

## ARTICLE III. RIGHTS-OF-WAY ADMINISTRATION\*

This is the section of the Code that Commissioner Hutchinson sent me — without comment — in support of her statement that the church got a "legal permit." □  
Note that this constantly refers to permits for "facilities," and defines them as anything "used to deliver utility service." This section is designed to regulate utilities. It clearly has nothing that allows the City Engineer to authorize the construction of a parking lot in a median. Now you can read it for yourself! □  
— Cal Deal

### Sec. 25-96. Intent and purpose.

The city commission of the City of Fort Lauderdale finds and declares that:

- (a) The city has acquired, built and maintained rights-of-way to promote the general health, safety and well-being of its citizens.
- (b) Utilities locate their facilities in the rights-of-way to ensure that all citizens receive adequate utility service.
- (c) Frequent construction in the rights-of-way by utilities and other users contributes to early deterioration of the rights-of-way.
- (d) In response to the foregoing, and to protect and limit deterioration of the rights-of-way, the city hereby adopts uniform regulations for the construction of facilities in the rights-of-way.
- (e) The regulations embodied herein have been made as broad as possible to serve as standards of quality to maintain the necessary uniformity in the utilization of rights-of-way.

(Ord. No. C-00-81, § 1, 12-19-00)

### Sec. 25-97. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Affiliate* means each person, directly or indirectly, controlling, controlled by, or under common control with the provider; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen (15) percent of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

*Broadband* means a combination or bundling of cable services, telecommunications services, and internet services.

*Cable services* means the same as the term is defined in section 202.11(2), Florida Statutes. For the purposes of this article, this definition includes open video service.

*City engineer or office of the city engineer* means the city engineer or designee.

*Code* means the City of Fort Lauderdale Code of Ordinances.

*Communication services* means the same as the term is defined in section 202.11(3), Florida Statutes. For the purpose of this article, the master cable services regulatory ordinance shall apply to cable services and open video service providers unless otherwise provided by law.

*Communications services system* means any system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communication services to or from subscribers or locations within the city.

*Communications Services Tax Simplification Law* means Chapter 2000-260, Laws of Florida.

*Construct or construction* means to excavate, obstruct, install poles, install signs, install physical features, other than landscaping, on, above, or under any part of the rights-of-way.

*Construction bond* means a bond posted to ensure proper and complete construction and repair of a facility pursuant to a permit.

*Department* means the department of public services.

*Department inspector* means any city employee or agent authorized by the city engineer to carry out inspections related to the provisions of this article.

*Emergency* means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

*Excavate or excavation* means to dig into or in any way remove or physically disturb or penetrate any part of a rights-of-way.

*Facilities* means any tangible thing located in any rights-of-way used to deliver utility service, but shall not include boulevard plantings or gardens planted or maintained in the rights-of-way between a person's property and the edge of pavement.

*In*, when used in conjunction with rights-of-way, means over, above, in, within, on or under a rights-of-way.

*Information services* means the same as the term is defined in section 202.11(7), Florida Statutes.

*Local communications services tax* means such tax as defined in Chapter 202, Florida Statutes.

*Master cable services regulatory ordinance* means City of Fort Lauderdale Ordinance No. C-00-32, codified at Chapter 25 Article X of the City of Fort Lauderdale Code of Ordinances, as amended from time to time.

*Permit* means the rights-of-way construction permit that must be obtained before a person may construct in a rights-of-way.

*Permittee* means any person to whom a permit to construct in the rights-of-way has been granted by the city.

*Person* means any natural person or corporate, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

*Private communications system* means the system of cable wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities placed in the rights-of-way for the provision of communications in connection with a person's business, but not for provision of telecommunications services, to the extent not a

"substitute communications system" as defined in the communication services tax simplification law.

*Probation* means the status of a person that has not complied with the conditions of this article.

*Probationary period* means one year from the date that a person has been notified in writing that they have been put on probation.

*Provider* means any person who owns, controls, or is the lessee of facilities in the rights-of-way, including private communications systems; provided, however, that provider shall not mean the lessee of facilities from a registrant or from a person who has a use agreement with the city.

*Registrant* means any person who has or seeks to have its facilities located in any rights-of-way, or in any way occupies or uses, or seeks to occupy or use, the rights-of-way or any facilities located in the rights-of-way.

