

TITLE II.

STREETS

CHAPTERS:

- 2-01. Driveways.
- 2-02. Streets.
- 2-03. Excavation Code.

CHAPTER 2-01  
DRIVEWAYS

SECTIONS:

- 2-0101. Scope of Chapter
- 2-0102. License Necessary to Construct, Reconstruct and Repair Driveways.
- 2-0103. Contractor's License, Fee, Expiration Date.
- 2-0104. Driveway Construction Specifications.
- 2-0105. Materials in General.
- 2-0106. Penalty.

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2-0101. **SCOPE OF CHAPTER.** This article shall govern all construction of all alley returns and driveways within the City of Argusville.

2-0102. **LICENSE NECESSARY TO CONSTRUCT, RECONSTRUCT AND REPAIR DRIVEWAYS.** No person may construct, reconstruct, or repair driveways within the City without first procuring a license from the City Auditor to engage in such work.

2-0103. **CONTRACTOR'S LICENSE, FEE, EXPIRATION DATE.** If a license to construct, reconstruct, and repair driveways is granted by the City Auditor, the person applying must pay to the City Auditor a license fee as set by resolution of the City Council. Such license will expire on December 31 of each year.

2-0104. **DRIVEWAY CONSTRUCTION SPECIFICATIONS.** All residential driveways must be six (6) inches thick, must be no less than nine (9) feet nor more than thirty (30) feet wide, and must be located so as to provide access to a parking space within the property to be served. All commercial or industrial driveways must be seven (7) inches thick and must be no more than thirty-six (36) feet in width. Provided, however, that such commercial or industrial driveway may, upon approval of the City Engineer, be constructed to a maximum width equal to one-half of the width of the lot.

Driveways should be designed in accordance to the following schedule and approved by the Building Inspector or City Engineer prior to construction:

<u>Designation of Street</u>	<u>Minimum Distance to Property Line Nearest the Intersection</u>
Local Street Approaching Local Street	20 feet
Local Street Approaching Collector Street	30-50 feet
Local Street Approaching Arterial Street	100-120 feet
Collector Streets	Limited Access
Arterial Streets	Limited Access

Access onto designated Collector or Arterial streets should be via a local street system. In instances where this, or the minimum distance to the intersection as set out above, cannot be achieved, approval must first be obtained by the City Council following review by the Planning and Zoning Commission. The required distance to intersections on Collector streets is a minimum of one hundred (100) feet. The required distance to intersections on Arterial streets is a minimum of one hundred fifty (150) feet. In instances where this cannot be achieved, approval must first be obtained by the City Council following review by the Planning and Zoning Commission.

Distances between driveways and intersections are measured from the edge of the driveway closest to the intersection and the right-of-way line of the intersecting street. In no case will the aggregate width of the driveway into a property exceed one-half (1/2) the width of that property.

2-0105. **MATERIALS IN GENERAL.** Design specifications and material requirements for driveways in the City will be available at the office of the City Engineer. All driveways constructed in the City must conform to those requirements.

2-0106. **PENALTY.** Any violation of the provisions of this Chapter will be an infraction unless another penalty is specifically provided for the violation in this Chapter. An infraction may be punished by a maximum fine of \$500. The Municipal Judge shall have the authority to establish the penalty for each infraction which is an offense up to a maximum of \$500. The Court shall have discretion within the \$500, even if the ordinance incorporates a specific section of the State Code and the State Code sets a different penalty for violation of that section. Any person convicted of an infraction who has, within one year prior to the commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction may

be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint or citation shall specify that the offense is a misdemeanor. A class B misdemeanor may be punished by a maximum fine of \$1,000, or 30 days imprisonment, or both. Each day such violation continues shall be considered a separate offense.

