

## Chapter 19

### STREETS, SIDEWALKS AND OTHER PUBLIC PLACES\*

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\* **Charter References:** General municipal powers, establishment and vacation of streets, alleys, public ways and other public places, and the use, regulation, improvement and control of the surface of such streets, alleys, public ways and other public places, and of the space above and beneath them, § 2.3(f); a plan of streets and alleys within and for a distance of not more than three miles beyond the municipal limits, § 2.3(h).

**Cross References:** Any ordinance levying or imposing any special assessment saved from repeal, § 1-11(a)(10); any ordinance dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street, sidewalk or alley saved from repeal, § 1-11(a)(11); any ordinance establishing the grade of any street or sidewalk saved from repeal, § 1-11(a)(12); buildings and building regulations, ch. 5; environment, ch. 10; floods, ch. 12; land development, ch. 14; loitering, § 15-162; parks and recreation, ch. 16; peddlers and solicitors, ch. 17; telecommunications, ch. 21; traffic and vehicles, ch. 22; utilities, ch. 23; vegetation, ch. 24; waterways, ch. 25; zoning, ch. 26.

**State Law References:** City control of highways, Mich. Const. 1963, art. VII, § 29; liability of local government for injury the result of not keeping highway in reasonable repair, MCL 691.1402, MSA 3.996(102).

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## **ARTICLE I.**

### **IN GENERAL**

#### **Sec. 19-1. Posting handbills, similar materials prohibited.**

No person shall post, paste, nail or paint or in any way attach any placard, poster, handbill, card or advertising matter of any kind, upon any fence, post, wall, tree, pole or upon any other structure in any street, highway, alley or public place in the city.

(Ord. No. 185, § 2.01, 3-15-1979)

**State Law References:** Destruction or injury of trees on public highways, MCL 247.235, MSA 9.355.

#### **Secs. 19-2--19-35. Reserved.**

## **ARTICLE II.**

### **EXCAVATIONS**

#### **DIVISION 1.**

#### **GENERALLY**

#### **Sec. 19-36. Guarding excavations and obstructions.**

The permittee shall erect such fence, railing or barriers about the site of the excavation work as shall prevent danger to persons using the city street or sidewalks, such protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions, and such lights shall also be kept burning at all times when visibility is such that the law requires lighting of motor vehicles. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public.

(Ord. No. 228, § 9.01, 9-20-1984)

**State Law References:** Covering or fencing excavation, MCL 750.493c, MSA 28.761(3).

#### **Sec. 19-37. Duties of police.**

All police officers shall be vigilant in the enforcement of this article, and shall report through proper channels any violations of this article to the city manager on observing or being informed of the opening or excavation in any street and shall require the person making such opening or excavation to exhibit the permit; and if none has been given or if the exhibition is refused, the officer shall, without delay, enforce the provisions of this article.

(Ord. No. 228, § 12.01, 9-20-1984)

#### **Sec. 19-38. Failure to comply with regulations.**

In case any person to whom a permit has been granted shall fail to comply with the terms of the permit,

such permit shall become null and void; and any and all expense which may be incurred by the city in refilling the excavation or restoring the street or sidewalk to its proper condition shall be borne by the permittee. If the person to whom a permit is granted shall fail to leave the street or sidewalk in as good condition as it was previous to any work being done under the permit, any and all expense which may be incurred by the city in restoring the street to its proper condition shall be borne by the permittee. Violation of this article is a civil infraction and is subject to the provisions of section 1-7. A separate offense shall be deemed committed upon each day that a violation occurs or continues.  
(Ord. No. 228, § 11.01, 9-20-1984)

**Secs. 19-39--19-60. Reserved.**

**DIVISION 2.**

**PERMIT**

**Sec. 19-61. Required.**

Unless acting under a contract with the city, it shall be unlawful for any person, other than a duly authorized city official or employee in the course of his employment, to make or cause or permit to be made any excavation or opening in or under the surface or pavement of any street, alley, sidewalk or other public place within the limits of the city without first having obtained and having in force a permit as provided in this division. In case of an emergency arising out of office hours, at night, Sundays or legal holidays, when an immediate excavation is necessary for the protection of public or private property, the necessary excavation may be made upon the express condition that an application be made in the manner provided in this division, on or before 12:00 noon of the next following business day.  
(Ord. No. 228, § 2.01, 9-20-1984)

**Sec. 19-62. Application.**

- (a) Any person desiring to procure a specific permit as provided in this division shall file with the city manager at least 72 hours before the time proposed to begin such work a written application upon a blank form prepared and provided by the city.
- (b) Such application shall state the:
  - (1) Name and address of the applicant;
  - (2) Name of the street, alley, sidewalk or public place in or under which it is desired to make the excavation or opening;
  - (3) Kind of pavement or sidewalk;
  - (4) Purpose, size and location, as near as can be determined, of the proposed excavation or opening; the name, address, lot and subdivision of the person for whose benefit the work is to be done; and

- (5) Time during which it is desired such opening is to be permitted.

The application shall be accompanied by a plat or pencil tracing or sketch showing the location, character and dimensions of the proposed excavation or opening for the installation of new work, or the location and character of the alterations involving the location of pipes, poles, conduits, wires or other conductors. However, any public utility operating in the state under the jurisdiction and control of the state public service commission, upon written application and upon filing an annual bond and the payment of an annual fee as provided in this division shall be granted a permit under the provisions of this division for the installation, maintenance or repair of any public utility installations in the public street, good for a period of one year from the date of issuance. Every such corporation performing any construction work under such permit, at the end of each week or whenever required by the city manager, shall file a written report showing all construction work performed by it within the city during such week under the provisions of such permit. Such annual permit shall not authorize any opening in any concrete, asphalt, brick or other pavement without the special permission of the city manager, in each case.

(Ord. No. 228, § 3.01, 9-20-1984)

### **Sec. 19-63. Deposit required.**

Before a permit under this division shall be issued, the city manager shall require of the applicant a deposit of such sum of money as shall be deemed by the city manager sufficient to cover and pay all the expenses for furnishing such material, doing such work, making such inspection, and taking means as shall be required properly to restore and secure against settlement of the street and sidewalk, pavement, curb and gutter necessary to be replaced in consequence of making such excavation, opening or disturbance. The sum of money so collected and deposited shall be paid into the city treasury by the city clerk and be used solely for the purpose of paying for the repairing and replacing of any such pavement or surface broken into or disturbed for any of the purposes mentioned in this article. After completion of the work to the satisfaction of the city engineer, he shall determine the cost of the work and the amount of any surplus remaining from the amount deposited in such case; and such surplus shall thereupon be returned to the proper claimant. If for any reason the amount of such deposit shall have been insufficient to cover the cost of such work or if any damage shall have been done not contemplated in the original estimate which shall have caused increased expenditure, the amounts of such deficiency or damage shall be collected from the person to whom the permit was issued. No further permits shall be granted to such person or any other person on his behalf until the amount of such deficiency or damage shall have been paid. However, any public utility to which a yearly or specific permit has been issued under the provisions of this division, in lieu of making such deposit, may deposit with the city manager a purchase order upon such company in favor of the city, for the payment by such company to the city, when determined, of all costs and expenses provided in this section.

(Ord. No. 228, § 4.01, 9-20-1984)

### **Sec. 19-64. Granting.**

The city manager, upon filing of the application and the payment of a permit fee set from time to time and the deposit required in this division, may, in his discretion, issue a permit which shall state the name and address of the applicant; the locations, nature, purpose and extent of the excavation or opening; the kind of pavement to be disturbed; the amount of the deposit paid by the applicant; and the dates of granting and expiration of the permit. All permits shall be consecutively numbered and shall be made in duplicate, one copy to be given to the applicant and one copy to be delivered to the city manager. Such permit shall at all times be

prominently posted on the job. This section shall not apply where inconsistent with the permit fee provisions of the ordinances regulating sewers and drains, plumbing and sidewalks, nor to a public utility to which an annual permit shall have been issued under the provisions of this division. The annual fee for a yearly permit issued hereunder shall be set from time to time, payable in advance.

(Ord. No. 228, § 5.01, 9-20-1984)

### **Sec. 19-65. Record of permits.**

The city manager shall prepare and keep a record of permits issued, numbered in the order in which they were issued, name and address of person to whom issued, location, nature, purpose and extent of excavation or opening, time in which street is to be restored, permit fee and amount of deposit paid, and such other and further items as will enable anyone to obtain a complete history of each permit from its issuance to its termination. The copies of the permit kept by the city manager, properly bound, may be used as a basis for such record.

(Ord. No. 228, § 6.01, 9-20-1984)

### **Sec. 19-66. Requirements for work under permit.**

(a) All work under a permit shall be under the supervision of the city manager and in conformity with the following requirement:

- (1) All work shall be pursued diligently and continuously until completed. When in consequence of the weather or any process of the law, or any other unexpected obstacle, the work shall be stopped for so long a time that public travel shall be unreasonably obstructed, the excavation or opening shall be refilled and repaved as if the work contemplated in a permit were actually completed.
- (2) In no case shall a person open or remove a greater area of surface and at no other location than that specified in the original or supplementary application; however, at the time of actually doing the work, if it shall be necessary to open or remove a greater area of surface than originally applied for the applicant shall first notify and procure the consent of the city manager to do so upon the express condition that he shall and will before noon of the following business day file a supplementary permit for the making of an additional excavation.
- (3) All work shall be performed in such a way as to cause a minimum of inconvenience and restriction to both pedestrian and vehicular traffic. No dirt or other materials shall be placed on sidewalks. Not more than half the width of the street shall be opened at one time; the other half shall remain untouched for the accommodation of traffic until the first half is restored for safe use. All work shall be prosecuted so as not to interfere with any access to fire houses, fire hydrants and United States mail boxes.
- (4) The person to whom a permit is granted shall at his expense sustain, secure and protect the pipes, poles, mains or conduits of any corporation from injury and replace and pack the earth wherever it shall have been removed, loosened or disturbed, under or around them, so that they shall be well and substantially supported. If any person shall fail to sustain, secure or protect such pipes, poles, mains or conduits from injury or to replace and pack the earth under or around them, as the provisions of this section require, the work may be done by the corporation to whom the

materials may belong; and the cost and all damages sustained by such corporation shall be paid by such person; and in default thereof, such corporation may maintain an action against him.

