

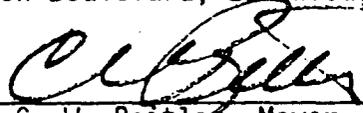
of not more than three hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment for each such violation.

UNLAWFUL SAVINGS CLAUSE

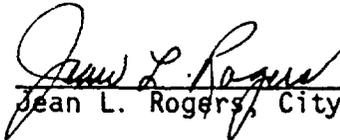
If any section, provision or part of this Chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not effect the validity of this Chapter as a whole or any section, provision or part thereof.

SECTION 2. This Ordinance shall take effect thirty (30) days after final publication.

INTRODUCED, READ AND PASSED on first reading at a regular meeting of the City Council on May 10, 1982; ordered published in full in the Lakewood Sentinel and Public Hearing and consideration on final passage set for May 24, 1982, at 7 o'clock p.m. at Lakewood City Hall, 44 Union Boulevard, Lakewood, Colorado.

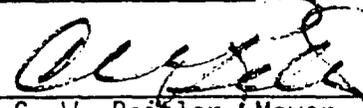
  
\_\_\_\_\_  
C. W. Reitler, Mayor

ATTEST:

  
\_\_\_\_\_  
Jean L. Rogers, City Clerk

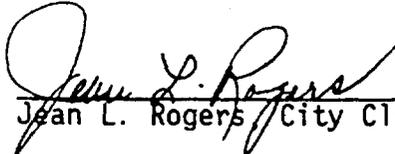
INTRODUCED, READ AND ADOPTED by the City Council this 24th day of May, 1982.

APPROVED AND SIGNED this 25th day of May, 1982.

  
\_\_\_\_\_  
C. W. Reitler, Mayor

I hereby certify and attest that the within and foregoing ordinance was introduced, read and passed on first reading on the date hereinabove set forth, published in full in the Lakewood Sentinel on the 13th day of May, 1982; introduced, read, finally passed and adopted by the City Council, and signed and approved by the Mayor on the dates hereinabove set forth.

ATTESTED AND CERTIFIED:

  
\_\_\_\_\_  
Jean L. Rogers, City Clerk

## A RESOLUTION

ESTABLISHING INSPECTION FEES FOR ORDINANCE 0-82-59 REGULATING WORK IN THE PUBLIC WAY

WHEREAS, Section 12.04.080 of the Lakewood Municipal Code, adopted by Ordinance 0-82-59, regulating work in the public way, requires that the City Council shall, by resolution, determine the cost of inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lakewood, Colorado, that:

SECTION 1. Pursuant to Section 12.04.080 of the Lakewood Municipal Code, the rate schedule for inspection fees charged to a permittee digging, paving or laying concrete in a public right-of-way shall be as follows:

CONCRETE

Sidewalk	\$.17 per front ft.	\$12.00 minimum
Curb and gutter	.17 per front ft.	12.00 minimum
Combination curb	.17 per front ft.	12.00 minimum
Driveway		12.00 each
Cross pan		12.00 each
Storm sewer inlet		23.00 each

STREET CONSTRUCTION  
(Paving and Earthwork)

Earthwork	\$.04 per sq. yd.	\$23.00 minimum
Base gravel	\$.04 per sq. yd.	23.00 minimum
Asphalt or concrete	\$.04 per sq. yd.	23.00 minimum
Total	\$.12 per sq. yd.	

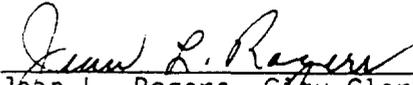
EXCAVATIONS

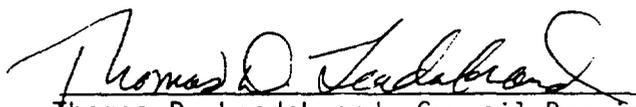
Single excavation		\$23.00 each
Water, sewer and storm sewer mains, gas, phone, electric and cable lines	\$.08 per lineal ft.	17.00 minimum

The preceding inspection fees will entitle the contractor to all necessary inspections for the proposed work.

INTRODUCED, READ AND ADOPTED by a vote of 9 for and 0 against at a regular meeting of the City Council on June 10, 1985, at 7 o'clock p.m. at Lakewood City Hall, 445 South Allison Parkway, Lakewood, Colorado.

