

CHAPTER 113

UTILITY CONSTRUCTION

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113.01 PURPOSE AND SCOPE. In order to protect the public health, safety, and welfare, to promote a pleasing aesthetic appearance and to facilitate the provision of City services, it is the purpose of this chapter to regulate within the City the construction, operation, and maintenance of facilities for the distribution of all electricity, natural gas, telephone, cable tv or telecommunications to the public for compensation, and to keep the City apprised of the operations of these utilities within the City. The provisions of this chapter apply to all Companies, as defined in Section 113.02 of this chapter.

113.02 DEFINITIONS. For the purposes of this chapter, the following terms, phrases, and words and their derivations shall have the meanings given herein.

1. “Company” means any individual, partnership, co-operative, business association, or corporation owning or operating, within the corporate limits of the City, any facilities for furnishing utility services to the public for compensation.
2. “Distribution” means all Company-owned facilities except lines over 15 kV for electrical companies.
3. “Facilities” means any overhead or underground utility distribution line, along with related equipment and appurtenances.
4. “Service lines” are the actual lines providing the utility service to each individual customer.
5. “Street” includes each of the following which have been, or in the future are, dedicated to the public, maintained under public authority, and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, City-owned easements, rights-of-way, and similar public ways and extensions and additions thereto.
6. “Transmission” means electrical wires carrying voltages of 15 kV or greater.

7. "Utilities" means all electric, natural gas, cable television, telephone, or telecommunications companies.

113.03 COMPLIANCE. It is unlawful for any Company to construct, operate, or maintain on City property any facilities, or to cause the construction, operation, or maintenance on City property of any facilities, without having fully complied with the provisions of this chapter.

113.04 CONSTRUCTION STANDARDS. All Company facilities constructed, reconstructed, erected, relocated, or repaired within the corporate limits of the City shall comply with the following:

1. When occupying City property, such facilities shall be located so as to cause minimum interference with the proper use of City property and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any City property.
2. Such facilities shall be constructed, per applicable State and Federal safety codes, so as to provide for safe installation of, and be located so as not to endanger or interfere with any facilities of another Company and with any other public utilities, including, but not limited to, electric wires, natural gas pipelines, telephone wires, cable television wires, telephone or cable television or electric underground conduits, fiber optics, fire hydrants, water pipes, sanitary sewers and storm sewers. To these ends, the City Administrator may, after consultation with affected persons and Companies, promulgate rules establishing utility corridors on City property and standardized placement of public utilities within those corridors.
3. All such facilities shall be kept and maintained in a safe, adequate, and substantial condition in accordance with all applicable Federal, State, and local safety codes.

113.05 DUTIES OF A COMPANY.

1. Safety. A Company shall at all times employ care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, or other warning and protective devices shall be used at such times and places as are reasonably required for the safety of the members of the public.
2. Restoration. A Company shall, at no expense to the City and in a manner approved by the City Administrator, restore any damage to or disturbance of City property resulting from the Company's operations,

or construction, reconstruction, erection, relocation, or repair on the Company's behalf, so that the City property is in as good a condition as before the work was commenced. The Company shall guarantee and maintain such restoration against defective materials or workmanship for a period of one (1) year. Because of impending work by the City or another public utility, the City Administrator and the Company may agree to a less stringent arrangement.

3. Relocation. A Company shall, at no expense to the City, protect, support, temporarily disconnect, relocate or remove, temporarily or permanently, any of its facilities when, in the opinion of the Council, the same is required by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of storm sewers, sanitary sewers, drains, water pipes, signal lines, transportation facilities, or any other types of structure or improvements by governmental agencies whether acting in a governmental or proprietary capacity, and any general program under which the City shall undertake to cause all such facilities to be located underground. Any public property vacations shall be subject to all utility easements or rights in place at the time the vacation occurs.

4. Location and Exposure. If requested by the City Administrator because of impending construction, reconstruction or maintenance, a Company shall locate and expose any of its underground facilities, at no cost to the City. In an emergency situation, the Company shall immediately locate and expose the facilities. In a routine situation, the Company shall locate and expose the facilities within forty-eight (48) hours of the City Administrator's request, during the normal work week. No construction permit shall be required for work under this subsection.

113.06 CONSTRUCTION PERMITS.

1. Permit Required. A Company must obtain a construction permit from the City Administrator prior to the construction, reconstruction, erection or relocation of any new or existing underground facilities, located within the public right-of-way. The City Administrator shall issue the permit or reject the application in writing within three (3) days of the date of application.