**State Law References:** Protection of facilities during construction activities, MCL 460.701 et seq., MSA 22.190(1) et seq.

- (5) Paving materials and earth or gravel removed must be kept separate, and such materials capable of being reused shall be preserved. The width of the excavation or opening shall be used when deemed necessary by the city manager. At the direction of the city manager, sheeting and bracing may be cut off one foot below the surface pavement and left in place when the opening is refilled. The street, alley, sidewalk or other public place must be opened in a manner which will cause the least inconvenience to the public and admit of the uninterrupted passage of water along the gutter. Excavations shall be made by open cut method. No tunneling shall be done except as authorized by the city manager and then only under such conditions as he may impose. In case of slips or slides of the sides of the excavation, they will be trimmed to solid earth and the top surface cut back to the limit of the excavation before any backfilling is commenced.
- (6) Upon the completion of the work, all equipment, materials, tools, tool boxes, temporary buildings, excavated materials and such, shall be promptly removed from the street, alley or public place. The surface of the street, sidewalk, lawn and private property shall be cleaned, leaving them in as neat, clear and usable condition as originally found. Trees damaged or removed shall be replaced. Lawns damaged by the work shall be repaired to the satisfaction of the city manager.
- (7) All excavations shall be backfilled in accordance with city specifications and must be inspected by the city engineer before the cut is graveled or paved as the case may be.
- (8)
  - a. The permittee shall restore the surface of all streets, broken into or damaged as a result of the excavation work, to its original condition in accordance with specifications of the city engineer. The permittee may be required to place a temporary surface over openings made in paved traffic lanes. Except when the surface is to be replaced before the opening of the cut to traffic, the fill above the bottom of the paving slab shall be made with suitable material well tamped into place; and this fill shall be topped with a minimum of at least one inch of bituminous mixture which is suitable to maintain the opening in good condition until permanent restoration can be made. The crown of the temporary restoration shall not exceed one inch above the adjoining pavement. The permittee shall exercise special care in making such temporary restorations and must maintain such restorations in safe traveling condition until such time as permanent restorations are made. The asphalt which is used shall be in accordance with the specifications of the city engineer. If in the judgment of the city engineer it is not expedient to replace the surface over any cut or excavation made in the street upon completion of the work allowed under such permit by reason of the looseness of the earth or weather conditions, he may direct the permittee to lay a temporary surface of suitable material designed by him over such cut or excavation to remain until such time as the repair of the original surface may be properly made.
  - b. Permanent restoration of the street shall be made by the permittee in strict accordance with the specifications prescribed by the city engineer to restore the street to its original and proper condition, or as near as may be.

c. Acceptance or approval of any excavation work by the city engineer shall not prevent the city from asserting a claim against the permittee and his surety under surety bond for incomplete or defective work if discovered within 24 months from the completion of the excavation work. The city engineer's presence during the performance of any excavation work shall not relieve the permittee of his responsibility under this article.

- (9) If any part of a slab or sidewalk is cracked or damaged in any way, the entire slab shall be replaced.
- (10) If it is necessary to cut a concrete pavement throughout its entire width, the entire slab, so cut, shall be replaced.
- (11) If the permittee shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit, or shall otherwise have failed to complete the excavation work covered by such permit, the city engineer, if he deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost and 25 percent of such cost in addition for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as provided in this article, and the city shall also enforce its rights under the permittee's surety bond provided.

(b) It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition. (Ord. No. 228, § 10.01, 9-20-1984)

**Secs. 19-67--19-90. Reserved.**

### **DIVISION 3.**

#### **IMPROVED STREETS, SIDEWALKS AND PUBLIC PLACES**

##### **Sec. 19-91. Openings in paved streets.**

It shall be unlawful for any person to make or permit or cause to be made any excavation or opening in or under a pavement authorized after this article becomes effective for any purpose whatsoever, within a period of two years from and after the time of construction of any such paving or resurfacing. The city manager may, on account of an emergency affecting public health or public safety and public welfare, and which could not have been foreseen, suspend the operation of this two-year rule; and in such cases, upon the granting of the permit, such work may be performed within the two-year period; but the mere failure or neglect of the applicant or other persons to do or have the work done before such two-year period, or the convenience, by reason of such failure or neglect to property along the particular street or in the particular public place described in the application shall not be considered to be an emergency. The two-year period shall be deemed to begin at the time of the completion and final acceptance by the city of any such construction, paving, resurfacing or repaving.

(Ord. No. 228, § 7.01, 9-20-1984)

**Sec. 19-92. Openings in streets or other public places prior to scheduled improvement.**

Before any street, alley, sidewalk or other public place shall be paved, resurfaced, repaved, widened or otherwise improved, notice shall be furnished to all public service corporations and similar persons concerned. Prior to any excavation or treatment of existing surfaces by the city, state or their contractor, such corporation or other persons shall lay all wires, pipes, poles, cables, conduits and the like which may be deemed necessary or contemplated by the utility during the life of the improvement. On the recommendation of the city manager the city council may, by resolution, set a reasonable time limit prior to which all work on all such wires, pipes, poles, cables, conduits and the like in the street, alley, sidewalk or other public places to be improved must be completed. Any person who, without the written consent of the city manager, continues to do such work after the expiration of the time set shall be subject to the penalties provided in this article. Failure of the city to give or receive notice to or from specific persons shall not affect the other provisions of this article or the penalties imposed by this article, and shall not be deemed to create an emergency within the meaning of section 19-91.

(Ord. No. 228, § 8.01, 9-20-1984)

**Secs. 19-93--19-125. Reserved.**

**ARTICLE III.**

**CULVERTS, DITCHES AND DRIVEWAYS\***

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\* **State Law References:** Driveways, MCL 247.321 et seq., MSA 9.140(21) et seq.

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**DIVISION 1.**

**GENERALLY**

**Sec. 19-126. Location.**

Culverts, ditches, driveways and all other improvements may be located only upon approval by the city and such other county and state authorities as required by law. However, such approval shall not be given where such facilities will cause an unreasonable increase in traffic hazards or violate clear vision zone requirements.

(Ord. No. 309, § 2.01, 6-20-1996)

**Sec. 19-127. Fees.**

The owner of the property shall be responsible for payment of the permit fees as prescribed by the city council.

(Ord. No. 309, § 4.01, 6-20-1996)

**Sec. 19-128. Penalties.**

Any person violating any of the provisions of this article shall be responsible for a civil infraction and

shall be subject to the fines and penalties of section 1-7. A separate offense shall be deemed committed upon each day that a violation occurs or continues.  
(Ord. No. 309, § 5.01, 6-20-1996)

**Secs. 19-129--19-150. Reserved.**

## **DIVISION 2.**

### **PERMIT**

**Sec. 19-151. Required.**

(a) No person shall dig or tear up any pavement, sidewalk or crosswalk, or dig and/or fill any holes, ditch, drain or sewer, or work within a city right-of-way, street, alley or public property without first obtaining a permit from the city.

(b) It shall be the duty of such person, upon being granted a permit, to maintain all traffic control devices and to immediately refill and restore, resurface or repave such street, alley or other public property so that they will be in as good condition as before. It shall further be the duty of such person to erect and maintain during the progress of the work a good and sufficient barrier around any cut, trench or excavation in such manner as to prevent accidents, and to place and keep upon such barrier suitable and sufficient colored lights during the night.

(c) A separate permit must be obtained for each occasion; and such permit shall specify the location of the cut, trench or excavation to be made.

(d) Applications for permits required by this section shall be made upon forms prescribed by the city. Such permits may be revoked by the city for failure to comply with this article, including the rules and regulations adopted pursuant to this article. Application for a permit under the provisions of this article shall be deemed as an agreement by the applicant to complete all work according to submitted and approved drawings, to promptly complete any work within a time limit within which the proposed work will be completed, observe all pertinent laws and regulations of the city in connection with such work, repair all damage done to the public right-of-way, and protect and save harmless the city from all damages or actions at law that may arise or may be brought on account of injury to persons or property resulting from the work done under the permit or in connection with the permit.  
(Ord. No. 309, § 1.01, 6-20-1996)

**Secs. 19-152--19-175. Reserved.**

**DIVISION 3.**  
**CONSTRUCTION**

**Sec. 19-176. Regulations.**

- (a) The following standards shall apply to residential construction that consists of one or more of the following; new construction of a single family home, and/or alterations to an existing house of a value of 40% or greater of the taxable value.
- (b) The entire driveway and parking area shall consist of an improved surface of concrete, asphalt or brick pavers.
- (c) Driveways may be no wider than 12 feet with the exception of that portion of a driveway within 30 feet of the front of a garage and directly in front of the garage doors. The maximum driveway width in front of the garage shall not exceed 24 feet.
- (d) All driveways consisting of an unapproved surface, shall conform to the provisions of this Section within one (1) year of the date this Ordinance takes effect.
- (e) The minimum distance between any drive approach and a public crosswalk shall be five feet.
- (f) The minimum distance between drive approaches, except those serving residential property, shall be 25 feet.
- (g) Driveway aprons must be constructed of either concrete, asphalt or other hard surfaces.
- (h) Driveway aprons shall be suitable for the width of the driveway, with the street end of the driveway at least three feet wider than the sidewalk end. No ribbon driveway aprons shall be permitted.
- (i) Concrete driveway aprons shall be at least five inches thick. Asphalt driveway aprons shall consist of a subbase of at least four inches of gravel or crushed limestone, and the asphalt applied shall be at least two inches thick.
- (j) Culverts shall be 12-inches minimum diameter or oval nine inches by 15 inches and be of either corrugated metal or corrugated plastic material with watertight joints.
- (k) There shall be a minimum of one foot of cover over the culvert unless otherwise approved by the city.
- (l) All ditching shall be constructed as to be mowable and have a positive minimum slope of 0.20 percent unless otherwise approved by the city.
- (m) Location and elevation of ditching must be approved by the city prior to construction.

(n) Sidewalks crossing drives shall be flat level and match side to side.  
(Ord. No. 309, § 3.01, 6-20-1996, Ord. No. 439, 08-23-2012)

**Secs. 19-177--19-210. Reserved.**

#### **ARTICLE IV.**

#### **SNOW AND ICE REMOVAL\***

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\* **Charter References:** General municipal powers, compelling of owners or occupants of real property within the city to keep sidewalks abutting upon their property clear from ice, snow or other obstructions, and if the owner or occupant fails to comply with such requirements, to remove such snow, ice or other obstructions and assess the cost against the abutting property in accordance with section 14.17 of this Charter, § 2.3(v).

