Kendra Carberry

From: Jim Campbell [campbej@uswest.com]
Sent: Friday, March 23, 2001 3:23 PM
To: Kendra Carberry
Cc: Dina Diehl
Subject: Comments

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Kendra,

As promised attached are Qwest's general comments to the proposed ordinance from the City. As we discussed, Qwest is still reserving its right to challenge in its entirety the fee structure proposed by the City until we see a cost justification (in accordance with Senate Bill 10 and the recent Supreme Court Decision) prepared by the City which shows that the fees are related to the actual direct costs of the City in its management of the public streets. However, conceptually, we have the following comments on the fees:

1. Using the duration of a permit job as a denominator to calculate the costs to the City is improper. Whether a specific job takes Qwest 10 days or 100 days does not directly affect the costs incurred by the City in administering the use of its streets.

2. The degradation fees proposed by the City are not direct costs but rather indirect costs. Therefore, they would not be allowed under applicable law. In any event, they are extremely high. Qwest would be interested in seeing how the City came up with a cost to restore streets of $23 per square yard.

In addition, I have attached to this e-mail a memorandum regarding Qwest's position that it should not have to obtain a PE stamp on each and every permit application.

Please call with questions.

Jim Campbell
(303) 896-1208

(See attached file: GreenwoodOrdRed.doc)(See attached file: GreenwoodPE.doc)

EXHIBIT
B

A BILL FOR AN ORDINANCE

ORDINANCE NO: _____ **SERIES OF 2001**

INTRODUCED BY: _____

AN ORDINANCE TO REPEAL AND REENACT CHAPTER 12.04 OF THE GREENWOOD VILLAGE CODE, ENTITLED PUBLIC RIGHT-OF-WAY PERMITS

WHEREAS, obstructions and excavations in public rights-of-way disrupt and interfere with public use of the rights-of-way;

WHEREAS, obstructions and excavations in public rights-of-way result in loss of parking and loss of business to merchants and others whose places of business are in the vicinity of such obstructions and excavations;

WHEREAS, to provide for the health, safety and welfare of the City and its residents, it is desirable to adopt policies and regulations which will enable the City to gain greater control over the disruption and interference with the public use of public rights-of-way;

WHEREAS, significant public funds have been invested to acquire, build, maintain and repair the streets within the City, and cuts and excavations in the streets reduce the useful life of the pavement;

WHEREAS, significant public funds have been invested to place and maintain landscaping within public rights-of-way in the City, and cuts and excavations in the public rights-of-way cause damage to, and increase the costs of maintaining that landscaping;

WHEREAS, at the present time, the City does not have a detailed map or database indicating the location, nature, or extent of the entire system of underground utility and telecommunications facilities; and,

~~WHEREAS, private and commercial operators of motor vehicles pay added gasoline taxes to compensate for the damage their vehicles cause to City streets, and part of these taxes are used by the federal government (the federal highway "trust fund") for construction and maintenance of interstate and federal highways, and the State of Colorado annually transfers revenue from gasoline taxes to the City for street maintenance, while public and commercial utilities which degrade the streets do not adequately pay for the long-term damage done to the roadway surfaces; and~~ (Qwest objects to this language as it is unnecessary for a right-of-way ordinance. In addition, Qwest feels that the public use of rights-of-way is the largest drain on their useful life, and we should not subsidize for the restoration and repair where we are not the primary cuaser.

WHEREAS, at the present time there is no formal mechanism nor legal requirement that public and commercial utilities, cable operators and telecommunications providers coordinate excavation or construction in public rights-of-way within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENWOOD VILLAGE, COLORADO, ORDAINS:

Section 1. Chapter 12.04 of the Greenwood Village Code is hereby repealed in its entirety and reenacted to read as follows:

Chapter 12.04

PUBLIC RIGHT-OF-WAY PERMITS

Sections:

12.04.010 Purpose and objectives.
12.04.020 Definitions.
12.04.030 Police power.
12.04.040 Permit required.
12.04.050 Developer ownership of infrastructure.
12.04.060 Permit application.
12.04.070 City review and approval.
12.04.080 Permit fees.
12.04.090 Insurance.
12.04.100 Indemnification.
12.04.110 Performance bonds and letters of credit.
12.04.120 Warranty.
12.04.130 Inspections.
12.04.140 Time of completion.
12.04.150 Joint planning and construction.
12.04.160 Locate information.
12.04.170 Minimal interference with other property.
12.04.180 Underground construction and use of poles.
12.04.190 Use of trenches and conduits by City.
12.04.200 Construction and excavation standards.
12.04.210 Restricted rights-of-way.
12.04.220 Relocation of facilities.
12.04.230 Abandonment and removal of facilities.
12.04.240 Emergency procedures.
12.04.250 Reimbursement of City costs.
12.04.260 Permit revocation and stop work orders.
12.04.270 Penalties.

