

REQUEST FOR ACTION: ORDINANCE

Version: 01/10/2013

AGENDA FOR: MAYOR COUNCIL AUTHORITY: DATE: February 20, 2013
 Tulsa City Clerk's Office: 596-7513 or 596-7514

FOR INFORMATION CONTACT:

DEPARTMENT: PLANNING & ECONOMIC DEV CONTACT NAME: Dawn T. Warrick
 ADDRESS: OTC 05-041 TELEPHONE: 918-576-5447

ORDINANCE # 22845

SUBJECT: Revising Title 35

ORDINANCE TYPE: AMENDING PREVIOUS ORDINANCE BA or CT #: _____
 AMENDMENT OF ORD#: _____ TRO TITLE: 35 TRO SUBTITLE: _____ PLANNING DISTRICT: _____
 ZONING #: _____ SSID: _____ PUD #: _____ PROP/INON-PROP: N COUNCIL DISTRICT: _____

SUMMARY:

Title 35, TRO, is being revised to provide clarification of two areas. The language for Right-of-way, Minor Construction Permits is being modified to clearly differentiate it from Right-of-way permits required by Title 11, Chapter 12. The new language in Title 35 does not change any requirements but does make it clearer which permit applies making it easier for the development community to apply for the proper permit. The current version of the ordinance passed in 2009 refers to the Director of Public Works. This version changes it to the appropriate director depending upon their areas of responsibility.

APPROVED BY MAYOR
CITY OF TULSA

MAR 18 2013

Approved By
City Council On
MAR 14 2013

RECEIVED

FEB 27 2013

BUDGET: **FINANCE DIRECTOR APPROVAL:**

FUNDING SOURCE: N/A

REQUEST FOR ACTION: All department items requiring Council approval must be submitted through the Mayor's Office.

DEPARTMENT HEAD APPROVAL: Dawn T. Warrick DATE: 2/20/13
 ASST CITY ATTORNEY APPROVAL: Racine R. Edmiston 2/26/13
 BOARD APPROVAL: _____
 MAYORAL APPROVAL: [Signature] FEB 26 2013
 OTHER: _____

FOR CITY COUNCIL OFFICE USE ONLY: 13-160 DATE RECEIVED: 2-27-13
 COMMITTEE: PW COMMITTEE DATE(S): 3-7-13 FIRST AGENDA DATE: 3-7-13
 HEARING DATE: _____ SECOND AGENDA DATE: 3-14-13 APPROVED: _____

For City Clerk's Office Use Only (Agenda Date: MMDDYYYY; Sec #: Dept #, Item #, Sub-Item #, Status: S=Synopsis):

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MARCH 22, 2013)

ORDINANCE NO. 22845

AN ORDINANCE AMENDING TITLE 35, TULSA REVISED ORDINANCES, ENTITLED "INFRASTRUCTURE DEVELOPMENT"; REVISING DEFINITIONS; REVISING PERMIT CATEGORIES; ADDING A PROVISION THAT CONTRACTORS PERFORMING IN AN UNSATISFACTORY MANNER MAY BE DENIED AN ANNUAL CONTRACT; REVISING THE RIGHTS-OF-WAY TEMPORARY USE PERMIT FOR TEMPORARY ACTIVITY, CLARIFYING LIMITS ON 'TEMPORARY USE'; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That Title 35, Tulsa Revised Ordinance be and the same is hereby amended to read as follows:

"CHAPTER 1. GENERAL PROVISIONS

Section 100. Scope.

Section 101. Application and manual.

Section 100. Scope.

- A. Infrastructure development for the City of Tulsa shall include the following: construction, reconstruction, replacement or alteration of any street, alley, curb, gutter, ditch, drainageway, channel, detention facility, storm or sanitary sewer, water main or other similar private or public improvement or appurtenances thereto, any of which is located or is to be located on real property owned in fee simple by the City of Tulsa or upon easements or rights-of-way owned or to be owned or otherwise controlled by the City of Tulsa.
- B. Infrastructure development as defined above shall not include any such work designed and/or constructed by the City of Tulsa.

Section 101. Application and manual.