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#### **Sec. 19-211. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Roadway* means that portion of a street or alleyway improved, designed or ordinarily used for vehicular travel exclusive of the berm or shoulder.

*Sidewalk* means that portion of a street between the curblines or the lateral lines of a roadway and the adjacent paved property lines intended for the use of pedestrians.

*Street* means the entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public for vehicular travel.

(Ord. No. 210, § 1.01, 8-19-1982)

**Cross References:** Definitions generally, § 1-2.

#### **Sec. 19-212. Required.**

No person shall permit any snow or ice to remain on the sidewalks in the front, rear or sides of any house, premises, building or lot owned, occupied or controlled by him, and shall clear all ice and snow from sidewalks adjoining such lot or premises within 24 hours after the end of snowfall. When any ice shall form on any sidewalk, that person shall immediately remove the ice. Rock salt, sand or sifted coal is to be spread upon the ice in such manner and in such quantity as to prevent the sidewalk from being slippery and dangerous to pedestrians; and that person shall remove the ice as soon thereafter as shall be possible.

(Ord. No. 210, § 2.01, 8-19-1982)

#### **Sec. 19-213. Enforcement.**

It shall be the duty of the city manager to enforce the provisions of this article.

(Ord. No. 210, § 3.01, 8-19-1982; Ord. No. 300, § 3.01, 7-20-1995)

**Sec. 19-214. Failure to clear.**

If any person shall neglect or fail to clear ice or snow from the sidewalk adjoining his premises within the time limited, or shall otherwise permit ice or snow to accumulate on such sidewalk, he shall be guilty of a violation of this article; and in addition, the city manager may cause the sidewalk to be cleared as soon as practicable after such failure; and the expense of removal shall become a debt to the city from the occupant or owner of such premises and shall be collected as any other debt to the city.  
(Ord. No. 210, § 4.01, 8-19-1982)

**Sec. 19-215. Depositing of snow on public ways.**

No person shall plow, shovel or otherwise deposit snow or ice or cause snow or ice to be plowed, shoveled or otherwise deposited from private property or driveway approach between the sidewalk and gutter line upon any street or alley pavement, sidewalk or other public way in the city. No person shall plow, shovel or otherwise deposit snow or ice, or cause snow or ice to be plowed, shoveled or otherwise deposited any closer than four feet from any corner or cross street and no higher than three feet.  
(Ord. No. 210, § 5.01, 8-19-1982)

**Sec. 19-216. Waivers.**

The elderly and disabled persons who have been assessed charges for removal of the ice and snow by the city may petition the city clerk for a waiver of those fees; and upon the recommendation of the city council, the city manager may waive the payment of such fees; not to exceed \$200.00 in any one snow and ice season. A petition may not be a waiver on a vacant lot, parcel of land or a rental piece of property.  
(Ord. No. 210, § 7.01, 8-19-1982)

**Sec. 19-217. Penalties.**

Any person who shall violate a provision of this article shall be responsible for a civil infraction and shall be subject to the fines and penalties of section 1-7.  
(Ord. No. 210, § 6.01, 8-19-1982; Ord. No. 300, § 6.01, 7-20-1995)

**Secs. 19-218--19-230. Reserved.**

**ARTICLE V.**

**RIGHT-OF-WAY MANAGEMENT**

**DIVISION 1.**

**GENERALLY**

**Sec. 19-231. Short title.**

This article shall be known and may be cited as the "City of Keego Harbor Right-of-Way Management Ordinance."

(Ord. No. 363, § 1.01.01, 9-21-2000)

**Sec. 9-232. Purpose; legislative findings.**

(1) Pursuant to Section 29 of Article 7 of the Michigan Constitution of 1963, and other applicable state and federal legislation, including MCL 247.183, the City of Keego Harbor has the authority to exercise reasonable control over its highways, streets, alleys and public places. The City of Keego Harbor finds that, in the furtherance of control and to ensure and protect the public health, safety and welfare, it is appropriate for the city to monitor, review and approve requests by persons and other entities seeking to disrupt and/or use and/or occupy the city's rights-of-way, easements and public places.

(2) This article is further intended to minimize the disruption, disturbance and/or damage to the city's rights-of-way, easements and public places, and also to exercise reasonable control over, and monitor the use of the same, as well as to maintain aesthetic, quality, and property values by requiring those parties or entities who seek to disrupt the city's rights-of-way, easements and public places, and those parties who seek to use the city's rights-of-way, easements and/or public places by constructing, installing, locating, operating, using and/or maintaining improvements, including telecommunications, gas and/or electric transmission systems therein, to obtain a disruption permit and/or a use permit and pay fair and reasonable permit fees.

(3) The city further finds that requiring the payment of the permit fees will assist in protecting the city's interests in its rights-of-way, easements and public places by allowing the city to cover the fixed and variable costs of maintaining, monitoring, and ensuring quality control with regard to its rights-of-way, easements and/or public places.

(Ord. No. 363, § 1.01.02, 9-21-2000)

**Sec. 19-233. Definitions.**

The following words, terms and phrases when used in this article shall have the meanings ascribed to them as follows:

*Appliance* means any sanitary or storm sewer, main, pipe, catch basin or any other structure or instrumentality used for the accumulation or transportation of water, sewage runoff, sewage, liquid or gas.

*City public right-of-way* means any and all public rights-of-way, streets, highways, roads, sidewalks, alleys, thoroughfares, public easements and public places located within the city, including, but not limited to, rights-of-way, public easements and public places within and/or under the jurisdiction of the city, as well as the curbs, shoulders, landscaped areas and/or other areas incidental and/or appurtenant thereto.

*Conduit* shall include any overhead or underground cable, wire and/or a combination thereof, for the transmission of electrical energy, telephone service, telecommunications services and/or the transmission of other signals, including service connections and any other item protecting said cable or wire, and other appurtenant devices used in connection therewith.

*Disruption* means a physical change, modification, alteration, disturbance, injury and/or damage to the city's right-of-way, including, but not limited to, construction, installation, location, maintenance, modification, alteration, replacement, and/or repair of improvements in the city's right-of-way.

*Disruption permit* means a nonexclusive limited permit issued by the city to a person and/or entity pursuant to the terms and provisions of this article for the purpose of allowing a person and/or entity to undertake an activity which will result in disruption to the city's right-of-way.

*Electric transmission* shall mean and include the, transmission and/or distribution of electricity for sale to persons or entities intending to further transmit and/or distribute, or to persons or entities who are end users.

*Franchise* is a nonexclusive limited authorization to transact, conduct and/or operate a use in the city, including, but not limited to, the operation and/or use of improvements in the city's right-of-way, which authorization has, prior to the date of enactment of this article, been awarded by the city to the grantee by an article and confirmed by a contract between the grantee and the city, and the term of which has not yet expired.

*Grantee* means the holder of a valid and effective franchise granted by the city.

*Improvement* shall mean any appliance, conduit, facility, pipes, poles, structures, wires, cables, fibers, buildings and/or any other man-made object and/or item, including, but not limited to, telecommunications system facilities, gas and/or electric transmission facilities, and other facilities.

*Ordinances* mean all laws, codes and regulations duly enacted and adopted by the City of Keego Harbor.

*Permittee* means a person who has been issued a disruption and/or a use permit pursuant to the terms and provisions of this article.

*Person* means a natural person, company, corporation, partnership, joint venture, voluntary association, organization or other legal entity.

*Public easement* shall mean any easement which has been granted and/or dedicated to the city and/or dedicated to public use, including, but not limited to, road and/or right-of-way easements, utility easements, water main and sewer line easements, access easements, drainage easements, recreational and/or conservation easements.

*Public place* shall mean any area owned, under the jurisdiction of and/or controlled by the city.

*Street* means the paved or designated area for vehicular travel within the right-of-way, and the word "street" shall be synonymous with the words "highway" and/or "road."

*Telecommunications provider* means a person who provides telecommunications services.

*Telecommunications services* means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and other associated and similar usages. Telecommunications services shall not include one-way transmission to subscribers of video programming or other programming services.

*Telecommunication system* means conduit, improvements and/or items which are designed and/or used to provide telecommunications services.

*Use permit* means a nonexclusive limited permit issued by the city to a person pursuant to the terms and provisions of this article to allow persons to use and/or occupy the city's right-of-way for the purpose of operating and/or using an improvement therein.  
(Ord. No. 363, § 1.01.03, 9-21-2000)

**Secs. 19-233--19-240. Reserved.**

## **DIVISION 2.**

### **DISRUPTION OF CITY RIGHTS-OF-WAY**

#### **Sec. 19-241. Disruption of right-of-way.**

(1) *Generally.* Except as otherwise provided herein, no person shall undertake and/or perform any activity which causes and/or results in any disruption to any city right-of-way unless a disruption permit is first obtain from the city and the activity is performed in accordance with the disruption permit and in the manner provided for in this article. No person shall place any improvement or obstruction in any city right-of-way, except under the conditions permitted in this article.

(2) *Exceptions.* In the event of a disruption emergency, including, but not limited to, a natural disaster, war and/or severe weather condition a person and/or a permittee may disrupt the city's right-of-way without first receiving a disruption permit from the city, provided that the city manager and/or his designee has approved the emergency disruption before the emergency disruption takes place. Moreover, this section shall not prohibit:

- (a) Those temporary obstructions which are incidental to the expeditious movement of articles and things to and from abutting premises;
- (b) The lawful operation and parking of vehicles within the part of the city's right-of-way;
- (c) The lawful and customary use of property by adjoining homeowners for such things as the installation of a mail box and customary landscaping, provided, such activities may not undermine public use or improvement needs, and, provided further that, any applicable permits or approvals must be obtained from other governmental agencies having jurisdiction, and, undertaking such activities in the right-of-way shall be at the owners risk in the event the area in question is needed for public use; and
- (d) A property owner desiring to make use of an adjoining right-of-way may make application to the city council for an exemption not specifically mentioned above, which may be granted with or without conditions.