*Restoration* means the process by which rights-of-way are returned to a condition as good or better as existed before the construction.

*Rights-of-way* means the surface and space above and below any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, or bridge.

*Service or utility service* means services provided by utilities.

*Trenchless technology* means the use of directional boring, horizontal drilling and microtunneling and other similar techniques in the construction of underground portions of facilities.

*Underground facilities* means all lines, cables, conduits, posts, tanks and any other facilities owned or operated by persons other than the city which are located wholly or primarily underneath rights-of-way.

*Use agreement* means the agreement between the city and provider regarding its facilities in the rights-of-way. The form of such use agreement shall be approved by the office of the city attorney.

*Utility or utilities* means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunication, signal, communication services, cable services, or cable television conduit, fiber, wire, cable, or operator thereof.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-98. City engineer to administer.**

The city engineer shall be responsible for the administration of this chapter.

(Ord. No. C-98-29, § 3, 5-19-98)

### **Sec. 25-99. Registration of facilities.**

(a) Each person who occupies, uses, or seeks to occupy or use, the rights-of-way or any facilities located in the rights-of-way, or who has, or seeks to have, facilities located in any rights-of-way shall register with the office of the city engineer. Any person seeking to occupy or use the rights-of-way for a private communications system, information services or any such person not otherwise exempt under applicable state law shall apply for and

receive a use agreement, if required, prior to registering under this section. Registration shall consist of providing the registration information set forth below. Any person providing cable services shall obtain a franchise pursuant to the master cable services regulatory ordinance and shall pay franchise fees until the effective date of the local communications services tax.

(b) **No person may construct**, install, repair, remove, relocate, or perform any other work on, or use **any facilities** or any part thereof located in any rights-of-way **without first being registered with the office of the city engineer.** Nothing herein shall be construed to repeal or amend the provisions of any section of this code or city policy permitting persons to plant or maintain boulevard plantings or gardens in the area of rights-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the rights-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article.

(c) **The information provided to the department at the time of registration shall include, but not be limited to:**

(1) Each registrant's name, address and e-mail address if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) **A certificate of insurance** verifying that insurance coverage has been obtained by the registrant pursuant to section 25-113 or other applicable requirement, by an insurance company licensed to do business in the State of Florida or a certificate of self-insurance, meeting the requirements of the risk manager for claims for personal injury, including death, claims for property damage arising out of the use, occupancy and placement of facilities in the rights-of-way by the registrant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property. Such policy or policies shall name the city as an additional insured and require that the city engineer be notified thirty (30) calendar days in advance of cancellation of the policy or any change in coverage.

(4) **If the person is a corporation, certification from the state that it is authorized to do business in the State of Florida.**

(5) **A copy of the registrant's certificate of authority from the Florida Public Service Commission**, where the person is lawfully required to have such certificate; copies of any other applicable franchises, use agreements, or licenses.

(6) For registrations submitted prior to the effective date of the local communications services tax, **the registrant shall state whether it provides local or toll service or both.**

(7) The **registrant** shall keep all of the information listed above current at all times by providing to the office of the city engineer information of changes within fifteen (15) calendar days following the date on which the registrant has knowledge of any change.

(8) If required of the registrant as provided in Chapter 25 of the Code, **the registrant shall provide for a security fund** under the terms and conditions provided by the city engineer and the city treasurer.

There was no evidence in the file that the applicant for the parking lot permit, A-1 Network, is a properly registered entity according to this section of the code.

(d) Each registrant shall coordinate with the office of the city engineer, to the extent feasible and practical, its construction of facilities, in order to reduce the frequency of construction, excavation and obstructions in the rights-of-way.

(e) Each registrant shall, to the extent feasible and practical, provide to the department information indicating the horizontal and approximate vertical location, relative to the boundaries of the rights-of-way, of all facilities which it owns or over which it has control and which is located in any rights-of-way. This information shall be provided with the specificity and in the format required by the department for inclusion in the mapping system used by the department.

(f) If any facilities are found in the rights-of-way and no registrant claims ownership within a reasonable time after notification in writing by the city of the location of such facilities, such facilities shall be deemed abandoned and the city may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of such facilities.

