pursuant to Section 12-25-103, C.R.S., need not include the signature of a licensed professional engineer.
- (d) An applicant shall notify the City immediately and shall update a permit application within two (2) days after any material change occurs.
- (e) Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fees. Applicants must agree among themselves as to the portion each shall pay, and if no agreement is reached, payment in full shall be required of all applicants.
- (f) In all cases, the applicant for a public right-of-way permit and the eventual permittee shall be the owner of the facilities to be installed, maintained or repaired, rather than the contractor performing the work.
- (g) By signing an application, the applicant is certifying to the City that the applicant is in compliance with all other permits issued by the City, and that the applicant is not delinquent in any

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payment due to the City for prior work. This certification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant, if the applicant and the City are negotiating in good faith to resolve the dispute. (Ord. 10 §1, 2005)

### **Sec. 11-2-70. Blanket maintenance permits.**

(a) A public right-of-way permit shall not be required for routine maintenance in the public right-of-way, as the term *routine maintenance* is defined in Section 11-2-20 of this Article. However, other maintenance operations within the public right-of-way which involve traffic lane closures or sidewalk closures shall require a public right-of-way permit. To expedite the process for ongoing maintenance operations, owners of facilities within the public right-of-way may, at their sole option and in the alternative to obtaining individual public right-of-way permits, obtain a blanket maintenance permit pursuant to this Section.

(b) A blanket maintenance permit shall be valid from the date of issuance of the permit through December 31 of the calendar year in which it was issued. Under no circumstances shall a blanket maintenance permit be valid for more than one (1) year.

(c) A blanket maintenance permit shall not, under any circumstances, authorize any pavement disturbance, excavation or installation of new facilities. Notwithstanding the foregoing, existing facilities may be removed and replaced, if no excavation or pavement disturbance is required.

(d) Any person seeking a blanket maintenance permit shall file an application, on a form provided by the City, which includes the following information:

- (1) The date of application;
- (2) The name, address and telephone number of the applicant;
- (3) A description of the maintenance operations to be performed pursuant to the permit;
- (4) The precise location of maintenance operations known at the time of application;
- (5) Traffic control plans as required by this Section and the Construction and Excavation Standards;
- (6) If applicable, documentation of the approval required by Subsection 11-2-180(c) of this Article; and
- (7) The applicable permit fee as set by the Construction and Excavation Standards.

(e) Blanket maintenance permits shall be subject to applicable provisions of the Construction and Excavation Standards.

(f) A blanket maintenance permit shall not require a performance bond, letter of credit or warranty. Work performed pursuant to a blanket maintenance permit shall not be subject to the specific inspections set forth in Section 11-2-140 of this Article, but may be subject to random inspection by the City to ensure compliance with the terms of the blanket maintenance permit and applicable provisions of the Construction and Excavation Standards. (Ord. 10 §1, 2005)

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**Sec. 11-2-80. City review and approval.**

(a) An application for a public right-of-way permit shall be reviewed by the City for completeness. If the application is not complete, the City shall notify the applicant of all missing information.

(b) Once an application is deemed complete by the City, the City shall review the application to determine whether the application complies with this Article and the Construction and Excavation Standards.

(c) At the conclusion of the review period, the City shall either approve the permit, approve the permit with conditions or deny the permit. If the permit is denied, the City shall send a written notice of denial to the permittee at the address listed on the application, via first-class mail, postage prepaid. The notice shall include the reasons for denial.

(d) Permits for work within trail easements will only be issued if the trail easement has an underlying utility easement. The City is not authorized to grant any additional use of trails other than the use granted the City by the trail easement. No other use shall be allowed by the City unless an easement for that use has been granted by the property owner.

(e) For utility companies needing to place structures within a trail/utility easement, the location of the structure must receive review and approval from the City before placement of each structure. (Ord. 10 §1, 2005)

**Sec. 11-2-90. Permit fees.**

(a) Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined in accordance with the fee schedule contained herein. Permit fees shall be reasonably related to the costs incurred by the City in providing services relating to the granting or administration of permits pursuant to this Article and future repair and maintenance costs related to a permittee's work in the City's rights-of-way. These costs include, but are not limited to, the costs of issuing right-of-way permits, verifying right-of-way occupation, mapping right-of-way occupation, inspecting work and administering this Article and future repair and maintenance of City-owned rights-of-way related to a permittee's work.

**FEE SCHEDULE**

The minimum permit fee for asphalt paved streets	\$480.00
The minimum permit fee for gravel streets	838.00
The minimum permit fee for city trails	480.00
Right-of-way occupancy fee (not cutting in ROW)	300.00

(b) Restoration fees.

(1) Restoration fees shall only be charged to the applicant if the City chooses to allow the applicant to not perform the required restoration of the public right-of-way to the City's standards, rendering the City responsible for performing any required restoration. The City shall decide at the

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time of application whether the applicant will perform any required restoration, and the City's decision shall be final.

(2) Restoration fees will be charged for all excavations within streets that are of a gravel surface. This fee will cover the cost to restore the street back to its original condition. Under no circumstances will this fee be waived for any reason if the work is within the gravel portion of the street. This fee may be charged for work outside of the gravel portion of the right-of-way if the City determines that the nature of the work will have an impact on the gravel surface of the street.