(3) *Violation.* Failure to obtain a disruption permit under this section shall constitute a violation of this article and shall subject the violating person to the penalties provided for in this article. A person who violates this section shall pay the required disruption permit fee, as well as an additional charge to be established by resolution of the city council for that period of time that the person did not have a valid

disruption permit pursuant to this article.  
(Ord. No. 363, § 1.02.01, 9-21-2000)

**Sec. 19-242. Permit application procedures.**

(1) A person that wants to undertake and/or perform any activity that causes and/or results in any disruption to the city's rights-of-way shall apply to the city for a disruption permit pursuant to this section. Every applicant must complete and file four sets of an application with the city building official's office on forms that will be provided by the city building official.

(2) At the time of filing an application, the applicant must pay to the city treasurer a nonrefundable application fee, with the amount of the application fee to be established by resolution of the city council in an amount necessary to reimburse the city for the costs in reviewing, processing, investigating, granting and/or denying the disruption permit.

(3) The applicant's application for a disruption permit shall include, without limitation, the following information:

- (a) The name, and address of the applicant in the case of a natural person, and if the applicant is not a natural person, and is not a publicly held corporation, the names and addresses of each of its officers, directors and partners, as well as the names and addresses of those stockholders holding more than a ten percent interest in the stock of the entity.
- (b) The name, phone number, and address of the person who will serve as the proposed contact person for the applicant, and, if different, the resident agent for accepting service of process if the applicant is a corporation or other person required to have a resident agent, and the address of the person's principal business office and headquarters.
- (c) The character of the business the applicant engages in and the length of time that the applicant has been engaged in the business of that character and where said business has been conducted.
- (d) A statement, description and plans showing and detailing the existing improvements located in the right-of-way, trees that may have to be removed, and the proposed disruption to the right-of-way, including, but not limited to, a statement, description and plans of any construction, installation, location, maintenance and/or repairs of improvements in the city right-of-ways, with a detailed description of the exact type, kind and amount of the construction, installation, location, maintenance and/or repair of improvements. Plans shall be prepared by a registered land surveyor or engineer.
- (e) Detailed map and plans showing those city rights-of-way that the applicant proposes to disrupt, and the map and plans shall clearly designate the exact location of the proposed disruption and shall designate whether the disruption will be underground and/or aboveground.
- (f) A schedule and timetable for the disruption activities, including commencement and completion dates for the disruption activities.

- (g) A detailed description of the services to be provided, and the location of known and projected customers, i.e., persons to be served.
  - (h) A detailed description of the method by which disputes between and among all relevant persons involved in the process of providing the product or service, and the ultimate consumption thereof, so as to avoid an interruption in providing the product or service.
- (4) An application shall not be accepted for filing by the city building official unless the application is complete, the disruption application and permit fee has been paid and the application contains all of the information required by this article.
- (5) Except as otherwise provided in this article, the city building official shall approve or deny a disruption permit within 90 days from the date the applicant files a completed application for disruption permit with the city building official's office.
- (a) Within 60 days after the date that the applicant files with the city building official a complete application, the city shall provide public notice of the application, which shall be published in a newspaper of general circulation within the city. The notice shall be published not less than 14 days before the day on which the permit is issued.
  - (b) After the public notice, the city building official shall within 90 days from the filing of the application approve and/or deny the application, shall not unreasonably deny an application for a permit.
  - (c) The 90-day time requirement for the city building official to make a decision from the date that the applicant files a completed application, as well as the 60-day time period for public notice and the 30-day period for making a decision after the public notice may be waived and/or extended by both parties if they agree to waive said time periods in writing.
- (6) The city building official may impose conditions on any disruption permit it approves, which conditions shall be limited to the applicant's disruption activities and shall be necessary to ensure and protect the public health, safety and welfare. The city building official may require as a condition of the permit that a bond, in the form of a letter of credit or cash escrow, be posted by the applicant, which bond shall not exceed the reasonable costs to ensure that the city's rights-of-way that are to be disrupted by the applicant are returned and restored to their original condition after the applicant's disruption of the right-of-way.  
(Ord. No. 363, § 1.02.02, 9-21-2000)

### **Sec. 19-243. Disruption permit fee.**

In addition to the nonrefundable application fee set forth in this article, and any other applicable fees for permits or approvals required by city ordinances and/or other applicable laws, the permittee shall pay a disruption permit fee in an amount which will cover all of the city's administrative costs, inspection costs, consulting costs, plan review costs, monitoring costs and all other costs incurred by the city in conjunction with the permittee's disruption of the city right-of-way. At the time the city issues the disruption permit to the permittee, the permittee shall immediately pay to the city an estimated disruption permit fee in an amount that the city has estimated that its administrative costs, inspection costs, consulting costs, plan review costs,

monitoring costs and all other costs in conjunction with the disruption are likely to be, and upon completion of the disruption activities, the permittee shall pay to the city any costs incurred in conjunction with the disruption activities that are over and above the amount paid to the city by the permittee as estimated disruption permit costs. The city shall reimburse to the permittee any excess funds over the amount incurred.  
(Ord. No. 363, § 1.02.03, 9-21-2000)

#### **Sec. 19-244. Disruption permit term and extension.**

(1) The disruption permit granted to the permittee by the city shall be for a specified time period established by the city building official after taking into consideration the information in the permittee's disruption permit application.

(2) Prior to the expiration of the term of the disruption permit, a permittee may apply to the city building official for an extension of the permit, which shall be granted by the city building official if the permittee demonstrates a substantial hardship for why the disruption activities could not be completed during the term initially established for the disruption permit by the city building official. For purposes of seeking an extension of its disruption permit, the applicant, instead of completing the application required by this article, may complete an abbreviated application entitled "Disruption Permit Extension Application" which shall be available from the city building official, and shall pay an extension application fee to the treasurer in an amount established by resolution of the city council. The city shall have the right to impose conditions on those disruption permit extensions.  
(Ord. No. 363, § 1.02.04, 9-21-2000)

#### **Sec. 19-245. Permit terms and conditions.**

(1) *Nonexclusive permit.* A disruption permit granted by the city to a permittee shall be nonexclusive and shall not restrict or prevent the city from at any time approving additional permits to other persons for the same city right-of-way, and the granting of a disruption permit does not establish any priority for the disruption or use of a city right-of-way.

(2) *Compliance with permit/ordinances.* A permittee shall strictly comply with all of the terms and conditions of the disruption permit issued by the city to the permittee, as well as comply with all city ordinances, codes and applicable statutes, laws and other legal requirements.

(3) *Building permits/other permits and approvals.* In addition to the disruption permit required by this division, a permittee shall not commence construction on, across and/or under any city right-of-way without first obtaining a building permit as required by the city and paying the required building permit fees, and, further, a permittee shall not disrupt any city right-of-way without first obtaining all other permits and approvals and paying all other applicable fees that are required by ordinance, code and/or statute.

(4) *Transfer/Assignment.* A permittee shall not transfer, convey and/or assign any of the rights/privileges granted to it by the city in its disruption permit:

- (a) In whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, substantial change in the ownership or control of the permittee's business, or by other means, without prior written consent of the city council. A substantial change in the

ownership or control of a permittee's business means any changes in the voting stock ownership of the permittee aggregating at least 35 percent, computed from the date of issuance of a permit.

(b) Notwithstanding the prohibition contained in paragraph (a), above, a permittee may grant a security interest in its rights under a permit in favor of a third party qualified financial institution (as defined herein) without first obtaining the consent of the city. Qualified financial institution for purposes of this provision shall mean an entity which:

1. Does not operate, and is not affiliated with any entity directly or indirectly that operates a business providing the service of the permittee;
2. Receives over 50 percent of its revenues from the provision of regulated financial services; and
3. Has assets of at least five billion dollars.

Affiliated, for purposes of this provision, shall mean a person or entity that directly or indirectly through one or more intermediaries' controls, is controlled by, or is under common control with a qualified financial institution. In the event a qualified financial institution must enforce its security interest and execute on the collateral, such qualified financial institution will assume the position of the permittee with all of its rights and responsibilities under, and subject to the conditions of, the permit granted under this division. The authorization contained in this subsection (b) shall not be effective to allow a qualified financial institution to assume the position of a permittee unless at least 15 days prior to taking possession of the collateral, the qualified financial institution shall give written notice to the city of its intent to take possession of the collateral, and such notice shall be accompanied by all information relating to the qualified financial institution required of an applicant under section 19-242(3)(a) through (c). In the event a qualified financial institution shall take possession of the collateral, such qualified financial institution will use its best efforts to expeditiously transfer or assign the collateral within 180 days to a prospective transferee or assignee with the city's prior written consent.

(c) If a permit is assigned in whole or in part with the approval of the city, the terms and conditions of the permit shall be binding upon the successors or assigns of the permittee or of a qualified financial institution.

(5) *As-built plans.* A permittee shall submit to the city as-built plans for any improvements constructed and installed during the permitted disruption of the city's right-of-way within 60 days after completion of the same. Unless waived by the city, the permittee shall provide the city with a digital copy of the as-built plans in a form acceptable to the city building official.

(6) *G.I.S.* If requested by the city, a permittee shall, within 60 days, provide the city with a geographical information system layer in a media form acceptable to the city that accurately portrays the permittee's as-built improvements that were constructed and installed in the city's right-of-way during the permittee's disruption of the right-of-way.

(7) *Additional future use.* The issuance of a disruption permit to a permittee does not confer to the

permittee the rights to any additional uses of the city's right-of-way, except for those uses specifically granted and described in the disruption permit.

(8) *City future use.* The issuance of a disruption permit to a permittee does not prohibit the city from using the city's right-of-way in a manner which may interfere with the permittee's disruption activities, and the permittee acknowledges and accepts this risk and shall not be entitled to receive any compensation from the city in the event that the city uses the city right-of-way in the aforementioned manner. The expense of making any necessary modifications of its improvements in order to accommodate a conflict shall be borne by the permittee. (Ord. No. 363, § 1.02.05, 9-21-2000)

**Sec. 19-246. Permittee's disruption of city right-of-way.**

(1) *No interference on city rights-of-way.* A permittee shall not disrupt the city's rights-of-way in such a manner that it would interfere with the city and/or other permittees' and/or grantees' use of said city rights-of-way, and/or interfere with existing water mains, gas lines, sanitary sewer lines, drains and/or drain pipes, and other improvements that are existing in the city's right-of-way. Any portion of the permittee's improvements that interfere with the city's, and/or other permittees' and/or grantees' use of the city's right-of-way or interfere with existing water mains, gas lines, drains and/or drainage pipes and/or other improvements, shall, at the request of the city, be removed and/or modified by the permittee at the permittee's own cost, and the permittee shall not be entitled to receive any compensation from the city for removal and/or modification of the same. Such removal or modification shall be made within a reasonable time of request, as stated in a written notice from the city. If the removal or modification is not made within such time, the city may remove or modify the interfering improvement(s) to the extent required, and bill the permittee for the expenses incurred in doing so. With regard to interferences with the use of the right-of-way for pedestrian, vehicular or other related purposes, all activities of a permittee shall be undertaken in a manner to minimize interference, and all due precautions shall be taken to maximize public safety.