ATTEST:

  
Jean L. Rogers, City Clerk

  
Thomas D. Leadabrand, Council President

Approved as to form:

City Attorney

*Reginald...*

Date May 19, 1992

Approved as to content:

Community Development \_\_\_\_\_ Date \_\_\_\_\_  
Parks and Recreation \_\_\_\_\_ Date \_\_\_\_\_  
Employee Relations \_\_\_\_\_ Date \_\_\_\_\_  
Finance \_\_\_\_\_ Date \_\_\_\_\_

City Administration \_\_\_\_\_ Date \_\_\_\_\_  
Public Safety \_\_\_\_\_ Date \_\_\_\_\_  
Public Works *AP* \_\_\_\_\_ Date 5-19-92

82-154

A RESOLUTION

ESTABLISHING REQUIRED LIABILITY INSURANCE AMOUNTS FOR ORDINANCE 0-82-59 REGULATING WORK IN THE PUBLIC WAY

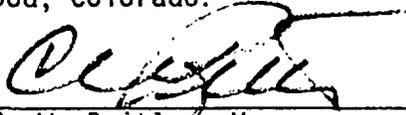
WHEREAS, Section 12.04.100 of the Lakewood Municipal Code, adopted by Ordinance 0-82-59, regulating work in the public way, requires that the City Council shall, by resolution, determine the amount or coverage of a Certificate of Insurance to be deposited with the City by persons doing work in the public way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lakewood, Colorado, that:

SECTION 1. Pursuant to Section 12.04.100 of the Lakewood Municipal Code, the following liability insurance requirements are hereby established for persons desiring to perform work in the public way:

- a. For any injury to one person in any single occurrence, the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).
- b. For any injury to two or more persons in any single occurrence, the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00).

INTRODUCED, READ AND ADOPTED by a vote of 11 for and 0 against at a regular meeting of the City Council on May 24, 1982, at 7 o'clock p.m. at Lakewood City Hall, 44 Union Boulevard, Lakewood, Colorado.

  
\_\_\_\_\_  
C. W. Reitler, Mayor

ATTEST:

  
\_\_\_\_\_  
Jean L. Rogers, City Clerk

# **EXHIBIT J**

CHAPTER 19 PUBLIC PROPERTY AND PUBLIC WORKS

ARTICLE 2 CITY PROPERTIES

PART 2 USE AND OCCUPANCY OF PUBLIC PROPERTY

SECTION:

- 19-2-201: Permits Required
- 19-2-202: Application for Permit
- 19-2-203: Insurance Required
- 19-2-204: Permit Fees; Renewals
- 19-2-205: Permit Term; Expiration Date
- 19-2-206: Issuance of Permit; Filing
- 19-2-207: Assignment of Permit
- 19-2-208: Indemnification
- 19-2-209: Additional Provisions or Conditions
- 19-2-210: Compliance With Laws
- 19-2-211: Permit Site
- 19-2-212: Use and Occupancy of Public Property Classified
- 19-2-213: Subsurface Use
- 19-2-214: Surface Uses
- 19-2-215: Spaces Above Surface of Public Property
- 19-2-216: Revocation of Permits
- 19-2-217: Appeal Procedures
- 19-2-218: Obstruction on Public Ways Prohibited; Removal

19-2-201: PERMITS REQUIRED:

A. The space below the surface, upon the surface, and above the surface of public property may be used and occupied for any purpose not inconsistent with the provisions of this Part 2, other provisions of this Code, or other laws or ordinances regulating the use and occupancy of such public property; provided, however, it shall be unlawful for any person to use or occupy such space, whether below, upon or above the surface of public property, or to construct any device or structure thereupon as hereinafter set forth except by and under the authority of a revocable permit in writing first granted by the City Council, City Manager or Utilities Director and issued by the City Clerk and except that recreational vehicles or trailers may be stored in accordance with the provisions of Section 14.1-8-107D of the City Code in which case no revocable permit shall be required under the provisions of this Part 2.

- B. For purposes of this Article the City Manager shall have authority to issue revocable permits for use of public property primarily used by the General City, and the Utilities Director shall have authority to issue revocable permits for use of public property primarily used by Utilities.
- C. The City Manager and the Utilities Director may by administrative regulation delegate the responsibility for review, approval and issuance of revocable permit to department heads under their respective supervision. (Ord. 4466; Ord. 91-160; Ord. 94-80; 1968 Code §10-143)

19-2-202: APPLICATION FOR PERMIT: An application for a revocable permit shall be filed with the City Clerk on a form or forms prepared by said City Clerk. (Ord. 4466; 1968 Code §10-145)

19-2-203: INSURANCE REQUIRED:

A. No revocable permit shall issue until the applicant shall furnish evidence of current public liability and property damage insurance policies. The following insurance coverage shall be required as a minimum in the name of the licensee with the City also named as insured:

Bodily Injury:	
Each person .....	\$300,000.00
Each accident .....	300,000.00
Property Damage:	
Each accident .....	\$ 50,000.00
Aggregate .....	100,000.00

B. Each such policy of insurance shall contain an endorsement to the effect that the insurance carrier shall notify the City Clerk at least thirty (30) days in advance of the effective date of any reduction or cancellation of the policy. The cancellation or reduction of insurance coverage shall be cause for automatic suspension of the permit until the coverage shall be reinstated. All policies shall be kept in force for the period of

the permit. (Ord. 4765; Ord. 94-80; 1968 Code §10-146; 1980 Code)