- A. Any person who engages in work related to or intended to facilitate infrastructure development in the City of Tulsa shall do so in accordance with all applicable federal, state and city laws.

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- B. Policies and procedures for infrastructure development in the City of Tulsa can be found in the most current edition of the Infrastructure Development Manual (IDM), three (3) copies of which shall be kept on file in the Office of the City Clerk of the City of Tulsa, Oklahoma. Any deviation or exception to the standards as called for in the IDM shall be approved by the director or his designee.

CHAPTER 2. INFRASTRUCTURE DEVELOPMENT PERMITS

Section 200. Definitions.

Section 201. Permit categories.

Section 202. Contracts, bonds and insurance.

Section 203. Infrastructure development construction standards.

Section 204. Permit required.

Section 205. Application.

Section 206. Duration and revocation of permits.

Section 207. Remedies.

Section 208. Acceptance.

Section 200. Definitions.

As used in this title, the following terms, phrases and words shall have the definitions ascribed below, unless expressly stated otherwise:

Applicant shall mean any person, firm, corporation or political subdivision (as defined herein) desiring to construct, reconstruct, replace or alter any street, alley, curb, gutter, ditch, drainage way, channel, detention facility, storm or sanitary sewers and water mains or other similar private or public improvement or appurtenances thereto, any of which is located or is to be located on real property owned in fee simple by the City of Tulsa or upon easements or rights-of-way owned or to be owned or otherwise controlled by the City of Tulsa.

Arterial streets shall mean the vehicle traffic lanes under the control and maintenance jurisdiction of the City of Tulsa, including the easements and rights-of-way on each side thereof, on freeways; parkways; special traffic ways; and primary, secondary and urban arterial streets, all as defined and established by the adopted and currently effective Tulsa City-County Major Street and Highway Plan. The term shall also apply and have reference to the street system within Tulsa's Central Business District, as defined in the City of Tulsa's adopted Comprehensive Plan, and more particularly described as the street network bounded on the east by the east leg of the inner dispersal loop (U.S. 75), the west by I-244, north by I-244, and on the South by the Broken Arrow Expressway (S.H. 51).

City shall mean the City of Tulsa, Oklahoma.

Contractor shall mean the person, firm or corporation engaged in any aspect of construction related to infrastructure development.

Developer shall mean the owner, or agent of the owner, of the subject land having the right to arrange construction related to infrastructure development.

Developer's contract shall mean the agreement between the developer, the Tulsa Metropolitan Utility Authority and the City of Tulsa providing for the developer's duties, prior to commencement of work related to infrastructure development.

Director shall mean the Director of Planning and Economic Development, Engineering Services, Water and Sewer or Streets and Stormwater or his/her designee, as appropriate.

Engineer's annual contract shall mean a contract between the City of Tulsa and a consulting engineer employed by the developer for the design of infrastructure development. It shall require the production of project plans, profiles and specifications approved by the City which are in accordance with the specifications generally applicable to City of Tulsa public improvement at the time the permit is issued.

Formal Acceptance shall mean the official approval of the infrastructure development which shall occur after final inspection and the formal filing in the Tulsa County Clerk's Office of a document executed by the Mayor which acknowledges acceptance of the infrastructure development by the City.

Infrastructure Development Process (IDP) shall mean the construction, reconstruction, replacement or alteration of any street, alley, curb, gutter, ditch, drainage way, channel, detention facility, storm sewer or other similar private or public works thereto, including sedimentation and erosion control measures, or sanitary sewers and water mains, any of which is located or is to be located upon land owned in fee simple by the City of Tulsa or upon easements or rights-of-way owned or to be owned or controlled by the City of Tulsa.

Non-arterial street shall mean any street that does not meet the definition of arterial street.

Permit shall mean the grant, on an appropriate form provided and signed by the director, for permission to perform a specific task.

Political subdivision shall mean any political subdivision of the state of Oklahoma, including but not limited to a municipality, school district, county or public trust with a city, town, school district or county as its sole beneficiary or beneficiaries, and all their institutions, instrumentalities or agencies.

Street right-of-way related project shall mean construction for the purpose of developing infrastructure that is to be owned or regulated by the City of Tulsa. This phrase shall not include connections for private property purposes only, performed in the right-of-way by trade workers (tradesmen) licensed and bonded by the state.