12.04.010 Purpose and objectives.

A. Purpose. The purpose of this Chapter is to establish principles, standards and procedures for the placement of facilities, construction, excavation,

encroachments and work activities within or upon any public right-of-way, and to protect the integrity of the City's street system.

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

1. To protect the public safety.

2. To minimize public inconvenience.

3. To protect the City's infrastructure investment by establishing repair standards for the pavement, facilities, and property in the public rights-of-way.

4. To standardize regulations and thereby facilitate work within the rights-of-way.

5. To maintain an efficient permit process.

6. To conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the City.

7. To establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

8. To promote cooperation among permittees and the City in the occupation of the public rights-of-way, and work therein, in order to: (i) eliminate duplication of facilities that is wasteful, unnecessary or unsightly; (ii) lower the permittees' and the City's costs of providing services to the public; and (iii) minimize street cuts.

9. To protect the public health, safety, and welfare.

12.04.020 Definitions.

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

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

B. "Construction and Excavation Standards" means the document entitled City of Greenwood Village Construction and Excavation Standards for

Public Rights-of-Way, as adopted by resolution of the City Council and amended from time to time.

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

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

E. "Duct or conduit" means a single enclosed raceway for cable, fiberoptic cable or other wires, or a pipe or canal used to convey fluids or gases.

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

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

H. "Facilities" means any pipe, conduit, wire, cable, amplifier, transformer, fiberoptic cable, antenna, pole, street light, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering, and providing utility and other services, whether above or below ground.

I. "Infrastructure" means any public facility, system, or improvement including water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks, and public safety equipment.

J. "Landscaping" means grass, ground cover, shrubs, vines, hedges, trees and non-living natural materials commonly used in landscape development, as well as attendant irrigation systems.

K. "Major installation" means an excavation in the public right-of-way exceeding one thousand ~~five hundred~~ feet (~~5~~1,000') in length. (NOTE: Qwest would request that major cuts be extended to one-thousand feet).

L. "Permit" means an authorization for use of the public rights-of-way granted pursuant to this Chapter.

M. "Permittee" means the holder of a valid permit issued pursuant to this Chapter.

N. "Public right-of-way" means any public street, way, place, alley, sidewalk, easement, park, square or plaza that is dedicated to public use.

O. "Work" means any labor performed within a public right-of-way and/or any use or storage of equipment or materials within a public right-of-way, including but not limited to: excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, and traffic signal devices; construction, maintenance, and repair of all underground facilities such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire, or any other similar structure; maintenance of facilities; and installation of overhead poles used for any purpose.

12.04.030 Police power.

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

B. The City reserves the right to exercise its police power, notwithstanding anything in this Chapter or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter.

12.04.040 Permit required.

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

B. No permittee shall perform work in an area larger or at a location different, or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and within twenty-four (24) hours shall file a supplementary application for the additional work.

C. Permits shall not be transferable or assignable without the prior written approval of the City, which approval shall not be unreasonably be withheld.

D. Except for emergency operations pursuant to Section ____ below, a~~A~~ny person conducting any work within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to restore the area in accordance with City requirements) and obtain a permit before work may be resumed.

12.04.050 Developer ownership of infrastructure.

In the City, the construction of infrastructure in new developments is the responsibility of the developer. Once a public right-of-way has been dedicated to the City, all work in that public right-of-way, including the installation of new infrastructure by a developer, shall be subject to this Chapter.

12.04.060 Permit application.

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

1. The date of application;

2. The name, address and telephone number of the applicant and any contractor or subcontractor which will perform any of the work;

3. A plan showing the work site, the public right-of-way boundaries, all infrastructure in the area, and all landscaping in the area;

4. The purpose of the proposed work to be conducted within the right-of-way;

5. A traffic control plan in accordance with the Construction and Excavation Standards;

6. The dates for beginning and ending the proposed work and proposed hours of work, and the number of actual work days required to complete the project;

7. A copy of each contractor's license required by Chapter 13.12 of this Code; and

8. The applicable permit fees as set by resolution of the City Council.

B. For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection A hereof, the application shall include the following information:

1. ~~An itemization of the total cost of restoration, based upon R.S. Means Estimating Standards or at the direction of the City, other published street repair cost estimating standards;~~ (NOTE: Because the City cannot, under Senate Bill 10, collect costs based on Qwest's cost of construction, this requirement is irrelevant to the City's management of the public rights-of-way).