(3) No restoration fees shall be required for a public right-of-way permit which does not include excavation unless the City determines that the nature of the work being performed under the permit will have an impact on the street.

(4) Restoration fees collected by the City shall be placed in a separate account for general street maintenance and construction.

(5) Restoration fees may be waived in the City's discretion when additional circumstances exist which would make restoration unnecessary, such as poor street quality and/or proposed street resurfacing or construction by the City. These circumstances are outlined in more detail in the section of the Construction and Excavation Standards addressing permit fees. (Ord. 10 §1, 2005; Ord. 01 §1, 2009)

### **Sec. 11-2-100. Insurance.**

(a) Unless otherwise specified in a franchise agreement or median maintenance agreement between a permittee and the City, prior to the granting of any permit, the permittee shall carry and maintain in full effect at all times the following insurance coverage:

(1) Commercial general liability insurance, including broad form property damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less than one million dollars (\$1,000,000.00) each occurrence for damages of bodily injury or death to one (1) or more persons; and five hundred thousand dollars (\$500,000.00) each occurrence for damage to or destruction of property.

(2) Workers' compensation insurance as required by state law.

(b) The permittee shall file with the City proof of such insurance coverage in a form satisfactory to the City.

(c) Upon prior written approval of the City, a permittee may provide self-insurance with the minimum coverage limits set forth in Subsection (a) above. (Ord. 10 §1, 2005)

### **Sec. 11-2-110. Indemnification.**

(a) Each permittee, for himself and his related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, shall hold the City harmless and defend and indemnify the City, its successors, assigns, officers, employees, agents and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the City for all its reasonable expenses, as incurred, arising out of or in any way related to the permittee's work or

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activity in the public right-of-way, including but not limited to the actions or omissions of the permittee, his employees, representatives, agents, contractors, related entities, successors and assigns, or the securing of and the exercise by the permittee of any rights granted in the permit, including any third-party claims, administrative hearings and litigation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Article or other applicable law. A permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence or willful and wanton acts of the City or any of its officers, employees or agents.

(b) Following the receipt of written notification of any claim, the permittee shall have the right to defend the City with regard to all third-party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, the City elects to defend itself with regard to such matters, the permittee shall pay all expenses incurred by the City related to its defense, including reasonable attorney fees and costs.

(c) If a permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act.

(d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Ord. 10 §1, 2005)

### **Sec. 11-2-120. Performance bonds and letters of credit.**

(a) Before a public right-of-way permit is issued, the applicant shall file with the City a bond or letter of credit, at the applicant's choice, in favor of the City in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any facilities being installed, or five thousand dollars (\$5,000.00), whichever is greater. The bond or letter of credit shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the State. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of City ordinances, resolutions and regulations, and upon payment of all judgments and costs rendered against the applicant for any violation of any City resolution, regulation or ordinance or state law arising out of any negligent or wrongful act of the applicant in the performance of work pursuant to the permit.

(b) The City may bring an action on the bond or letter of credit on its own behalf.

(c) The bond or letter of credit shall be approved by the City prior to the issuance of the permit.

(d) A blanket bond of sufficient amount to cover all proposed work during the upcoming year may be filed with the City on an annual basis in lieu of the project-specific performance bonds or letters of credit required by Subsection (a) above. The form and amount of the blanket bond shall be subject to the prior review and approval of the City. Should the blanket bond be deemed insufficient by the City based on the work to date, the City may require additional, project-specific performance bonds or letters of credit pursuant to Subsection (a).

(e) The performance bond, blanket bond or letter of credit shall remain in force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.

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(f) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Ord. 10 §1, 2005)

### **Sec. 11-2-130. Warranty.**

(a) A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and in accordance with this Article and the Construction and Excavation Standards, and warrants and guarantees all work done for a period of two (2) years after the date of probationary acceptance.

(b) Under the warranty, the permittee shall at his own expense repair or replace, at the discretion of the City, any portion of the work that fails, is defective, is unsound or is unsatisfactory because of design, engineering, materials or workmanship.

(c) The warranty period shall begin on the date of the City's probationary acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the initial two-year period starting with the date of probationary acceptance.

(d) At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. If the defects are determined by the City to be an imminent danger to the public health, safety and welfare, the permittee shall begin repairs within twenty-four (24) hours of receipt of the written notice and continue the repairs until completion. Nonemergency repairs shall be completed within thirty (30) days after notice.

(e) The warranty shall cover only those areas of work performed by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the City. If a portion of work warranted by a permittee is subsequently adversely impacted by work of another permittee, another user of the right-of-way or the City during the warranty period, the other permittee or the City, as applicable, shall assume responsibility for repair to the subsequently adversely impacted portion of the public right-of-way.

(f) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Ord. 10 §1, 2005)

### **Sec. 11-2-140. Inspections.**

(a) The following four (4) inspections shall take place, at a minimum:

(1) Preconstruction inspection. The City shall conduct a preconstruction inspection, to determine any necessary conditions for the permit. The permittee shall mark with white paint the area proposed for excavation.