Substantial Completion shall mean the status of an infrastructure development project which has been inspected by the City of Tulsa and found to be complete for all intended purposes. Such status authorizes the immediate public use by the City of Tulsa of the infrastructure for that which it is designed.

TMUA shall mean the Tulsa Metropolitan Utility Authority, a public trust.

Trade workers (tradesmen) shall mean mechanical contractors, plumbing contractors and others as determined by the Director of Planning and Economic Development, who are licensed by the state of Oklahoma, bonded by the state, and registered with the City of Tulsa.

Section 201. Permit categories.

Permits required to engage in infrastructure development in the City of Tulsa are classified into three (3) separate categories, as follows:

- A. **IDP Major Construction Permit.** This category shall include all construction that must be designed by a licensed professional engineer, including but not limited to water mains, sanitary sewers, storm sewers, storm drainage, street construction and other such engineering projects, or as may be required by the director.
- B. **Rights-of-way Minor Construction Permit.** This category shall include any project that can be constructed using standard plans and specifications as outlined by City of Tulsa standards and does not require certification by a licensed professional engineer unless required by Title 11, Chapter 12, Tulsa Revised Ordinances. Bonding limits under this category shall depend on whether construction occurs in arterial streets or non-arterial streets. This section shall not apply to "Rights-of-Way Occupants" and their contractor's as defined in Title 11, Chapter 12, Tulsa Revised Ordinances.
- C. **Rights-of-way Temporary Use Permit.** This category shall include the use of streets for temporary activity, including the placement of equipment or temporary construction accessory buildings supporting construction activity in the rights-of-way, but not including special events permits.

Section 202. Contracts, bonds and insurance.

- A. **Developer's contract.** Prior to commencement of infrastructure development work, the developer shall execute a developer's contract, in the form required by the City, which shall require the following:
 - 1. The hiring of an engineer currently under annual contract with City to design and oversee construction through completion of the project and its formal acceptance by City.
 - 2. The construction of the water system, sanitary sewer, storm drains, streets and all other infrastructure development as required by and in accordance with the engineer's design and in compliance with City standards utilizing construction contractors currently under annual contract with City.
 - 3. The maintenance of an escrow account with City to pay for laboratory testing, inspecting, Oklahoma Department of Environmental Quality fees, connection costs and other fees.
 - 4. All documentation for floodplain management (i.e., conditional letters of map revision [CLOMR] and letters of map revision [LOMR]), required by the Federal Emergency Management Agency (FEMA) must be properly completed and submitted in a timely manner through the City to FEMA for approval.

5. That the developer remain responsible and accountable for all requirements until formal acceptance of the IDP project by City. Formal acceptance by City shall not occur until all infrastructure construction is complete, final inspection, delivery to City of all the record drawings, receipt from developer of certification that there are no liens against the project and the issuance and recording in the office of the Tulsa County Clerk of formal acceptance of the IDP project.
6. That the developer, if appropriate, shall enter into an additional contract to construct oversized water mains as directed by the City to accommodate future development outside the area covered by the subject project for which the developer will be reimbursed according to the provisions of the contract.
7. That the developer, if appropriate, shall enter into an additional contract to construct oversized sanitary sewer mains as directed by the City to accommodate future development outside the area covered by the subject project for which the developer will be reimbursed according to the provisions of the contract.
8. That before the IDP Major project will be formally accepted by the City, the developer shall cause to be delivered to the City all record drawings, in condition deemed acceptable to the City, which demonstrate the actual construction and written certification that there are no liens on the property or infrastructure being transferred to the city.
9. That the developer shall identify for the City a construction coordinator who will serve for the duration of the project.
10. That City is granted access to the infrastructure for operation and maintenance following substantial completion through formal acceptance of the project.
11. That the developer shall obtain all required zoning, platting, rights-of-way and easements as may be required for the project.