2. Work By the City. In the event of a failure by any Company to fulfill any duties or responsibilities required to be fulfilled under this chapter, the City may cause such work to be done, and the Company shall reimburse the City the costs thereof with thirty (30) days after the receipt of an itemized list of such costs.

3. Certificate of Insurance. An application for a construction permit shall be accompanied by a certificate of insurance, naming the City as the insured and showing liability amounts of no less than two million dollars (\$2,000,000.00) per occurrence, except for those companies operating within the City which have a valid franchise agreement indemnifying the City from liability.

4. Permit Fee. An application for a construction permit shall be accompanied by a permit fee in the amount specified in Section 135.09(11) of this Code of Ordinances.

5. Expiration. Each construction permit shall expire within sixty (60) days after the date of its issuance, and no such permit shall authorize any work being done after such time. Work under any permit must begin within thirty (30) days after the date of its issuance. The City Administrator and the Company may agree to an alternative beginning date, and alternative expiration date, or both.

6. Timing. After holding a pre-construction conference with the Company making the application, the City Administrator may postpone the effective date of a construction permit until such time as the Company's work will not interfere with street construction or with the construction of other public utilities. Street closings and access obstructions shall be held to a minimum between Memorial Day and Labor Day.

7. Denial of a Permit. Violation by a Company of any requirement imposed on that Company by this chapter shall be grounds for the City Administrator to deny a construction permit for any work to be done by or for that Company, until such time as the violation has been corrected. Within three (3) days after the City Administrator discovers a violation, the City Administrator shall notify the violating Company in writing. A denial of a construction permit may be appealed by the Company to the Council.

113.07 PLANS AND SPECIFICATIONS/NEW CONSTRUCTION.

1. Filing. At least three (3) days prior to the time of application for a construction permit, the Company shall file with the City Administrator two (2) sets of plans and specifications for the work. The plans and specifications shall be of sufficient detail to show the intended location, height and depth of facilities in relation to property lines and easements. Routine maintenance on existing facilities shall be exempted from the provisions of this section.

2. Review. The City Administrator shall review the plans and specifications and may require such changes and revisions as are necessary to ensure coordinated placement of facilities within City property so as to avoid interference with other public utilities. In any event, the City Administrator may waive any or all of the above requirements.

3. Return. One set of plans and specifications, showing any changes or revisions by the City Administrator shall be returned to the Company with the construction permit. Construction shall not deviate from the approved plans and specifications without the approval of the City Administrator.

113.08 EMERGENCY WORK. In emergency situations a Company may initiate work without first obtaining a construction permit. However, the Company shall notify the City within twenty-four (24) hours of the commencement of the work. Within three (3) working days of the commencement of the work, the Company shall file an application for a construction permit. All emergency work must conform to the other applicable provisions of this chapter, except that the plans and specifications can be filed at the time of making the application for a construction permit.

113.09 OBSERVATION AND INSPECTIONS. The City Administrator is charged with enforcing the provisions of this chapter. In order to ensure compliance with this chapter and with the construction permit, the City Administrator shall have the right to observe and inspect all construction, reconstruction, erection, and relocation which is subject to this chapter. The City Administrator may order the changes necessary to bring construction, reconstruction, erection, or relocation into compliance with this chapter and the construction permit.

113.10 INDEMNIFICATION. The Company shall defend at its own expense, in the name of and on behalf of the City, and shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs, or expenses, whether caused or contributed to by the negligence of the Company, or the City, on account of injury or damage to any person or property, caused or occasioned, or allegedly caused or occasioned, in whole or in part by reason of or arising out of the construction, operation, or maintenance of the Company's underground system within the corporate limits of the City. However, the Company shall not be obliged to defend, indemnify and save harmless the City for any costs or damages arising from the sole or partial negligence of the City. The duty of the Company to defend, indemnify and save harmless the City shall

extend to officers, employees, and agents of the City to the extent the City is obligated to defend, indemnify and save harmless by law.

113.11 TIME FRAME. All utilities will have ten (10) years from the effective date of the ordinance codified in this chapter to have all of their facilities underground, except electric transmission systems. Electric transmission systems are not included in this section. If any area is annexed to the City after the effective date of this chapter, the Company will have ten (10) years from the effective date of the annexation to have underground installed in the annexed areas. The City Administrator and the Company may mutually agree to maintaining overhead facilities provided no ordinance shall require the placement of distribution lines underground in contravention of any applicable Federal or State safety or health regulations, rule or statute or if the City agrees that sound engineering or financial criteria as determined by both entities would make such placement inappropriate. If no agreement can be reached by the parties, then the matter will be resolved by binding arbitration.

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