2. Copies of all permits and licenses (including required insurance, deposits, bonding, and warranties) required to do the proposed work, whether

required under the laws of the United States, the State of Colorado, or City ordinances or regulations.

C. An applicant for a public right-of-way permit for a major installation shall, in addition to the information required by Subsections A and B hereof, submit the following information:

1. To the extent known, l~~L~~ocates of all existing facilities located within five feet of the proposed facility, which shall be compiled and submitted according to the Construction and Excavation Standards; and

~~2. Engineering construction drawings or site plans for the proposed work, signed by a professional engineer licensed in the State of Colorado.~~ (NOTE: Qwest feels it is exempt under State law from this requirement. We will provide legal justification).

D. An applicant shall update a permit application within ten days after any material change occurs.

E. Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fees. Applicants must agree among themselves as to the portion each shall pay, and if no agreement is reached, payment in full shall be required of all applicants.

F. In all cases, the applicant for a public right-of-way permit and the eventual permittee shall be the owner of the facilities to be installed, maintained or repaired, rather than the contractor performing the work.

~~G. By signing an application, the applicant is certifying to the City that the applicant is in compliance with all other permits issued by the City, and that the applicant is not delinquent in any payment due to the City for prior work.~~ (NOTE: Each permit should be specific to the job undertaken by Qwest. This type of catchall phrase places Qwest in the position of having future permits denied which are unrelated to the permit in question. If the City were willing to propose language where non-compliance with other permits was substantial in nature, we would be able to agree to an amendment of this section.)

12.04.070 City review and approval.

A. An application for a public right-of-way permit shall be reviewed by the City for completeness within five working days of submission. If the application is not complete, the City shall notify the applicant of all missing information.

B. Once an application is deemed complete by the City, the City shall review the application as follows:

1. For a public right-of-way permit which does not include excavation, within five working days.

2. For a public right-of-way permit which includes excavation, within ten working days.

3. For a public right-of-way permit for a major installation, within fifteen working days.

C. At the conclusion of the review period, the City shall either approve the permit, approve the permit with conditions, or deny the permit.

12.04.080 Permit fees.

A. Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined in accordance with a fee schedule adopted by resolution of the City Council. All fees charged by the City related to a proposed application ~~Permit fees~~ shall be reasonably related to the costs of managing the public rights-of-way. These costs include, but are not limited to, the costs of issuing rights-of-way permits, verifying rights-of-way occupation, ~~mapping rights-of-way occupation~~ (NOTE: Please clarify that Qwest will not be subsidizing the City for installation of its mapping system), inspecting work, administering this Chapter, ~~and costs relating to restoration of the public right-of-way to remedy degradation of that public right-of-way caused by permittees~~ (NOTE: Senate Bill 10 limits the City to recovering its actual and direct costs associated with administration and management of permits and applications. Street restoration and degradation is not a direct cost to the City).

B. No restoration fee shall be required for a public right-of-way permit which does not include excavation.

~~C. Restoration fees shall be segregated by the City into an account to cover general street maintenance and construction.~~

12.04.090 Insurance.

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

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

2. Workers compensation insurance as required by State law.

B. The permittee shall file with the City proof of such insurance coverage in a form satisfactory to the City (NOTE: The City was to add prospect of providing self insurance).

12.04.100 Indemnification.

A. Each permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall save the City harmless and defend and indemnify the City, its successors, assigns, officers, employees, agents, and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses, as incurred, arising out of permittee's acts or omissions with respect to its ~~any~~ work or activity in the public right-of-way, including, but not limited to, the actions of the permittee, its employees, agents, contractors, related entities, successors and assigns, or the securing of and the exercise by the permittee of any rights granted in the permit, including any third party claims, administrative hearings, and litigation; whether or not any act or omission complained of is authorized, allowed, or prohibited by this Chapter or other applicable law.