(2) *Disruption costs.* The permittee's disruption of the city's right-of-way shall conform to and be in compliance in all respects with the disruption plans submitted to and approved by the city, and all permits issued to the permittee by the city. All costs associated with the permittee's disruption of the city's rights-of-way shall be the sole responsibility of the permittee and shall be borne entirely by the permittee. All disruption activities performed by the permittee and its contractors, including the construction and installation of any improvements, shall be promptly done by the permittee and its contractors in compliance with the schedule submitted to and approved by the city and in a good and workmanlike fashion in accordance with recognized construction industry standards and other applicable industry standards and subject to the required inspections of the city and also subject to the final approval of the city. The permittee's disruption activities in the city's right-of-way shall not commence until such time as permittee has obtained all required building permits and other permits and approvals, has paid all applicable fees and has received approval of its plans and specifications for said construction.

(3) *Restoration of property.* The permittee shall, as soon as is reasonably possible, restore, at permittee's sole cost and expense, any portion of the city's right-of-way that is disrupted by the permittee. The disrupted right-of-way shall be restored and returned to a condition that is as good as that which existed at the time the disruption occurred. The time period and the manner in which the restoration is to take place by the permittee shall be established by the city, and, in the event that the permittee does not complete the restoration in the time period specified by the city and/or does not undertake the restoration in the manner approved by the

city, the city may, upon written notice to the permittee, complete the repair and restoration and apply the bond posted by the permittee with the city toward the city's cost of restoration and repair. In the event the bond does not cover all of the costs incurred by the city, the permittee shall immediately pay the outstanding balance of the costs to the city, and shall be liable to the city for the same until paid.

(4) *Permittee's personnel.* Personnel of permittee conducting disruption activities shall at all times wear or have a clearly visible identification as a representative of permittee, and every service vehicle of permittee shall also be clearly identified as one of the permittee's vehicles.  
(Ord. No. 363, § 1.02.06, 9-21-2000)

#### **Sec. 19-247. Indemnification.**

(1) The city, and its officers, employees, agents, representatives and contractors, shall not be liable and/or responsible for any damages and/or injuries that occur to and/or are suffered by any person, property and/or other item which is caused by or results from the permittee's disruption of the city's right-of-way, and as a condition to the permittee being issued a permit by the city, the permittee shall execute and deliver to the city an indemnification agreement in a form approved by the city attorney, in which the permittee agrees to indemnify and hold harmless the city and its officers, employees, agents, representatives and contractors from any and all damages, injuries, liability, claims, actions, losses, demands and/or law suits, including attorney fees and costs that arise out of the permittee and/or its contractors, agents and representative's disruption of the city's right-of-way.

(2) The permittee also agrees to indemnify and hold the city and its officers, employees, agents, representatives harmless from any claims or other encumbrances which may be imposed as a result of any indebtedness or amounts owing by the permittee to any contractors, subcontractors and/or any other persons providing services, labor, materials and/or other items to the permittee. In the event that the city discovers that such a claim and/or encumbrance has been placed on and/or against the city's right-of-way, the city shall notify the permittee in writing of the existence of said claim and/or encumbrance, and the permittee shall remove the same within 30 days from said notice, and failure to remove such a claim is grounds for revocation of the permittee's permit. In the event that the permittee fails to remove the claim and/or encumbrance from the city's right-of-way within 30 days from the city's written notice to the permittee of the existence of said lien and/or encumbrance, the city may apply the bond posted by the permittee with the city towards the city's cost of completely removing the claim and/or encumbrance against the city's right-of-way. The permittee shall have the affirmative obligation to inform the city of any claims and/or encumbrances that the permittee is aware have been placed on and/or against the city's right-of-way.  
(Ord. No. 363, § 1.02.07, 9-21-2000)

#### **Sec. 19-248. Insurance.**

The permittee shall, at its own cost, maintain in full force and effect during the entire term of its disruption permit the following kinds of insurance with the limits set forth, with said insurance and the company to be providing the same to be approved first by the city:

- (1) *Comprehensive.* Comprehensive general liability insurance, with liability limits in an amount to be established by resolution of the city council, which liability insurance coverage shall include, but not be limited to, coverage for operational liability, products liability, contractors' liability,

subcontractors' liability and shall also contain the coverage commonly referred to as XCU coverage.

- (2) *Automobile.* Automobile liability insurance covering any and all vehicles owned, leased and/or used by the permittee, its employees, agents, representatives, contractors and/or subcontractors, with said insurance to comply in all respects with Michigan no-fault statutes, and to have personal protection and property protection insurance and liability limits in amounts to be established by resolution of the city council.
- (3) *Additional insured.* The city and its officers, employees, agents, contractors and representatives shall be named as additional insurers on the comprehensive general liability insurance and the automobile liability insurance to be obtained by permittee.
- (4) *Proof of insurance/cancellation.* The permittee shall furnish to the city certificates of insurance and certified copies of each insurance policy that the permittee is required by this section to obtain. No insurance policy and coverage that the permittee is required to obtain and keep in full force and effect by this section shall be canceled and/or changed and/or subject to cancellation or reduction during the entire period of the reduction without the prior written consent and approval of the city, and the insurance policy and/or coverage shall contain express language prohibiting termination or cancellation without 30 days advance notice to the city. In the event that the permittee changes and/or cancels the insurance required by this section prior to the expiration of the permittee's disruption permit without the written consent and/or approval of the city, said cancellation and/or change may, at the city's sole discretion, be grounds for revocation of the permittee's disruption permit by the city pursuant to this article.

(Ord. No. 363, § 1.02.08, 9-21-2000)

#### **Sec. 19-249. Revocation of permit.**

In addition to any other rights and/or remedies that the city may have pursuant to this article and any other applicable law, which rights and/or remedies the city may pursue in its sole discretion, the city council, if it finds the existence of an imminent threat to the public health, safety or welfare, may order a stoppage of work pending a hearing before the city council, or, the city council may also revoke a permittee's disruption permit for any of the following reasons, subject to undertaking the revocation procedure in the next section:

- (1) Permittee's violation of and/or non-compliance with this article.
- (2) Permittee's failure to comply with any of the standards, conditions and/or requirements of its disruption permit, including, but not limited to, failure to perform its disruption activities in the city's right-of-way in compliance with the permit, building permit and any and all construction and other plans submitted to and approved by the city.
- (3) Permittee's failure to obtain permits and other approvals and to timely pay any fees required by this article and/or any other applicable ordinances, codes, statutes or laws.
- (4) Violation of any ordinance, code, state, law and/or any other applicable law and/or legal requirement.

- (5) The permittee's change to and/or cancellation of the insurance policies and coverage required by this article without the prior written approval and consent of the city.
- (6) The cessation of operation, termination, dissolution and/or disbanding of the permittee.
- (7) Causing and/or maintaining a nuisance as determined by the city in the city's right-of-way.
- (8) Failure to timely pay to the city any real property taxes, personal property taxes, assessments and/or other obligations.
- (9) Failure to remove any liens or encumbrances from the city's right-of-way.
- (10) A change of circumstance relating to the right-of-way that results in a material adverse condition in which to permit a continuation of permittee's use.

(Ord. No. 363, § 1.02.09, 9-21-2000)

**Sec. 19-250. Revocation procedure.**

In the event that the city determines that the permittee's disruption permit is subject to revocation under this article, the city shall do the following prior to the formal revocation of the permittee's permit:

- (1) Mail or deliver a written notice of hearing to the permittee at least ten days prior to the hearing, containing the following information:
  - a. Notice of the city's proposed action.
  - b. Reasons for the city's proposed action.
  - c. Date, time and location of hearing.
  - d. A statement that at the hearing the permittee may present witnesses, evidence, information and arguments on its behalf, and that the permittee has the right to be represented by counsel.
- (2) Hold a hearing as scheduled. The permittee shall be given an opportunity to be represented by counsel and to present witnesses, evidence, information and arguments. Other interested persons shall also be permitted to attend the hearing and may present information and comments on the matters addressed at the hearing.
- (3) Following the public hearing, the city council shall make a decision as to whether or not to revoke the permittee's disruption permit, and, in the event that the city council decides to revoke the permittee's disruption permit, the city council shall state the reasons for its revocation on the record and shall mail or deliver a written copy of its action to the permittee.

(Ord. No. 363, § 1.02.10, 9-21-2000)

**Sec. 19-251. No waiver.**

Nothing in this article shall be construed as a waiver of any of the rights, remedies and/or authority of the city pursuant to any laws, ordinances, codes or regulations of the city, and the city reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, city ordinance, code and/or regulation. Nothing in this article shall be construed to limit and/or preclude the city from exercising its right of eminent domain.

(Ord. No. 363, § 1.02.11, 9-21-2000)

**Secs. 19-252--19-260. Reserved.**

**DIVISION 3.**

**USE AND OCCUPANCY OF CITY'S RIGHTS-OF-WAY**

**Sec. 19-261. Use permit required.**

(1) Except as otherwise provided in this article, no person shall use and/or occupy the city's rights-of-way for the purpose of using and/or operating any improvements within said rights-of-way unless a use permit has first been applied for and issued by the city pursuant to this article. For purposes of this article, a person providing local exchange service or other local telecommunications services shall be considered to be using the city's right-of-way if such person is the owner of the improvement or obtains the use of the improvement from another party under a lease, contract, interconnection or other similar arrangement.

(2) Failure to obtain a use permit under this section shall constitute a violation of this article and shall subject the violating person to the penalties provided for in this article, and a person who violates this section shall pay the required use permit fee, as well as an additional charge to be established by resolution of the city council for that period of time that the person did not have a valid permit pursuant to this article.

