

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING ARTICLE 13.08, "RIGHT-OF-WAY MANAGEMENT," OF CHAPTER 13, "UTILITIES," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, AND REPLACING IT WITH A NEW ARTICLE 13.08, "RIGHT-OF-WAY MANAGEMENT"; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

**WHEREAS**, the Town of Prosper, Texas (the "Town"), is charged with maintaining control of and access to the public right-of-way in order to protect the health, safety and welfare of its citizens and the public; and

**WHEREAS**, the Town has found that work performed by right-of-way users in the public right-of-way can significantly interfere with public use of the right-of-way and existing utility facilities, and negatively affect public safety, public resources, air quality, level of service on streets and sidewalks, community aesthetics, parking and business; and

**WHEREAS**, pursuant to the Town's home-rule powers, the Town Council has found that it is necessary to amend certain regulations governing the installation, operation, maintenance, repair, modification and replacement of facilities in the public right-of-way in order to protect the health, safety and welfare of the Town's citizens and the public by minimizing and reducing impacts to public safety within the public right-of-way and to minimize and reduce impacts to the Town, its citizens and visitors

**WHEREAS**, the Town has determined that these amendments will be in the best interests of the public; and

**WHEREAS**, pursuant to Chapters 51 and 54 of the Texas Local Government Code, the Town is authorized to adopt any such ordinances necessary to preserve and protect its wastewater resources.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:**

**SECTION 1**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2**

From and after the effective date of this Ordinance, existing Article 13.08, "Right-of-Way Management," of Chapter 13, "Utilities," of the Code of Ordinances of the Town of Prosper, Texas, is hereby repealed and replaced with a new Article 13.08, "Right-of-Way Management, to read as follows:

## "ARTICLE 13.08. RIGHT-OF-WAY MANAGEMENT

### DIVISION 1. GENERALLY

#### **Sec.13.08.001 Administration.**

The Town Manager shall appoint a right-of-way (ROW) Manager, who is the principal town official responsible for the administration of the ROW, ROW permits, the regulation of same and ordinances related thereto. The ROW Manager may delegate any or all of the duties hereunder. The ROW Manager shall have the duties, responsibilities and authority as specified for the ROW Manager stated herein.

#### **Sec. 13.08.002 Definitions.**

The following definitions apply in this article. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

*Abandoned facilities* means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

*Administration fee* means the fee charged by the town to recover its costs incurred for ROW management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying ROW permit applications; inspecting job sites and restoration improvements; determining the adequacy of the ROW restoration; revoking ROW permits, and other costs the town may incur in implementing the provisions of this article.

*Applicant* means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

*Area of influence* means area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

*Backfill:*

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

*Certificated telecommunications provider or CTP* means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the state public utility commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code Ch. 283 or "the act."

*Collector Street* means any roadway or street classified on the town thoroughfare plan, as it exists or may be amended, as a collector.

*Compaction* means consolidating backfill material in a trench to prevent future settlement.

*Comprehensive plan* means the town comprehensive plan, as it exists or may be amended.

*Construction* means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the ROW. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the ROW.

*Contractor* means any public or private person, subcontractor or organization, other than the town.

*Day* means business day unless otherwise specified.

*Department* means the Town Department of Engineering Services or a successor department that is responsible for management of the ROW and roadway infrastructure.

*Emergency operations* means those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

*Excavation* means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the ROW and does not include landscaping activity unless the activity removes or disturbs the paved portion of the ROW.

*Facilities* means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, hand holes and wires located under, on, or above the surface of the ground within the ROW, and related facilities and equipment used or useful for the provision of utility services.

*FCC* means the Federal Communications Commission.

*Governing body* means the Mayor and the Town Council of the town.

*Governmental entity* means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

*Holiday* means days in which town offices are closed in observance of a holiday.

*Local Street* means roadway or street not classified on the town comprehensive plan, as it exists or may be amended, as a highway toll-way, major thoroughfare, minor thoroughfare or collector.

*Main line* means lines other than service connections used to convey the ROW user's product.

*Major project* means any project, which includes 500 or more linear feet of excavation or any excavation under pavement. *Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

*Network provider* means a wireless service provider, or a person that does not provide wireless services and that is not an electric utility but builds or installs, on behalf of a wireless service provider, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

*Pavement* means streets containing Portland cement, asphalt, brick or other rigid or semirigid material that covers the surface of a street and their underlying sub-grade and base.

*Permit* means permit issued under this article authorizing excavation in the ROW.

*Permittee* means person or ROW user to whom a permit is issued to excavate a ROW.

*Perpendicular excavations* means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

*Person* means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the town.

*Public inconvenience penalty* means penalty assessed to the ROW user who denies the public the use of public property for a time period greater than allowed by this article.

*PUCT* means public utility commission of the state.

*Registration* means the annual application process of the ROW user to use any portion of the ROW.

*Registration certificate* means the document provided by the town, annually, upon approval of the application for registration.

*Repair* means the temporary or permanent construction work necessary to make the ROW usable.

*Repair area* means area around excavation where the pavement and sub-grade is impacted by an excavation.

*Restoration* means the process by which an excavated ROW and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

*Resurfacing* means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

*Right-of-way or public right-of-way (ROW)* means the surface of, and the space above and below, any street, road, highway, freeway, toll-way, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the town or over which the town exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the town, but shall specifically exclude private property.

*Right-of-way (ROW) Inspector* means person assigned by the ROW Manager to oversee inspections of work conducted within the town's ROW.

*Right-of-way (ROW) Manager* means the ROW Manager of the town, or his/her designee.

*Right-of-way (ROW) user* means person, its successors and assigns, that uses the ROW for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

*Routine service operation* means a work activity that makes no material change to the facilities and does not disrupt traffic.

**Service** means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the ROW, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

**Service connection** means the line that serves no more than two individual customers or two meter banks.

**Street** means the paved portion of the ROW that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

**Surface-mounted markers** means any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

**Temporary Lines** means facilities that are installed temporarily above ground (or can be below) and not in their ultimate location. This can be as a result of an existing main line being hit or damaged by other construction, and a temporary solution to re-establish the connection is made until a more permanent fix is complete. Temporary lines can also be individual connections to individual residence (typically above ground) until a permanent connection is placed underground.

**Thoroughfare** means any roadway or street classified on the town comprehensive plan, as it exists or may be amended, as a highway, toll-way, major thoroughfare or minor thoroughfare.

**TMUTCD** means the state manual on uniform traffic-control devices, as it exists or may be amended.

**Town.** The town and the town's officers and employees.

**Town project** means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the town, or its designee, in the public ROW, on any town utilities, on any town facilities, in pursuant of its governmental functions or for the benefit of the public.

**Town utilities** means any water, sewer or drainage line owned and operated by the town, the North Texas Municipal Water District (NTMWD), the Upper Trinity Regional Water District (UTRWD), or any other utility district providing water or sewer service to the town.

**Traffic-control representative** means the designated representative of the ROW user who is responsible for work zone safety and compliance with TMUTCD. The ROW user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

**Transport facility** means each transmission path physically within a public ROW, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

**Trench** means excavation deeper than 24 inches. This shall include linear trenches, holes, pits, etc.

**Underground Facility Damage Protection Safety Act** means the V.T.C.A. Utility Code § 251.001 et seq., as it exists or may be amended.

**Utility** means any privately or publicly owned entity which uses ROW to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, traffic management, streetlights, fiber communications, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the ROW. Poles are regulated herein only as specifically set forth in this article.

**White lining** means marking the excavation site with white washable marking paint or flags prior to requesting a utility locate in order to further identify the site.

**Wireless service** means any service using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

**Wireless service provider** means a person that provides wireless services to the public.

### **Sec. 13.08.003 Penalty.**

This is not a traffic ordinance authorized under the Texas Motor Vehicle Statutes, and is not governed by the penal provision thereunder. Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the town from filing suit to enjoin the violation. The town retains all legal rights and remedies available to it pursuant to local, state and federal law.