~~B. The terms of each contract awarded by a permittee for work pursuant to a permit shall contain indemnity provisions whereby the contractor shall indemnify the City to the same extent as described above.~~

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

~~D. In the event the City institutes civil litigation against a permittee for a breach of the permit or for a violation of this Chapter and the City is the prevailing party, the permittee shall reimburse the City for all costs related thereto, including reasonable attorney fees. A permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence, or any willful acts of the City or any of its officers, employees, or agents.~~ (NOTE: Qwest would request that the ordinance provide that both parties pay for attorney's fees. This section in contractual in nature, and looks more like "franchise" language, which is disallowed under State law.)

E. If a permittee is a public entity, the indemnification requirements of this section shall be subject to the provisions of the Colorado Governmental Immunity Act.

12.04.110 Performance bonds and letters of credit.

A. Before a public right-of-way permit is issued, the applicant shall file with the Director a bond or letter of credit in favor of the City in an amount equal to the total cost of construction, including labor and materials, or five thousand dollars, whichever is greater. The bond or letter of credit shall be executed by the applicant as principal and by at least one surety upon whom service of process may be had in the state. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of City ordinances, rules and regulations, and upon payment of all judgments and costs rendered against the applicant for any violation of City ordinances or state statutes that may be recovered against the applicant by any person for damages arising out of any negligent or wrongful acts of the applicant in the performance of work pursuant to the permit.

B. The City may bring an action on the bond or letter of credit on its own behalf or on behalf of any person so aggrieved as beneficiary.

C. The bond or letter of credit shall be approved by the City's finance director prior to the issuance of the permit. However, the City may waive the requirements of any such bond or letter of credit or may permit the applicant to post a bond without surety thereon upon finding that the applicant has financial stability and assets located in the state to satisfy any claims intended to be protected against the security required by this section.

D. A letter of responsibility, in a form acceptable to the City, shall be accepted in lieu of a performance bond or letter of credit from all special districts operating within the City.

E. The performance bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of three years after completion and acceptance of the street cut, excavation or lane closure.

12.04.120 Warranty.

A. A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and warrants and guarantees all work done for a period of two ~~three~~ years after the date of probationary acceptance, and agrees to maintain upon demand and to make all necessary repairs during the two ~~three~~ year period. This warranty shall include all repairs and actions needed as a result of:

1. Defects in workmanship.

2. Settling of fills or excavations.

3. Any unauthorized deviations from the approved plans and specifications.

4. Failure to barricade.

5. Failure to clean up during and after performance of the work.

~~6. Any violation of this Chapter, the Construction and Excavation Standards or other City ordinance.~~ (NOTE: A warranty for specific work should not extend to unrelated work. This is not the commercial standard for construction warranties).

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

C. At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. Such repairs shall be completed within twenty four hours if the defects are determined by the City to be an imminent danger to the public health, safety and welfare. Non-emergency repairs shall be completed within thirty calendar days after notice.

D. The warranty shall cover only those areas of work undertaken by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the City. In the event that a portion of work warranted by a permittee is subsequently impacted by work of another permittee or the City during the warranty period, the other permittee or the City, as applicable, shall assume responsibility for repair to the subsequently impacted portion of the public right-of-way.

12.04.130 Inspections.

A. The following four inspections shall take place, at a minimum:

~~1. Pre-construction inspection. The permittee shall request that the City conduct a pre-construction inspection, to determine any necessary conditions for the permit.~~ (NOTE: Qwest feels that this is unnecessary given the substantial amount of information required during the application process and the fact that Qwest warrants its work and compliance with City requirements).

2. Completed work inspection. The permittee shall notify the City immediately after completion of work. The City shall inspect the work within twenty one days of the permittee's notification. Probationary acceptance shall be made if all work meets all standards set forth in this Chapter and any other applicable City ordinance or resolution.

3. Warranty inspection. Approximately thirty days prior to the expiration of the two~~three~~-year warranty period, the City shall conduct a final inspection of the work. If the work is still satisfactory the bond or letter of credit

shall be returned or allowed to expire, with a letter of final acceptance, less any amounts needed to complete work not completed by permittee.

4. Utility marking inspection. The City shall conduct a utility marking inspection pursuant to Chapter 12.06 of this Code.

B. Upon review of the application for a permit, the Director shall determine how many additional inspections, if any, may be required. The total number of required inspections shall be listed on the permit. For a permit which does not include excavation, the City may waive any or all of the above-listed inspections.

