

# TIGARD MUNICIPAL CODE

## Chapter 15.04 WORK IN RIGHT-OF-WAY

### Sections:

- 15.04.010 Definitions.
  - 15.04.020 Jurisdiction.
  - 15.04.030 Permit Required.
  - 15.04.040 Permit Applications.
  - 15.04.050 Review By City Engineer.
  - 15.04.060 Permit Issuance.
  - 15.04.070 Compliance With Permit.
  - 15.04.080 Notice Of Construction.
  - 15.04.090 Construction in Right-of-Way.
  - 15.04.105 Coordination of Construction
  - 15.04.110 As-Built Drawings.
  - 15.04.120 Restoration Of Rights-of-Way  
And City Property.
  - 15.04.135 Right-of-Way Preservation and  
Restoration Policy.
  - 15.04.140 Financial Security.
  - 15.04.150 Unusual Conditions.
  - 15.04.160 Repairs.
  - 15.04.170 Inspection And Acceptance.
  - 15.04.180 Barricades And Safety  
Measures.
  - 15.04.190 Liability for Accidents.
  - 15.04.200 Option To City To Replace  
Pavement.
  - 15.04.210 Violation--Penalty.
- 15.04.010 Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. Emergency. As used in this chapter, “emergency” means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

2. Person. As used in this chapter, “person” means every natural person, firm, co-partnership, association, corporation or entity, or district.

3. Right-of-way. As used in this chapter, “right-of-way” includes City streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the City. “Right-of-way” also includes public utility easements to the extent that the easement allows use by the permittee planning to use or using the public utility easement. “Right-of-way” includes the subsurface under and airspace over these areas. “Right-of-way” does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.

4. Sidewalk. As used in this chapter, “sidewalk” means an area specifically delineated and constructed for pedestrian use located behind a curb but within the rights-of-way or within an easement specifically established for that purpose.

5. Street or Alley. As used in this chapter, “street” or “alley” means every way or place open as a matter of right to the use of the public for vehicular or pedestrian traffic between right-of-way lines.

6. Tunnel. As used in this chapter, “tunnel” means an excavation requiring the removal of dirt or like material and does not include driving or forcing of pipe through the ground. (Ord 06-11, Ord. 74-14 § 1, 1974).

### 15.04.020 Jurisdiction.

The requirements of this chapter shall apply to all rights-of-way under the jurisdiction of the City of Tigard, dedicated by plat or deed, created by user, or the use thereof controlled by the City pursuant to agreements with Washington County

# TIGARD MUNICIPAL CODE

or the Oregon Department of Transportation.  
(Ord. 06-11)

## **15.04.030 Permit Required.**

1. It is unlawful for any person to cut upon or within, break, dig up, damage in any manner, undermine or tunnel under any public street or public alley for the purposes of doing work in a right-of-way or in a sanitary sewer, storm sewer or water easement as described in this chapter, without first complying with the provisions of this chapter in regard to the obtaining of permits, depositing of securities and the making of applications to the City. Application for permits shall be in the form prescribed by the City. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit.

2. No permit shall be issued to place or maintain a utility system in any portion of the right-of-way unless the applicant has complied with the provisions of chapter 15.06 of the Code.

3. Any person who cuts upon or within, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved public street or public alley for purposes other than those described in this chapter, must obtain an encroachment permit pursuant to chapter 15.16 of this Code. (Ord. 06-11, Ord. 02-22, Ord. 99-31, Ord. 74-14 § 2, 1974).

## **15.04.040 Permit Applications.**

1. Applications for construction permits shall be submitted on forms provided by the City and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:

a. That all work will be performed and any facilities will be constructed in accordance with all applicable codes, rules and

regulations;

b. That all work will be performed and any facilities will be constructed by or for a franchisee in accordance with the franchise agreement;

c. The location and route of all of applicant's new facilities to be installed as well as all of applicant's existing facilities in the construction area, including a cross-section to show the facilities in relation to the street, curb, sidewalk and right-of-way;

d. The construction methods to be employed for protection of existing structures, fixtures and facilities and a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.