(Ord. No. 363, § 1.03.01, 9-21-2000)

**Sec. 19-262. Exemption.**

The terms and provisions of this article shall not apply to any person that currently has a valid, effective and unexpired franchise from the city to use and occupy the city's rights-of-way for the use and operation of improvements, and, further, shall not apply to those telecommunication carriers who have continuously used and occupied public rights-of-way under a claim of entitlement based on an alleged grant of authority by the state predating the Michigan Constitution of 1909 and have provided universal services for many years and/or provided telecommunications services within the city pursuant to MCLA 484.4 prior to the enactment of the Michigan Constitution of 1909. Provided, however, this exemption shall not be applicable if and immediately when a court of competent jurisdiction in any action in michigan determines that the city is not required to exempt a person purportedly granted rights in this section.

(Ord. No. 363, § 1.03.02, 9-21-2000)

**Sec. 19-263. Permit application procedures.**

(1) A person that wants to use and/or occupy the city's rights-of-way and/or place improvements

therein shall apply to the city for a use permit pursuant to this article. Every applicant must complete and file four sets of an application with the city building official's office on forms that will be provided by the city building official. At the time of filing an application, the applicant must pay to the city treasurer a nonrefundable application fee, with the amount of the application fee to be established by resolution of the city council in an amount necessary to reimburse the city for the costs in reviewing, processing, investigating, granting and/or denying the permit.

(2) The applicant's application for a use permit shall include, without limitation, the following information:

- (a) The name and address and phone number of the applicant in the case of a natural person, and if the applicant is not a natural person, and is not a publicly held corporation, the names, addresses and phone number of each of its officers, directors and partners, as well as the names and addresses of those stockholders holding more than a ten percent interest in the stock of the entity.
- (b) The name, phone number, and address of the person who will serve as the proposed contact person to the applicant, and, if different, the resident agent for accepting service of process if the applicant is a corporation or other person required to have a resident agent, and the address of the entity's principal business office and headquarters.
- (c) The character of the business the applicant engages in and the length of time that the applicant has been engaged in the business of that character and where the business has been conducted.
- (d) Copies of the articles of incorporation of an applicant that is a corporation or a limited liability corporation, as well as copies of the corporation's last three annual reports, and in the case of a partnership, a copy of the partnership agreement.
- (e) Copies of the financial statements of the applicant for the last three years.
- (f) A statement, description and plans showing and describing in detail the proposed use and occupancy of the right-of-way, including, but not limited to, a statement, description and plans detailing the construction, installation, location, use and/or operation of the improvements in the city rights-of-way, with a detailed description of the exact type, kind and amount of the construction, installation, location, use and/or operation of the improvements, including who does and who will own, operate and use the same, and a detailed description of the purpose or purposes for which the improvements are intended to be used.
- (g) Detailed map and plans showing those city rights-of-way in which the applicant proposes to construct, install, locate, use and/or operate the improvements, and the map and plans shall clearly designate the proposed route and exact location of the same, and shall designate whether the improvements are to be located underground and/or aboveground.
- (h) A map showing the manner in which the proposed improvements will interconnect with existing and proposed improvements in other municipalities.
- (i) A schedule and timetable for the construction and installation of the improvements, including the

commencement and completion dates for the construction, as well as a commencement date for when the actual operation and use of the improvement in the city right-of-way will begin to take place.

- (j) A statement of all activities anticipated to be performed within the right-of-way after completion of initial construction.
- (k) A detailed description of the services to be provided, and the location of known and projected customers, i.e., persons to be served.

(3) An application shall not be accepted for filing by the city building official unless the application is complete, the application fee and use permit fee has been paid and the application contains all of the information required by this article.

(4) Except as otherwise provided in this article, the city building official shall approve or deny a use permit within 90 days from the date the applicant files a completed application for a use permit with the city building official's office.

- (a) Within 60 days after the date that the applicant files with the city building official a complete application, the city shall provide public notice of the application, which shall be published in a newspaper of general circulation within the city. The notice shall be published not less than 14 days before the day on which the permit is to be issued.
- (b) After the public notice, the city building official shall within 90 days of the filing of the application, approve and/or deny the application, and the city building official shall not unreasonably deny an application for a use permit.
- (c) The 90-day time requirement for the city building official to make a decision from the date that the applicant files a completed application, as well as the 60-day time period for providing a public notice, and the 30-day period for making a decision after the public notice may be waived and/or extended by both parties if they agree to waive said time periods in writing.

(5) The city building official may impose conditions on any use permit necessary to ensure and protect the public health, safety and welfare limited to the applicant's use and occupancy of the city's right-of-way. The city building official may require as a condition of the use permit that a bond, in the form of a letter of credit or cash escrow, be posted by the applicant, which bond shall not exceed the reasonable costs to ensure that the city's right-of-way that are used and/or occupied by the applicant are retained and restored to their original condition during and after the applicant's use and occupancy of the right-of-way.

(Ord. No. 363, § 1.03.03, 9-21-2000)

#### **Sec. 19-264. Use permit fee.**

In addition to the nonrefundable application fee set forth in this article, and any other applicable fees for permits or approvals required by city ordinances and/or other applicable laws, the permittee shall pay for each year that the use permit is in effect on or before the last business day prior to January 1 of each year an annual use permit fee to the city in an amount established from time-to-time by resolution of the city council. The

amount of the use permit fee shall be fair and reasonable, competitively neutral and nondiscriminatory and shall not exceed the fixed and variable cost to the city in maintaining the city's rights-of-way used and occupied by the permittee. The amount of the annual fee per lineal foot shall be set from time to time by resolution of the city council for above-ground improvements and underground improvements. All applications shall be reviewed on a case-by-case basis for the purpose of determining whether the improvements of a permittee create any more or less impact upon the fixed and variable costs to the city. In making such determination, the city building official shall take into consideration the following factors:

- (1) The annual fixed and variable cost to the city in maintaining the right-of-way in or under or over which the permittee's use occurs.
- (2) The total amount of area that the permittee will be using and occupying in the city right-of-way, including, but not limited to, the length in lineal feet of right-of-way being occupied by the permittee, and the size of improvements authorized to be constructed.
- (3) The frequency and unit cost of monitoring the rights-of-way in or under or over on a regular basis to ensure that the use by permittee conforms with applicable law, ordinance and permit conditions, and that such use has not created the need for public attention.
- (4) The proportionate cost of maintaining and administering records of right-of-way use, including administration to assist in the avoidance of conflicts in the use of the rights-of-way by other users, and auditing of the extent of permittee's use.
- (5) Any unique aspects of permittee's use or improvements that are likely to increase the cost to the city of permittee's use of the rights-of-way.

(Ord. No. 363, § 1.03.04, 9-21-2000)

#### **Sec. 19-265. Use permit term and renewal.**

The first use permit granted to the permittee shall be valid from the date the city building official grants the use permit through December 31 of the tenth year following the date the use permit was granted. Thereafter, the permittee may apply to the city for ten-year renewals of its use permit, which renewal periods would run from January 1st to December 31 of each ten-year term. Unless earlier terminated by the permittee and/or the city, a permittee must file an application for renewal of its use permit with the city building official not less than 120 days before the expiration of the current valid permit, and pay a renewal application fee to the city treasurer in an amount established by resolution of the city council. The city building official shall, by November 1st of the year in which the renewal application is filed, publish a public notice of all requests for use permit renewals, and shall not later than December 1st of each year approve and/or deny all use permit renewal requests. The city shall have the right to impose additional reasonable conditions on those use permit renewals it grants.

Although permits are to be granted with a ten year duration, as specified above, the city building official shall also conduct an interim review at the end of the third and sixth years of a permit, for two purposes: the review shall first determine whether the fee schedule then in effect is adequate. If the engineer determines that it is inadequate, a new fee shall be established and shall be effective for the balance of the term of the permit. The second purpose of the review shall be to require the permittee to demonstrate all of the following:

- (1) The permittee has complied with all use permit terms and requirements.
- (2) The permittee has timely paid to the city the annual use permit fee and has timely paid personal property taxes and real property taxes and/or any obligations due and payable to the city.
- (3) The permittee's performance has been in compliance with this article relative to specific issues presented to the permittee in advance of the review by the city building official.

If at such review the permittee fails to make the demonstration specified above, the city building official may impose further conditions upon the continuation of the use permit, or, if the failure represents a material breach of the terms and intent of this article, the city council may terminate a use permit.

(Ord. No. 363, § 1.03.05, 9-21-2000)

### **Sec. 19-266. Use permit terms and conditions.**

(1) *[Nonexclusive nature of use permit.]* A use permit granted by the city to a permittee shall be nonexclusive and shall not restrict or prevent the city from at any time approving additional permits to other persons to use and/or occupy the same city right-of-way, and the granting of a use permit does not establish any priority for the use and/or occupancy of township right-of-way.

(2) *Compliance with use permit/ordinances.* A permittee shall strictly comply with all of the terms and conditions of the use permit issued by the city to the permittee, as well as comply with all applicable laws, codes, restrictions and ordinances.

(3) *Permits and approvals.* In addition to the use permit required by this article, a permittee shall not commence construction on, across and/or under any city right-of-way without first obtaining disruption and building permits as required by the city and paying the required building permit fees, and, further, a permittee shall not use and/or occupy any city right-of-way for the purpose of using and/or operating any improvement therein not included within a valid ordinance or use permits without first obtaining all other permits and approvals and paying all other applicable fees that are required by ordinance, code and/or statute.

(4) *Transfer/Assignment.* A permittee shall not transfer, convey and/or assign any of the rights/privileges granted to it by the city in its use and/or occupancy permit:

- (a) In whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, substantial change in the ownership or control of the permittee's business, or by other means, without prior written consent of the city council. A substantial change in the ownership or control of a permittee's business means any changes in the voting stock ownership of the permittee aggregating at least 35 percent, computed from the date of issuance of a permit.
- (b) Notwithstanding the prohibition contained in paragraph (a), above, a permittee may grant a security interest in its rights under a permit in favor of a third party qualified financial institution (as defined herein) without first obtaining the consent of the city. Qualified financial institution for purposes of this provision shall mean an entity which:
  1. Does not operate, and is not affiliated with any entity directly or indirectly that operates a

business providing the service of the permittee;

2. Receives over 50 percent of its revenues from the provision of regulated financial services; and
3. Has assets of at least five billion dollars.