12.04.140 Time of completion.

A. All work covered by the permit shall be completed by the date stated on the application.

B. Permits shall be void if work has not commenced within thirty days after issuance, unless an extension has been granted by the City.

12.04.150 Joint planning and construction.

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

B. A permittee owning, operating or installing facilities in public rights-of-way shall meet annually with the City, at the City's request, to discuss the permittee's planned major excavations in the City. As used in this Subsection, the term "planned major excavations" means any future excavations planned by the permittee that will affect any public right-of-way for more than five days and are more than one thousand (1,000) feet in length, provided that the permittee shall not be required to identify future major excavations planned to occur more than three years after the annual meeting~~date that the permittee's master plan or update is discussed~~. Between the annual meetings to discuss planned major excavations, the permittee shall use its best~~s~~ efforts to inform the City of any substantial changes in the planned major excavations discussed at the annual meeting.

C. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, a permittee shall meet and cooperate with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of street cuts within the City and the amount of pedestrian and vehicular traffic that is obstructed or impeded. ~~Should two permittees refuse to joint trench or share bores or street cuts, the City may require each permittee to submit written evidence detailing why such sharing would be impossible or impractical. Should the permittee fail to provide evidence satisfactory to the City, the City may deny a~~

~~permit application on that basis.~~ (NOTE: The requirement of this section exceeds the City's authority in that it is regulation of the actual provision of telecommunications services. This duty is relegated to the PUC. The City cannot deny a permit due to a provider not joint trenching, or failing to provide, what in the City's sole opinion, a good enough justification. Qwest will absolutely work with industry to minimize impact to City streets

12.04.160 Locate information.

A. All users of the public rights-of-way in the City shall have an ongoing obligation to provide locate information to other users of the public rights-of-way and the City for the purpose of either design or construction.

B. In locating facilities in the public rights-of-way in preparation for work, a permittee shall compile all information obtained regarding its or any other facilities in the public rights-of-way related to a particular permit, and shall submit that information to the City in a format acceptable to the City.

C. Prior to the City undertaking any work in the public rights-of-way, the City may notify all permittees of the City work to be performed. Upon such notification, all permittees shall, within seven days, locate their facilities in the public rights-of-way in which the work will be performed, and provide documentation in a form acceptable to the City of the location of the permittee's facilities in that public right-of-way.

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

12.04.170. Minimal interference with other property.

A. Work in the public right-of-way or on or near other public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any City property, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the public rights-of-way by the City or its authority.

B. Facilities shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the City may deem proper.

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

12.04.180 Underground construction and use of poles.

A. When required by City ordinance, resolution, regulation or rule or applicable State or federal law, facilities shall be placed underground at no cost to the City. Placing facilities underground shall not preclude the use of ground-mounted appurtenances.

B. If allowed under applicable state and federal law, ~~W~~where all existing facilities in a particular location are installed underground at the time of construction, or where all such facilities are subsequently placed underground, all of a permittee's facilities in that location shall also be placed underground at no expense to the City unless funding is generally available for such relocation to all users of the public rights-of-way.

C. In areas where existing facilities are above-ground, the permittee may install above-ground facilities.

D. For above-ground facilities, a permittee shall utilize existing poles and conduit wherever possible.

12.04.190 Use of trenches and conduits by City.

A. Should the City desire to place its own facilities in trenches or bores opened by the permittee, the permittee shall cooperate with the City in any construction by the permittee that involves trenching or boring, provided that the City has first notified the permittee in some manner that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. A permittee shall allow the City to place its facilities in the permittee's trenches and bores, provided the City incurs any incremental increase in cost of the trenching and boring. The City shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores under this Section.

~~B. Unless otherwise prohibited by law, the City may install or affix and maintain its own facilities for City purposes in or upon any and all of a permittee's ducts, conduits or equipment in the public rights-of-way and other public places, at a charge to be negotiated between the parties (but in no event greater than the highest price charge by the permittee to any other user), to the extent space therein or thereon is reasonably available, and pursuant to all applicable City ordinances. For purposes of this Section, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems.~~ (NOTE: This section should not be included in a ROW Ordinance. If the City wants to purchase facilities from Qwest, this should be handled outside of this ordinance.)

12.04.200 Construction and excavation standards.

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

B. The permittee shall be fully responsible for the cost and actual performance of all work in the public right-of-way.

C. All restoration shall result in a work site condition equal to or better than ~~that which~~that, which existed prior to the work.