(g) A registrant who has determined to discontinue all operations in the city must notify the city engineer of the assumption by another registrant of ownership of such facilities, obtain permission from the City Engineer to abandon such facilities in place or provide the city engineer with an acceptable plan for disposition of such facilities. If a registrant fails to comply with this subsection, such facilities shall be deemed abandoned and the city may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities.

(h) Registration shall not convey, transfer, or assign any property interest, equitable or legal, in the rights-of-way. A registration does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its facilities on another person's facilities. Nothing contained in any registration granted pursuant to this article shall entitle a provider to use, alter, convert to, or interfere with, any real or personal property of any kind whatsoever under the management or control of the city.

(i) A registrant shall obtain and maintain any and all required regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities.

(j) A registrant shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, a registration granted pursuant to this article without having first provided the city with at least thirty (30) days written notice of the same. Further, any such person to whom such transfer has been made, must register with the city in accordance with this article and shall provide proof of insurance coverage in accordance with section 25-113 of the Code, and further shall be governed by Article III and Article IX of Chapter 25. Transfers to affiliates shall not be exempt from the requirements of this subsection.

(k) Each registrant shall renew its registration annually in accordance to the registration requirements of this article.

(l) Registrant shall be given a copy of Article III, Article IX, and Article X, if applicable, of this chapter, and an authorized officer of registrant shall acknowledge receipt of said articles, that registrant has read and understood the provisions thereof, and that registrant will be bound by the provisions of said articles.

(Ord. No. C-98-29, § 3, 5-19-98; Ord. No. C-00-81, §

Section 25-100 (below) is the one Cindi highlighted to suggest that it allows the City Engineer to authorize the construction of a parking lot in a median. It does not. It refers to facilities (see definitions page) and only applies if the applicant is registered.

### Sec. 25-100. Rights-of-way permits.

(a) Except as otherwise provided in the code, no person may construct in any rights-of-

way without first having obtained a permit from the office of the city engineer.

(b) A permit will allow the holder to construct in that part of the rights-of-way described in such permit and to hinder free and open passage over the specified portion of the rights-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(c) A permit is valid only for the dates and the area of rights-of-way specified in the permit, unless modified by the city engineer.

(d) No person may construct in the rights-of-way beyond the date or dates specified in the permit unless such permit is modified by the city engineer.

(e) Permits issued under this article shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by department inspectors and authorized city personnel.

(f) All permit requests shall be in the form specified by the city engineer and shall contain at a minimum:

(1) Evidence that the person requesting the permit is a registrant or proof that the person requesting the permit has authority to apply for a permit on behalf of a registrant.

(2) A traffic control plan demonstrating the protective measures and devices that will be employed, consistent with uniform traffic control standards as designated by the office of the city engineer, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(3) If the person requesting the permit is proposing to install facilities on new poles, a statement that it is not feasible to locate its facilities on existing utility poles along the proposed route.

(4) If person requesting the permit is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way:

a. a statement that the permittee has verified that it is not feasible to locate its facilities in existing ducts and conduits;

b. the location, depth, size and quantity of proposed new ducts or conduits; and

c. a description of the excess space that may be available for use by other utilities after installation of the new facilities.

(5) A preliminary construction schedule and completion date.

(6) All money for which payment is currently due to the city, without offset or dispute.

(7) When a permit is requested for purposes of installing additional facilities, the posting of a construction bond for the additional facilities, if required.

(g) Except in the case of an emergency, no permit will be granted to any person:

(1) required to register who has not registered;

(2) not in substantial compliance with the requirements of this article or, if applicable, with the requirements of Article IX of this chapter;

(3) with an outstanding debt which is due and payable to the city without offset or dispute; or

The yellow highlighting here is mine; the pink is Cindi's. □  
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(4) where there exists grounds for the revocation of a permit, until such person has corrected any such failure or default.

(h) The city engineer may impose reasonable conditions upon the issuance of the permit and the performance of the person requesting the permit thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.

(i) Upon registration, the registrant shall be entitled to a blanket maintenance permit for the routine maintenance of its facilities. The city engineer shall establish reasonable standards and guidelines for the kinds of maintenance activities that are permissible under a blanket maintenance permit.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-101. Rights-of-way permit fees.**

(a) *Established.* Permit fees shall be established by resolution of the city commission to the extent applicable once the permit fee provisions of the communications services tax simplification law become effective. Those utilities not covered by said law may be subject to permit fees in accordance with the rules and regulations of the city.