CHAPTER 2-02

STREETS

SECTIONS:

- 2-0201. Supervision of Construction.
- 2-0202. Pipes and Conduits in Streets: Prevention of Leaks.
- 2-0203. Pipes and Conduits in Streets: Repair of Breaks.
- 2-0204. Superintendent of Streets to Notify Owner of Leak.
- 2-0205. Failure of Owner to Repair.
- 2-0206. Construction of Sewer, Vault, Cellar, Cistern or Well in Street - Permit.
- 2-0207. Excavation in Streets: Permit.

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2-0201. **SUPERVISION OF CONSTRUCTION.** Whenever any public streets are constructed in the City of Argusville, such construction shall be under the supervision of the City Engineer.

2-0202. **PIPES AND CONDUITS IN STREETS: PREVENTION OF LEAKS.** It shall be the duty of every person, firm or corporation forcing, transmitting or conveying water or gas through pipes or other conduits which have heretofore been, or shall be hereafter, laid in any street, alley or public ground in the City of Argusville, to prevent the public use of such street, alley or public ground from being or becoming in any way impaired, obstructed, injured or rendered dangerous or offensive by the escape of water or gas into or upon said street, alley or public ground, out of said pipes or conduits.

2-0203. **PIPES AND CONDUITS IN STREETS: REPAIR OF BREAKS.** In case any such pipe or conduit shall break out or burst so that water or gas shall escape from the same into or upon any such street, alley or public ground in said City, it shall be the duty of any person, firm or corporation forcing, transmitting or conveying water or gas through the same, within twenty-four (24) hours after having received notice or knowledge of the escaping water or gas therefrom as aforesaid, to commence and diligently prosecute the repair of said pipe or other conduit, in case such pipe or other conduit is owned by such person, firm or corporation, and if such, pipe or other conduit is not owned by such person, firm or corporation, such person, firm or corporation shall immediately shut off the water or gas therefrom until same is repaired.

2-0204. **CITY AGENT TO NOTIFY OWNER OF LEAK.** It shall be the duty of the City Agent, upon discovery of the fact that water or gas is escaping from any pipe or other conduit, used as aforesaid, into or upon any street, alley or public ground, to immediately notify the person, firm or corporation forcing, transmitting or conveying water or gas through the same, of such escape.

2-0205. **FAILURE OF OWNER TO REPAIR.** In case any person, firm or corporation forcing, transmitting or conveying water or gas through any pipe or other conduit laid in any street, alley or public ground of the City of Argusville shall neglect or refuse to repair the same, in case it is owned by such person, firm or corporation, or to shut the water or gas off therefrom in case it is not owned by such person, firm or corporation, then the City Agent, under the direction of the City Engineer of the said City, shall forthwith proceed to repair said pipe or other conduit, and the cost shall be recovered by the City in an action for that purpose from such person, firm or corporation.

Provided, that the foregoing provision shall not apply to any water mains or service pipes which are owned or under the control of the City of Argusville and under the supervision of the City Agent.

2-0206. **CONSTRUCTION OF SEWER, VAULT, CELLAR, CISTERN OR WELL IN STREET - PERMIT.** No person shall construct, or cause to be constructed or made, any sewer, vault, cellar, cistern or well in any of the streets or public places of the City without the express authority from the City Engineer.

2-0207. **EXCAVATION IN STREETS: PERMIT.** It shall be unlawful for any person, persons, firm or corporation to open up or make any excavation in or upon any street or alley in the City of Argusville, for any purpose, without first having obtained a permit so to do as provided in Chapter 2-03 of the ordinances of the City of Argusville.