- (a) A person commits an offense if they:
  - (1) Perform, authorize, or supervise construction without a valid permit issued under this article;
  - (2) Fail to comply with restrictions or requirements of a permit issued under this article;
  - (3) Fail to comply with a lawful order or regulation of the ROW Manager issued pursuant to this article; or
  - (4) Violate other provisions of this article.
- (b) A person commits an offense if, in connection with the performance of construction in the public ROW: they
  - (1) Damage the public ROW beyond what is incidental or necessary to the performance of the construction;
  - (2) Damage public or private facilities within the public ROW;
  - (3) Fail to immediately clear debris associated with construction from a public ROW after construction is complete; or
  - (4) Fail to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the ROW Manager.

- (c) The ROW Inspector will provide the contractor with a Notice of Violation Form that identifies the violation(s) and corrective measures to be taken by a certain date as specified by the ROW Manager. The contractor is required to acknowledge receipt on the Notice of Violation Form.
- (d) A culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or authorized or directed. An offense under this article is punishable by a fine of \$1.00 to \$2,000.00.
- (e) Prior to initiation of civil litigation, the public service provider, or any other person, who has violated a provision of this article, shall be given the opportunity to correct the violation within a time frame specified by the ROW Manager. The subsection does not prohibit the ROW Manager of the town from taking enforcement action as to past or present violations of this article, notwithstanding their correction.
- (f) If a permittee is in violation of this article, no additional permits will be granted to the public service provider and/or permittee until the offense has been corrected and any direct or indirect costs incurred by the town have been reimbursed.

#### **Sec. 13.08.004 Existing franchise.**

If any provision of this article conflicts with an existing franchise agreement, the franchise agreement shall prevail until the expiration thereof.

#### **Sec. 13.08.005 Bridge weight limit violation.**

It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load-bearing wheels travel on the bridge.

#### **Sec. 13.08.006 Utility coordination committee.**

Each utility shall name a utility coordinator who shall participate in the utility coordination committee. All ROW users with open permits shall send one representative to the utility coordination committee meetings at the time and location established by the town. In the event that a ROW user's representative does not attend two or more meetings within a 12-month period, the ROW user's permits will be placed on hold until the representative resolves all conflicts discussed in the unattended meetings and attends the next scheduled meeting.

#### **Sec. 13.08.007 Field utility coordination.**

- (a) The ROW user shall notify the Department at each of the following times during a project; and failure to do so constitutes a violation of this article.
  - (1) Forty-eight hours before the start of construction; either through email and/or text ROW Inspector must be informed;
  - (2) Daily Work Location Form;
  - (3) Potholing; when water main 16 inches or greater is exposed and visible to ROW Inspector;

- (4) When traffic control is required; ROW Inspector must be notified prior to starting work in the designated area;
- (5) Upon completion of the initial backfill; and
- (6) Upon completion of the project, an email or text must be sent to the ROW Inspector as documentation that the job has been completed.
- (7) When an existing utility is damaged (water main, water service, sewer main, sewer service, gas, electric, cable, irrigation) the ROW Inspector must be notified immediately. In instances where a private water service, sewer service, or irrigation is damaged, the ROW user must immediately hire a licensed plumber to make a permanent repair.

- (b) The ROW user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.
- (c) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of non-washable markers is prohibited.
- (d) Compliance with the Texas Utilities Code, as amended, is required at all times.
- (e) All barricades, plates, cones, traffic directional equipment and all other traffic-control devices owned, leased or used by the ROW user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or ROW user or subcontractor, as applicable, at all times such equipment is used on or near the ROW. An exception to the marking requirement may be made in the sole discretion of the ROW Manager in the event the traffic-control equipment is not owned by the permittee or ROW user.
- (f) Locate to the extent of the ROW. The public service provider has the exclusive responsibility to locate the extent of the public ROW. Acceptance of the plans and issuance of a permit does not constitute liability of the town's part of any facilities placed on private property. If facilities/utilities are placed on private property, it is the public service provider's responsibility to contact the property owner and acquire easements.
- (g) The town reserves the right under this article to take the following actions:
  - (1) Divide larger neighborhood permits into smaller more manageable permits, allowing bores on no more than 2 streets concurrently. Failure to do so may result in shutdown of work or temporary hold of permit until the issue has been resolved.
  - (2) Require ROW user to backfill any open holes (at any time during the scope of work) at the request of the ROW Inspector. Failure to do so may result in shutdown of work or temporary hold of permit until the issue has been resolved.

#### **Sec. 13.08.008 Maps and records of registrants.**

- (a) Within 30 days of passage of this article, each ROW user shall provide the town an accurate map of their service area. The map shall be in electronic format overlaid over the North Central Texas Council of Government base digital map. In dual coverage areas, the town may request additional information to enable identification of ROW users.
- (b) Each ROW user must maintain accurate maps and records of its facilities. The town's road network may be provided in digital format upon request. The ROW user is encouraged to maintain their system maps geo-referenced to the town's street network, which is on the North Central Texas Council of Government base digital map. The map should include true

bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The ROW user will provide the town with digital information within 90 days of a request for maps from the town for any user with less than 50 miles of utilities within the town. All other ROW users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the town on an annual basis by January 1.

- (c) If the maps and records submitted in response to any request by or requirement of the town include information expressly designated by the ROW user as a trade secret or other confidential information protected from disclosure by state law, the town and its agents, employees, or other representatives may not disclose that information to the public without the consent of the ROW user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a ROW user to designate all matters in its maps and records as confidential or as trade secrets.
- (d) Within 60 days of completion of each new permitted section of a person's facilities, the person shall supply the town with a completed set of "as-built" drawings for the segment in a format used in ordinary course of the persons business and as reasonably prescribed by the town, and allowed by law.

#### **Sec. 13.08.009 Notice.**

Notice for purposes of this article shall be made to the town via electronic message (email), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the department or United States mail return receipt required.

#### **Sec. 13.08.010 Registration.**

- (a) Nothing in this section relieves a ROW user and/or utility from obtaining a permit under this article to perform work in the ROW.
- (b) In order to protect the public health, safety, and welfare, a utility maintaining or operating existing facilities in the ROW must register with the ROW Manager in accordance with the following requirements:
  - (1) The registration must be on a form furnished by the ROW Manager and made in the name of the ROW user that owns the facilities.
  - (2) Registration expires the date the certificate of insurance provided to the town by the ROW user the registration occurs. If the utility fails to renew registration by that date, the town will send by certified mail a notice of noncompliance to the address listed on the registration. If the utility fails to renew registration within 30 calendar days after the date of sending the notification, the facilities of the utility will be deemed to have been legally abandoned.
  - (3) If information provided as part of the registration changes, the utility must inform the ROW Manager, in writing, not more than 30 days after the date the change occurs.
  - (4) The utility shall also include the following registration:

- (A) The name of the utility using the ROW, including any business name, assumed name, or trade name the utility operates under or has operated under in the town within the past five years.
- (B) If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.
- (C) The ordinance number of any franchise or license issued by the town that authorizes the utility to use the ROW.
- (D) The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.
- (E) The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility.
- (F) The name, address and telephone number of any contractor or subcontractor, who will be working in the ROW on behalf of the utility. This list may be amended as needed by the utility; however, no work shall be performed in the ROW by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.
- (G) The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, 7 days a week.
- (H) Proof of existing insurance that complies with division 4 of this article.

(5) Upon completion of registration, the town will provide the ROW user a registration certificate valid until the end of the calendar year during which the registration was completed. The ROW user may make as many photocopies of the registration certificate as necessary. The ROW user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(F) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

#### **Sec. 13.08.011 Traffic handling training.**

The ROW user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic-control representative. The representative is responsible for compliance with the TMUTCD and the traffic-control plan (if required) at all work zone sites. The traffic-control representative shall ensure employees on the job site have adequate training. In instances where traffic control is required, ROW user must contact ROW Inspector to verify traffic control before work commences. All vehicles must be parked in the direction of travel on one side of the street.