2. Applications for construction permits shall be accompanied by the following:

a. A verification that the drawings, plans and specifications submitted with the application comply with all applicable technical codes, rules and regulations. The City may require that the verification be by a registered professional engineer.

b. A written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the City Engineer.

c. The permit fee in an amount to be determined by resolution of the City Council. The fee shall be designed to defray the costs of City administration of the construction permit program. (Ord. 06-11)

## **15.04.050 Review By City Engineer.**

The City Engineer, after reviewing the materials submitted with the application, shall

# TIGARD MUNICIPAL CODE

notify the applicant if changes in the construction plans are needed and what City requirements must be met. (Ord. 06-11)

## **15.04.060 Permit Issuance.**

Upon a determination that the application and supporting information complies with the requirements of this chapter, the City Engineer shall issue a permit authorizing construction in the rights-of-way, subject to conditions that the City Engineer deems appropriate to ensure compliance with this chapter. In order to minimize disruption to transportation and to coordinate work to be performed in the right-of-way, the permit may specify a time period within which all work must be performed and require coordination of construction activities. The City Engineer may impose conditions regulating the location and appearance of facilities. (Ord. 06-11)

## **15.04.070 Compliance With Permit.**

All construction shall be in accordance with the permit and approved plans and specifications. The City Engineer or designee shall be provided access to the work site and the opportunity to inspect any work in the right-of-way. The permittee shall provide, upon request, any information needed by the City Engineer or designee to determine compliance with applicable requirements. All work that does not comply with all permit requirements shall either be corrected or removed at the sole expense of the permittee. The City is authorized to issue stop work orders to assure compliance with this chapter. (Ord. 06-11)

## **15.04.080 Notice Of Construction.**

Except in an emergency, the permittee shall notify the City Engineer not less than two working days prior to any excavation or construction in the right-of-way. (Ord. 06-11)

## **15.04.090 Construction In Right-of-Way.**

The permittee shall complete all construction within the right-of-way so as to minimize disruption of the right-of-way and utility service and without interfering with other public and private property within the rights-of-way. All construction work within rights-of-way, including restoration, must be completed within 120 days of issuance of the construction permit unless an extension or alternate schedule has been approved by the City Engineer. The permittee shall comply with City traffic control procedures and standards. (Ord. 06-11)

## **15.04.105 Coordination of Construction.**

1. All permittees shall make a good faith effort to coordinate their construction schedules with those of the City and other users of the rights-of-way.

2. Unless otherwise agreed to in writing by the City, at least 60 days prior to the installation or upgrading of utility facilities or a utility system (as defined in chapter 15.06) that requires a cut or opening in the street of 400 linear feet or greater, the person intending to perform such work shall provide notice to the City and all other utilities identified by the City as utilities that are franchised or permitted to place facilities within the project area.

a. The notice must be provided in a manner which documents receipt of notice by utilities.

b. The notice shall state the anticipated location, project schedule and general description of the proposed work.

c. No permits for work shall be issued until notice has been given.

# TIGARD MUNICIPAL CODE

3. All utilities performing work in the rights-of-way subject to the notice requirement set forth in paragraph 2 of this section shall cooperate with other utilities with permits to do work in the same location at or near the same time to coordinate construction and colocate facilities.

4. Nothing in this section shall require a utility to reveal proprietary information. A utility shall signify any proprietary information as such and the City will protect such information from disclosure to the extent allowed by law.

5. The notification requirement set forth in paragraph 2 of this section shall not be required for the installation of facilities in new developments that are being processed through the private development review process.

## **15.04.110 As Built Drawings.**

Upon request by the City, a permittee shall provide City with two complete sets of engineered plans in a form acceptable to the City showing the location of the facilities the permittee installed or constructed within the rights-of-way pursuant to the permit. (Ord. 06-11)

## **15.04.120 Restoration Of Rights-of-Way And City Property.**

1. When a permittee does any work in or affecting any rights-of-way or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or designee.

2. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. Such

temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

3. If the permittee fails to restore rights-of-way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after said notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

4. A permittee shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

5. The permittee shall restore all streets, alleys, roads and other public ways or places that it disturbs to the same condition the area was in prior to permittee's work. The permittee shall perform all work in compliance with applicable rules, regulations, ordinances or orders. The City Engineer may issue orders to ensure compliance with this chapter and proper protection of public and private property. If the permittee fails to make repairs or provide restoration in response to any order within the time allowed under the order, City may make those repairs at the expense of the permittee. (Ord. 06-11)

# TIGARD MUNICIPAL CODE

## **15.04.135 Right-of-Way Preservation And Restoration Policy**

1. Except as provided in paragraph 3 of this section, after any street has been constructed, reconstructed, paved or improved by any person, the driving surface of the pavement shall not thereafter be cut or opened for a period of 4 years.

a. The City Engineer shall make the final determination on what construction or improvement will result in a limitation set forth in paragraph 1 of this section and shall create, maintain and make available to the public a list of the streets and street segments subject to the limitation. Only streets named on the list shall be subject to the limitation set forth in paragraph 1.

b. The 4 year limitation period shall begin upon the City's acceptance of the completed street or street improvements.

2. Except as provided in paragraph 3 of this section, after the installation or upgrading of utilities that require a cut or opening in the street of 400 linear feet or greater, the pavement surface within 400 feet of that cut or opening shall not be cut or opened for a period of 12 months, provided that the person requesting to cut or open such a surface received notice of the prior street cut or opening pursuant to section 15.04.105. The 12 month limitation period shall begin upon the utility's completion of the restoration of the street.

3. The City Engineer or designee shall grant exceptions to the prohibitions set forth in paragraphs 1 and 2 of this section: (1) in emergency situations (as defined in paragraph 4), (2) when cutting or opening the street is required to locate existing facilities when tunneling, boring, or pushing under the street (e.g., "potholing"), and (3) to provide or maintain utility services to a property when no other reasonably practicable alternative exists within the right-of-way or existing utility easement. The City

Engineer or designee may grant exceptions to the prohibitions set forth in paragraphs 1 and 2 of this section when, in the sole discretion of the City Engineer, compelling circumstances warrant the cutting or opening of the street.

a. In granting an exception, the City Engineer may impose conditions determined to be appropriate to completely restore the street and provide equivalent surface quality, durability and rideability. Conditions may include surface grinding, base and sub-base repairs, or similar work, and may include up to a full-width surface paving of the roadway.

b. The City Engineer shall develop and maintain guidelines for use in determining the appropriate restoration conditions that may be imposed under subparagraph (a), and shall consider the guidelines and any other relevant circumstances in imposing restoration conditions.

c. In the event that the City Engineer requires the partial or full repaving of a street segment, the City Engineer may require that a financial security in a form acceptable to the City be provided to the City in the amount of the estimated cost of the repaving prior to performing any work in the City's rights-of-way.

d. The denial of a request for an exemption or the conditional approval of an exemption under this section may be appealed to the City Manager, who shall have 15 business days to determine if the denial or conditional approval complies with the terms of this chapter. Appeals must be in writing and received by the City Manager not more than 15 business days after the applicant's notice of the denial or conditional approval of the request.

4. Notwithstanding the provisions of this section, in emergency situations, any person cutting or opening a street subject to the limitations of this section shall, when reasonably

# TIGARD MUNICIPAL CODE

feasible, seek verbal authorization from the City Engineer or designee for an exception. Emergency situations are those in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property. Whether or not verbal authorization was given, the utility operator shall apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work, and the owner of the facility shall be subject to any restoration conditions imposed by the City Engineer pursuant to paragraph 3.