B. **Contractor's annual construction contract, bonds and insurance.** Any contractor desiring to participate in infrastructure development must execute an annual contractor's contract in the form required by the City prior to commencement of such work which shall provide the following:

1. **Requirements:**

a. That contractor shall:

- (1) Furnish all tools, equipment, supplies, superintendence, transportation and other construction accessories, services and facilities;
- (2) Furnish all materials, supplies and equipment specified and required to be incorporated in, and to form a permanent part of, the completed work; and

- (3) Provide all such materials and perform all labor in a good, substantial and workmanlike manner, all in accordance with the requirements, stipulations, provisions and conditions of the contract documents for the construction of a specific infrastructure development project within City.
 - b. That prior to the commencement of work, the contractor shall post bonds and insurance as required by ordinance and applicable law.
 - c. That contractor shall rely upon the owner or developer who engages contractor for full payment of contractor's charges and not expect compensation of any nature from the City of Tulsa.
2. **Term.** Each annual contractor's contract shall have a twelve-month term, provided that it may be renewed or replaced on the anniversary date for successive twelve-month intervals, provided contractor is in compliance with then existing City requirements. Contractors that do not consistently perform in a timely manner and/or the quality of work is not satisfactory as determined by the City may have their application for a new annual contract rejected.

3. **Bonds and insurance.**

a. **Bonds:** As a condition to the execution of a contractor's annual contract, the contractor shall file with the City insurance and a bond which combines the obligations of traditional performance bonds, payment bonds (statutory labor and materialmen payment) and maintenance bonds, in forms acceptable to City, executed by a surety acceptable to City and authorized to do business in the state of Oklahoma, providing as described hereafter that:

- (1) The City and property owner shall be held harmless from any costs, damages or expenses of any kind and from any liability which may be imposed by law or for which the City or property owner may become liable or may pay by reason of any loss sustained by any person because of any act or omission by the contractor in the construction of infrastructure development or in providing proper safeguards for the public during such construction;
- (2) For a period of one (1) year after the acceptance of the work by the City, contractor shall, in the manner prescribed by the director, repair any breaks or defects arising from defective construction or materials and shall repair any damage;
- (3) Upon completion of construction, should any work not be approved by the director, it shall be reconstructed by the contractor within ten (10) days after receipt of written notice from the director and the contractor shall pay for any damages arising from the repairs;

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- (4) The contractor shall pay all indebtedness incurred for labor or materials furnished in the construction or repair of any infrastructure development in the City, and any person to whom there is due any moneys for furnishing labor or materials upon such work shall have a right of action against the principal and his surety as prescribed in 61 O.S. § 2;
 - (5) If the contractor's permit involves arterial streets, the amount of the bond shall be Two Hundred Fifty Thousand Dollars (\$250,000.00); if the permit is for non-arterial street work, the amount shall be One Hundred Thousand Dollars (\$100,000.00); and
 - (6) If the bond is for IDP major construction, the contractor shall file an additional maintenance bond in a sum equal to one hundred percent (100%) of the estimated cost of the project, naming the City and the developer or property owner, as appropriate, as the obligees and guaranteeing all work and materials for a period of two (2) years from and after substantial completion.
- b. **Insurance:** All required insurance coverage shall be submitted by the contractor prior to execution of an annual contract. Coverage shall be written by a solvent company acceptable to the City and authorized to do business in the state of Oklahoma. The following coverages shall be required:
- (1) **Workers' compensation insurance.** As prescribed by the laws of the state of Oklahoma, the contractor shall provide and require the subcontractor to similarly provide workers' compensation insurance for all employees, unless such employees are covered by the protection afforded by the permittee's insurance coverage.
 - (2) **Public liability insurance.** The contractor shall procure and maintain during the duration of any permit or any extension thereof contractor's public liability insurance in an amount not less than One Hundred Seventy-Five Thousand Dollars (\$175,000.00) for injuries (including accidental death) sustained by any one (1) person in a single accident or occurrence, and in an amount not less than One Million Dollars (\$1,000,000.00) for injuries sustained by two (2) or more persons in a single accident or occurrence and contractor's property damage insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00).
 - (3) **Owner's protection liability insurance.** The contractor shall also furnish an owner's protective liability policy in the amounts specified in paragraph 202.B.3.b(2), above, with the City of Tulsa

as the named insured, issued by the same insurance company as the contractor's liability carrier, protecting the City of Tulsa against any and all actions, claims, judgments or demands arising out of or on account of injuries of whatever kind and character sustained by any person or persons on account of the construction of such work as may be performed by the contractor pursuant to the permit issued by the director. An exception to the "same insurance company" may be made only if both the owner's protective liability policy and the contractor's public liability policy are endorsed with "Waiver of Transfer of Rights of Recovery Against Others to Us," or equivalent, endorsements. Waiver under the contractor's public liability policy shall be in favor of the City and waiver under the owner's protective liability policy shall be in favor of the contractor.