(b) *Payment of permit fees.* To the extent permit fees are not prohibited under the communications services tax simplification law, no permit shall be issued without prior payment of permit fees, unless, at the discretion of the city engineer, the city allows the person requesting the permit to pay such fees within thirty (30) calendar days of billing.

(c) *Probationary fees.* To the extent probationary fees are not prohibited under the communications services tax simplification law, all permit fees shall be doubled during a probationary period.

(d) *Non-refundable fees.* Permit fees that were paid for a permit that the city engineer has revoked for a breach are not refundable.

(e) *Joint submissions.* Persons requesting permits are encouraged to make joint submissions for permits to work in the rights-of-way at the same place and time. Persons requesting permits who apply for permits for the same construction, which are not performed by the department, may share in the payment of the permit fee. Persons requesting permits must agree among themselves as to the portion each will pay and indicate the same on their submissions.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-102. Work without a permit.**

(a) *Emergency situations.* Each registrant shall promptly notify the city engineer of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. In the event that the city becomes aware of an emergency regarding a registrant's facilities, the department shall, if circumstances warrant, attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the department may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency. Each registrant shall be responsible for the cost of repairing any facilities

that it or its facilities damages at any time, or that are damaged during an emergency caused by the registrant or its facilities.

(b) *Non-emergency situations.* Except in the case of an emergency, it shall be unlawful for any person to construct in rights-of-way without a permit.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-103. Subsurface utility engineering study.**

(a) Prior to securing a permit to commence the construction of underground facilities in the rights-of-way, a registrant shall conduct a subsurface utility engineering study on the proposed route of construction. A subsurface utility engineering study consists of, at minimum, completion of the following tasks:

(1) Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all underground facilities along the proposed construction route.

(2) Visibly survey and record the location and dimensions of any above-ground features of all underground facilities along the proposed construction route, including but not limited to manholes, valve boxes, utility boxes, posts and visible street cut repairs.

(3) Plot and incorporate the data obtained from completion of the tasks described in this subsection on the registrant's proposed system route maps, plan sheets and computer aided drafting and design (CAD) files. The permittee shall also provide the city with this information.

(4) Determine and record the presence and approximate horizontal location of all underground facilities in the rights-of-way along the proposed system route utilizing surface geophysical designating techniques such as electromagnetic, magnetic and elastic wave locating methods.

(5) Plot, incorporate and reconcile the data obtained by completion of the task described in this subsection with the updated route maps, system plans and CAD files described in this subsection. The registrant shall also provide the city with this information.

(6) Where system design and the location of underground facilities appear to conflict on the updated system route maps, plans and CAD files, utilize non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities. A registrant shall not excavate more than a two hundred (200) millimeter by two hundred (200) millimeter square hole in the rights-of-way to complete this task.

(7) Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed system design elevations, horizontal or vertical locations to avoid the need to relocate other underground facilities.

(b) The registrant shall record all of the data collected into a file compatible with the CAD standard with the specificity and in the format required by the department and deliver an electronic copy to the department.

(c) All subsurface utility engineering studies conducted pursuant to this section shall be performed by a firm specializing in subsurface utility engineering that is approved by the

department, or may be performed by the person if the person proves to the department that it possesses the requisite education and experience to complete the project itself.

(d) The person shall bear the cost of compliance with this section.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-104. Location of facilities.**

(a) The city engineer shall have the power to prohibit or limit the placement of new or additional facilities within the rights-of-way if there is insufficient space to accommodate all of the requests of permittees to occupy and use the rights-of-way. In making such decisions, the city engineer shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by the condition of the rights-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the rights-of-way, and future city plans for public improvements and development projects which have been determined by the city commission to be in the public interest.

(b) The city makes no warranties or representations regarding the fitness or suitability of the city's rights-of-way for the installation of permittee's cables or conduits, and any performance of work or other costs incurred by permittee shall be at permittee's sole risk.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-105. Least disruptive technology.**

(a) All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption to the rights-of-way. Specifically, every permittee installing underground facilities for telecommunications systems, communications systems, Cable services, open video systems, or private communications systems, as defined in Article IX of this chapter, shall utilize trenchless technology, unless the city engineer approves another method.