(2) One (1) site inspection shall be conducted on or after the first day the work starts as stated on the permit.

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(3) Completed work inspection. The permittee shall notify the City immediately after completion of work. The City shall inspect the work within ten (10) working days of the permittee's notification. Probationary acceptance shall be made if all work complies with this Article, the Construction and Excavation Standards and any other applicable City regulation, ordinance or resolution. The probationary acceptance shall begin after the inspection has been completed. If all work does not meet the requirements established by the City, written notice will be mailed to the address on the permit listing all items that must be corrected.

(4) Warranty inspection. Approximately thirty (30) days prior to the expiration of the two-year warranty period, the City shall conduct a final inspection of the work. If the work is still satisfactory, the bond or letter of credit shall be returned or allowed to expire.

(b) Upon review of the application for a permit, the City shall determine how many additional inspections, if any, may be required. The total number of required inspections shall be listed on the permit. For a permit which does not include excavation, the City may waive any or all of the above-listed inspections. At any time during the permit period, the City may increase the number of inspections required. The additional fees associated with the inspections shall be paid for within two (2) working days of such change to the permit. (Ord. 10 §1, 2005)

### **Sec. 11-2-150. Time of completion.**

(a) All work covered by the permit shall be completed within the time period stated on the permit, unless an extension has been granted by the City in writing, in which case all work shall be completed within the time period stated in the written extension.

(b) Permits shall be void if work has not commenced within thirty (30) days after issuance, unless an extension has been granted by the City in writing. The permittee shall request such an extension in writing, and the City shall either grant or deny the request within five (5) days of receipt of the request. (Ord. 10 §1, 2005)

### **Sec. 11-2-160. Joint planning and construction.**

(a) Permittees shall make reasonable efforts to attend and participate in meetings of the City, of which the permittee is notified, regarding public right-of-way issues that may impact their facilities, including planning meetings to anticipate joint trenching and boring.

(b) Each permittee owning, operating or installing facilities in public rights-of-way shall meet annually with the City, at the City's request, to discuss the permittee's planned major excavations in the City. As used in this Subsection, the term *planned major excavations* means any major excavations planned by the permittee that will affect any public right-of-way for more than five (5) days per year during the next three (3) years. Between the annual meetings to discuss planned major excavations, the permittee shall use his best efforts to inform the City of any substantial changes in the planned major excavations discussed at the annual meeting.

(c) Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, a permittee shall meet and cooperate with other providers, licensees, permittees and franchisees so as to reduce so far as possible the number of street cuts within the City and the amount of pedestrian and vehicular traffic that is obstructed or impeded. Should two (2) permittees refuse to joint trench or share

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bores or street cuts, the City may require each permittee to submit written evidence detailing why such joint trenching or sharing would be impossible or impractical. Such evidence may include the potential impact of joint trenching or sharing on the timing of the initiation and/or completion of the work. The City shall consider the evidence submitted. Should the permittee fail to provide evidence satisfactory to the City that joint trenching or sharing is impossible or impractical, the City may deny a permit on that basis. (Ord. 10 §1, 2005)

### **Sec. 11-2-170. Locate information.**

(a) Any person owning facilities in the public right-of-way shall provide field-locate information to the City and any other permittee with a valid public right-of-way permit which authorizes locate pothole excavation or other excavation work. Within seven (7) days of receipt of a written request from the City or such a permittee, the facility owner shall field locate facilities in the public right-of-way in which the work will be performed.

(b) For major installations, a permittee shall obtain a public right-of-way permit to locate other existing facilities as provided in the Construction and Excavation Standards. The location of such facilities shall be field-verified in a manner approved by the City.

(c) Before beginning excavation in any public right-of-way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by Section 9-1.5-102 et seq., C.R.S., make inquiries of all ditch companies, utility companies, districts, local governments and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work.

(d) Before beginning excavation in any public right-of-way that has been landscaped and is maintained by a contiguous property owner, the permittee shall contact the property owner to provide him with notice of the planned work in the right-of-way. In all cases, all improvements that are disturbed during the work will be restored to their condition before work commenced. (Ord. 10 §1, 2005)

### **Sec. 11-2-180. Damage to public rights-of-way or other City property.**

It shall be unlawful for any person to cause or allow to be caused any damage to public rights-of-way or other City property, regardless of whether a City permit is required for work performed that contributes to the damage. A property owner that authorizes work for which a permit is not required, together with the person actually causing the damage, shall be responsible for all damages to the public rights-of-way or other City-owned property. The provisions of Section 11-2-270 of this Article shall apply to damages caused by work for which a permit is not required or issued, and any notice to a permittee pursuant to that Section shall be provided to the property owner and/or the person causing the damage. (Ord. 5 §4, 2010)

### **Sec. 11-2-190. Minimal interference with other property.**

(a) Work in the public right-of-way or on or near other public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be located, constructed and maintained in such a manner as not to interfere with sewers, water pipes or any City property, or with any other pipes, wires, conduits, pedestals,

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structures or other facilities that may have been laid in the public rights-of-way by the City or its authority.

(b) Facilities shall not unnecessarily hinder or obstruct the free use of the public rights-of-way or other public property, interfere with the travel and use of the public rights-of-way by the public during the construction, repair, operation or removal thereof, or obstruct or impede traffic.