**19-2-204: PERMIT FEES; RENEWALS:** The cost of each permit to cover cost of investigation and filing and not as rental for use of City property shall be ten dollars (\$10.00) for an initial revocable permit and one dollar (\$1.00) for renewal of said permit payable to the City Clerk upon issuance, and such shall not be refundable or proratable in the event of suspension or revocation. (Ord. 4765; 1968 Code §10-148)

All revocable permits shall be renewable unless expressly declared to be nonrenewable on the face of the permit. Renewal shall be obtained from the City Clerk upon payment of the required fee if the City Clerk has not received any objections in writing concerning the revocable permit. If such objections are received, the City Manager or Utilities Director shall review the renewal request to determine whether the public interest or the operations of the General City or Utilities will be jeopardized by renewal of the permit. If the City Manager or the Utilities Director finds that the operations of General City, Utilities or public interest will be jeopardized, the City Manager or the Utilities Director shall refuse to renew the permit, subject to appeal to the City Council hereinafter provided. (Ord. 4466; Ord. 94-80; 1968 Code §10-150)

**19-2-205: PERMIT TERM; EXPIRATION DATE:** No revocable permit shall be for a term longer than one year. All revocable permits shall expire on the last day of December of each year. Renewal of revocable permits shall be requested prior to the last day of December. If no request is made for renewal, such use, device or structure occupying public property shall be considered to have been discontinued, and if still remaining, will be removed at the expense of the permittee. An additional fee of ten dollars (\$10.00) will be charged for each late renewal. (Ord. 4466; 1968 Code §10-149)

**19-2-206: ISSUANCE OF PERMIT; FILING:** Upon finding that the application is in proper form and that all other conditions and requirements of this Part 2 have been met, the City Manager or Utilities Director shall grant a revocable permit. The City Clerk shall countersign and issue such permit in writing and shall keep a file of all such permits in the City Clerk's office. (Ord. 4466; Ord. 94-80; 1968 Code §10-158)

**19-2-207: ASSIGNMENT OF PERMIT:** There shall be no assignment of any revocable permit, except by express authorization in writing by the City Manager, Utilities Director or City Council. Such authorization shall not be withheld if the assignee complies with all the requirements of this Part 2. (Ord. 4466; Ord. 94-80; 1968 Code §10-151)

**19-2-208: INDEMNIFICATION:** The permittee shall be responsible for any and all damages to property or injury to persons arising out of the exercise of the permit or the construction or installation of any device or structure thereunto appertaining, including the maintenance thereof, and the permittee shall indemnify and save harmless the City and all its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property on account of the exercise of the permit or of any act or omission of the permittee thereunder, his agents or employees or on account of the failure of the permittee to maintain the structure or device or to provide necessary safety devices to ensure the safety of the public; and the permittee shall defend against any such suit, action or claim and pay any judgment, with costs, which may be obtained against the City, its officers, agents or employees growing out of such injury or damage. (Ord. 4466; 1968 Code §10-147)

**19-2-209: ADDITIONAL PROVISIONS OR CONDITIONS:** The City Manager and the Utilities Director are authorized to impose on the permittee at any time additional conditions or provisions relating to the revocable permit for the use or occupancy of public property that are reasonable and necessary to protect the public health, safety and welfare, and the safety and welfare of General City and Utilities Operations, equipment and facility. Without limiting the generality of the foregoing, the City Manager and Utilities Director may consider the requirement of a bond or cash deposit to assure the removal of any device or structure at the expiration or in the event of revocation of the permit, or to assure the completion of the work within the required time or restore the surface of the public space to the former conditions upon completion of installation of the structure or device for which the permit is requested. (Ord. 4466; Ord. 94-80; 1968 Code §10-159)

The City Manager and Utilities Director are authorized to waive any of the provisions or conditions of this Article in respect to any revocable permit requested by any charitable, educational, nonprofit or eleemosy-

nary institution, organization or association whose request for a revocable permit is for a temporary use, device or structure; provided, however, that neither the City Manager nor the Utilities Director may waive the insurance requirements without express approval of the City Council. (Ord. 4466; Ord. 94-80; 1968 Code §10-160)

**19-2-210: COMPLIANCE WITH LAWS:** The permittee shall inform himself, and keep fully informed, and comply with all Federal and State laws, Municipal laws and ordinances, the Charter of the City, and all rules and regulations, including but not by way of limitation, the various construction codes of the City as the same may be now or hereafter amended<sup>1</sup>. The permittee shall at all times protect and indemnify the City, its officers, agents and employees against any claim of liability arising from or based on violations of such laws, ordinances or regulations caused by any actions or omissions of the permittee arising out of the exercise of the permit. (Ord. 4466; 1968 Code §10-152)