#### **Sec. 13.08.012 Reporting obligations.**

All ROW users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the town, state, or federal government, or railroad or pipeline company, including a description of the ROW user's intended use of the ROW, information sufficient to determine whether the ROW user is subject to franchising or licensing by the town, and information to determine whether the ROW user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough

to determine whether the ROW user has applied for and received any permit or other approvals required by the FCC. ROW user shall provide all such other information as may be reasonably required by the town to complete the registration statement.

#### **Sec. 13.08.013 Surface-mounted markers.**

Where surface-mounted markers are needed, curb-mounted medallions shall be used whenever possible.

#### **Sec. 13.08.014 Relocation of facilities for public improvements.**

- (a) In the exercise of governmental functions, the town has first priority over all uses of the ROW. The town reserves the right to, among other things, install curbs, gutters, inlets, aprons, traffic signs or poles, with or without attached flashing lights, traffic signals and other traffic management devices, light poles, guard rails, sidewalks, conduits, fiber, construct, maintain and alter town projects, including but not limited to laying water, sewer, drainage, and other pipelines or cables and conduits, and doing underground and overhead work, and attachments, restructuring, or changes in street facilities in, across, along, over, or under a public street, alley or ROW occupied by an agency or ROW user, and to change the curb, sidewalks, or the grade of streets and any improvements reasonably associated therewith.
- (b) The ROW user must relocate its facilities, at its own expense and in accordance with section 13.08.066, prior to the start of construction of a town project or any work described in subsection (a) above. Failure to comply with this provision shall subject the ROW user to the enforcement provisions contained herein.
- (c) A permit will be required when making facility adjustments in preparation for town projects.
- (d) Franchise utilities shall acknowledge in writing when they are not in conflict with ongoing town projects upon request by the town.

#### **Sec. 13.08.015 Permit required.**

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunneling, excavate or close lanes on any ROW, locate street, or town easement, without first having made application and obtained a permit therefor except for as allowed by section 13.08.016. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any ROW for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the ROW Manager a permit in compliance with this article.

- (a) Before issuing a permit, the ROW Manager shall have been provided an online application, on a form furnished by the ROW Manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with town specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If ROW user cannot show distinctive line weights, the plans shall clearly label the above information using text. When

required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.

- (b) At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in Division 3 of this article.
- (c) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the ROW Manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.
- (d) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with facilities installed in any ROW to relocate the facilities, at no cost to the town, subject to state law, if applicable, in the event that relocation is required by the town to accommodate a proper governmental use of the ROW.
- (e) Combinations of permits shall be permitted at the sole discretion of the ROW Manager. Fees shall be assessed based on the excavations permitted.
- (f) Subdivision monuments, historical markers, and any other signs or structures with foundations in the ROW, excluding billboards, are subject to this article.
- (g) If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public ROW. An extension to a permit may be granted by the ROW Manager only before the permit expires.
- (h) Storm water pollution prevention plan. The permittee shall submit with the permit application two sets of storm water pollution prevention plan in cases where stream crossings are open cut. The permittee shall contain all sediment within the work area using erosion control measures and erosion limiting construction techniques as specified in other town ordinances, including but not limited to any storm water management ordinance contained in state and federal laws.

#### **Sec. 13.08.016 Exceptions to require permit.**

- (a) The ROW Manager reserves the right in his/her discretion to require a ROW permit on service connections. Unless otherwise required by the ROW Manager, service connections do not require a permit if all of the following conditions are met:
  - (1) The service connection excavation shall not exceed 4 feet inside the ROW to property line;
  - (2) All excavation shall be in accordance with service connection drawings;
  - (3) The address for the service connection is on the town-provided form, which is submitted to the ROW Manager via hard copy or email. Work shall not begin until the electronic form is transmitted to the ROW Manager;
  - (4) The excavation required is less than 18 inches in depth;
  - (5) The excavation is no wider than 2 inches or is hand dug; and
  - (6) The service connection does not require boring.

(b) Irrigation system installation does not require a permit if all of the following conditions are met:

- (1) The work is performed with an existing valid permit issued by the town for the installation of irrigation.
- (2) The excavation shall not exceed 12 inches in depth and no wider than one inch.
- (3) The address for the service connection is on the town-provided form, which is submitted to the ROW Manager via email and is approved. All requests which are not approved within 48 hours are denied.
- (4) Line locates from the town are requested.

**Sec. 13.08.017 Permit application.**

- (a) Application for a ROW permit shall be submitted online in accordance with the procedures and requirements stated herein and on the town's website. The online application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavation, which will exceed 5 feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.
- (b) A permit shall only be valid for the area of the ROW specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new ROW permit.
- (c) Applicants may apply jointly for permits to excavate the ROW at the same time and place. Applicants who apply jointly for a ROW permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The town will recognize only one point of contact.
- (d) Permits will be issued or denied within 5 business days of town receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The town may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new ROW permit or a permit extension for additional time. This supplementary application must be submitted to the town prior to the permit end date. Applicants are required to attend a pre-construction meeting for major projects identified by the ROW Manager.
- (e) An expedited permit may be requested, and shall be issued or denied within 2 days of application upon a showing of good cause, as solely determined by the ROW Manager.
- (f) If the owner fails to act upon any permit within 30 calendar days of issuance, the permit shall become invalid, and the owner will be required to obtain a new permit. No permits shall be transferable.

### **Sec. 13.08.018 Issuance of permit.**

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the ROW Manager, it shall be his/her duty to issue the permit, when the provisions of this article have been complied with.

- (a) Upon receiving a completed online application for a permit and a plan prepared in accordance with the town specifications, the ROW Manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Except only in emergency excavations, at least one working day prior to the start of work, the applicant shall notify the ROW Manager the date that the work will commence when traffic-control devices are necessary on a thoroughfare.
- (b) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- (c) Each permit shall state a time period for completion of all the work to be done hereunder. The ROW Manager may in his/her sole discretion, grant extensions of time.
- (d) No person in violation of any requirement of this article shall be issued a permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation(s) is/are corrected or a plan for correction is approved by the ROW Manager. The ROW Manager is authorized to grant exceptions upon showing of good cause. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the town at law or equity.
- (e) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the ROW user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

### **Sec. 13.08.019 Posting of signs.**

The ROW user and contractor (if used) shall be identified by 3 feet by 3 feet information signs on all work requiring a permit. The signs shall state the name and phone number of the ROW user and contractor (if used). The signs shall be placed in the ROW on a breakaway pole base on each approach to the location where construction is occurring from the time of the beginning of work in the ROW and shall continue to be posted at the location during the entire time the work is occurring. Informational signs shall be posted on the public ROW 100 feet before the construction location commences and 100 feet thereafter, unless other posting arrangements are approved or required by the director.

### **Sec. 13.08.020 Excavation to be under supervision of the ROW Manager.**

- (a) Any ROW user engaged in making or backfilling any excavation in any ROW shall, at all times, while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide the same, when requested by any authorized town employee. At all times while the work is in progress, the ROW user shall also maintain, at the job location, a sign, barricade or other device bearing the ROW user's name and a phone number in which the ROW user can be reached.

- (b) The ROW user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, streetlights, or other property at, near or encountered in its work. The ROW user shall determine the boundary of the ROW.
- (c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of ROW and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the town pursuant to the policy and regulatory powers of the town necessary to provide for public convenience. The ROW user shall not trespass upon private property. The ROW user shall determine the boundary between ROW and private property and place stakes/markers indicating this boundary to remain in place for the duration of the work.
- (d) The town reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the town, in, across, along, over or under any ROW or public place occupied by a ROW user and to change any curb or sidewalk or the grade of any street and to maintain all of the town's facilities. In allowing such work to be performed by others, the town shall not be liable to a ROW user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW user by such third party.
- (e) All transmission and distribution structures, lines, equipment and facilities erected by a ROW user within the town shall be so located as to cause minimum interference with the proper use of the ROW, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the ROW.
- (f) If the town requires a ROW user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the town, to use, or to use with greater convenience, any ROW or public place, the ROW user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a ROW user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a ROW user's facilities; provided, however, that the town shall never be liable for such reimbursement.
- (g) During excavations or boring performed within 10 feet of water main 16 inches or greater in size, potholing of that line must take place. Potholing will require the ROW user to expose the line so that it is visible and can be inspected by the ROW Inspector. Potholing will be required every 150 feet along the water main.