5. Within three years after this provision becomes effective, the City Engineer or designee shall review the application and effectiveness of this section and report the findings of the review to the City Council. The review shall include measurement of its impact on the quality and surface life of City streets, compliance with this section, and the circumstances in which exceptions have been granted and conditions have been imposed under paragraph 3. The City Engineer or designee shall provide all persons who requested permits to cut or open a street subject to the limitations of this section a reasonable opportunity to provide written comments and include in the report all comments received. (Ord. 06-12)

## **15.04.140 Financial Security.**

When the City, in its sole discretion, determines that a permittee's work or manner of performance warrants, the permittee shall provide a financial security in a form acceptable to the City in an amount equal to at least 110% of the estimated costs of construction in the rights-of-way. The financial security shall remain in force until 60 days after substantial completion, including restoration of rights-of-way and other property, as determined by the City. The financial security shall guaranty timely completion, construction in compliance with applicable plans,

permits, codes and standards, proper location, restoration of rights-of-way and other property, and timely payment and satisfaction of all claims, demands or liens for labor, material or services. (Ord. 06-11)

## **15.04.150 Unusual Conditions.**

The City Engineer may grant the permit even if all the standards of this chapter are not met if the City Engineer determines that the following conditions are present:

1. There are peculiar physical conditions not ordinarily existing in similar districts in the City or the nature of the business or operation makes compliance with all standards impossible or impractical;
2. The public interest, particularly safety, health, and general welfare is not adversely affected;
3. The granting of the permit will not adversely affect the rights of adjacent property owners or residents; and
4. The application of the standards of this chapter would work unnecessary hardship upon the applicant, property owner, tenants, or residents. (Ord. 06-11, Ord. 02-22, Ord. 74-14 §12, 1974).

## **15.04.160 Repairs.**

The permittee shall, at its own expense, repair and restore the area in which the work was performed to as good or better condition than before such work was undertaken. (Ord. 06-11, Ord. 02-22, Ord. 74-14 §17, 1974).

## **15.04.170 Inspection and Acceptance.**

The permittee must notify the City Engineer or designee upon completion for inspection of the

# TIGARD MUNICIPAL CODE

work to determine compliance with the requirements of this chapter, prior to final acceptance of the work. The permittee shall not be relieved of obligations under any security given pursuant to the provisions hereof until the work is in accordance with the terms of the permit and has been accepted by the City. Acceptance by the City does not relieve the permittee of its obligation to maintain, repair, or reconstruct the site of the excavation so as to maintain a condition acceptable to the City Engineer until the right-of-way is reconstructed, repaved, or resurfaced by the City. (Ord. 06-11, Ord. 02-22, Ord. 74-14 §14, 1974).

## **15.04.180 Barricades And Safety Measures.**

Whenever any person, under authority of this chapter or otherwise, places any obstruction in a right-of-way or makes any excavation therein for any purpose whatsoever, it shall be the duty of such person to keep the obstructions or excavation properly safeguarded by substantial barricades and display lighted red lanterns or other lights or flares from dusk until daylight in conformity with such regulations as may be specified by the City Engineer. Whenever, in the opinion of the City Engineer, the public safety is endangered by such cuts or excavations as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning and all traffic is properly routed around such barricades, the permittee shall be responsible for furnishing such supervision. (Ord. 06-11, Ord. 02-22, Ord. 74-14 §15, 1974).

## **15.04.190 Liability for Accidents.**

Every person having occasion to place any obstruction in the right-of-way or to make any excavation therein under the provisions of this chapter shall be responsible to anyone for any injury by reason of the presence of such obstructions or excavation on the public highways

when the obstruction or excavation is the whole proximate cause of the injury and shall also be liable to the City, in the event that the City is held responsible for any action or claims or otherwise arising out of the presence of the obstruction or excavation in the right-of-way. (Ord. 06-11, Ord. 74-14 §16, 1974).

## **15.04.200 Option To City To Replace Pavement.**

The permittee shall replace or repair the street surface or pavement cut, damaged, tunneled under or undermined under the provisions of this chapter. If the permittee fails to restore the street surface or pavement as required by this chapter, the City may replace or repair the street surface or pavement and either charge the permittee or deduct the cost from the security deposited by the permittee with the City. (Ord. 06-11, Ord. 74-14 §18, 1974).

## **15.04.210 Violation--Penalties.**

Failure to comply with a provision of this chapter shall be a Class 1 Civil Infraction. (Ord. 06-11, Ord. 02-22, Ord. 74-14 §21, 1974).■