12.04.210 Restricted rights-of-way. (NOTE: Qwest is a provider of last resort, and has state obligations to serve customers on request. To the extent that this ordinance places Qwest in a position where we might violate that obligation, an exception needs to be carved out.)

A. To reduce the impact of work within the public right-of-way in and around certain heavily-traveled arterial and collector streets within the City, the City shall employ a rotating permit schedule for work in such public rights-of-way.

B. Those public rights-of-way in and around the streets listed in the Construction and Excavation Standards as "restricted rights-of-way" shall be subject to this Section.

C. Work shall only be permitted within any restricted right-of-way once every three years. The procedure for such rotation shall be as follows:

1. The City shall publish once in a newspaper of general circulation during the month of January of each year, a list of those restricted rights-of-way (by street name) in which work shall be permitted each year for the next two ~~three~~ years. The list shall also be published on the City's website.

2. Any person wishing to perform work in a restricted right-of-way on the list for a given year shall file a completed application pursuant to Section 12.04.060 ***on or before March 1*** (NOTE: Again, Qwest must provide service upon request. We will not have this available one year in advance.) of that year.

3. The City shall review the permit application and approve or deny the permit in accordance with Section 12.04.070.

4. All permitted work shall be performed between March 1 and October 31.

5. After October 31, the restricted right-of-way shall be ineligible for work until January of one ~~two~~ calendar years later, and then the process shall begin again.

C. If a restricted right-of-way is subject to excavation or construction as part of a City, state or other public improvement project, public right-of-way permits may be issued by the City for work during such improvement project notwithstanding the schedule set forth in this Section.

D. Exemption from restricted schedule. ~~In rare circumstances, t~~The City may grant an exemption from the schedule for restricted rights-of-way in accordance with the following procedures.

1. A request to be exempted from the restricted schedule shall be in writing on a form acceptable to the City, and shall contain the following information, at a minimum:

a. A detailed and dimensional engineering plan that identifies and accurately represents all public rights-of-way and other property that will be impacted by the proposed work, and the method of construction.

b. The location, width, length, and depth of the proposed excavation.

2. Criteria for approval. In determining whether an exemption should be granted, the City shall consider the following criteria, at a minimum:

a. Whether alternative utility alignments that do not involve excavating in the restricted public right-of-way are available.

b. Whether the proposed excavation can reasonably be delayed until after the three year deferment period has elapsed.

c. Whether duct or conduit is reasonably available from another user of the public right-of-way.

d. Whether the proposed work involves joint trenching or joint use, and the number of users to share in the trenching or use.

e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching.

f. Whether the proposed applicant has a legal obligation under applicable state or federal law to provide service to customers within the restricted area.

E. Exemptions for emergency operations. Emergency maintenance operations in restricted rights-of-way shall be limited to circumstances involving the preservation of life or property, or the restoration of customer service. Any person commencing operations under this Subsection shall submit detailed engineering plans, construction methods and remediation plans no later than one working day after initiating the emergency operation.

12.04.220 Relocation of facilities.

A. If at any time the City requests a permittee to relocate its facilities in order to allow the City to make any public use of rights-of-way, or if at any time it shall become necessary because of a change in the grade or for any other purpose by reason of the improving, repairing, constructing, or maintaining of any public rights-of-way, or by reason of traffic conditions, public safety or by reason of installation of any type of structure of public improvement the City ~~or other public agency or special district, and any general program for the undergrounding of such facilities,~~ (NOTE: Quasi-governmental agencies must reimburse Qwest for relocation. In addition, HB 1134 requires Cities to reimburse utilities for placing plant underground.) to relocate facilities within or adjacent to public rights-of-way in any manner, either temporarily or permanently, the City shall notify the affected permittee, at least ninety (90) days in advance, except in the case of emergencies, of the City's intention to perform or have such work performed. The permittee shall thereupon, at no cost to the City, accomplish the necessary relocation within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date the City has notified the permittee that it intends to commence its work or immediately in the case of emergencies.

B. Should the permittee fail to perform the relocation, the City may perform such relocation at the permittee's expense and the permittee shall reimburse the City as provided in Section 12.04.250.

C. Following relocation, the permittee shall, at the permittee's own expense, restore all affected property to, at a minimum, the condition which existed prior to the work. A permittee may request additional time to complete a relocation project, and the City may grant an extension if, in his or her sole discretion, the extension will not adversely affect the City's project or the public use of the affected public rights-of-way.