### **Sec. 13.08.021 Registration certificate required.**

It is unlawful for any person, its agents, servants or employees to perform construction in the ROW without first having made either application and obtained a permit therefor or have in possession a valid registration certificate. A registration certificate may only be used for construction activities not requiring a permit in accordance with section 13.08.016. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided that no excavation is required in the ROW.

### **Sec. 13.08.022 Hours of operation for nonemergency work.**

- (a) Excavation and boring allowed. Excavation and boring shall be conducted between the hours of 7:00 a.m. to 3:00 p.m. on Monday thru Friday, except on holidays. No excavation or boring shall be performed on holidays. Excavation and boring will cease at noon the day before a holiday, or a holiday weekend.
- (b) All other work requiring an inspection shall be done between the hours of 7:00 a.m. to 3:00 p.m. on Monday thru Friday, except on holidays. No work shall be performed on holidays. Excavation and boring will cease at noon the day before a holiday, or a holiday weekend. A ROW user may work on Saturday subject to the approval of the ROW Manager. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed and is nonrefundable.

### **Sec. 13.08.023 Denial, Suspension, or holding of permit.**

A permit may be denied or suspended, or held for any of the following reasons:

- (a) Failure to provide proof of a surety bond or liability insurance acceptable to the town or notice of termination of the same.
- (b) Failure to secure a contractor's license or other required license.
- (c) Failure to perform in accordance with the requirements of this article.
- (d) The excavation would be in a street and not otherwise permitted by this article.
- (e) The proposed warning or other traffic-control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the ROW Manager.
- (f) The proposed activity would violate any town article or state or federal law, rule, regulation or statute.
- (g) The permit application contains false or misleading information.
- (h) The activity would cause a public health or safety hazard.
- (i) The ROW user is not authorized within the town.
- (j) The ROW user is in violation of this article relative to work in progress.
- (k) The ROW user has not compensated the town, or is not legally obligated to compensate the town by contract, by agreement or by law, for using the public property; or the ROW user has failed to timely make required payments.

- (l) A representative of a franchise utility fails to attend two or more utility coordination meetings within a 12-month period.
- (m) The ROW user fails to comply with the construction timelines of the town's projects.
- (n) Outstanding invoices or bills will result in denial.
- (o) Failure to bury temp lines will result in holding of permits.
- (p) Failure to restore a property owner's property to existing conditions or better, including replacement of any damaged landscaping, sod, irrigation, hardscape, utility service and pavement.

**Sec. 13.08.024 Appeal.**

A ROW user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- (a) If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the ROW Manager within 5 business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The ROW Manager shall provide a written decision within 5 business days. Failure to render a decision within 5 business days shall constitute a denial.
- (b) If a further denial is given, the appellant may thereafter file a written notice of appeal to the Director of Engineering Services within 5 business days of receipt of the ROW Manager's written decision. The Director of Engineering Services shall provide a written decision within 5 business days of receipt of an appeal in accordance with this section. Failure to render a decision within 5 business days shall constitute a denial.
- (c) If a further denial is given, the appellant may thereafter file a written notice of appeal to the office of the Town Manager within 5 business days of receipt of the Director of Engineering Services written decision. The Town Manager shall provide a written decision within 5 business days of receipt of an appeal in accordance with this section. Failure to render a decision within 5 business days shall constitute a denial.

**Secs. 13.08.025—13.08.050 Reserved.**

**DIVISION 2. TECHNICAL SPECIFICATIONS**

**Sec. 13.08.051 Lawful use of ROW.**

- (a) The use of the ROW in any manner which violates federal, state, or local laws, or town codes, article and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the town.
- (b) Permittee shall dispose of all material removed from the ROW and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary

storage of material may be placed in a pile no higher than 30 inches and not obstruct a driver's view.

(c) If a permittee excavates any contaminated, regulated or hazardous materials in the ROW, permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the town, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the ROW, and within eight hours provide the aforementioned information to the town in writing. Permittee must consult with and receive written authorization from the town before undertaking any of the steps/actions set forth in this subsection.

#### **Sec. 13.08.052 Compliance with safety regulations.**

The permittee and ROW user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

#### **Sec. 13.08.053 Conformance with the thoroughfare plan.**

A ROW user should consult the town's thoroughfare plan (TP) prior to the acquisition of any interest in real property in the town for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, ROW, thoroughfare, highway, or any proposed street, ROW, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All ROW users are charged at all times with constructive notice of the TP subsequent to the effective date of this article. The town shall, at a minimum, have no liability for the value of or loss by a ROW user of any improvements constructed in the area shown on the TP, except as provided herein. Typical locations of town facilities are depicted in Figure 1, attached to this Ordinance.

#### **Sec. 13.08.054 Tree trimming and graffiti abatement.**

Permission is granted to a ROW user, subject to the requirements of the town's tree preservation ordinance, as exists or may be amended from time to time, to trim trees upon and overhanging the ROW, so as to prevent the branches of such trees from coming in contact with a ROW user's facilities. A ROW permit is required. Appropriate traffic control is also required, and all ground surfaces must be restored and cleaned from equipment usage. When so directed by the town, the tree trimming shall be done under the supervision and direction of the town. The town shall report damage or vandalism to the ROW user's facilities as soon as practicable after the town discovers or learns of such event. The ROW user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed 7 days after the ROW user discovers or learns of any misuse, destruction, damage or vandalism to its facilities. Should the owner, its contractor or agent fail to remove such trimmings within 24 hours, the town may remove the trimmings or have them removed, and upon receipt of a bill from the town, the owner shall promptly reimburse the town for all costs incurred within 30 calendar days.

### **Sec. 13.08.055 Employee communication.**

The ROW user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently. The contractor shall maintain at all times on the job site a responsible person authorized to receive and relay instructions from the town.

- a) The ROW user shall submit the "Daily Work Location Form" by 9:00 am each day the user will be working.
- b) The ROW inspector will promptly fill out and return the "Notice of Violation Form" after a violation has occurred.

### **Sec. 13.08.056 Routing and spatial assignment.**

The town reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the ROW. The town reserves the right to reserve space for future utilities.

### **Sec. 13.08.057 Commencement and completion.**

After obtaining the permit and prior to commencing the work, the permittee shall notify the ROW Manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the ROW Manager. No work shall commence until erosion control measures (e.g. silt fence) and required traffic control devices are in place as required by the ROW permit conditions. If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public ROW. An extension to a permit may be granted by the ROW Manager only before the permit expires, for an additional 30 days.

### **Sec. 13.08.058 Notification of affected property owners.**

Except in the case of an emergency, whenever excavation is required in the ROW adjacent to an occupied property, the ROW user shall notify the property owner a minimum of 24 hours and a maximum of 72 hours in advance of the activity through use of a door hanger, which shall include the following information:

- (a) Door Hangers
  - (1) Permit number;
  - (2) Contractor's name and the ROW user, including a contact name and phone number by which more information regarding the project could be obtained 24 hours a day, 7 days a week and;
  - (3) The anticipated duration of the construction work.
- (b) Vehicle and Equipment Identification:
  - (1) This information must be displayed on each vehicle on site and on both sides of the vehicle in a manner that is legible from a property owner's porch. This shall include equipment such as bore rigs, excavators, and vac-machines.

- (c) If ROW user MUST be on private property at any time during the scope of the work, the ROW user is required to first get permission from the property owner

#### **Sec. 13.08.059 Safe conduct of work.**

Every permittee and ROW user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or ROW where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and non-hazardous manner. Cones must be placed around all trucks, reels, vac-machines, or any other equipment that are allowed by the ROW Inspector to be parked in the street.