(c) No permit shall be granted for work in a landscaped median or roadside landscaping unless the applicant demonstrates that his plans, specifications and a proposed schedule of work have been submitted to and approved by the City, special district or other entity responsible for the median or roadside landscaping. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-200. Underground construction and use of poles.**

(a) When required by City ordinance, resolution or regulation or applicable state or federal law, and in locations where all existing facilities are located underground, all of a permittee's facilities shall be installed underground at no cost to the City.

(b) In areas where existing facilities are aboveground, the permittee may install aboveground facilities on existing poles with approval from the owner of that aboveground facility.

(c) For aboveground facilities, a permittee shall use existing poles. If at any time the existing aboveground facilities are converted to underground, the permittee will place his facilities underground at that time and at no cost to the City or property owners that are utilizing those facilities for any services provided by those facilities, subject to the requirements of Section 29-8-101 et seq., C.R.S., as applicable. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-210. Use of trenches and bores by City.**

Should the City desire to place its own facilities in trenches or bores opened by a permittee, the permittee shall cooperate with the City in any construction by the permittee that involves trenching or boring, provided that the City has first notified the permittee in writing that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The permittee shall allow the City to place its facilities in the permittee's trenches and bores, provided that the City incurs any incremental increase in cost of the trenching and boring; the City's installation does not unreasonably delay the permittee's work; and the City's facilities are used solely for noncommercial, City purposes. The City shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores. If requested by the permittee, the City shall have separate access structures and shall not use the permittee's access structures. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-220. Construction and excavation standards.**

(a) Each permittee shall comply with the Construction and Excavation Standards for all work in the public right-of-way, including the location of the work and facilities within the public right-of-way.

(b) Except as otherwise provided in this Article, the permittee shall be fully responsible for the cost and actual performance of all of his work in the public rights-of-way.

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(c) All restoration shall result in a work site condition equal to or better than that which existed prior to the work. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-230. Hours of work.**

(a) To reduce the impact of work within the public right-of-way in and around certain heavily traveled collector streets within the City, work will only be allowed between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday. No work will be allowed on weekends or holidays or at any other time unless directed by the City.

(b) Exemptions for emergency operations. Emergency operations in restricted rights-of-way shall be permitted pursuant to Section 11-2-250 of this Article. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-240. Relocation of facilities.**

(a) If the relocation of any facilities in the public right-of-way becomes necessary to allow the City to make any public use of the public right-of-way, or because of the improvement, repair, construction or maintenance of any public right-of-way, or because of traffic conditions, public safety or installation of any type of public improvement by the City, other public agency or special district, or if the City or local improvement district implements any general program for the undergrounding of such facilities pursuant to Section 29-8-101 et seq., C.R.S., as applicable, the City may request a permittee to relocate facilities within or adjacent to public rights-of-way, either temporarily or permanently. The City shall notify the affected permittee, at least ninety (90) days in advance, except in the case of emergencies, of the reason for the relocation and the projected start date of the project necessitating the relocation. The City shall provide the affected permittee with such notice at least one hundred twenty (120) days in advance if the relocation will be considered a major installation under this Article. The permittee shall thereupon, at his own cost, unless otherwise required by Section 29-8-101 et seq., C.R.S., or when the facility owner by law can pass that cost on to the customer, accomplish the necessary relocation within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date listed in the notice as the proposed start date, or immediately, in the case of emergencies.

(b) Should the permittee fail to perform the relocation, the City may perform such relocation at the permittee's expense, and the permittee shall reimburse the City as provided in Section 11-2-260 of this Article, unless otherwise required by Section 29-8-101 et seq., C.R.S.

(c) Following relocation, the permittee shall, at the permittee's own expense, unless otherwise required by Section 29-8-101, et seq., C.R.S., restore all affected property to, at a minimum, the condition which existed prior to the work. A permittee may request additional time to complete a relocation project, and the City may grant an extension if, in its sole discretion, the extension will not adversely affect the City's project or the public use of the affected public rights-of-way. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-250. Abandonment and removal of facilities.**

(a) Notification. A permittee who intends to discontinue use of any facility within the public right-of-way shall notify the City in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued; a date of discontinuance of use, which date shall not be less than fifteen (15) days from the date such notice is submitted to the City; and the method of

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removal and restoration. The permittee may not remove, destroy or permanently disable any such facilities during said fifteen-day period without written approval of the City. After fifteen (15) days from the date of such notice, the permittee may commence removal and disposal of such facilities as set forth in the notice, as the notice may be modified by the City. The permittee shall complete such removal and disposal within one hundred eighty (180) days, unless additional time is requested from and granted by the City.

(b) Abandonment of facilities in place. Upon prior written approval of the City, a permittee may either:

(1) Abandon the facilities in place and immediately convey full title and ownership of such abandoned facilities to the City. The only consideration for the conveyance shall be the City's permission to abandon the facilities in place. The permittee shall be responsible for all obligations and liabilities until the conveyance to the City is completed.

(2) Abandon the facilities in place, but retain ownership and responsibility for all liabilities associated therewith.