CHAPTER 2-03

EXCAVATION CODE

SECTIONS:

- 2-0301. Definitions.
- 2-0302. Excavator's Registration.
- 2-0303. Permit to Excavate.
- 2-0304. Exemptions.
- 2-0305. Performance Deposits.
- 2-0306. Pre-excavation Requirements.
- 2-0307. Warranty.
- 2-0308. Joint Application.
- 2-0309. Supplementary Applications.
- 2-0310. Denial of Permit.
- 2-0311. Inspection.
- 2-0312. Revocation of Permits.
- 2-0313. Mapping Data.
- 2-0314. Location of Facilities.
- 2-0315. Relocation of Facilities.
- 2-0316. Damage to Other Facilities.
- 2-0317. Right-of-Way Vacation.
- 2-0318. Excavation Moratorium.
- 2-0319. Emergency Excavation.
- 2-0320. Preservation of Monuments.
- 2-0321. Inspections.
- 2-0322. Regulations.
- 2-0323. Severability.
- 2-0324. Penalty.
- 2-0325. Appeal.

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2-0301. **DEFINITIONS.**

- 1. "Alley" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
- 2. "Berm" shall mean that portion of the street lying outside the traveled way.
- 3. "City" shall mean the City of Argusville, North Dakota.
- 4. "City Agent" shall mean a designated official of the City of Argusville.

5. "Controlled density fill" (CDF) shall mean a sand, cement and/or fly ash slurry resulting in a 50 to 100 PSI material used for backfill.
6. "Emergency" shall mean a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
7. "Excavation" means any removal or disturbance of material to a depth of more than three inches within the traveled way of any street or alley or the removal or disturbance of material to a depth of more than ten inches in sod or soil areas of any publicly-owned property. Excavation is further defined to include all tunneling, pushing, or jacking under any publicly-owned property within the corporate limits of the City of Argusville.
8. "Excavator" shall mean any person, firm or corporation who performs the act of excavation through the use of mechanically powered equipment or otherwise.
9. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.
10. "Lateral Support" of a public place shall be considered impaired whenever an excavation extends below a plane sloping downward at an angle of 45 degrees from the boundary of the public place, or whenever a proposal excavation would expose any adverse geological formation of soil condition.
11. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.
12. "Street" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
13. "Traveled Way" means the width from curb to curb on curbed streets, from edge to edge on asphalt non-curbed streets, and from shoulder to shoulder on gravel streets.

14. "Utilities" for the purpose of this ordinance, shall include all underground cables, conduit and pipe used for the transportation or distribution of fuel, electricity, communication services, water or sewage.

2-0302. **EXCAVATOR'S REGISTRATION.** No person, firm or corporation shall engage in the practice of Excavation within public right-of-way unless registered as an Excavator in the City of Argusville, or under contract with the City. An Excavator's registration will be issued by the City Auditor upon submission of a written application on forms obtained from the Auditor and upon fulfilling the fee, bonding and insurance requirements as specified herein. The registration period shall be from January 1 to December 31 of each year.

1. Fee. The registration fee for an Excavator's registration for a calendar year or any part thereof shall be set by resolution of the City Council.
2. Insurance. Any person, firm or corporation licensed as an excavator must file proof of liability insurance in the amount of Two Million dollars (\$2,000,000) with the City Auditor. The insurance must name the City as an additional insured as to whom the coverages required are in full force and applicable and for whom defense will be provided as to all such coverages. The insurance shall also require that the City Auditor be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

2-0303. **PERMIT TO EXCAVATE.**

1. No excavation within public right-of-way shall be initiated without a permit being issued by the City of Argusville, except as otherwise provided in Section 2-0304 of this chapter. Application for an excavation permit shall be made at least 24 hours in advance, in writing, to the City Agent on forms provided by the City. In the case of a bona fide emergency, the written application may be filed after the excavation has been initiated providing that the intent to excavate has been reported to the City Agent, either in person or by telephone.
2. A permit to excavate shall be issued only to a registered Excavator, to a governmental unit of the City, to a contractor performing work under a written contract with any governmental unit or to the owner of a utility

franchised to operate within the corporate limits of the City of Argusville; however, the issuance of a permit under the provisions of this ordinance shall not relieve any permittee from compliance with all requirements of this ordinance nor relieve the permittee of any liability for damage to any existing utility. The City of Argusville assumes no liability whatsoever by virtue to the issuance of said permit. The permit shall be maintained on the site while the excavation is in progress. The permit holder will provide the City Agent with an emergency phone number of a responsible employee who can be contacted during non-working hours. The fee for each permit issued under the provisions of this ordinance shall be set by resolution of the City Council. Every permit issued under the provisions of this ordinance shall expire by limitation and become null and void if the work authorized by such permit is not commenced within twenty days from the date of such permit.