#### **Sec. 13.08.060 Revocation or suspension of permit.**

The town reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other town ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (a) The violation of any provision of the permit.
- (b) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the town or its citizens.
- (c) Any material misrepresentation of any fact in the permit application.
- (d) The failure to meet insurance, surety bond or indemnification requirements.
- (e) The failure to complete the work as specified in the permit.
- (f) The failure to correct a condition indicated on an order issued pursuant to this article.
- (g) Repeated traffic-control violation.
- (h) Failure to protect facilities or repair facilities damaged in the ROW.
- (i) Violation of any part of this article.
- (j) Recognition by the ROW Manager that a permit was issued in error.
- (k) Failing to comply with an order of the ROW Manager on the permit and any other valid permit held by the ROW user.
- (l) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the ROW Manager.
- (m) If the ROW Manager determines that the permittee has committed a breach of any law or condition of the ROW permit, the ROW Manager shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The ROW Manager may, in his/her discretion, revoke the permit, provide specifications to cure the breach, or both. Within 5 days of receiving notification of the breach, permittee shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

- (n) A representative of a franchise utility fails to attend two or more utility coordination committee meetings within a 12-month period.

**Sec. 13.08.061 Work not in accordance with permit declared unlawful.**

- (a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, ROW or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the ROW Manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the ROW Manager may, in his/her sole discretion, grant a written waiver to take the circumstances into account.
- (b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the ROW Manager has approved alternative requirements.

**Sec. 13.08.062 Work done without a permit.**

No cut, excavation, grading or disturbing of the ROW, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. For an emergency job, the ROW user must submit a permit within 2 business days after the work is commenced and clearly label the subject area of the permit as an emergency. No person or ROW user shall, at any time, open or encumber more of the ROW than shall be reasonably necessary to complete a project in the most expeditious manner.

**Sec. 13.08.063 Cease work.**

At any time, the ROW Manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The ROW Manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or well-being of the public.

**Sec. 13.08.064 Requirements.**

The ROW Manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within 10 days after issuance of written notice, the permittee shall present proof to the ROW Manager that the violation has been corrected. If such proof has not been presented within the required time, the ROW Manager may revoke the permit.

**Sec. 13.08.065 Location and relocation of facilities.**

Subject to applicable federal, state, and local laws, the ROW user shall, upon the request of the town, which shall be in writing, locate and/or relocate its facilities situated within any ROW, at no expense to the town, where reasonable and necessary to accommodate any town project. The written request provided by the town shall state the date by with the relocation by the ROW user shall be completed and a reasonable amount of time shall be provided by the town. When relocation is necessitated by federal government requirements, which includes reimbursements

of costs, the town will reimburse applicant for its proportionate share from funds provided to the town in such reimbursements.

**Sec. 13.08.066 Relocation facilities for the town.**

In the event the town finds it necessary to move a ROW user's facilities to protect the ROW, any town utilities and/or street, the town shall notify the local representative of the ROW user. ROW user shall promptly move or facilitate the relocation of the subject facilities at ROW user's sole expense.

**Sec. 13.08.067 Abandoned facilities.**

- (a) A ROW user owning abandoned facilities in the ROW shall:
  - (1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The ROW Manager may allow some or all facilities to remain if the ROW Manager determines same is in the best interest of the public to do so; or
  - (2) Provide information satisfactory to the town that the ROW user's obligations for its facilities in the ROW have been lawfully assumed by another authorized ROW user.
- (b) The facilities of the ROW user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the town receives written confirmation and reasonable evidence, as solely determined by town, that the ROW user intends to use the facilities. The town may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the ROW user at the ROW user's sole expense.

**Sec. 13.08.068 Underground service requirements.**

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by an existing franchise agreement between the ROW user and the town or a PUCT tariff. (This does not prohibit replacing existing poles for maintenance purposes.)

**Sec. 13.08.069 Location of poles and conduits.**

All poles in the ROW shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with vehicular and pedestrian travel. All poles in the ROW shall be located within 3 feet of the ROW. Poles with bases greater than 36 inches in diameter shall not be placed within the ROW. Poles shall not be placed within the center median of the street. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a ROW user in the construction and maintenance of its system in the town shall be subject to the reasonable and proper control, direction and approval of the town. The specifications in this article modify the provisions of the American National Standards Institute. Incorporated, the National Electrical Safety Code and such other codes and standards that are generally accepted by the industry to the extent of any conflict. Typical placement of poles and anchor guys along curvilinear streets are shown in Figure 2, attached to this Ordinance. Placement of poles and anchor guys along curvilinear streets shall comply with town ordinances and regulations.

### **Sec. 13.08.070 Size and location of aboveground facilities.**

The maximum dimensions for utility structures above the ground in the ROW adjacent to streets are 7 feet long (parallel to the road), 2 feet wide (perpendicular to the road) and 6 feet in height. For structures 3 feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the ROW adjacent to streets, unless otherwise approved in writing by the ROW Manager. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening.

### **Sec. 13.08.071 Height of overhead line.**

The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code as it exists or may be amended.

### **Sec. 13.08.072 Attachments to poles.**

- (a) Nothing shall obligate or restrict a ROW user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the town.
- (b) A ROW user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
- (c) Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation.
- (d) Equipment, other than antennas, must be in an underground vault. Vaults must be flush to the ground.
- (e) If the existing pole already has more than two existing riser/drops, the pole must be replaced with a metal pipe and all wires and cables must be run in a conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When installation will result in two or fewer riser/drops on the pole, the wires and cables may be installed as a riser/drop in the conduit painted an approved color.

### **Sec. 13.08.073 Temporary rearrangement of aerial wires.**

The ROW user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The ROW user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the town. The ROW user may invoice the requesting parties for the cost of this work, where applicable.

### **Sec. 13.08.074 Street closures.**

- (a) All lane closures on any thoroughfare or collectors shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the ROW Manager. The ROW Manager may require a traffic-control plan. Arrow boards and message boards may be required for lane closures on thoroughfares and collectors.
- (b) Except in an emergency, no thoroughfare or collector street shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.
- (c) All lane closures require twenty-four hours notification of the police and fire departments prior to closing. Such notification will be made by the ROW Manager.

### **Sec. 13.08.075 Site maintenance during construction and prior to full restoration.**

- (a) *Erosion control and stormwater management.* The ROW user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with town, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, high erosion areas will require wire-backed silt fencing, and the removal of slurry used when running boring equipment. Upon request of ROW Manager, the ROW user may be required to furnish documentation submitted or received from the federal or state government.
- (b) *Dust control.* The ROW user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.
- (c) *Traffic-control safety.* In the event of noncompliance with the TMUTCD, the ROW user shall be notified of the violation. In the event of continued noncompliance, the ROW Manager may revoke the permit, in addition to any other remedies available to the town. At any time the ROW Manager determines the work threatens public safety, he/she may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.
- (d) *Responsibility for signs, barricades and warning devices.* The ROW user working in any ROW is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.
  - (1) Only those individuals who are qualified by means of adequate training in safe traffic-control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic-control devices in a construction area.
  - (2) The ROW user must either (A) subcontract the barricading to a firm specializing in traffic control; or (B) submit the qualifications and name(s) of employees to the ROW Manager for approval prior to the work commencing. The ROW user must also submit a traffic-control plan for review and approval by a town traffic engineer when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.

- (3) All barricades, plates, and other traffic-control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic-control representative.
- (4) All barricades, plates and other traffic-control equipment must display accurate and sufficient information including without limitation, the name of the ROW user.
- (5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the ROW Manager may place the necessary devices as required, and the ROW user shall reimburse the town for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.
- (6) All traffic-control devices must be removed immediately upon completion of work.
- (7) Streets shall be restored to existing conditions or better within 21 calendar days from the date that a portion of the street is closed and/or opened to traffic by using a steel roadway plate unless the ROW Manager grants approval to extend the time period and affected property.