(c) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-260. Emergency procedures.**

(a) Any person maintaining facilities in the public right-of-way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. The person doing the work shall apply to the City for a permit on the first working day after such work has commenced. All emergency work shall require prior telephone notification to the Public Works Department, the Police Department and the appropriate fire protection agency.

(b) If any damage occurs to an underground facility or its protective covering, the contractor or permittee responsible shall notify the facility's owner promptly. When the facility's owner receives a damage notice, the facility's owner shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic or corrosive gas or liquid or endangers life, health or property, the contractor or permittee responsible shall immediately notify the facility's owner and 911 and take immediate action to protect the public and nearby properties. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-270. Reimbursement of City costs.**

(a) The City may make any repairs necessary to eliminate any imminent danger to the public health or safety without notice to any permittee, at the responsible permittee's expense.

(b) For any work not performed by a permittee as directed by the City but not constituting imminent danger to the public health or safety, the City shall provide written notice to the permittee, ordering that the work be corrected within ten (10) days of the date of the notice. If the work is not corrected within the ten-day period, the City may correct the work at the permittee's expense.

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(c) Costs of any work performed by the City pursuant to this Section shall be billed to the permittee. The permittee shall also be responsible for any direct costs incurred by the City. The permittee shall pay all such charges within thirty (30) days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the City may, in addition to taking other collection remedies, seek reimbursement through the performance bond or letter of credit. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the City issue any further permits of any kind to said permittee, until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the permittee and being negotiated in good faith with the City) have been paid in full. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-280. Permit revocation and stop work orders.**

(a) A public right-of-way permit may be revoked or suspended by the City for any of the following:

- (1) Violation of any condition of the permit or any provision of this Article or the Construction and Excavation Standards.
- (2) Violation of any other City ordinance or state law relating to the work.
- (3) Existence of any condition or performance of any act which, in the City's determination, constitutes or causes a condition endangering life or property.

(b) Stop work orders. A stop work order may be issued by the City to any person performing or causing any work to be performed in the public right-of-way for:

- (1) Performing work without a permit except for emergency repairs to existing facilities as provided for in this Article.
- (2) Performing work in violation of the permit, any provision of this Article or any other City resolution, ordinance or regulation, or state law relating to the work.
- (3) Performing any act which, in the City's determination, endangers life or property.

(c) A suspension, revocation or stop work order shall take effect immediately upon delivery of written notice to the person performing the work or to the permittee. If neither the person performing the work nor the permittee can be located on the work site on the day of issuance of the suspension, revocation or stop work order, the suspension, revocation or stop work order shall take effect upon mailing of the written notice via first-class mail, postage prepaid, to the permittee's last known address. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

### **Sec. 11-2-290. Penalties.**

(a) If any person is found guilty of or pleads guilty to a violation of any of the provisions of this Article, he shall be subject to the penalties set forth in Article IV, Chapter 1 of this Code. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.

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(b) In addition to or in lieu of the penalties set forth in Article IV, Chapter 1 of this Code, upon conviction in the Municipal Court of any of the following offenses, the party convicted thereof shall be assessed the following mandatory minimum penalty for each such offense:

(1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the City:

a. In restricted streets (as defined in the City of Cherry Hills Village Transportation System Map) from the hour of 6:30 a.m. through 8:30 a.m., inclusive and from 3:00 p.m. through 6:00 p.m., inclusive, Monday through Friday: one hundred dollars (\$100.00) for each fifteen (15) minutes, or portion thereof, for a maximum of two thousand dollars (\$2,000.00) per day.

b. In restricted streets during any time other than the times specified in Subparagraph a. above, or in local streets at any time: fifty dollars (\$50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of fifteen hundred dollars (\$1,500.00) per day.

(2) For commencing work without a valid permit: five hundred dollars (\$500.00), plus twice the applicable permit fee.

(3) For facilities installed outside of the approved alignment: ten dollars (\$10.00) per linear foot. This penalty shall not be imposed if the facilities are removed and/or relocated to comply with the approved alignment, or the facilities are abandoned pursuant to Subsection 11-2-240(b) of this Article.

(4) For any other violation of any other term of a permit: two hundred fifty dollars (\$250.00) per violation, with no maximum amount.

(c) The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Article, and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit, or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the exercise of one (1) penalty shall not preclude the City from exercising any other penalty. (Ord. 10 §1, 2005; Ord. 5 §4, 2010)

## ARTICLE III

### City Parks and Rights-of-Way

#### Sec. 11-3-10. Definitions.

For the purpose of this Article, *park* means Blackmer Common, Dahlia Hollow Park, John Meade Park, Three Pond Park and Woodie Hollow Park. *Trail* means any City-owned, City-leased or City-maintained bridle trail, bicycle trail, pedestrian trail or recreational easement or area, including but not limited to the Highline Canal trail. (Prior code 8-2-1; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

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### **Sec. 11-3-15. Parks held public trust.**

All parks currently held or acquired by the City shall be held, protected and regulated as park and recreational property and shall be maintained in perpetuity in public trust for the use and benefit of the public. (Ord. 10 §2, 2007)