- (4) **Insurance certificates.** The contractor shall furnish the City an original and a duplicate certificate of insurance which shall indicate the types of insurance carried and the amounts of coverage. The contractor shall also provide the City with two (2) copies of the policy of insurance issued by the contractor's insurance carrier.
- (5) **Notice of cancellation.** All insurance policies and certificates shall contain clauses stating that the policies cannot be canceled by the insurer without the insurer's giving the City thirty (30) days' prior written notice of cancellation. Cancellation of a required insurance policy shall automatically revoke any permit and all work by the permittee shall thereupon immediately terminate.

C. **Engineer's annual contract and insurance.** Any engineer designing facilities under the infrastructure development process must execute an annual contract in the form required by the City.

1. **Requirements:**

- a. The engineer shall, in conformity with City of Tulsa design criteria, prepare project plans, specifications and other engineering documents as may be necessary for the proper construction of the project(s), including but not limited to, preparation and documentation of record drawings, and shall perform construction oversight of the project improvements as they are constructed by the owner and the owner's construction contractor(s) until final acceptance by the City. The City of Tulsa Standard Specifications for Engineering Services shall be attached, incorporated by reference, and made a part of this contract.
- b. The City shall review and approve acceptable project plans, specifications and other engineering documents for the construction of each project prepared and submitted by the engineer to the director.

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- c. The engineer shall compensate the City for reviewing and approving project plans and specifications in accordance with the fee schedule established in Title 49, Tulsa Revised Ordinances. Fees shall be due and payable upon presentation of acceptable plans and specifications for each project for review by the City.
 - d. The engineer must be a Licensed Professional Engineer in the state of Oklahoma at the time of execution of the contract. If the engineer ceases to be a Licensed Professional Engineer prior to full performance of the terms and conditions of the contract; the engineer shall immediately cease work and notify the City.
 - e. The engineer shall maintain professional liability insurance in limits of not less than One Hundred Thousand Dollars (\$100,000.00), and such insurance shall remain in continuous force and effect for a period of not less than three (3) years from and after final acceptance of each project.
2. **Term.** Each annual engineer contract shall have a twelve-month term provided that it may be renewed or replaced on the anniversary date for successive twelve-month intervals, provided engineer is in compliance with then existing City requirements.

Section 203. Infrastructure development construction standards.

- A. All infrastructure development constructed under authority of a permit issued by the City pursuant to the provisions of this chapter shall be constructed in strict accordance with the project plans, profiles and specifications approved by the director, and in accordance with the specifications generally applicable to City of Tulsa infrastructure development construction contracts at the time the permit is issued. These project plans, profiles and specifications shall be contained in a contract between the City of Tulsa and the developer. When work not specified in the contract is necessary, whether as a result of plan deficiencies or of encountering unforeseen site conditions, the developer or his agent shall submit proposed changes to the contract for review by the director; and, if the director approves the changes, they shall be submitted to the Mayor for approval. Upon receipt of these approvals, the developer shall construct the improvements in accordance with the modified contract.
- B. In no event shall work commence until all required documentation, bonds and insurance are submitted to and approved by the City.

Section 204. Permit required.

Any applicant desiring to construct, reconstruct, replace or alter any street, alley, curb, gutter, ditch, drainage way, channel, detention facility, storm sewer, sanitary sewer and water main, or other similar private or public improvement or appurtenances thereto, any of which is located or is to be located upon real property owned in fee simple by the City of Tulsa, or upon easements or rights-of-way owned or to be owned or otherwise controlled by the City of Tulsa, shall first obtain a permit authorizing such work.