12.04.230 Abandonment and removal of facilities.

A. Notification. A permittee that intends to discontinue use of any facility within the public right-of-way shall notify the City in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than thirty (30) days from the date such notice is submitted to the City, and the method of removal and restoration.

B. The permittee may not remove, destroy or permanently disable any such facilities during said thirty (30) day period without written approval of the City. After thirty (30) days from the date of such notice, the permittee shall remove and dispose of such facilities as set forth in the notice, as the same may be modified by the City, and shall complete such removal and disposal within six (6) months, unless additional time is requested from and approved by the City.

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

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

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

12.04.240 Emergency procedures.

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

B. If any damage occurs to an underground facility or its protective covering, the contractor shall notify the facility's owner promptly. When the facility's owner receives a damage notice, the facility's owner shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the contractor responsible shall immediately notify the facility's owner and 911 and take immediate action to protect the public and nearby properties.

12.04.250 Reimbursement of City costs.

A. The City may make any repairs necessary to eliminate any safety hazard and/or to correct any work not performed by a permittee as directed. Any such work performed by the City shall be completed and billed to the permittee at overtime rates.

B. The permittee shall pay all such charges within thirty (30) days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the City may, in addition to taking other collection remedies, seek reimbursement through the performance bond or letter of credit. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the City issue any further permits of any kind to said permittee, until all outstanding charges have been paid in full, unless such charges have been disputed by the permittee in accordance with the terms contained in this Ordinance.

12.04.260 Permit revocation and stop work orders.

A. A public right-of-way permit may be revoked or suspended by the City, after written notice to the permittee, for any of the following:

1. A material ~~V~~violation of any condition of the permit or any provision of this Chapter or the Construction and Excavation Standards.

2. A material ~~V~~violation of any other City ordinance or state law relating to the work.

3. Existence of any condition or performance of any act which, in the City's determination, constitutes or causes a condition endangering life or property.

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

1. Performing work without a permit except for routine maintenance or emergency repairs to existing facilities as provided for in this Chapter.

2. Performing work in violation of any provisions of this Ordinance, or any other ordinance of the City, or state law relating to the work.

3. Performing any ~~act which~~act, which, in the City's determination, endangers life or property.

C. A suspension, revocation or stop work order shall take effect immediately upon delivery of written notice to the person performing the work, or

upon mailing first-class mail, postage prepaid, to the permittee's last known address.

12.04.270 Penalties.

~~A. If any person, firm or corporation is found guilty of or pleads guilty to a violation of any of the provisions of this Chapter, they shall be punished as provided in Section of this Code. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.~~

~~B. In addition to or in lieu of the penalty set forth in Subsection A,~~ (NOTE: Qwest should not be subject to criminal sanctions for violations of a right-of-way ordinance) T~~t~~he City may impose the following monetary penalties:

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

a. In arterial and collector streets (as defined in the City of Greenwood Village Transportation Plan) during the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: ~~one hundred dollars ($100) for each fifteen minutes, or portion thereof, for a maximum of three thousand dollars ($3,000) per day.~~(NOTE: These are excessive. They should be reduce substantially. $300 per day would be adequate).

b. In arterial and collector streets during any time other than the times specified in Subsection a., or in local streets at any time: ~~fifty dollars ($50) for each fifteen minutes, or portion thereof, for a maximum of fifteen hundred dollars ($1,500) per day.~~ (NOTE: These are excessive. They should be reduce substantially. $200 per day would be adequate).

2. For commencing work without a valid permit: five hundred dollars ($500). ~~, plus twice the applicable permit fee.~~

3. For any other violation of a permit: two hundred fifty dollars ($250) per violation, with no maximum amount.

C. The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Chapter, and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit, or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the exercise of one penalty shall not preclude the City from exercising any other penalty.

INTRODUCED AND APPROVED ON FIRST READING ON THE ____ DAY OF _____, 2001, AND ORDERED PUBLISHED IN THE VILLAGER.

David W. Phifer, Mayor

ATTEST:

_____
Mareile Webster, City Clerk

INTRODUCED AND APPROVED ON SECOND READING ON THE ____ DAY OF _____, 2001, AND ORDERED PUBLISHED IN THE VILLAGER BY REFERENCE TO TITLE ONLY.

_____
David W. Phifer, Mayor

ATTEST:

_____
Mareile Webster, City Clerk

EFFECTIVE: _____