Affiliated, for purposes of this provision, shall mean a person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a qualified financial institution. In the event a qualified financial institution must enforce its security interest and execute on the collateral, such qualified financial institution will assume the position of the permittee with all of its rights and responsibilities under, and subject to the conditions of, the permit granted under this division. The authorization contained in this subsection (b) shall not be effective to allow a qualified financial institution to assume the position of a permittee unless at least 15 days prior to taking possession of the collateral, the qualified financial institution shall give written notice to the city of its intent to take possession of the collateral, and such notice shall be accompanied by all information relating to the qualified financial institution required of an applicant under section 19-263(2)(a) through (e). In the event a qualified financial institution shall take possession of the collateral, such qualified financial institution will use its best efforts to expeditiously transfer or assign the collateral within 180 days to a prospective transferee or assignee with the city's prior written consent.

- (c) If a permit is assigned in whole or in part with the approval of the city, the terms and conditions of the permit shall be binding upon the successors or assigns of the permittee or of a qualified financial institution.

(5) *As-built plans.* A permittee shall submit to the city as-built plans for the construction, installation, location, maintenance, use and/or operation of its improvements that are in the city right-of-way within 60 days after completion of the same. Unless waived by the city, the permittee shall provide the city with a digital copy of the as-built plans in a form acceptable to the city building official.

(6) *G.I.S.* If requested by the city, a permittee shall within 60 days provide the city with a geographical information system layer in a media form acceptable to the city which accurately portrays the permittee's as-built improvements, and the permittee shall update said layer to accurately reflect any changes to the same which are approved by the city.

(7) *Additional and/or future use.* The issuance of a use permit to a permittee does not confer to the permittee the rights to any additional uses of the city's right-of-way, except for those uses specifically granted and described in the use permit.

(8) *City future use.* The issuance of a use permit to a permittee does not prohibit the city from using the city's right-of-way in a manner which may interfere with, disrupt and/or prevent the permittee's use and/or occupancy of the same, and the permittee acknowledges and accepts this risk and shall not be entitled to receive any compensation from the city in the event that the city uses the city right-of-way in the aforementioned manner. The expense of making any necessary modifications of its improvements in order to accommodate a conflict shall be borne by the permittee.

**Sec. 19-267. Permittee's use and occupancy of city right-of-way.**

(1) *No interference in city rights-of-way.* A permittee shall not construct, install, locate, maintain, use and/or operate its improvements in the city's rights-of-way in such a manner that would interfere with the city and/or other permittees' and/or grantees' use of said city rights-of-way, and/or interfere with existing water mains, gas lines, sanitary sewer lines, drains and/or drain pipes, and other improvements that are existing in the city's right-of-way. Any portion of the permittee's improvements that interfere with the city's, and/or other permittees' and/or grantees' use of the city's right-of-way or interfere with existing water mains, gas lines, drains and/or drainage pipes and/or other improvements, shall, at the request of the city, be removed and/or modified by the permittee at the permittee's own cost, and the permittee shall not be entitled to receive any compensation from the city for removal and/or modification of the same. Such removal or modification shall be made within a reasonable time of request, as stated in a written notice from the city. If the removal or modification is not made within such time, the city may remove or modify the interfering improvement(s) to the extent required, and bill the permittee for the expenses incurred in doing so. With regard to interferences with the use of the right-of-way for pedestrian, vehicular or other related purposes, all activities of a permittee shall be undertaken in a manner to minimize interference, and all due precautions shall be taken to maximize public safety.

(2) *Construction, installation, use and occupancy costs.* The construction, installation and location by the permittee of its improvements in the city's right-of-way, and the permittee's use and/or occupancy of the city's rights-of-way, shall conform to and be in compliance in all respects with the construction/building plans, and the operation and use plans submitted to and approved by the city, and all permits issued to the permittee by the city. All costs of the permittee's construction, installation, maintenance, use and/or operation of its improvements in the city's rights-of-way, and all of the costs of the permittee's use and occupancy of the right-of-way shall be the sole responsibility of the permittee and shall be borne entirely by the permittee. All construction and installation of the improvements in the city's rights-of-way, as well as the permittee's use and/or occupancy of the rights-of-way, shall be performed by the permittee in compliance with the schedule submitted to and approved by the city building official and shall be done in a good and workmanlike fashion in accordance with recognized construction industry standards and other applicable industry standards and subject to the required inspection of the city and also subject to the final approval of the city. The construction and installation of the permittee's improvements in the city's right-of-way, and its use and occupancy thereof, shall not commence until such time as permittee has obtained all required building permits and other permits and approvals, has paid all applicable fees and has received all required approval of its plans and specifications.

(3) *Restoration of property.* The permittee shall, as soon as reasonably possible, restore, at permittee's sole cost and expense, any portion of the city's right-of-way that is disrupted by the construction, installation, location, maintenance, use and/or operation of its improvements. The disrupted right-of-way shall be restored and returned to a condition that is as good as that which existed at the time the disruption occurred. The time period and the manner in which the restoration is to take place by the permittee shall be established by the city, and, in the event that the permittee does not complete the restoration in the time period specified by the city and/or does not undertake the restoration in the manner approved by the city, the city may, upon written notice to the permittee, complete the repair and restoration and apply the bond posted by the permittee with the city toward the city's cost of said restoration and repair. In the event that the bond does not cover all of the costs incurred by the city, the permittee shall immediately pay the outstanding balance of the costs to the city, and shall be liable to the city for the same until paid.

(4) *Maintenance and repair.* During the term of the use permit, the permittee shall, at its sole expense and cost, maintain and repair the permittee's improvements, and if at anytime during the term of the use permit the permittee fails to maintain and/or repair the improvement to the satisfaction of the city, the city shall send a written notice to the permittee advising the permittee that the permittee has 14 days to correct and/or maintain the defective condition, and if the defective condition is not corrected within 14 days, the city shall be entitled, at its sole discretion, to draw upon the bond posted by the permittee and perform said maintenance and repair, correct the defect and/or remove the improvement, and bill the cost of the same to the permittee for any excess amounts, which the permittee shall pay to the city within 30 days of the date of billing, or the city may declare the permittee in default of its use permit and revoke the permittee's use permit as provided in this division.

(5) *Removal and/or relocation.* A permittee shall, at its own cost and expense, remove, relocate and/or disconnect any portion of its improvements located in the city's rights-of-way when the permittee is advised in writing by the city that removal, relocation and/or disconnection of the same is necessary for the city to undertake and complete any construction, excavation, maintenance, repair and/or any other work in the city right-of-way, and/or when said removal, relocation and/or disconnection is necessary for the city to undertake any activity which is in the furtherance of the public health, safety and welfare. The city may remove, relocate, damage, disrupt and/or disconnect keep permittee's improvements in the event of an emergency, including, but not limited to, a war, disaster, fire and/or severe weather occurrence if the same is determined to be necessary by the city's supervisor and/or his or her duly appointed designees, with the city not being liable to the permittee and/or any persons receiving the permittee's services for any damages or injuries caused by the removal, relocation, damage and/or disconnection.

(6) *Vacation/abandonment.* If a right-of-way is vacated, discontinued, abandoned, terminated and/or released, the permittee's right to use and/or occupy the city right-of-way shall immediately terminate, and the permittee shall, at its own cost, remove its improvements therefrom.

(7) *Expiration or termination of use permit.* At the expiration and/or termination of the permittee's use permit, and/or in the event that the permittee abandons and/or ceases operating and/or using its improvements in the city's rights-of-way, the permittee shall, at its own cost and expense, and within a time period established by the city, remove all of its improvements from the city's right-of-way, and shall, at its own cost, restore and return the area to the condition that existed prior to the construction, installation, location, maintenance, use and/or operation of its improvements in the city right-of-way. In the event the permittee and the city both agree that it would not be in the best interest of the public health, safety and welfare for the permittee to remove its improvements from the city right-of-way, the permittee shall convey and give the improvements to the city, at no cost to the city, and the city shall become the owner of the improvements in the city's right-of-way, and the city shall be permitted to use the same in any manner that the city sees fit. The decision as to whether a permittee shall remove its improvements from the city's right-of-way is in the sole discretion of the city.

(8) *Co-location.* To the extent possible, but only with the prior written permission of the city, a permittee shall, if physically and financially feasible, utilize existing improvements to construct or install its improvements. The determination of physical and financial feasibility shall be determined in the discretion of the city building official. An applicant shall have the burden of demonstrating that use of an existing facility is unfeasible.

(9) *Activities of permittee and/or its contractors.* All activities of the permittee and/or its contractors that involve any construction, erection, installation, disruption, alteration to and/or any maintenance of any of the permittee's improvements in the city's right-of-way shall only be performed after the permittee has contacted the city's building department and advised it that said activities will be taking place, except for those activities which are necessitated by an emergency. Personnel of permittee conducting such activities shall at all times wear clearly visible identification, and every service vehicle of permittee shall also be clearly identified as one of the permittee's vehicles. The issuance of a use permit shall not be in lieu of a disruption permit or building permit, and such disruption permits and building permits, as applicable, must be obtained.  
(Ord. No. 363, § 1.03.07, 9-21-2000)

#### **Sec. 19-268. Indemnification.**

(1) The city and its officers, employees, agents, representatives and contractors shall not be liable and/or responsible for any damages and/or injuries that occur to and/or are suffered by any person, property and/or other item which are caused by or results from the permittee's and/or its contractor's construction, installation, location and/or maintenance of its improvements in the city's right-of-way and/or are caused by or result from the permittee's use and/or occupancy of the right-of-way, and as a condition to the permittee being issued a use permit by the city, the permittee shall execute and deliver to the city an indemnification agreement in a form approved by the city attorney, in which the permittee agrees to indemnify and hold harmless the city and its officers, employees, agents, representatives and contractors from any and all damages, injuries, liability, claims, actions, losses, demands and/or law suits, including attorney fees and costs that arise out of the permittee and/or its contractor's construction, installation, location and/or maintenance of improvements in the city's right-of-way and/or are caused by or result from the permittee's use and/or occupancy of the right-of-way.