3. Where the permittee will not be the owner of the facilities installed, the owner (or the entity who will become the owner after completion of the project) will also be required to execute the application for permit, be listed on the permit, and be subject to the indemnification and warranty provisions of Section 2-0303(4) and 2-0307.
4. The permittee in the permit must agree to hold the City harmless from any and all damages claimed by reason of negligence, incompetence or omission on the part of such person, firm or corporation in the performance of their work, the same to include, but not be limited to, careless guarding of excavations made by them or failure to restore all public properties to as good a condition as they were before such work was done, or for any damages growing out of the negligence or carelessness of any such licensed person, firm or corporation.
5. An application for a permit will be considered complete only upon compliance with the requirements of the following provisions:
  - a. Registration pursuant to this chapter.
  - b. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the

proposed project, and the location of all known and existing proposed facilities.

- c. Payment of money due the City for:
  - (1) Permit fees and franchise or user fees, if applicable;
  - (2) Any overdue permit or fee payment;
  - (3) Any disputed loss, damage or expense suffered by the City as a result of applicant's prior excavating or any emergency actions taken by the City;
- 6. The City Agent may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.
- 7. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (a) makes a supplement to the application for another right-of-way permit before the expiration of the initial permit, and (b) a new permit or permit extension is granted.
- 8. Notwithstanding subdivision 6 of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by the City Council by resolution.

2-0304. **EXEMPTIONS.**

- 1. The following shall be exempt from the registration and permit requirements:
  - a. Employees of the department of street of the City of Argusville, while engaged in work directed by the City, shall be exempt from the requirements of Sections 2-0302 and 2-0303 of this chapter.
  - b. Argusville Park District employees when performing work within the property lines of the areas designated as the park system.

2. The following shall be exempt from the registration requirements:
  - a. All governmental units of the City.
  - b. All contractors performing work under a written contract with any governmental unit of the City.
  - c. Utilities which have a franchise agreement with the City. However, all contractors hired by such utility must be registered.

2-0305. **PERFORMANCE DEPOSITS.** Deposits as required under this section shall be cash, a certificate of deposit, or a surety bond approved by the City Attorney.

1. Certificates of deposit. If a certificate of deposit is used, the certificate must be held by a financial institution located within the city limits of the City of Argusville, North Dakota, and there must be an escrow agreement in a form satisfactory to the City Attorney executed by the City, financial institution, and permittee.
2. Annual Deposits. Any person intending to make openings, cuts or excavations in public places may make and maintain, with the City Auditor, an annual deposit in an amount set by resolution by the City Council, and the person so depositing shall not be required to make the special deposits provided in this section but shall, however, be required to comply with all other applicable provisions of this ordinance.
3. Purpose of Deposits. Any special or annual deposit made hereunder shall serve as security for the repair and performance of work necessary to put the public place in as good a condition as it was prior to the excavation, for a period extending through the warranty period, and to cover any penalties imposed for delay.
4. Special Deposits. Special deposits shall be required for all permits not covered by an annual deposit. The amount of each special deposit shall be determined by the City Agent on a case-by-case basis in accord with paragraph 3.
5. Refund or Reduction of Deposits. Upon the permittee's completion of the work, covered by a permit in apparent conformity with this chapter as determined by the City Agent, two-thirds of such deposit shall be refunded or

released by the City, with the remaining balance being released at the completion of the warranty period.