Section 205. Application.

Any applicant seeking a permit under this chapter shall make written application which shall contain the name and address of the applicant and a description of the nature, location and the estimated total cost and the number of calendar days required for completion of the work. In addition, the applicant shall provide the name and address of the owner or developer, a signed and executed developer's contract between the developer and the City, if otherwise required herein, together with any other relevant information requested by the City. The application shall be signed by the applicant or his agent or officer.

Section 206. Duration and revocation of permits.

- A. Permits shall continue in effect until substantial completion of the IDP Major Construction project or until suspended, revoked or terminated in accordance with this title. If the work authorized by the permit has been inactive for six (6) consecutive months, the permit shall be deemed canceled and no further work shall be authorized; provided that should the permittee for good cause shown fail to complete the improvement within the time specified, the permittee may apply in writing for an extension of the permit for such additional time as may be reasonably necessary to complete the work. Any application for an extension of time in which to complete the work authorized by the original permit shall be accompanied by properly executed documents required for issuance of the original permit, affirmatively indicating the surety's and the financial institution's acceptance of an extension of time for the completion of the work by the permittee. Before any permit authorizing any additional time beyond the time authorized in the original permit is issued, the applicant shall pay a fee equal to the fee required for an original permit of equal duration.
- B. Upon determination by the director that cause exists to revoke the permit, e.g., deficient design, unacceptable workmanship, defective materials or such other uncorrected deficiencies, the permit shall be revoked. Any person aggrieved may appeal the revocation to the appropriate board as provided in this chapter.

Section 207. Remedies.

Should the applicant, its surety or financial institution fail or refuse to complete the improvements authorized pursuant to a permit issued under the provisions of this chapter, or fail to repair or replace any defective materials or work incorporated in the improvements during the period of the maintenance bond covering the same, the City may at its election immediately institute legal proceedings against the permittee and its surety or financial institution to recover the estimated cost of completing, repairing or replacing such improvements. In the alternative, the City may complete, repair or replace the improvements and then institute legal proceedings to recover the cost from the permittee and its surety or financial institution.

Section 208. Acceptance.

It shall be the duty of the director to determine when the work on an authorized public improvement is completed and to recommend its acceptance to the Mayor. No work or any portion of the work shall be considered finally accepted until it is completed and formally accepted by the City after the final inspection is made by the director. Failure or neglect on the

part of the director, or any other agent or employee of the City, to condemn or reject inferior work or material shall not be construed to imply acceptance of any such work or materials if such inferior work or material may become evident at any time prior to final acceptance of the City or prior to the expiration of the maintenance bond thereon.

CHAPTER 3. IDP MAJOR CONSTRUCTION PROCESS

Section 300. Definition—scope and permit.

Section 300. Definition—Scope and permit.

- A. **Infrastructure development process.** The development process contemplated herein, which shall include but not be limited to such activities as business parks, retail stores, manufacturing facilities, infrastructure construction or residential development and other similar projects, all of which require designs by a licensed professional engineer, shall require an IDP Major Construction permit. Integral to the completion of such projects are activities related to stormwater drainage, sanitary sewer, water main extensions, easements and rights-of-way, traffic and transportation and others. This process shall include the following stages:
1. A pre-development conference at the initiation of the project, which is optional.
 2. Zoning and platting, which shall be conducted in compliance with the City Zoning Code and Subdivision Regulations.
 3. Completion of the infrastructure development process, which shall include a developer's contract, engineer's and contractor's annual contracts, project design by a licensed professional engineer, plan review and approval by the City of Tulsa and issuance of permits for site development and building construction.
 4. The construction process, which shall consist of a pre-work conference, construction of the infrastructure, inspection and testing, substantial completion certification by the City of Tulsa, maintenance period and formal acceptance by the City of Tulsa.
- B. **Permit.** An IDP Major Construction permit shall be issued to the applicant only after:
1. Approval of the application;
 2. Execution and submission of the engineer's annual contract; of the contractor's annual contract; and the developer's contract;
 3. Approval of the required bonds, insurance policies and licenses;
 4. Filing of all necessary documentation with the City Clerk;
 5. The payment of fees as provided in Title 49, Tulsa Revised Ordinances;
 6. Approval by the director of the plans, profiles and specifications applicable to the project within the preceding twelve (12) months;
- C. **Content and posting of permit.** The permit shall state the name of the person, firm or corporation to whom it is issued; the name of the owner for whom the project is being constructed; a description of the improvements authorized; the location of the improvements authorized; the length of time in calendar days the permit shall remain in

effect and that issuance and validity are conditioned upon acceptance and compliance with the provisions of this chapter. At all times during the duration of the permit, a copy of the permit shall be posted in a conspicuous public place at or near the location of the work.