### **Sec. 11-3-20. Violations of park or trail rules and regulations.**

It is unlawful for any person to fail to observe or refuse to obey any lawful rule or regulation of any sign posted in any City park or on any City trail. (Prior code 8-2-1-1; Ord. 10 §1, 2007)

### **Sec. 11-3-30. Acts and conditions; penalty.**

The acts and conditions or violations of the required provisions set forth in this Article shall subject the offender to be fined as set forth in Section 1-4-20 of this Code. (Prior code 8-2-2; Ord. 9 §1, 2003)

### **Sec. 11-3-40. Unlawful deposits.**

It is unlawful to deposit, throw or cause or permit to be thrown or deposited any offal composed of animal or vegetable substance or both, any dead animal, garbage, refuse, trash, landfill, waste material or other offensive matter or any other substance upon any park or trail or into the water of any stream, canal, pond or other body of water or so near any such place as to be liable to pollute said water or decrease the natural beauty or adversely affect the recreational use thereof. (Prior code 8-2-2-1; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-50. Permit required for public meetings.**

It is unlawful to hold any public meetings in any park or trail within the City unless and until a permit therefor has been issued by the City Manager. (Prior code 8-2-2-2; Ord. 9 §1, 2003; Ord. 10 §1 2007)

### **Sec. 11-3-60. Watercraft restricted; permits.**

It is unlawful to operate or to use in or upon any lake or canal in any park within the City any boat, raft or other floating device without having first obtained a permit for the use of same from the City Manager. (Prior code 8-2-2-3; Ord. 9 §1, 2003)

### **Sec. 11-3-70. Swimming or wading prohibited.**

It is unlawful to swim or wade in, or otherwise bodily to enter the water of, any lake or canal within any park within the City. (Prior code 8-2-2-4; Ord. 9 §1, 2003)

### **Sec. 11-3-80. Operation of motor vehicles.**

It is unlawful to drive any motor vehicle in any park or on any trail within the City. For the purposes of this Section, *motor vehicle* includes any wheeled vehicle propelled wholly or in part by internal combustion or electric engine or motor, except for individual handicapped propulsion devices and any police, fire, ambulance and any other park, fire protection, water or sanitation district, City, Denver Water Department, U.S. Postal Service or other public vehicle; or a vehicle operated for the purpose of

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installing, maintaining or servicing parks or trails or a utility such as a water, sewer or gas line or telephone or electric power line or installation. (Prior code 8-2-2-5; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-90. Parking or camping.**

It is unlawful to park or camp, or to place or erect any tent, table, bench, trailer or any structure, or to burn or cook within a park or trail within the City without first having obtained a permit for the same from the City Manager. (Prior code 8-2-2-6; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-100. Removal or damage of structures, property.**

It is unlawful to remove, deface or otherwise damage any sign, building, equipment, tree, bush, plantings or other property located in any park or trail within the City. (Prior code 8-2-2-7; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-110. Hours of observance.**

It is unlawful for any person other than those authorized by the City Manager to enter or be within any park or trail within the City between the hours of 11:00 p.m. and 6:00 a.m. (Prior code 8-2-2-8; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-120. Alcoholic beverages.**

It is unlawful to consume any alcoholic beverage within any park or trail within the City. (Prior code 8-2-2-9; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-130. Control of dogs.**

It is unlawful for any dog owner, possessor or handler to fail to restrain and control a dog by means of a leash while in any City park or trail. A dog, even while on a leash, is presumed to be out of control if it harasses or inflicts damage or injury by biting or jumping on any person, animal, property or wildlife. (Prior code 8-2-2-10; Ord. 9 §1, 2003; Ord. 10 §1, 2007)

### **Sec. 11-3-140. Bicycle and equestrian safety regulations.**

All bicyclists and equestrians entering any park or trail will be subject to a speed limit of fifteen (15) miles per hour. Bicyclists and equestrians must ride in a safe and controlled manner while in the vicinity of pedestrians, and bicyclists must yield the right-of-way to all equestrians and pedestrians. (Prior code 8-2-2-11; Ord. 3, 1990; Ord. 9 §1, 2003)

## ARTICLE IV

### Local Improvements

#### **Sec. 11-4-10. Local improvements.**

The City shall use the procedures set forth in Title 31, Article 25, Part 5, C.R.S., for notice, the method and time of filing protest and disposition thereof, the method and manner of making local

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improvements, letting contracts therefor, assessing the cost thereof and issuing and paying bonds for costs and expenses relating to the organization of special or local improvement districts and of construction or installation of such improvements within the City. (Prior code 8-3-1; Ord. 13, 1981; Ord. 9 §1, 2003)

### ARTICLE V

#### Vacation of Public Rights-of-Way

##### **Sec. 11-5-10. Purpose.**

The purpose of this Article is to establish a uniform procedure for the vacation of interests in rights-of-way owned or otherwise held by the City and to supplement the procedures for vacation of rights-of-way provided by Title 43, Article 2, Part 3, C.R.S. (Prior code 8-4-1; Ord. 5, 2001)

##### **Sec. 11-5-20. Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated:

*Interested person* means the owner of property contiguous to or served by a right-of-way that is the subject of a petition for vacation submitted in accordance with this Article.