(e) *Duty to barricade.* At all times during construction activity, the contractor and/or ROW user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

#### **Sec. 13.08.076 Inspection.**

The permittee shall make the worksite accessible to the town, and others as authorized by law, for inspection at all reasonable times during performance of the work. All boring by a public service provider along or across a public ROW which contains an existing storm sewer or sanitary sewer must be checked with a camera upon completion of boring activity. The camera recording must sufficiently record storm sewer or sanitary sewer, and activity. The camera recording of the existing storm sewer or sanitary sewer must be completed on the same day the public service provider completes the boring activity. A copy of the camera recording must be delivered to the ROW Inspector within 24 hours of completion of the boring activity. In instances where excavation has taken place the ROW user must notify the ROW Inspector prior to backfill.

#### **Sec. 13.08.077 Materials testing.**

The department may require testing of materials used in construction in or near the ROW to determine conformance with town construction specifications, including, but not limited to, compaction tests on backfill materials, sub-grade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the Department. The ROW user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

### **Sec. 13.08.078 Duties of persons making excavations or creating obstructions.**

Any person who shall cause to be made any excavation or obstruction in any street or ROW shall not allow the same to remain there beyond a 21 calendar days or another time period required by the ROW Manager for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or ROW so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or ROW in as good condition as before the excavation.

### **Sec. 13.08.079 Emergency excavations.**

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or ROW by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the ROW Manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

### **Sec. 13.08.080 Excavation in streets.**

Except in case of an emergency, there shall be no excavation in any street without the prior written approval of the ROW Manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence provided to the ROW Manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the ROW Manager. All streets and alleys shall be repaired from panel to panel unless otherwise approved in writing by the ROW manager. All town pavement repairs shall comply with the town's design standards.

- (a) Responsibility of excavated area maintenance. A permittee or ROW user shall maintain its repairs in the ROW for two years from the completion date of any repair. The town reserves the right to require a maintenance bond on any work that is deemed substantial.

### **Sec. 13.08.081 ROW restoration requirements.**

- (a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the ROW must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the ROW Manager may, in his/her sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.
- (b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the town, and damaged, disturbed, or removed by a ROW user shall be fully repaired promptly by the ROW user, at its sole expense, to the reasonable satisfaction of the ROW Manager.
- (c) After any excavation, the ROW user shall, at its expense, restore the ROW, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was

prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall endure without failure for two years from the completion date of any repair.

- (d) In the event the ROW user fails to restore the ROW in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the town may, at its option, serve written notice upon the ROW user that, unless within 5 days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the ROW by the ROW user, the town may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the ROW user, and ROW user, and its surety, shall be liable to the town for any and all cost incurred by the town by reason of such prosecution and completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the town.
- (e) If any excavation cannot be backfilled immediately, the ROW user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
- (f) In all ROW restoration, the ROW user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the ROW user shall, in the event of any failure of the restoration, and upon notification from the ROW Manager, reimburse the town for pavement restoration costs as provided for in this article. Additionally, the ROW user, in the event of such failure, shall within 48 hours of notice from the town, repair the subject trench envelope.
- (g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the town, the ROW user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more ROW users have made repairs in the exact same location, the last ROW user to excavate shall be responsible for the two-year guarantee in that location, unless the ROW Manager determines, in his/her sole discretion, that a failure was most likely a result of work performed by another ROW user. That ROW user shall be responsible for the two-year maintenance period.
- (h) All street excavations shall be perpendicular excavations, unless otherwise approved by the ROW Manager. Excavations in streets, which are not perpendicular excavations require: (1) block-to-block and curb-to-curb pavement reconstruction; or (2) other method of repair approved by the ROW Manager. All repairs shall be equal to or better than those which existed prior to the commencement of any work.
- (i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same work day before sunset. Any variance from this requirement must be granted in writing from the ROW Manager prior to work beginning.
- (j) *Temporary Lines:* Upon failure of an owner to perform restoration from the result of installing a temporary line, and 5 days after written notice has been given to the owner by the town, and in the event restoration has not been initiated during such five-day period, the town may repair such portion of the public ROW as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the town, the owner will reimburse the town for the costs so incurred within 30 calendar days from the date of the town invoice.

### **Sec. 13.08.082 Restoration of pavement.**

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, ROW or other public place shall be performed by the permittee.

- (a) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the ROW Manager.
- (b) All excavations shall comply with the town construction standards, as amended, and requirements of this article. Unless otherwise required by town standards, as amended, or if unusual conditions are encountered, the ROW Manager may require new standards for compaction, backfill and pavement restoration.
- (c) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the ROW user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the ROW Manager.
- (d) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

### **Sec. 13.08.083 Permanent pavement repairs.**

The ROW user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW user shall make the final repairs within 7 days on thoroughfares and collector streets and within 21 days on residential, local and alley streets after the ROW Manager makes final inspection. Backfill failures shall remain the responsibility of the ROW user.

### **Sec. 13.08.084 Substandard repair of pavement of ROW.**

In case the pavement or the surface of the street, alley, or ROW in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the ROW user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the town of the cost to restore the street and/or ROW.

### **Sec. 13.08.085 Failure to complete work within specified time.**

In the event any work governed by this article is not completed by the ROW user within the time required or in accordance with the specifications required herein or by the ROW Manager, the ROW Manager may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The ROW user shall reimburse the town for the costs of securing the site.

### **Sec. 13.08.086 Removal and reconstruction where work is defective.**

All construction work in the streets, ROW, sidewalks and public places of the town is declared to be subject to the exclusive control of the town, and whenever, in the sole opinion of the ROW Manager, any such work shall not have been duly completed within a reasonable time or shall

have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the ROW Manager, then upon written demand or notice from the ROW Manager, such ROW user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the ROW Manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or ROW user shall fail or refuse to do so within a reasonable time to be specified by the ROW Manager, then, if required by the ROW Manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the town, in such a manner as in the opinion of the ROW Manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the ROW Manager, and the contractor or ROW user shall reimburse town for any and all cost incurred by the town performing the work described in this subsection.

#### **Sec. 13.08.087 Cleanup of ROW.**

In every case, and at all times, the work of removing from the ROW all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the ROW user. The ROW user shall maintain the area on and around the excavation and related to the work in a clean, safe, and orderly fashion at all times during the conduct of the excavation and shall clean the same area upon completion of the work. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. All Traffic Control devices must be removed at the completion of each work day and then re-established the next working day. The ROW user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the ROW Manager, sufficient reason therefor having been given to his/her satisfaction, grants a written extension of time.

#### **Sec. 13.08.088 Completion of Work**

When the work under permit hereunder is completed, the permittee shall notify the town in accordance with the requirements placed on the permit. The town will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.

#### **Sec. 13.08.089 Effect of article on persons engaged in construction.**

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of town article and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

#### **Secs. 13.08.090—13.08.130. Reserved.**

### **DIVISION 3. FEES, ENFORCEMENT AND PENALTIES**

#### **Sec. 13.08.131 Fees.**

The fees in this section shall apply to all ROW users, unless governed by an existing agreement, such as a franchise agreement with the town.

- (a) *Permit application fee.* There is a permit application fee of \$25.00. Permits shall be issued or denied within 5 days from the town's receipt of the application. There is an expedited

application fee of \$250.00 for permits, which shall be issued or denied within 2 days. An applicant shall pay the fees when a permit is issued. The fees are charged for administration and input of permit data. An expedited permit may be requested upon a showing of good cause, including but not limited to, a pending order for service that cannot be met by means of existing facilities of the ROW user.

- (b) *Saturday inspection fee.* The Saturday inspection fee shall be \$150.00 per Saturday.
- (c) *Permit expiration fee.* A fee of \$30.00 will be charged for any permit that has not been extended before its expiration date and for any permit wherein work has not been completed by the expiration date provided for in the permit.
- (d) *Electronic maps submittal fee.* A fee of \$40.00 per hour will be charged for each hour of labor necessitated by information submitted to the town in hard copy format in lieu of submittals to the town in electronic format. There is a minimum of two hours.
- (e) *Registration fee.* There is a fee of \$100.00 per ROW user per year for processing registration information fee, which will be collected by town upon registration.