6. Refund or reduction of annual deposits. Two-thirds of any annual deposit shall be refunded by the City at the end of the one-year period for which the deposit is made or the apparent satisfactory completion of all excavation work undertaken during such period, whichever is later, and the balance of the annual deposit shall be released at the expiration of the warranty period.
7. Use of Deposits. Part, or all, of any such deposit may be used to pay the cost of any work the City performs or has contracted to another entity to restore or maintain the public place as provided in this chapter in the event the permittee fails to perform such work, and to cover any penalty for delay which is not paid directly by the permittee.

2-0306. **PRE-EXCAVATION REQUIREMENTS.** It shall be the responsibility of each permittee to notify all utility companies of the intended excavation. Except in the case of a bona fide emergency, a minimum 24-hour advance notice is required. The permit form shall serve as a guide to assist the permittee in scheduling and documenting utility clearance.

2-0307. **WARRANTY.** The permittee warrants that restoration work will meet the requirements of this chapter for a period of twenty-four (24) months following the completion of the work. During this twenty-four (24) month period, it shall, upon notification from the City Agent, correct all restoration work to the extent necessary, using the method required by the City Agent. Such work shall be completed within five (5) calendar days of the receipt of the notice from the City Agent, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable. If permittee fails to restore the right-of-way in the manner and condition required by the City Agent, or fails to satisfactorily and timely complete all restoration required by the City Agent, the City Agent, at its option, may do such work or contract for such work to be done. In that event, the permittee shall pay to the City within thirty (30) days of the billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its right under the deposits required by this chapter, and if such sums are not sufficient, the City may otherwise seek payment from the permittee and/or owner of the facilities installed.

2-0308. **JOINT APPLICATION.**

1. Registrants may jointly apply for permits to excavate or construct a right-of-way at the same place and time.
2. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fees. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.
3. Registrants who apply for permits for the same obstruction or excavation may share in the required deposit. Registrants must agree among themselves as to the portion each will be responsible for and indicate the same on their application.

2-0309. **SUPPLEMENTARY APPLICATIONS.**

1. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that specified in the permit granted must, before working in the greater area (a) make application for a permit extension and pay any additional fees required thereby, and (b) be granted a new permit or permit extension.
2. A right-of-way permit is valid only for the dates specified in the permit. No permittee may be its work before the permit start date or, except as provided herein, continue working after the end date. If permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

2-0310. **DENIAL OF PERMIT.** The City Agent may deny a permit for failure to meet the requirements and conditions of this chapter, or if the City Agent determines that denial is necessary to protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use.

2-0311. **INSPECTION.**

1. When the work under any permit hereunder is completed, the permittee shall provide written notice of completion to the City Agent.
2. Permittee shall make the work-site available to the City Agent and to all others as authorized by law for inspections at all reasonable times during the execution of and completion of the work.
3. The City Agent shall have the authority to do the following:
  - a. At the time of inspection, the City Agent may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
  - b. The City Agent may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be a cause for revocation of the permit. Within ten (10) days after the issuance of the order, the permittee shall present proof to the City Agent that the violation has been corrected. If such proof has not been presented within the required time, the City Agent may revoke the permit pursuant to Section 2-0316.

2-0312. **REVOCAION OF PERMITS.**

1. The City reserves its rights, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - a. The violation of any material provision of the right-of-way permit;
  - b. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

- c. Any material misrepresentation of fact in the application for a right-of-way permit;
  - d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; or
  - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 2-0315.
2. If the City Agent determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City Agent shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City Agent, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
  3. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City Agent with a plan, acceptable to the City Agent, that will cure the breach. Permittee's failure to so contact the City Agent, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of permit.
  4. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2-0313. **MAPPING DATA.** Each owner of utilities in the right of way in Argusville must provide mapping information required by the City Agent. Mapping data shall generally consist of drawing exhibits showing all existing aboveground and underground facilities and proposed location of new facilities. Drawings shall be submitted in AutoCAD DWG or DXF digital format and in hard copy. All drawings shall be registered to the City's coordinate system, or if the City does not have a separate coordinate system, the North Dakota State Plan, and certified by a registered land surveyor or professional engineer. In regard to existing

facilities, the required mapping information must be provided within one year of the written request for such information by the City Agent. Failure to provide such information in the time required, shall subject the violator to administrative fines in the amount of \$500 a day until the violator is in compliance. In addition, no permit will be granted to the violator, or to a contractor doing work for the violator until the violator is in compliance with this section.