**19-2-211: PERMIT SITE:** The site or sites of the permitted use or occupancy or both shall have adequate safeguards to protect the public against damage or injury, and shall be kept in a clean and orderly manner. Failure to maintain a safe, clean and orderly site shall be cause for suspension of the permit pending correction of the cause of suspension or revocation if such fault be continued or of aggravated nature. (Ord. 4466; 1968 Code §10-153)

**19-2-212: USE AND OCCUPANCY OF PUBLIC PROPERTY CLASSIFIED:**

- A. The use and occupancy of public property for which revocable permits may be issued is classified in three (3) categories: first, "Subsurface Space", (Section 19-2-213); second, "Surface Uses", (Section 19-2-214), and third, "Spaces Above Surface of Public Property", (Section 19-2-215).
- B. 1. Use and occupancy of public property for which a revocable permit is issued may be exclusive in the name of the permittee thus prohibiting others from entering upon the property exclusively permitted without the invitation and permission of the permittee.
2. The permittee may charge fees for the use of the public property by others to cover the cost of

such items as insurance, barricading, portable toilets, and such other items. The permittee shall be required to provide a complete accounting of all such fees charged. (Ord. 4466; Ord. 91-20; 1968 Code §10-154)

**19-2-213: SUBSURFACE USE:**

- A. The space below the surface of public property may be used and occupied in connection with the use of the adjoining private property or for uses in the public interest not inconsistent with the provisions of this Part 2 or other laws and ordinances regulating the use of such property, provided, no use shall be authorized which will interfere with any existing or proposed underground utility line or installation or other lawfully existing underground installation. "Proposed" means scheduled for installation within the following twelve (12) month period.
- B. The person or persons desiring a revocable permit for the use of subsurface space shall submit with the application detailed plans including but not limited to:
1. The exact location, size, dimensions, apertures, ventilation and landscaping of the underground structure or device.
  2. The period of excavation and space required for excavation.
  3. A description of protective and safety devices to be used during the excavation, including but not limited to barricades, warning lights and directional signs.
  4. The legal description of adjoining land to be served by the permit, if pertinent.

The issuance of a revocable permit shall not relieve the permittee of the obligation to obtain from the department having jurisdiction all required permits and to pay the required fees therefor, all in accordance with applicable City ordinances.

- C. The permittee shall pay for the installation and construction of any structure or device below the surface of public property, and shall pay all costs and expenses attendant to the removal of such structure or device and backfilling of such space in the event the permit is rescinded.

1. For adoption by reference of building and constructions codes, see Chapter 16, Article 2 of this Code.

- D. Openings from the spaces below the surface of public property shall be covered so as to prevent damage or injury. The permittee may open access to the space below the surface of public property at any time as long as there are adequate safeguards to protect the public from damage or injury, and the time of opening does not inconvenience the public. It shall be unlawful to leave open any aperture to the space below so as to endanger persons, animals or vehicles<sup>1</sup>. Ventilation shall be by means of grates or other devices so as not to endanger persons or property.
- E. The entire construction or installation shall be subject to the direction and approval of the City Manager or the Utilities Director.
- F. A revocable permit may be issued for the following:
1. Vaults.
  2. Storage Tanks. Fire department approval is required for storage of flammables.
  3. Equipment or material drops.
  4. Any other lawful similar uses or occupancies as determined by the City Manager or Utilities Director.
- G. All permittees of subsurface uses now existing shall be required to comply with this Article upon renewal of permit; except that plans need not be submitted. (Ord. 4466; Ord. 94-80; 1968 Code §10-155)

#### 19-2-214: SURFACE USES<sup>2</sup>:

- A. The surface of public property may be used and occupied for any purpose not inconsistent with the provisions of this Part 2, this Code or other laws and ordinances regulating the use of such property.
- B. The person or persons desiring revocable permits to use the surface of public property shall submit with the application detailed plans and descriptions, including but not limited to the installation, construction, size and location of the structure or device and the purpose thereof.

- C. The permittee shall pay all costs for the installation and construction of any structure on public property, and further, shall pay all costs and expenses attendant to the removal of such device, structure or use in the event the permit is rescinded.
- D. The construction or installation of a device or structure on the surface of public property shall be subject to the direction of the City Manager, Utilities Director or their respective designated representative.
- E. A revocable permit may be issued for the following uses, structures or devices:
1. Bicycle parking racks.
  2. Newspaper or other vending machines that serve the public interest in a similar manner.
  3. Benches<sup>3</sup>.
  4. Telephone booths.
  5. Flagpoles.
  6. Trees and shrubbery.
  7. Collection booths or kiosks (charitable).
  8. Curbside teller or business services.
  9. Recessed curbs.
  10. Conduct of TV and radio interviews.
  11. Canopies.
  12. Conduct of promotion, sidewalk, or street sales and similar activities. A single permit may be issued to an association or group sponsoring such activity, provided all addresses or locations represented by the group shall appear on the application and the permit.
  13. Any other lawful similar uses or occupancies as determined by the City Manager, Utilities Director or their designated representative.
- F. The following conditions as well as the other conditions in this Article, shall apply to each of the above-listed uses, structures and devices:

1. See Section 21-2-106 of this Code.

2. The adopted edition of the Uniform Building Code permits the temporary use of public property during construction or demolition. No revocable permits are required for such activities unless there is a deviation from the Uniform Building Code, as amended and modified.