(b) A permittee shall use all reasonable efforts not to disrupt the operation or maintenance of any other utilities or uses in the rights-of-way, including, but not limited to, sewers, storm drains, gas or water mains, or other underground cables or conduits.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-106. Exceptions.**

The city engineer may grant an exception to the requirements of sections 25-100, 25-101 and 25-102 if a permittee demonstrates, with written evidence satisfactory to the city engineer, that:

- (1) The exception will not create any threat to the public health, safety or welfare, or the operations of other utilities; or
- (2) The increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of the requirements of such sections actually or effectively prohibits the ability of the permittee to provide utility services; or
- (3) The requirement unreasonably discriminates against the permittee in favor of

another person.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-107. Removal and relocation of facilities.**

(a) The registrant must promptly, with due regard for seasonal working conditions, permanently remove or relocate or both, its facilities in the rights-of-way whenever the city engineer, upon advance written notice to registrant, finds that the facilities are unreasonably interfering in any manner with the convenient, safe or continuous use or maintenance, improvement, extension, or expansion of such rights-of-way, and registrant shall restore the rights-of-way to the same condition it was in prior to said removal or relocation or both. Unless otherwise provided by statute, the costs associated therewith shall be borne by the registrant.

(b) A registrant's rights upon vacation of rights-of-way shall be governed by section 47-24.6 of the Uniform Land Development Regulations of the city.

(c) If a registrant fails to commence removal or relocation of its facilities as designated by the city, within thirty (30) calendar days of the issuance of the city's removal order, or if a registrant fails to substantially complete such removal or relocation, including all associated repair of the rights-of-way of the city, within twelve (12) months thereafter, the city shall have the right to authorize any work do be done to effect the removal or relocation or both of the facilities. Unless otherwise provided by statute, the costs associated therewith shall be borne by the registrant.

(d) Before commencing construction, each registrant who has facilities located in the proposed construction area shall be responsible to mark the horizontal and where known, the approximate vertical placement of all its facilities in accordance with Chapter 556, Florida Statutes.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-108. Rights-of-way restoration.**

(a) The permittee shall restore the rights-of-way in the manner and to the condition required by the office of the city engineer.

(b) If the permittee fails to restore the rights-of-way, and upon ten (10) days written notice to permittee, the city may restore the rights-of-way itself, and the permittee shall pay the costs thereof within thirty (30) calendar days of billing.

(c) The permittee shall perform the work according to the standards and with the materials specified by the city engineer. The city engineer shall have the authority to prescribe the manner and extent of the restoration. The city engineer in exercising this authority shall be guided by the following standards and considerations:

- (1) the number, size, depth and duration of the excavations, disruptions or damage to the rights-of-way;
- (2) the traffic volume carried by the rights-of-way;
- (3) the character of the neighborhood surrounding the rights-of-way;
- (4) the condition of the rights-of-way prior to the excavation;
- (5) the remaining life-expectancy of the rights-of-way affected by the excavation;

(6) whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the rights-of-way that would otherwise result from the excavation, disturbance or damage to the rights-of-way; and

(7) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the rights-of-way that would otherwise take place.

(d) The permittee shall guarantee its restoration work and shall maintain and correct any improper construction at its cost for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the department, correct all restoration work to the extent necessary using the method required by the office of the city engineer. Said work shall be completed within twenty one (21) calendar days of the receipt of the notice from the city.

(e) The permittee shall, at its own expense, repair or replace any other real or personal property disturbed or damaged on account of its construction of facilities in the rights-of-way.

(f) In the event permittee fails to comply with any part of this section, the registrant shall be fully responsible to the extent provided by law.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-109. Protection of facilities.**

When the city performs work in the rights-of-way and such work affects a registrant's facilities in order to protect them, the registrant shall make such adjustments to its facilities as may be required by the city engineer. In the event that registrant fails to adjust its facilities as required the city may do such work as is necessary. Unless otherwise provided by statute, the costs associated therewith will be billed to that registrant and must be paid within thirty (30) calendar days from the date of billing. City shall give notice as required by law to a registrant of any work that involves maintaining, supporting, or moving a registrant's facilities.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-110. General obligations of permittees.**

(a) The construction performed in the rights-of-way shall be done in conformance with specifications as promulgated by the city engineer and set forth in the City of Fort Lauderdale Construction Standards and Specifications.