**Sec. 13.08.132 Public inconvenience penalty.**

Public inconvenience penalties are assessed and calculated from the date of expiration of the permit until date of completion of work or repair or of final backfill if turned over to the Department for repair. This penalty shall not exceed and is capped by statutory limits. Public inconvenience penalties are charged per day as follows:

	Type of Facility	Unit of Cost (Per Day)	Penalty			
			31-75 days	79-90 days	90-100 days	>100 days
(1)	Sidewalk	Per square ft.	\$0.0026	\$0.0052	\$0.0078	\$0.0104
(2)	Driveway	Per each	\$39.00	\$78.00	\$117.00	\$156.00
(3)	Metered traffic lane	*In addition to traffic lane fee				

**Secs. 13.08.133—13.08.160 Reserved.**

**DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY**

**Sec. 13.08.161 Liability of ROW user.**

To the extent allowed by law, the ROW user shall be liable to the town for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the ROW user shall fully indemnify, hold harmless and defend the town, its council members, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the town, its council members, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The town shall promptly notify a permittee, or ROW user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the town and alleging negligent or wrongful conduct by the permittee or ROW user in connection with an excavation.

## **Sec. 13.08.162 Insurance.**

(a) ROW users shall furnish an original completed certificate of insurance to the Department which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the town. The town shall have no duty to perform under this article until such certificate has been delivered to the Department. The certificate holder must be the Town of Prosper.

(b) The town reserves the right to review the insurance requirements of this section to modify insurance coverage and limits when deemed necessary and prudent by the town based upon changes in statutory law, court decisions, or circumstances surrounding this article, but in no instance will the town allow modification whereupon the town may incur increased risk.

(c) Subject to the ROW user's right to maintain reasonable deductibles in such amounts as are approved by the town, ROW users shall obtain and maintain in full force and effect for the duration of the permit, and any extension thereof, and/or duration of time it maintains facilities in the public ROW, at the ROW user's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state and rated A- or better by A.M. Best Company and/or otherwise acceptable to the town, in the following types and amounts:

	Type	Amount
(1)	Worker's compensation	Statutory
	Employer's liability	\$500,000/\$500,000/\$500,000
(2)	Commercial general (public) liability insurance to include coverage for the following:	Bodily injury and property damage of \$2,000,000 per occurrence
	(A) Premises/operations	\$5,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
	(B) Independent contractors	
	(C) Products/completed operations	
	(D) Contractual liability	
	(E) Personal injury	
	(F) Explosion, collapse, underground	
	(G) Broad form property damage, to include fire legal liability	
(3)*	Business automobile liability	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence or its equivalent
	(A) Owned/leased vehicle	
	(B) Nonowned vehicles	
	(C) Hired vehicles	

(4)*	Professional liability (claims made from)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services
(5)*	Contractor's pollution liability coverage	\$1,000,000 written on a claims made form with a two-year extended reporting period
(6)*	Pollution liability motor carrier and trucker coverage endorsing the upset, overturn and remediation of a load in transport	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence written or an occurrence form
* If applicable.		

- (d) The town shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the town, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the town, the ROW user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (e) ROW users shall ensure that all insurance contracts and certificate(s) of insurance contain the following required provisions:
  - (1) Name the town and its council members, officers, employees, volunteers, agents and representatives as additional insured with respect to the operations and activities of, or on behalf of, the named insured performing in the ROW under provision of this article, with the exception of the professional liability, workers' compensation and liability policy;
  - (2) ROW user's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the town;
  - (3) Provide for an endorsement that the "other insurance" clause shall not apply to the town where the town is an additional insured shown on the policy; and
  - (4) Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the town.

- (f) ROW user shall notify the town in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or 10 days' notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the town at the following address:

ROW Manager  
 Department of Engineering Services  
 250 W. First Street  
 P.O. Box 307  
 Prosper, TX 75078

- (g) Nothing herein contained shall be construed as limiting in any way the extent to which the ROW user may be held responsible for payments of damages to persons (including death) or property resulting from the ROW user's, or its subcontractors', performance of the work performed in the public ROW.
- (h) The town-owned utilities shall not be required to provide the insurance specified herein.
- (i) With respect to the ROW user's obligation to comply with the requirements for commercial general (public) liability insurance coverage to include pollution coverage, the town may allow the ROW user to self-insure upon annual production of evidence that is satisfactory to the town. With respect to the ROW user's obligation to comply with the requirements for automobile liability insurance and for workers' compensation insurance, a ROW user may self-insure, provided the ROW user tenders satisfactory evidence of self-insurance as contemplated by the State Motor Vehicle Financial Responsibility Law, V.T.C.A. Transportation Code § 601.124, and the Texas Workers' Compensation Act, V.T.C.A. Labor Code § 407.001 et seq., as amended.

**Sec. 13.08.163 Performance/assurance bond and maintenance bond.**

- (a) Before a permit shall be issued, the applicant shall execute and deliver to the town, to be kept on file with the town, a good and sufficient bond of performance or assurance, in the sum of \$10,000.00 to be approved by the town and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the town, its council members, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the town. With respect to the ROW user's obligation to comply with the requirements for a performance/assurance bond, the town may, in the town's sole discretion, allow the ROW user to self-insure such obligation upon production of evidence that is satisfactory to the town.
- (b) Before a permit shall be issued, the applicant shall execute and deliver to the town, to be kept on file with the town, a good and sufficient maintenance bond, in a sum equal to the estimated costs of reconstruction of town facilities related to the work the permit was for, including but not limited to costs of returning streets, sidewalks, ROW and other public property to its original condition as it existed prior to the work performed by the permittee and to insure maintenance required by section 13.08.082, be approved by the town and in favor of the town that indemnifies the town against any repairs that may become necessary to any part of the work performed in connection with the permit arising from defective workmanship or materials used therein for a period of two years from the date of the time period provided for completion of the work in the permit, or as such time may have been extended by the ROW Manager, whichever is later.

#### **Sec. 13.08.164 Optional continuing bond and deposit.**

In lieu of a bond of performance or assurance required for each permit issued under the performance/assurance bond section of this article, the applicant may maintain a one-time bond of performance or assurance with the ROW Manager in the sum of \$100,000.00 for the purposes specified in section 13.08.163, and shall have on file, with the town, an approved bond of performance or assurance in like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than \$100,000.00; provided, further, that section 13.08.163 shall not apply to applications for permits to make cuts, openings or excavations in any street, plaza or other public place paved under contract with the town, unless the contract of maintenance and the maintenance bond therefor all have expired. The bond shall be maintained until the applicant is no longer working in or on the ROWs.

#### **Sec. 13.08.165 Liability of contractor and sureties for maintenance and repair work.**

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the ROW user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the town retains the right and option to terminate the ROW user's guaranty, upon written notice to the ROW user. In such event, the ROW user shall reimburse the town for its direct costs associated with the repair of the failure of the restoration work.

#### **Sec. 13.08.166 When additional security required.**

In the event the ROW Manager reasonably believes the contractor's or ROW user's solvency is threatened, the ROW Manager may, at any time, make written demand on a contractor and/or ROW user for bonds, and the contractor and/or ROW user shall immediately furnish such additional bond or bonds to the town.

#### **Sec. 13.08.167 Bonds generally.**

All bonds required under this article shall be executed by a surety company holding a license to do business in the state which is solvent and reputable.

#### **Sec. 13.08.168 Decision of ROW Manager binding on contractor, ROW user and sureties.**

If any question arises as to when any work was actually begun or other specific dates, the decision of the ROW Manager shall be conclusive on the contractor, ROW user, and the sureties on all such bonds.