3. See Section 14.1-9-204 of this Code for regulations concerning benches at bus stops.

NEW FEE SCHEDULE

Excavation Permits

Excavations less than 100 ft. long (no intersection)	Each	\$ 75.00
Excavations 100 ft. to 500 ft. long (no intersection)	Each	\$100.00
Excavations over 500 ft.	Block	\$200.00
Excavations involving intersection	Block	\$200.00
No permit for the job	Each	2 X permit cost
Second no permit for the job	Each	3 X permit cost

# **EXHIBIT K**

Amended 9-8-97

BY AUTHORITY

ORDINANCE NO. 628

COUNCIL BILL NO. 613

SERIES OF 1997

COMMITTEE OF REFERENCE:  
\_\_\_\_\_

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 10.5 RELATING TO CABLE AND OTHER ELECTRONIC COMMUNICATIONS, OF THE REVISED MUNICIPAL CODE BY ADDING THERETO AN ARTICLE I PERTAINING TO PRIVATE USE PERMITS, TO CONSTRUCT CONDUIT, INSTALL CABLE, OR OPERATE TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY IN A CERTAIN AREA OF DENVER, COLORADO, IN ORDER TO PROVIDE TELECOMMUNICATIONS SERVICES.

Whereas, in order to provide for the health, safety and well-being of its citizens, as well as to insure the structural integrity of its streets and the use of the Rights-of-Way, the City strives to keep its Rights-of-Way in a state of good repair and free from unnecessary encumbrances; and

Whereas, although the general population bears the financial burden for the upkeep of the Rights-of-Way, a primary cause for the early and excessive deterioration of its Rights-of-Way is their frequent excavation by persons whose equipment is located therein; and

Whereas, Rights-of-Way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel plans because of them,

1 and Persons whose Facilities are located within the Rights-of-Way are the primary cause of these  
2 frequent obstructions; and

3  
4 Whereas, the City Council desires that certain costs associated with the maintenance and use of the  
5 Rights-of-Way by Telecommunications Providers be paid by the Telecommunications Providers and  
6 not borne by the City or its taxpayers; and

7  
8 Whereas, the City recognizes that it holds the Rights-of-Way within its geographical boundaries  
9 as an asset in trust for its citizens. The City and other public entities have invested millions of  
10 dollars in public funds to build and maintain the Rights-of-Way. It also recognizes that some  
11 persons, by placing their equipment in the Rights-of-Way and charging the citizens of the City for  
12 goods and services delivered thereby, are using this property held for the public good. Although  
13 such services are often necessary or convenient for the citizens, such persons receive revenue and/or  
14 profit through their use of public property; and

15  
16 Whereas, Article XI of the Colorado Constitution prohibits the donation or grant of public property  
17 for the benefit of any private corporation; and

18  
19 Whereas, the Federal Telecommunications Act of 1996 preserves the authority of local  
20 governments to manage and receive compensation for use of their rights-of-way in a competitively  
21 neutral and non-discriminatory manner; and



1 with the context, words used in the present tense include the future tense, words in the plural number  
2 include the singular number, and words in the singular number include the plural number. The word  
3 "shall" is mandatory and not merely directory, and "may" is permissive. Words not defined in this  
4 or other sections shall be given their common and ordinary meaning.

5 (1) *Arterial Street* means each street listed as such in the Department of Public Works  
6 Transportation Engineering filing No. 97-724 in the Denver Clerk's office.

7 (2) *Applicant* means any Person requesting permission to excavate, obstruct or construct in a  
8 Rights-of-Way.

9 (3) *Application* means the process by which an Applicant submits a request to locate, maintain  
10 or remove Facilities in the Rights-of-Way.

11 (4) *City* means the City and County of Denver, a municipal corporation of the State of Colorado  
12 and includes the municipal government of the City, including the City Council, the Mayor,  
13 and all administrations, commissions, offices, agencies, departments, bureaus and agents of  
14 the City, and also the territory currently, or which may in the future be included, within the  
15 geographic boundaries of the City and County of Denver.

16 (5) *City Cost* means the direct and indirect costs borne by the City for pavement management,  
17 traffic management, risk management, financial management, cost recovery, infrastructure  
18 oversight, budget analysis, record keeping, legal assistance, systems analysis, application  
19 processing and checking, issuing Permits, inspecting job sites, creating and updating  
20 mapping systems, and performing all of the other tasks required by this Ordinance, including  
21 other costs the City may incur in managing the provisions of this Ordinance.

