

## ARTICLE XIII. - UTILITY RIGHT-OF-WAY USE<sup>191</sup>

Footnotes:

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**Editor's note**— Ord. No. 3730, § 1, adopted October 22, 2007, enacted provisions intended for use as article XII. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as article XIII.

### DIVISION 1. - GENERALLY

Sec. 19-331. - Purpose.

The purpose of this article is to provide for the proper management of the public rights-of-way in order to preserve the health, safety, and welfare of the citizens of the city. Specifically, this article is intended to provide for the reasonable regulation of the owners of public and private utility facilities located in the public rights-of-way, and the time, place and manner in which such utility facilities are located and worked upon.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-332. - Definitions.

*Utility* means a company that owns and provides services to customers through utility facilities located in the right-of-way. This definition shall include the city for purposes of the city's ownership of water, waste water, and stormwater utility facilities.

*Utility facility* means a pole, tower, water main or line, sanitary sewer pipe or line, stormwater pipe or structure, gas pipe or gas line, telecommunications line or equipment, power line, conduit, or any like structure.

(Ord. No. 3730, § 1, 10-22-2007)

Secs. 19-333—19-335. - Reserved.

### DIVISION 2. - STANDARDS AND PERMITS

Sec. 19-336. - Utility right-of-way master permit required.

- (a) It shall be unlawful to own any utility facility located in, on, under, or above the right-of-way without a valid and un-expired utility right-of-way master permit issued by the city. A utility right-of-way master permit shall, among other things:
- (1) Grant to the holder of the permit the general right to have utility facilities in the right-of-way provided, however, that the master permit does not constitute a permit for any particular installation, maintenance, repair, or removal of a utility facility;
  - (2) Specify the term of the permit (which term shall typically be for the one-year period, or portion of a one-year period, the expires on June 30);
  - (3) Provide for the removal of abandoned utility facilities;
  - (4) Acknowledge the city's right to require the removal or relocation of utility facilities when necessitated by a public need;

- (5) Provide for the defense and indemnification of the city, its officers, and employees for claims and suits arising out of the use of the right-of-way;
  - (6) Require proof of suitable levels of insurance coverage;
  - (7) State the rights, if any, to assign or transfer rights or obligations without the prior consent of the city;
  - (8) Acknowledge the city's full retention of its police power;
  - (9) Provide for the registration of all contractors who work in the right-of-way on behalf of the owner; and
  - (10) Provide for the preparation, maintenance and maps of utility facilities located within the city.
- (b) Exceptions. The holder of an unrevoked and unexpired franchise issued by the city shall not be required to obtain a utility right-of-way master permit for purposes of the utility facilities located in the rights-of-way that are used for the purpose authorized by the franchise. This section shall not apply to the city.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-337. - Powers reserved.

A utility right-of-way master permit does not constitute a grant of all governmental approval necessary for the use and enjoyment of utility facilities located in the rights-of-way. A utility right-of-way master permit is not a franchise. With respect to the holder of a utility right-of-way master permit, the city fully retains its franchising and police power authority and the holder of a utility right-of-way master permit is not relieved of its obligation to obtain all necessary franchises and permits and to comply with all other legal requirements.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-338. - Utility facility installation, maintenance, repair, and removal.

- (a) The key business executive of the department of transportation is authorized to adopt, amend, and repeal standards and provisions governing the installation, maintenance, repair, and removal of utility facilities in, on, under, and over the rights-of-way. The standards and provisions shall, among other things, specify those types of activities that:
- (1) Require a utility work permit;
  - (2) Do not require a utility work permit but must be done in accordance with the standards set forth in the standards and provisions; and
  - (3) Are exempt.
- The standards and provisions shall also address emergency situations and activities.
- (b) It shall be unlawful to install, maintain, repair, or remove any utility facility in the right-of-way in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful to install, maintain, repair, or remove any utility facility in the right-of-way without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a utility work permit for such activities.
- (d) Any owner of utility facilities located in the right-of-way shall maintain a map of such facilities.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-339. - Utility pavement/sidewalk cuts.

- (a) The key business executive of the department of transportation is authorized to adopt, amend, and repeal standards and provisions governing the making, excavation, filling, repair, and closing of a utility pavement/sidewalk cut. The standards and provisions may provide that certain activities may be undertaken only in accordance with a utility work permit issued pursuant to such standards and provisions. The standards and provisions shall also address emergency situations and activities.
- (b) It shall be unlawful to make, excavate, fill, repair, or close a utility pavement cut in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful to make, excavate, fill, repair, or close a utility pavement cut without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a permit for such activities.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-340. - Lane closure/traffic control.

- (a) The key business executive of the department of transportation is authorized to adopt, amend, and repeal standards and provisions governing the closing of any portion of the right-of-way to vehicular, pedestrian or other traffic, including standards and requirements for warning and controlling traffic including, but not limited to, development and enforcement of a Work Area Traffic Control Handbook (WATCH). The standards and provisions may provide that certain closings or traffic warning and control activities may be undertaken only in accordance with a utility work permit issued pursuant to such standards and provisions. The standards and provisions shall also address emergency situations and activities.
- (b) It shall be unlawful for any person to close any portion of the right-of-way to vehicular, pedestrian, or other traffic in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful for any person to close any portion of the right-of-way to vehicular, pedestrian, or other traffic without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a utility permit for such closing.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-341. - Additional violations.