#### **Secs. 13.08.169—13.08.190 Reserved.**

## DIVISION 5. VARIANCES AND EXEMPTIONS

### **Sec. 13.08.191 Procedure.**

A permittee or ROW user may request a variance from any of the requirements of this article by filing a written request with the ROW Manager stating the requirement and the basis for the variance. The ROW Manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

- (a) Any request for a variance from any ROW restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- (b) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefor.
- (c) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
- (d) The department shall grant or deny an application for a variance and/or exemption within 10 days of receipt of the application for variance and/or exemption.
- (e) Denial of the variance may be appealed in accordance with section 13.08.024 of this article.

### **Secs. 13.08.192—13.08.220 Reserved.**

## DIVISION 6. CERTIFIED TELECOMMUNICATIONS PROVIDERS

### **Sec. 13.08.221 Authority required/nonexclusive use.**

The CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use a public ROW. The CTP's right to use and occupy the public ROW shall not be exclusive and the town shall have the right to exercise its police powers and manage its public ROW, based on the act and all other state or federal laws.

### **Sec. 13.08.222 Additional authority required.**

The CTP, and any of its affiliates, are not authorized to provide cable television service as a cable operator or to operate an open video system in the town, but must first obtain a separate franchise agreement from the town for that purpose, under such terms and conditions as may be required by law. This section does not preclude the CTP from providing its services to cable television companies. Unless a cable television operator shows proof of appropriate town authorization, nothing herein shall authorize the CTP to license, sublicense, lease, sublease or by any instrument authorize any cable television operator the right to use or utilize the transmission media or facilities of the CTP.

### **Sec. 13.08.223 Transfer and notice.**

A CTP shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the CTP uses the ROW.

### **Sec. 13.08.224 Exemption from fees.**

CTPs are exempted from the following fees provided for in this article:

- (a) Permit application fee, including expedited application fee and permit expiration fee;
- (b) Additional permit fee;
- (c) Saturday inspection fee; and
- (d) Registration fee.

### **Sec. 13.08.225 Waiver bonds.**

Unless determined otherwise by the ROW Manager, a CTP will be exempt from the bonding requirements of this article, including sections 13.08.163 and 13.08.164, however, in the event that the ROW Manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the ROW Manager may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the ROW Manager requires a bond of a CTP and it has not been necessary for the town to seek performance under the bond, then a bond will no longer be required pursuant to this section.

### **Sec. 13.08.226 CTP indemnity.**

A CTP shall indemnify the town as specified by V.T.C.A. Local Government Code § 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A. Local Government Code § 283.057, as amended.

### **Secs. 13.08.227—13.08.250 Reserved.**

## **DIVISION 7. NETWORK PROVIDERS**

### **Sec. 13.08.251 Network provider's authority required/nonexclusive use.**

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public ROW. The network provider's right to use and occupy the public ROW shall not be exclusive, and the town shall have the right to exercise its police powers and manage its public ROW, based on the V.T.C.A. Local Government Code ch. 284, as amended, and all other state or federal laws.

### **Sec. 13.08.252 Transfer and notice.**

A network provider shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the network uses the ROW.

### **Sec. 13.08.253 Network provider indemnity.**

A network provider shall indemnify the town as specified by the Texas Local Government Code, as may be amended.

### **Sec. 13.08.254 Compliance with design manual.**

A network provider shall comply with the town's design manual, as amended, for the installation of network nodes and node support poles, as amended by the ROW Manager.

### **Sec. 13.08.255 Fees.**

The following fees shall apply to a network provider's use of the town's ROW, as follows:

- (a) *Small cell application fee.* \$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole.
- (b) *Small cell user fee.* \$250.00 annually for each network node; \$20.00 per year for town pole attachment.
- (c) *Transport facility monthly user fee.* \$28.00 multiplied by the number of the network provider's network nodes located in the public ROW for which the installed transport facilities provide backhaul, until the time the network provider's payment to the town exceeds its monthly aggregate per month compensation to the town."

## **SECTION 3**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

## **SECTION 4**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

## SECTION 5

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Prosper, Texas.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 9TH DAY OF JANUARY, 2024.**

APPROVED:

  
\_\_\_\_\_  
David F. Bristol, Mayor

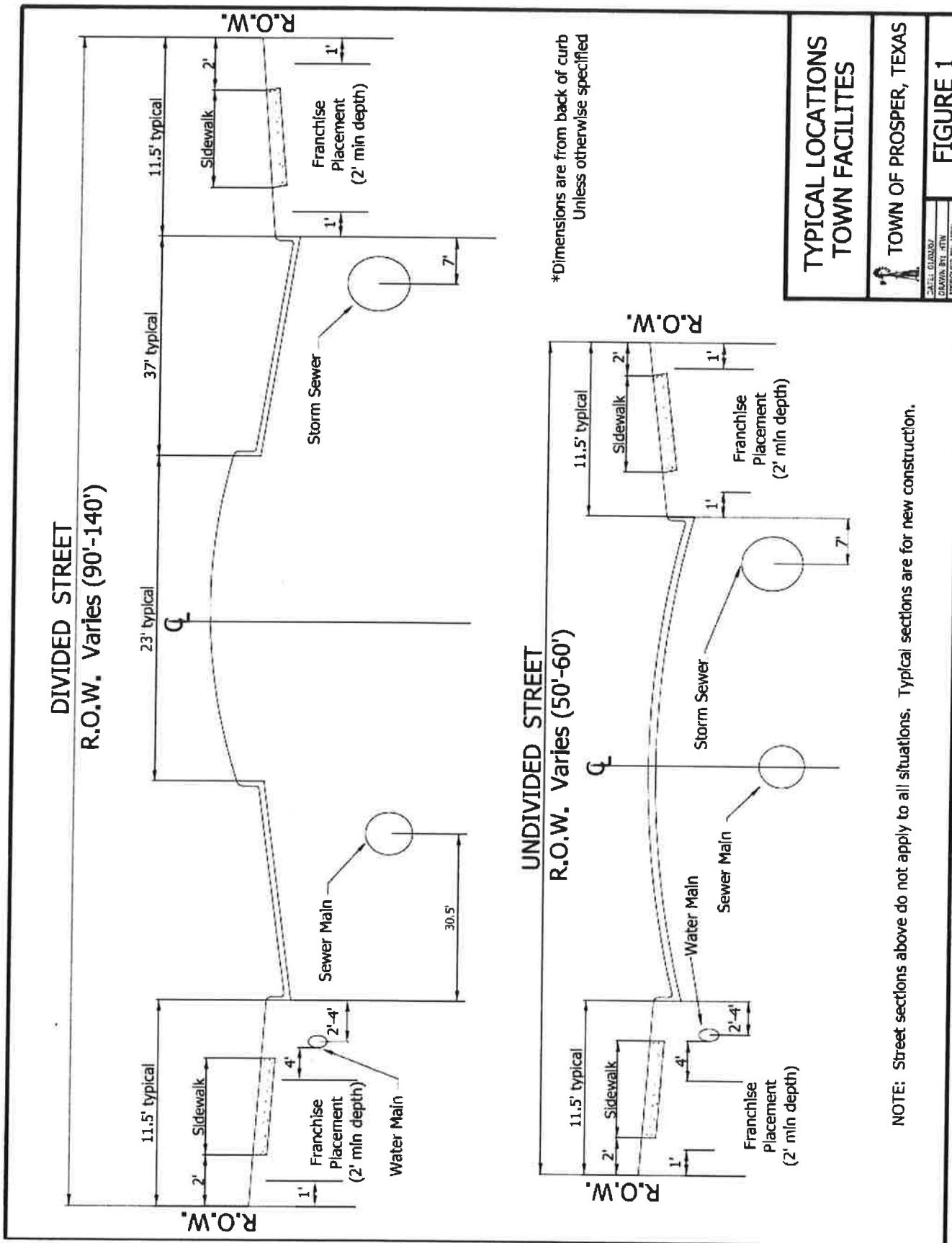
ATTEST:

  
\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Terrence S. Welch, Town Attorney





**FIGURE 1**