(b) Within five (5) calendar days of the time the work under any permit hereunder is completed, the permittee shall notify the city engineer.

(c) The permittee shall make the work site available to the department inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

(d) Obtaining a permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations.

(e) Except in the case of an emergency, and with the approval of the city engineer, no rights-of-way construction may be performed when climatic conditions are unreasonable for such work.

(f) A permittee shall not so obstruct rights-of-way in a manner that will interfere with the natural free and clear passage of water through the gutters or other waterways.

(g) Private vehicles may not be parked within or adjacent to a permit area. Construction equipment or the loading or unloading of trucks adjacent to or in a permit area is prohibited unless specifically authorized by the permit.

(h) A permittee or registrant shall belong to the sunshine state one-call notification system as required by Chapter 556, Florida Statutes.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-111. Enforcement of permit obligations.**

(a) The city engineer may order the suspension of work under a permit and ultimately may revoke any permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation, or any condition of the permit. The types of substantial breach by permittee may include, but are not limited to:

- (1) the violation of any material provision of the permit;
- (2) an evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) any material misrepresentation of fact in the process of permittee's request for a permit or registration;
- (4) the failure to maintain the required construction bond or insurance;
- (5) the failure to properly restore the rights-of-way; or
- (6) the failure to correct within the specified time an order issued by the department inspector.
- (7) the failure to register, re-register, or provide notice of any transfer in accordance with this article.

(b) If the city engineer determines that the permittee has committed a substantial breach of a term or condition of the permit, the city Engineer 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. Further, a substantial breach, as stated above, will allow the city engineer, at his or her discretion, to place additional or revised conditions on the permit.

(c) Within five (5) calendar days of receiving notification of the breach, permittee shall contact the city engineer with a plan, acceptable to the city engineer, for its correction. Permittee's failure to so contact the city engineer, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for revocation of the permit. Further, permittee's failure to so contact the city engineer, or the permittee's failure to submit an acceptable plan, or permittee's failure to implement the approved plan, shall be cause for the permittee to be placed on probation for one full year.

(d) The city engineer may establish a list of conditions of any permit which, if breached, will be cause for the permittee to be placed on probation for one full year, such as, but not limited to, working out of the allotted time period or working on rights-of-way significantly outside of the permit. These conditions shall be stated on the permit.

(e) If a permittee, while on probation, commits a breach as outlined above, permittee's permit may be revoked and not be allowed further permits for one full year, except for emergency repairs and service requirements as mandated by state or federal regulations.

(f) 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 attorneys' fees incurred in connection with such revocation.

(g) The department inspector may issue an immediate stop work order where the permittee's construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has abated.

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-112. Construction bond.**

(a) Prior to the commencement of any construction, a permittee shall deposit with the city engineer a construction bond in an amount determined by the city engineer based on the type of facilities, the extent of the project, rights-of-way restoration work required and the past performance of the permittee on other work for which the city issued a permit. The construction bond shall not be released until the rights-of-way have been restored and inspected pursuant to the specifications provided in this article.

(b) The construction bond shall serve as security for:

(1) the faithful performance by the permittee or registrant of all terms, conditions and obligations, including restoration of the rights-of-way and permit fees, of this article;

(2) any expenditure, damage, or loss incurred by the city occasioned by the permittee or registrant's violation of this article or its failure to comply with all rules, regulations, orders, permits and other directives of the city issued pursuant to this article;

(3) the payment of premiums for the liability insurance required pursuant to this article;

(4) the submission to the city of accurate record drawings showing at a minimum correct horizontal and vertical locations of new facilities placed in the rights-of-way in a CAD format approved by the office of the city engineer. Record drawings shall be certified by a professional engineer or land surveyor registered by the State of Florida, except for such engineers or surveyors who may be exempt from registration by Florida Statutes.

(c) The construction bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) calendar days after completion of construction of the facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) calendar days' written notice to Fort Lauderdale of surety's intention to cancel or not renew this bond."