2-0314. **LOCATION OF FACILITIES.**

1. Unless otherwise permitted by an existing franchise or North Dakota law, or unless existing aboveground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable code.
2. The City Agent may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is, or pursuant to current technology, the City Agent expects will someday be located within the right-of-way. All permits issued by the City Agent involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A five foot clear zone shall be maintained on each side of the City sanitary sewer, storm sewer and water main utilities.
3. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City Agent shall, not later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived in writing by the City Agent for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
4. To protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current use, the City Agent shall have the power to prohibit or limit the placement of new or additional facilities within a right-of-way. In making such decisions, the City Agent shall strive to the extent possible to

accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

2-0315. **RELOCATION OF FACILITIES.** A registrant must promptly, and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the City Agent for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The City Agent may make such requests to prevent interference by the company's equipment or facilities with (a) a present or future City use of the right-of-way, (b) a public improvement undertaken by the City, (c) an economical development project in which the City has an interest or investment, (d) when the public health, safety and welfare of the public require it, or (e) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a person shall not be required to move or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until reasonable costs thereof are first paid by the non-governmental entity requesting the vacation.

2-0316. **DAMAGE TO OTHER FACILITIES.** When the City Agent does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City Agent shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to the registrant and must be paid within thirty (30) days from the date of the billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of any other registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

2-0317. **RIGHT-OF-WAY VACATION.**

1. If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the City shall reserve, to and for itself and

all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

2. If the vacation requires the relocation of registrant's or permittee's facilities and (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

2-0318. **EXCAVATION MORATORIUM.** No excavation requiring a permit will be allowed within 36 months of the completion of construction of a roadway. Additionally, no excavation will be allowed on any roadway within 24 months following any of the following activities: overlay, mill and overlay, chip seal, or slurry seal without written authorization from the City Agent.

2-0319. **EMERGENCY EXCAVATION.** Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the City Agent for such a permit on the first working day after such work is commenced.

2-0320. **PRESERVATION OF MONUMENTS.** Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a survey reference point, or a permanent survey bench mark, shall not be removed or disturbed without first obtaining permission in writing from the City Agent. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper placement of this monument by the City Agent or registered land surveyor. Any person or entity removing or disturbing such monuments without permission shall be responsible for any costs associated with replacing the monuments, as well as a \$500 administrative penalty.

2-0321. **INSPECTIONS.** The provisions of this chapter do not relieve or change any other inspection requirements contained in the City ordinances or in any rules and regulations as approved by the City Council.

2-0322. **REGULATIONS.** The City Agent is hereby authorized and directed to promulgate rules and regulations setting forth the requirements for excavation protection, backfilling and restoration, and related matters, to prepare the necessary related forms, and to issue such permits in compliance with this chapter.

2-0323. **SEVERABILITY.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

2-0324. **PENALTY.**

1. Every person, firm or corporation violating this ordinance shall, upon conviction thereof, be punished by a fine not to exceed \$500, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.
2. The City shall further have the right and authority to deny, suspend or revoke the registration or permit of every person violating this chapter.

2-0325. **APPEAL.**

1. A right-of-way user that (a) has been denied registration; (b) has been denied a permit; (c) has had a permit revoked; or (d) believes that the fees imposed are invalid, may have that denial, revocation, or fee imposition reviewed, upon written request by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon confirmation by the City Council of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and the right-of-way user. If the parties cannot agree on an

arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way users, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the City and right-of-way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other part of the expense of the third arbitrator and the arbitration.