22 (6) *Collector Street* means each street listed as such in the Department of Public Works  
23 Transportation Engineering filing No. 97-724 in the Denver Clerk's office.

- 1 (7) *Construct* means to excavate, install poles, install signs, install physical features, other than  
2 landscaping, on, above, or under any part of the Rights-of-Way.
- 3 (8) *Council* or *City Council* means the legislative body of the City.
- 4 (9) *Department* means the Department of Public Works of the City.
- 5 (10) *Department Inspector* means any person authorized by the Manager of Public Works to carry  
6 out inspections related to the occupancy and construction in the rights-of-way.
- 7 (11) *Director* means the Director of the Office of Telecommunications.
- 8 (12) *Effective Date* means November 1, 1997.
- 9 (13) *Emergency* means a condition that poses a clear and immediate danger to life or health, or  
10 of a significant loss of property.
- 11 (14) *Facilities* or *Telecommunications Facilities* means any and all equipment, structures,  
12 materials or tangible components located in the Rights-of-Way and used to provide  
13 Telecommunications Services, including without limitation; all plant, whether inside or  
14 outside, works, fiber strands, electronic equipment, amplification equipment, optic  
15 equipment, transmission and distribution structures and antennas, lines, termination  
16 equipment, pipes, mains, conduit, innerducts, regenerators, repeaters, underground lines,  
17 vaults, manholes, handholes, pull boxes, splice closures, wires and cables.
- 18 (15) *Federal Communications Commission* or *FCC* means the federal agency created by the  
19 United States Communications Act of 1934, as amended, codified at 47 U.S.C. § 151 et seq.,  
20 and any legally appointed, designated or elected agent or successor.
- 21 (16) *In*, when used in conjunction with *Rights-of-Way*, means over, above, in, within, on or under  
22 a Rights-of-Way.

- 1 (17) *Law* means all Federal, State, and City statutes, caselaw, rules, regulations, administrative  
2 rulings, standards and procedures.
- 3 (18) *Local Street* means all streets in the City and County of Denver not listed as Arterial Street  
4 or Collector Street in filing No. 97-724 in the Denver Clerk's office.
- 5 (19) *Manager* means the Manager of Public Works.
- 6 (20) *Occupy* means owning, operating, or in anyway using Facilities that are located in Rights-of-  
7 Way.
- 8 (21) *Permit Area* is the specific Rights-of-Way in which the Permittee is authorized to occupy or  
9 use, with its Telecommunications Facilities, as set forth in Exhibit A to the Permit.
- 10 (22) *Permit Fee* means money paid to the City by a Permittee for a Permit.
- 11 (23) *Permittee* means any Person to whom a Permit to Occupy a Rights-of-Way has been granted  
12 by the City.
- 13 (24) *Person* means any individual, firm, partnership, corporation, company, trust, joint stock  
14 company, banking institution, association, governmental entity or organization of any kind.
- 15 (25) *Private Use Permit* or *Permit* means the Permit that must be obtained to Occupy Rights-of-  
16 Way to provide Telecommunications Services.
- 17 (26) *Probation* means the status of a Person that has not complied with the conditions of this  
18 Ordinance.
- 19 (27) *Public Utilities Commission* or *PUC* means the Public Utilities Commission of the State of  
20 Colorado or other authority succeeding to the regulator powers of the Public Utilities  
21 Commission.

- 1 (28) *Reasonableness* means the standard for the granting or denial of consent or approval, guided  
2 by public and governmental policy, moral and ethical standards as well as business and  
3 economic considerations.
- 4 (29) *Rights-of-Way* means the surface and space above and below any real property in which the  
5 City has an interest in law or equity, whether held in fee, or other estate or interest, or as a  
6 trustee for the public, including, but not limited to any public street, boulevard, road,  
7 highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel viaduct, bridge, park,  
8 public easement, dedicated easement, or any other place, area, or real property owned by or  
9 under the control of the City.
- 10 (30) *Surrender of Permit* shall include the abandonment of or ceasing to use the  
11 Telecommunication Facilities within the Rights-of-Way for a period of one year.
- 12 (31) *Trenchless Technology* means the use of directional boring, horizontal drilling and  
13 microtunneling and other techniques in the construction of underground portions of  
14 Telecommunications System which result in the least amount of disruption and damage to  
15 Rights-of-Way as possible.
- 16 (32) *Underground Facilities* means all lines, cables, conduits, posts, tanks and any other facilities  
17 owned or operated by Persons other than the City which are located wholly or partially  
18 underneath Rights-of-Way.
- 19 (33) *Telecommunications Services* means electronic or optic transmission of data, video, and/or  
20 voice communications between or among points of the user's choosing without change in the  
21 form of content or the information as sent and received by means of Telecommunications  
22 Facilities.