*Petitioner* means an interested person submitting a petition for vacation of a right-of-way as permitted by this Article.

*Right-of-way* includes any platted or designated public street, alley, lane, parkway, avenue, road, easement including utility easements and pedestrian or equestrian trail easements, or other public way, whether or not it has been used as such, owned by the City. (Prior code 8-4-2; Ord. 5, 2001; Ord. 9 §1, 2003)

##### **Sec. 11-5-30. City Council authority.**

(a) The City Council is authorized to vacate all or any portion of a right-of-way in accordance with this Article upon the petition of any interested person or upon the City's own initiative. The vacation of a right-of-way shall be a legislative and discretionary decision of the City Council.

(b) The City Council may impose reasonable conditions upon the vacation of any right-of-way, including but not limited to:

(1) The payment of consideration by the landowners receiving benefit from the vacation;

(2) The approval of a subdivision plat in accordance with Chapter 17 of this Code documenting the vesting of the ownership interests resulting from the vacation of a right-of-way; and/or

(3) The imposition of a deed restriction or other form of covenant upon the vacated right-of-way as may be deemed necessary or desirable by the City Council to protect the public health, safety or welfare.

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(c) The City Council may reserve, except or otherwise create and retain one (1) or more easements within any right-of-way vacated pursuant to this Article. (Prior code 8-4-3; Ord. 5, 2001)

### **Sec. 11-5-40. Petition.**

(a) Preliminary petition for vacation.

(1) Any interested person may submit to the City Manager a written preliminary petition requesting that the City Council consider the vacation of a right-of-way located within the City. At a minimum, the petition shall include the name, address and telephone number of the petitioner, together with a general description or illustration of the right-of-way proposed for vacation and all properties contiguous to or served by such right-of-way. A preliminary petition shall not be required for a City-initiated vacation.

(2) The City Manager shall inform the City Council of the City Manager's receipt of a preliminary petition at a regular meeting of the City Council. The City Council shall, following an administrative review of the preliminary petition, determine whether the requested vacation possesses sufficient merit to justify the petitioner's preparation and submission of a formal petition and the processing of such formal petition in accordance with this Article. The City Council's decision that a preliminary petition lacks sufficient merit to justify further consideration shall constitute a legislative finding that the requested vacation is not in the public interest and that the petition is rejected. The City Council's decision that a preliminary petition possesses sufficient merit to justify further consideration shall only authorize the further processing of a formal petition for vacation; such decision shall not constitute a finding or imply that the vacation will be approved following such further consideration.

(b) Formal petition for vacation.

(1) In the event that the City Council determines that a preliminary petition possesses sufficient merit to justify further consideration, the petitioner may prepare and submit a formal petition for vacation to the City, at the petitioner's cost and expense, containing the following:

a. An application letter signed by the petitioner requesting the City's approval of the right-of-way vacation and generally describing the reasons for the vacation;

b. A nonrefundable application fee of one hundred dollars (\$100.00). In addition, the petitioner shall deposit with the City ten thousand dollars (\$10,000.00) or such other amount determined by the City Manager based upon the City Manager's estimate of the City's cost and expense associated with the processing of the petition. The deposit shall be applied toward the petitioner's payment of the City's planning and engineering review services, attorney review fees, plat recordation fees, appraisal fees and other costs and expenses incurred by the City and made necessary as a result of the City's processing of the petition. The deposit shall be administered in accordance with the provisions of Subsection 17-3-20(b) of this Code;

c. A complete legal description of the right-of-way proposed for vacation;

d. A survey of the right-of-way proposed for vacation and of all property located within two hundred fifty (250) feet of the boundaries of such right-of-way prepared by a Colorado

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licensed land surveyor. The survey shall include a written certification signed by the surveyor certifying to the City the survey's accuracy and conformance with applicable law. Such survey shall illustrate or include a description of:

1. Both the existing right-of-way and the resulting vesting of the ownership of such right-of-way pursuant to Section 11-5-60 below in the event the vacation is approved by the City Council;

2. All easements within the right-of-way and the location of all existing utilities within, above or below the right-of-way; and

3. The location of all physical improvements within the right-of-way and, where applicable, the portion of the right-of-way used by the petitioner, other owners of property served by the right-of-way and the general public; and

e. A current commitment for title insurance ("title commitment") identifying the current ownership interests in the right-of-way proposed for vacation, together with liens, encumbrances and restrictions thereon, if any, prepared by a Colorado title insurance company. The title commitment shall be accompanied by a copy of each recorded lien, encumbrance and restriction identified in the title commitment. The petitioner may be required by the City to obtain a policy of title insurance based on the title commitment as a condition of approval of the requested vacation;

f. A written description, including sketch drawings, of the planned use of the right-of-way proposed for vacation and a description of the means of access to all properties affected by the proposed vacation; and

g. A list of the names and mailing addresses of all owners of property within five hundred (500) feet of the right-of-way proposed for vacation as their names and addresses appear on record with the County Assessor's office. The list shall be accompanied by a statement signed by the petitioner certifying that: 1) the list was prepared not more than thirty (30) days prior to the date of submission of the formal petition to the City; and 2) the list accurately identifies the information concerning ownership available from the County Assessor's office.