(Ord. No. C-00-81, § 1, 12-19-00)

### **Sec. 25-113. Insurance.**

(a) Each registrant shall maintain at all times workers' compensation insurance and liability insurance as follows, written by an insurance company authorized to do business in the State of Florida and with an A.M. Best Company rating of no less than B+ VIII; all coverage shall be occurrence form:

(1) Workers compensation within statutory limits and employer's liability insurance with limits of not less than five hundred thousand dollars (\$500,000).

(2) Commercial general liability insurance occurrence form, including premises/operations; independent contractors; contractual liability; products/completed operations; X, C, U coverage; and personal injury coverage for limits of no less than one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) in the aggregate. The coverage must be evidenced by a certificate of insurance that names the city as an additional insured and provides the city engineer with at least thirty (30) days advance written notice of cancellation.

(3) Commercial automobile liability coverage for all owned, non-owned and hired vehicles for limits of no less than one million dollars (\$1,000,000.00) per occurrence combined single limit.

(4) Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

(b) The city may, at its option, allow a registrant to be self insured or the equivalent thereof for one or more lines of insurance coverage. In such instances, the registrant shall demonstrate to the risk manager that it has adequate financial resources to defend and cover claims in the amounts and categories as required by the risk manager.

(c) Upon the effective date of the registration, the registrant shall submit to the city proof that it has obtained the insurance required under this section, including a certificate of insurance signed by the insurance agent.

(d) The city shall have the authority to increase or decrease the policy limits set forth above and shall provide each registrant with at least thirty (30) days written notice of such change. Within thirty (30) days from receipt of a notice to increase its policy limits, the registrant shall submit to the city proof of such increased coverage.

(Ord. No. C-00-81, § 1, 12-19-00)

## **Sec. 25-114. Indemnification and liability.**

(a) By reason of the acceptance of a registration or the grant of a permit, the city does not assume any liability:

(1) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city;

(2) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.

(b) By registering with the department a registrant agrees, or by accepting a permit a permittee is required, to defend, indemnify, and hold the city whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, whether any act or omission complained of is authorized, allowed, or prohibited by a permit. The foregoing does not indemnify the city for its own negligence or intentional acts, provided, however, that the city's right to indemnification shall not be affected by the issuance of permits and inspection

of plans or work by the city. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf. Nothing herein shall be construed as a waiver of the protections, limitations and immunities provided in Section 768.28, Florida Statutes.

(c) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the registrant under workers' compensation, disability or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability or limitations of any insurance held by the registrant.

(d) The city does not and shall not waive any rights against the registrant which it may have by reason of this indemnification, or because of the acceptance by, or the registrant's deposit with the city of any of the insurance policies required by this article for registration.

(e) This indemnification by the registrant shall apply to all damages and claims for damages of any kind suffered by reason regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-115. Security fund.**

(a) In the city engineer's discretion and prior to the registrant receiving its first permit to place or maintain facilities in the rights-of-way, the registrant shall provide an annual surety bond in an amount set by the city engineer. The bond or guaranty shall be issued by a surety qualified to do business in the State of Florida, and acceptable to the finance director, and shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by this Code. The bond shall be furnished annually to provide a continuing guaranty of the registrant's full and faithful performance, until such time as the city engineer may remove the requirement for the security fund.

(b) In the event registrant fails to perform the duties and obligations imposed upon registrant, there shall be recoverable, jointly and severally from the principal and surety of the bond any damages or loss suffered by city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of registrant, plus reasonable attorneys' fees, up to the full amount of the security fund.

(c) The city engineer may accept a corporate guaranty, under the same terms and conditions as (a) and (b) above, of the registrant or its parent company in lieu of a bond, provided the registrant is a publicly traded company and maintains an insurance rating of no less than A-.

(d) The provision of a security fund, if required, shall not waive any claims or remedies a registrant may have under applicable law with respect to provisions of the code or application thereof.

(Ord. No. C-00-81, § 1, 12-19-00)

#### **Sec. 25-116. Statutory exceptions.**

No requirement set forth in this article shall apply to any utility that is exempted from

complying with such a requirement under state or federal law or regulation.

(Ord. No. C-00-81, § 1, 12-19-00)

Secs. 25-117--25-120. Reserved.