(2) The permittee also agrees to indemnify and hold the city and its officers, employees, agents, representatives and contractors harmless from any claims and/or any other encumbrances which may be imposed as a result of any indebtedness or amounts owing by the permittee to any contractors, subcontractors and/or any other persons providing services, labor, materials and/or other items to the permittee. In the event that the city discovers that such a claim and/or encumbrance has been placed on and/or against the city's right-of-way, easement and/or public place, the city shall notify the permittee in writing of the same within 30 days from said notice, and failure to remove such a claim is grounds for revocation of the permittee's permit. In the event that the permittee fails to remove the claim and/or encumbrance from the city's right-of-way within 30 days from the city's written notice to the permittee of the existence of said claim and/or encumbrance, the city may apply the bond posted by the permittee with the city towards the city's cost of completely removing the claim and/or encumbrance against the city's right-of-way. The permittee shall have the affirmative obligation to inform the city of any claims and/or encumbrances that the permittee is aware have been placed on and/or against the city's right-of-way.  
(Ord. No. 363, § 1.03.08, 9-21-2000)

#### **Sec. 19-269. Insurance.**

The permittee shall, at its own cost, maintain in full force and effect during the valid term of its use permit the following kinds of insurance with the limits set forth, with said insurance and the company to be providing the same to be approved first by the city:

- (1) *Comprehensive.* Comprehensive general liability insurance, with liability limits in an amount to be established by resolution of the city council, which liability insurance coverage shall include, but not be limited to, coverage for operational liability, products liability, contractors' liability, subcontractors' liability and shall also contain the coverage commonly referred to as XCU coverage.
- (2) *Automobile.* Automobile liability insurance covering any and all vehicles owned, leased and/or used by the permittee, its employees, agents, representatives, contractors and/or subcontractors, with said insurance to comply in all respects with Michigan no-fault statutes, and to have personal protection and property protection insurance and liability limits in amounts to be established by resolution of the city council.
- (3) *Additional insured.* The city and its officers, employees, agents, contractors and representatives shall be named as additional insured on the comprehensive general liability insurance and the automobile liability insurance to be obtained by permittee.
- (4) *Proof of insurance/cancellation.* The permittee shall furnish to the city certificates of insurance and certified copies of each insurance policy that the permittee is required by this section to obtain. No insurance policy and coverage that the permittee is required to obtain and keep in full force and effect by this section shall be canceled and/or changed and/or subject to cancellation or reduction during the entire period of the reduction without the prior written consent and approval of the city, and the insurance policy and/or coverage shall contain express language prohibiting termination or cancellation without 30 days advance notice to the city. In the event that the permittee changes and/or cancels the insurance required by this section prior to the expiration of the permittee's use permit without the written consent and/or approval of the city, said cancellation and/or change may, at the city's sole discretion, be grounds for revocation of the permittee's use permit by the city pursuant to this division.

(Ord. No. 363, § 1.03.09, 9-21-2000)

### **Sec. 19-270. Revocation of permit.**

In addition to any other rights and/or remedies that the city may have pursuant to this division and any other applicable law, which rights and/or remedies the city may pursue in its sole discretion, the city manager, if he finds the existence of an imminent threat to the public health, safety or welfare, may order a stoppage of work pending a hearing before the city council, or, the city council may also revoke a permittee's use permit for any of the following reasons, subject to undertaking the revocation procedure in the next section:

- (1) Permittee's violation of and/or non-compliance with this division.
- (2) Permittee's failure to comply with any of the standards, conditions and/or requirements of its use permit, including, but not limited to, failure to construct, install, locate, maintain, use and/or operate improvements in the city's right-of-way in compliance with the permit, building permit and any and all construction and other plans submitted to and approved by the city.
- (3) Permittee's failure to obtain permits and other approvals and to timely pay any fees required by this division and/or any other applicable ordinances, codes, statutes or laws.

- (4) Violation of any ordinance, code, state law and/or any other applicable law and/or legal requirement.
- (5) The permittee's change to and/or cancellation of the insurance policies and coverage required by this division without the prior written approval and consent of the city.
- (6) The cessation of operation, termination, dissolution and/or disbanding of the permittee.
- (7) Causing, allowing and/or maintaining a nuisance as determined by the city in the city's right-of-way.
- (8) Failure to timely pay to the city any real property taxes, personal property taxes, assessments and/or other obligations.
- (9) Failure to remove any liens or encumbrances from the city's right-of-way.
- (10) A material change of circumstance relating to the right-of-way that results in a material adverse condition in which to permit a continuation of permittee's use.

(Ord. No. 363, § 1.03.10, 9-21-2000)

#### **Sec. 19-271. Revocation procedure.**

In the event that the city determines that the permittee's use permit is subject to revocation under this article, the city shall do the following prior to the formal revocation of the permittee's use permit:

- (1) Mail or deliver a written notice of hearing to the permittee at least ten days prior to the hearing, containing the following information:
  - a. Notice of the city's proposed action.
  - b. Reasons for the city's proposed action.
  - c. Date, time and location of hearing.
  - d. A statement that at the hearing the permittee may present witnesses, evidence, information and arguments on its behalf, and that the permittee has the right to be represented by counsel.
- (2) Hold a hearing as scheduled. The permittee shall be given an opportunity to be represented by counsel and to present witnesses, evidence, information and arguments. Other interested persons shall also be permitted to attend the hearing and may present information and comments on the matters addressed at the hearing.
- (3) Following the public hearing, the city council shall make a decision as to whether or not to revoke the permittee's use permit, and, in the event that the city council decides to revoke the

permittee's use permit, the city council shall state the reasons for its revocation on the record and shall mail or deliver a written copy of its action to the permittee.

(Ord. No. 363, § 1.03.11, 9-21-2000)

**Sec. 19-272. No waiver.**

Nothing in this division shall be construed as a waiver of any of the rights, remedies and/or authority of the city pursuant to any laws, ordinances, codes or regulations of the city, and the city reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, city ordinance, code and/or regulation. Nothing in this article shall be construed to limit and/or preclude the city from exercising its right of eminent domain.

(Ord. No. 363, § 1.03.12, 9-21-2000)

**Secs. 19-273--19-280. Reserved.**

**DIVISION 4.**

**MISCELLANEOUS**

**Sec. 19-281. Violations/penalties.**

(1) Any person and/or entity violating any of the provisions of this division shall, upon conviction thereof, be subject to a fine not exceeding \$500.00 or imprisonment not to exceed 90 days in the Oakland County Jail, or both such fine and imprisonment in the discretion of the court, plus costs of prosecution.

(2) In addition to proceeding by an appearance ticket in district court for violations of this division, the city may, in its sole discretion, seek relief in the Oakland County Circuit Court and/or may proceed administratively by seeking revocation of the permittee's disruption and/or use permit as provided in this division, and/or may seek any other relief that is permitted by law.

(Ord. No. 363, § 1.04.01, 9-21-2000)

**Sec. 19-282. Notices.**

Any notices required to be sent to the permittee by this division may be delivered, or may be sent by first-class mail to the permittee at the address listed in the permittee's disruption and/or use permit application, and any notices required to be sent to the city may be delivered or forwarded to the city by first-class mail addressed to: City Clerk, at the city offices.

(Ord. No. 363, § 1.04.02, 9-21-2000)

**Sec. 19-283. Underground installation.**

Except those improvements that must be established on or above the surface of the ground, and except to the limited extent that an applicant/permittee is exempted by law from this requirement, all installations of improvements shall be underground. It shall be the burden of the applicant/permittee to establish that an exception applies.

(Ord. No. 363, § 1.04.03, 9-21-2000)

## **DIVISION 5.**

### **MAILBOXES**

#### **Sec. 19-284. Purpose**

The purpose of this policy is to establish requirements for the installation of mailboxes along street rights-of-way that provide for efficient snow removal, right-of-way maintenance, enhanced traffic safety and to establish standards for reimbursing property owners for damage done to mailboxes by City equipment.

#### **Sec. 19-285. Requirements for the Installation of Mailboxes**

(1) All curbside mailboxes installed must comply with the following installation requirements:

- a. The bottom of the mailbox shall be between 41 inches and 45 inches from the top of the pavement as defined by United States Postal Service (USPS) installation requirements.
- b. The front face of the mailbox shall be set back 6-8 inches from the face of the curb or on streets with no curb, the edge of the pavement, as defined by USPS installation requirements.
- c. The mailbox support post construction shall meet the following standards:
  - i. The mailbox support structure may be constructed of masonry or concrete material manufactured for that purpose.
  - ii. Mailbox support structures shall comply with AASHTO's Roadside Design Guide, Section 4.6.5 Mailbox Supports, and Federal Highway Administration (FHWA) Standards.
  - iii. Mailbox support structures shall:
    1. If wood, be no greater than either 4 inches by 4 inches if the structure is square or 4 inches in diameter if the structure is round;
    2. If metal, have strength no greater than a 2 inch diameter standard strength steel pipe; and
    3. Not be imbedded more than 24 inches into the ground nor set in concrete.
    4. Premanufactured plastic and decorative mailbox support structures are allowed provided all locational requirements have been met and approved by United States Postal Service.

(2) Mailboxes not conforming to the requirements of this policy that were located within the street right-of-way before the effective date of this ordinance are permitted for a period not exceeding six (6) months after the date of adoption of this Ordinance subject to the following conditions:

- a. No alteration or addition to a non-conforming mailbox is permitted except in conformity with this ordinance.
- b. If any non-conforming mailbox is damaged or destroyed by any means, or if a non-conforming mailbox is removed due to street or utility construction or similar work, repair or reconstruction will be permitted only in conformity with this ordinance.
- c. No mailbox will be allowed to exist within the City's rights-of-way if it interferes with the traveling public or the function, maintenance or operation of the City's street system.

**Sec. 19-286. Mailbox Damage Reimbursement**

(1) The City will reimburse for damaged mailboxes along City streets only when it has been determined that:

- a. The damage was caused by actual physical contact with City equipment;
- b. The mailbox is of standard design and placed in conformance with this policy; and
- c. The mailbox and post were in good condition.

(2) The City will not reimburse for mailboxes damaged along City streets when the City has determined that:

- a. The mailbox was not of a standard design or not placed in conformance with this ordinance even though it might have been damaged by City equipment;
- b. The mailbox and post were not in good condition; or
- c. The weight of the plowed snow resulted in damage to the mailbox and/or support structure.

The City will reimburse for qualified damaged mailboxes upon receipt of a paid invoice up to \$30 to cover the cost of materials for the repair and replacement of the mailbox. The City of Keego Harbor will not install mailbox posts or mailboxes.

(Ord. No. 447, 4-18-2013)