1     APPLICABILITY

2     Sec. 10.5-2. Permits required.

3             It shall be unlawful for any Person to occupy, use, or seek to occupy or use, the Rights-of-  
4     Way for the purpose of providing Telecommunications Services or any Facilities located in the  
5     Rights-of-Way, or who has, or seeks to have, Facilities located in any Rights-of-Way, without first  
6     obtaining a Private Use Permit pursuant to this Article. Any Person that maintains Facilities in the  
7     Rights-of-Way on the Effective Date shall obtain a Private Use Permit within 90 days of the  
8     Effective Date of the Ordinance and furnish a depiction and mapping of their existing Facilities in  
9     a format acceptable to the Manager.

10  
11     Sec. 10.5-4. Privilege granted.

12             Private Use Permits shall authorize the occupancy and operation of Telecommunications  
13     Facilities in, over, under, upon, across and along Rights-of-Way in the areas identified in the Permit.  
14     The granting of such privilege is expressly conditioned on, and subject to, continuing compliance  
15     with all provisions of Law and the obtaining of all construction and street cut permits.

16  
17     Sec. 10.5-5. Permit nonexclusive.

18             The Private Use Permit shall constitute a non-exclusive privilege to make reasonable use of  
19     the Rights-of-Way identified in the Permit. The City reserves the right to grant similar uses,  
20     franchises, Permits or any other rights with regard to the Rights-of-Way or any other interest, to any  
21     other Person.

1       Sec. 10.5-6. Compliance with law.

2               Every Permittee shall comply with all provisions of applicable Law, as now in effect or  
3 hereafter enacted. All privileges granted under Permits are subject to the police powers of the City  
4 to adopt and enforce ordinances, including amendments to this Article, necessary to the safety,  
5 health, and welfare of the public. The City reserves the right to exercise its police powers,  
6 notwithstanding anything in this Article and in any Permit to the contrary. Any conflict between the  
7 provisions of this Article or a Permit and any other present or future lawful exercise of the City's  
8 police powers shall be resolved in favor of the latter.

9

10       Sec. 10.5-7. Third parties.

11               This Article governs rights between the City and individual Permittees, and is not intended  
12 in any way to confer any rights, duties or obligations upon any private third parties, provided,  
13 however that:

14               (a)     the privileges granted under a Permit shall be expressly subject to any privileges  
15 granted previously by the City to any Person other than the Permittee; and

16               (b)     every Person who leases any of its Facilities, or any portion of the Rights-of-Way,  
17 to unaffiliated Persons who use such Facilities or Rights-of-Way to provide Telecommunications  
18 Services shall notify the City immediately of the existence of such lease by providing the City with  
19 the name and address of the contact person for each lessee.

20

21       Sec. 10.5-8. Not in lieu of cable franchise.

22               No Permit granted hereunder shall be deemed to have granted a Permittee the authority to  
23 operate as a "cable operator" as the term is defined in the Cable Act, 47 U.S.C. § 522(5), nor provide

1 or offer to provide "cable service" as that term is defined in the Cable Act, 47 U.S.C. § 522(6),  
2 without first obtaining a cable franchise pursuant to Article 3 or Chapter C of the Denver Charter,  
3 1960 compilation.

4

5 **Sec. 10.5-9. Open video systems.**

6 Any Person that receives a certificate from the FCC to provide Open Video Services in the  
7 City shall notify the City of such certification. Any Person that operates an Open Video System  
8 shall comply with all applicable FCC Rules regarding support for public, educational, and  
9 governmental access and shall pay an additional fee equal to 5% of its gross receipts from Open  
10 Video Services.

11

12 **Sec. 10.5-10. Permits limited in time and scope.**

13 A Permit is valid only for the dates and the area of Rights-of-Way specified in the Permit.  
14 No Person may Occupy in the Rights-of-Way beyond the date or dates specified in the Permit unless  
15 such Person:

16 (a) makes a Supplementary Application for another Permit before the expiration of the  
17 initial Permit; and

18 (b) a new Permit or Permit extension is granted.

19 Permits issued under this Article shall be conspicuously displayed at all times at the indicated work  
20 site and shall be available for inspection by Department Inspectors and authorized City personnel.

21

1     APPLICATION PROCESS

2     Sec. 10.5-11. Private use permit application.

3             Except as otherwise provided in the Code, no Person may Occupy any Rights-of-Way for  
4     the purpose of providing telecommunication services without first applying to the Manager for, and  
5     obtaining a Private Use Permit as follows:

6             (a)     All Applications shall contain, and will be considered complete only upon compliance  
7     with the requirements of the following provisions:

8             (1)     The Applicant's name, address and e-mail address, and telephone and facsimile  
9     numbers.

10            (2)     The name, address and e-mail address, and telephone and facsimile numbers of a  
11     local representative who shall be available at all times. Current information  
12     regarding how to contact the local representative in an Emergency shall be provided  
13     at the time of application.