(2) The City Manager may commission the preparation by a Colorado licensed real estate appraiser of a written appraisal of the fair-market value of the right-of-way proposed for vacation. The expense of such appraisal shall be paid from the petitioner's deposit required by Subparagraph (1)b above unless otherwise directed by the City Council.

(3) The City Manager or the City Council may modify or waive all or any requirement of a formal petition imposed by Paragraph (1) above and may request additional information deemed necessary by the City to permit the City's thorough review of the merits of the proposed right-of-way vacation.

(4) The City may initiate a petition for vacation by motion or resolution of the City Council. Prior to processing a City-initiated petition for vacation of a right-of-way, the City Council shall consider and decide the applicability of the requirements of a formal petition as provided in

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Paragraph (1) above. A City-initiated petition shall be processed in accordance with Section 11-5-50 below. (Prior code 8-4-4; Ord. 5, 2001; Ord. 9 §1, 2003; Ord. 7 §16, 2004)

### **Sec. 11-5-50. Procedure.**

(a) After the City receives a complete formal petition for vacation of a right-of-way, the City Manager shall schedule a public meeting before the Planning and Zoning Commission to consider the petition. The Planning and Zoning Commission shall provide recommendations to the City Council for action on the proposed vacation and include, where appropriate, any conditions necessary or desirable to protect the public health, safety and welfare. The petitioner shall give notice of the public meeting.

(b) If a right-of-way proposed for vacation affects a trail easement, the Planning and Zoning Commission shall obtain recommendations from the Parks, Trails and Recreation Commission before making recommendations to the City Council. The City Manager shall schedule a public meeting before the Parks, Trails and Recreation Commission to consider the petition. The petitioner shall give notice of the public meeting.

(c) After the Planning and Zoning Commission considers the petition, the City Attorney shall prepare an ordinance to vacate the right-of-way. If the Planning and Zoning Commission recommends approval or conditional approval of the petition, the ordinance shall be in a form consistent with the Planning and Zoning Commission's recommendations.

(d) After the Planning and Zoning Commission has acted on a petition, the City Manager shall schedule the ordinance for first reading before the City Council. If approved on first reading, the ordinance, together with the petition, shall be scheduled for second reading and consideration at a public hearing before the City Council. The petitioner shall give notice of the public hearing.

(e) After the public hearing, the City Council shall reject the ordinance or approve the ordinance with amendments. The City Council may, in its discretion, continue the public hearing and postpone a final decision if it determines that additional information would assist in its deliberations.

(f) No ordinance vacating a right-of-way shall be approved unless the City Council finds the following:

(1) For the vacation of any right-of-way, that the vacation serves the public interest; and

(2) For the vacation of a right-of-way that provides vehicular access to property, that the vacation will not leave any property without an established public road or private access easement connecting with another established public road. (Prior code 8-4-5; Ord. 5, 2001; Ord. 09 §1, 2007)

### **Sec. 11-5-55. Notice.**

(a) The petitioner shall provide notice of any public meeting required by this Article by depositing letters in certified United States mail, at least twenty (20) days before the date of the meeting, addressed to all owners of property identified under Subparagraph 11-5-40(b)(1)g. The letter shall state that the petitioner is requesting the vacation of a right-of-way, the date, time and place of the meeting and describe or illustrate the right-of-way proposed for vacation. The petitioner shall deliver to the City, prior

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to the public meeting, evidence from the United States Postal Service of the certified mailing of the notice letters.

(b) The petitioner shall provide notice of any public hearing required by this Article by the posting of one (1) notice sign in a conspicuous location within the right-of-way described in the petition for vacation at least twenty (20) days before the date of the hearing. The notice sign shall be provided by the City and bear a caption "NOTICE OF PUBLIC HEARING," with each letter of the caption at least two (2) inches in height, shall state the date, time and place of the public hearing, shall state that the petitioner is requesting the City's vacation of a right-of-way and shall describe or illustrate the right-of-way proposed for vacation. The petitioner shall also provide notice of the public hearing by depositing letters in certified United States mail, at least twenty (20) days before the date of the hearing, addressed to all owners of property identified under Subparagraph 11-5-40(b)(1)g. The letter shall state that the petitioner is requesting the vacation of a right-of-way, the date, time and place of the hearing, and describe or illustrate the right-of-way proposed for vacation. The petitioner shall deliver to the City, prior to the public hearing, evidence from the United States Postal Service of the certified mailing of the notice letters. (Ord. 09 §2, 2007)

### **Sec. 11-5-60. Effect of vacation of right-of-way.**

For any right-of-way vacated in accordance with this Article, the ownership of the City's vacated interest in a right-of-way shall vest as follows:

- (1) For a roadway as such term is defined by Section 43-2-301(3), C.R.S., ownership of the City's vacated interest shall vest in accordance with the provisions of Section 43-2-302, C.R.S.; or
- (2) For an easement not within the definition of Section 43-2-301(3), C.R.S., ownership of the City's vacated interest shall vest with the then-current owners of the underlying fee simple estate, as their ownership interests may appear. (Prior code 8-4-6; Ord. 5, 2001)