- (a) Except in an emergency, it shall be unlawful to authorize a contractor to perform work regulated by this article without first registering such contractor with the city.
- (b) If a contractor is performing work on a utility facility in the right-of-way, it shall be unlawful for the contractor to fail or refuse to properly identify the Utility on whose behalf the contractor is performing the work when requested to do so by the director/engineer.
- (c) If a subcontractor is performing work on a utility facility in the right-of-way, it shall be unlawful for the subcontractor to fail or refuse to properly identify the contractor on whose behalf the subcontractor is performing the work when requested to do so by the director/engineer.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-342. - Fees and deposits.

Permit and other regulatory and nonregulatory use fees, including but not limited to utility right-of-way master permit fees, utility work permit fees, street cut patch fees, and pavement degradation fees, to

be charged for the governmental activities undertaken pursuant to this division shall be established and revised in accordance with section 2-1.

A cash deposit, letter of credit or warranty bond may be required in an amount prescribed by the city to guarantee the completion of work in accordance with all rules and regulations.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-343. - Process for amending rules and regulations.

Prior to amending the standards and provisions authorized in sections 19-338, 19-339, and 19-340, the key business executive of the department of transportation shall provide written notice of such proposed amendments to all utilities that hold a valid and unexpired utility right-of-way master permit and provide a reasonable opportunity to comment at least 30 days before the effective date of such amendments.

(Ord. No. 3730, § 1, 10-22-2007)

Secs. 19-344, 19-345. - Reserved.

### DIVISION 3. - ENFORCEMENT AND APPEALS

Sec. 19-346. - Administration and enforcement.

- (a) This article shall be administered and enforced by the director/engineer.
- (b) A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in G.S. 160A-175. Notwithstanding the foregoing, the violation of a stop work order issued pursuant to section 19-338 shall constitute a misdemeanor punishable under G.S. 14-4.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-347. - Civil penalties.

The following civil penalties are established:

- (1) Violation of subsection 19-338(b) ..... \$ 100.00
- (2) Violation of subsection 19-338(c) ..... 1,000.00
- (3) Violation of subsection 19-339(b) ..... 100.00
- (4) Violation of subsection 19-339(c) ..... 1,000.00
- (5) Violation of subsection 19-340(b) ..... 100.00
- (6) Violation of subsection 19-340(c) ..... 1,000.00
- (7) Violation of subsection 19-331(a) ..... 100.00

Civil penalties authorized by this section may be assessed against the utility on whose behalf work is being performed and against the contractor or subcontractor who is performing such work.

Billings not paid within 30 days will be assessed a late fee of one percent of the unpaid balance per month.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-348. - Administrative enforcement.

- (a) *Stop work orders.* A stop work order shall be in writing, state the work to be stopped, state the reasons therefore, and state the conditions under which the work may be resumed. A stop work order may be issued for:
- (1) Working in the right-of-way without a valid and unexpired utility right-of-way master permit or unrevoked and unexpired franchise issued by the city as required by section 19-336;
  - (2) Use of a contractor that has not been registered with the city other than in an emergency;
  - (3) Violation of subsection 19-338(c);
  - (4) Violation of subsection 19-340(c);
  - (5) Failure to comply with subsection 19-338(b) within a reasonable period of time after notification of such non-compliance;
  - (6) Failure to comply with subsection 19-340(b) within a reasonable period of time after notification of such non-compliance;
  - (7) Violation of subsection 19-341(b);
  - (8) Violation of subsection 19-341(c).
- (b) *Permit denials.* The city may refuse to issue utility work permits required by this article to a utility that does not possess a valid and unexpired utility right-of-way master permit or unrevoked and unexpired franchise as required by section 19-336 or to a utility that is in violation of the terms and conditions of a utility right-of-way master permit or franchise.

The city may refuse to issue utility work permits required by this article to a utility that has not paid civil penalties within 45 days after the date the penalties were assessed if the company has not appealed the assessment, or within 45 days of a final decision on appeal.

The city may refuse to issue utility work permits required by this article to a utility that has not paid costs assessed pursuant to subsection (c) within 45 days of the assessment.

- (c) *Cost of remediation.* In the event that a utility fails to properly repair and restore the right-of-way as required by this article, the city may provide of the repair and restoration and charge the cost to the utility.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-349. - Appeals.

- (a) Any person whose utility work permit application has been denied or who has been assessed a civil penalty may appeal such decision within ten days after notice of such denial or civil penalty assessment. A utility that has been charged repair and restoration costs pursuant to subsection 19-348(c) may appeal such decision within ten days after the city invoices such charge. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the department of transportation. The appellant shall have the right to present evidence at said hearing.
- (b) A ruling on appeal is subject to review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-350. - Reserved.