14            (3)     If the Person is a corporation, written evidence that it is authorized to do business in  
15     the State of Colorado, as certified to by the secretary of state.

16            (4)     A copy of the Applicant's certificate of authority from the Colorado Public Utilities  
17     Commission where the Applicant is lawfully required to have such certificate from  
18     said commission.

19            (5)     The Applicant's five (5) year plan for the installation of Applicant's system.

20            (b)     The Applicant shall keep all of the information listed above current at all times by  
21     providing to the Department information of changes within fifteen (15) days following the date on  
22     which the Applicant has knowledge of any change.

1 (c) The Application will include an Application Fee, as determined by the Manager as  
2 deemed necessary, provided that such Application Fee recovers the City's Costs associated with  
3 processing the application.

4 (d) All Applications shall be filed with the Manager, with copies to City Council and the  
5 Director.

6 (e) Such other information requirements that may be required by the Manager.

7  
8 **Sec. 10.5-12. Facilities installation.**

9 Prior to applying for a street cut permit (Article VIII of Chapter 49) for the installation of any  
10 Facilities, the Permittee shall file with the Manager in a form acceptable to the Manager, who shall  
11 provide the Director with a copy of the following information:

12 (a) If the Permittee is proposing to install above-ground Facilities, evidence that there  
13 is surplus space available for locating its Telecommunications Facilities on existing utility poles  
14 along the proposed route.

15 (b) If the Permittee is proposing to install ground-level facilities, evidence that there is  
16 sufficient space for the Facilities to locate the Telecommunications on the Rights-of-Way without  
17 interfering with other users.

18 (c) If the Permittee is proposing an underground installation in existing ducts or conduits  
19 within the Rights-of-Way, information in sufficient detail to identify:

20 (1) the Excess Capacity currently available in such ducts or conduits before installation  
21 of Permittee's Telecommunications Facilities;

22 (2) the Excess Capacity, if any, that will exist in such ducts or conduits after installation  
23 of Permittee's Telecommunications Facilities.

1 (d) If Permittee is proposing an underground installation within new ducts or conduits  
2 to be constructed within the Rights-of-Way:

3 (1) the location, depth, size and quantity of proposed new ducts or conduits;

4 (2) the Excess Capacity that will exist in such ducts or conduits after installation of  
5 Permittee's Telecommunications Facilities.

6 (e) A preliminary installation schedule and completion date.

7 (f) When the Permittee is intending to install Facilities, the posting of a Construction Bond  
8 sufficient for all the Facilities shall be filed.

9  
10 **Sec. 10.5-13. General requirements granting all private use permits.**

11 (a) Every Applicant for a Private Use Permit shall also submit to the Manager in a form  
12 acceptable to the Manager:

13 (1) a copy of all insurance policies and certificates required under this Article with a  
14 signed statement from the City's Director of Risk Management who shall notify the  
15 Director when such policies and certificates are acceptable to the City; and

16 (2) a copy of applicable authorizations to offer Telecommunications Services in the City  
17 from the Public Utilities Commission, and the Federal Communications  
18 Commission, to the Director;

19 (3) a statement signed by the Applicant that the Applicant agrees to be bound by all  
20 provisions of this Article and agrees to obtain all applicable permits and  
21 authorizations prior to constructing, installing, or operating Telecommunications  
22 Facilities in Rights-of-Way.

1 (b) Permits shall be of no force or effect until the Application is approved by the  
2 Manager, the Applicant files a written acceptance of the terms and conditions of this Article and the  
3 Permit, and the Director certifies in writing to City Council that the foregoing general requirements  
4 have been performed.

5  
6 Sec. 10.5-14. Issuance of permit; conditions.

7 If the Manager determines that the Applicant has satisfied the requirements of this Ordinance  
8 the Manager may issue a Permit, and the Manager may impose reasonable conditions upon the  
9 issuance of the Permit and the performance of the Applicant thereunder in order to protect the public  
10 health, safety and welfare, to insure the structural integrity of the Rights-of-Way, to protect the  
11 property and safety of other users of the Rights-of-Way, and to minimize the disruption and  
12 inconvenience to the traveling public.

13  
14 Sec. 10.5-15. Reporting obligations.

15 (a) Each Permittee shall, by December 1 of each year, file a construction and major  
16 maintenance plan with the Manager. Such plan shall be submitted using a format designated by the  
17 Manager and shall contain the information determined by the Manager to be necessary to facilitate  
18 the coordination and reduction in the frequency of excavations and obstructions of Rights-of-Way.

19 The plan shall include, but not be limited to, the following information:

- 20 (1) the specific locations and the beginning and ending dates of all planned construction  
21 projects to be commenced during the next calendar year, and  
22 (2) the tentative locations and beginning and ending dates for all construction projects  
23 contemplated for the five (5) years following the next calendar year.