CHAPTER 4. RIGHTS-OF-WAY MINOR CONSTRUCTION PROCESS

Section 400. Definition—scope and permit.

Section 400. Definition—scope and permit.

- A. A Rights-of-Way Minor Construction permit shall be required for any project that can be constructed within the City of Tulsa's rights-of-way using standard plans and specifications as outlined by City of Tulsa standards and which does not require design and certification by a Licensed Professional Engineer. All minor construction which is to occur within existing public rights-of-way shall be further subdivided into work on an arterial street or work on a non-arterial street. Construction contractors working under the provisions of a Rights-of-Way Minor Construction permit must have obtained an annual contract with the City of Tulsa. Other contractors, either franchisees pursuant to contract provisions or contractors regulated by Title 11 Chapter 12 (Right of Way Occupancy) are excluded from this section but must comply with other applicable ordinances.
- B. **Permit.** A Rights-of-Way Minor Construction permit (arterial and non-arterial) shall be issued to the applicant only after:
 - 1. Approval of the application;
 - 2. Execution and submission of the contractor's annual contract;
 - 3. Approval of the required bonds, insurance policies and licenses;
 - 4. Filing of all necessary documentation with the City Clerk;
 - 5. The payment of fees as provided in Title 49, Tulsa Revised Ordinances;
 - 6. Any additional requirements in Title 11, Chapter 12, Tulsa Revised Ordinances, as needed;
- C. **Content and posting of permit.** The permit shall state the name of the person, firm or corporation to whom it is issued; the name of the owner for whom the project is being constructed; a description of the improvements authorized; the location of the improvements authorized and whether it is to be located within an arterial or non-arterial right-of-way; the length of time in calendar days the permit shall remain in effect and that issuance and validity are conditioned upon acceptance and compliance with the provisions of this chapter. At all times during the duration of the permit, a copy of the permit shall be posted in a conspicuous public place at or near the location of the work;
- D. **Conditional exemption of trade workers.** Trade workers licensed by the state of Oklahoma, bonded by the state and registered with the City of Tulsa shall not be required to obtain a Rights-of-Way Minor Construction permit except when a street right-of-way related project is involved. Other specific requirements and permits related to trade workers as provided in other ordinances remain applicable.

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CHAPTER 5. RIGHTS-OF-WAY TEMPORARY USE PERMIT

Section 500. Definition, scope and permit.

Section 500. Definition, scope and permit.

A. A Rights-of-Way Temporary Use permit shall include the use of streets for temporary activity. Such permits are temporary and shall not exceed Fifteen (15) days. Two extensions may be allowed but the cumulative time shall not exceed Forty-five (45) days for the basic permit plus extensions. Temporary use is the placement of items such as dumpsters, cranes, equipment, etc., that are not permanent in the rights-of-way. It does not include construction in the rights-of-way.

The fees for Rights-of-Way Temporary Use permits on non-arterial streets are provided in Title 49, Section 906B, Tulsa Revised Ordinances. The fees for Rights-of-Way Temporary Use permits on arterial streets are provided in Title 11, Section 1208, Rights-of-Way Construction Permits, Tulsa Revised Ordinances.

CHAPTER 6. FAMILIAR RIGHTS-OF-WAY ACTIVITIES

Section 600. Scope.

Section 601. Sidewalks and Driveways.

Section 602. Parkway and Arterial Street Sidewalks—Fee-in-Lieu Option

Section 603. Paving and Sidewalk Cuts.

Section 604. Retaining Walls, Wall Fences and Flood Walls.

Section 605. Irrigation Systems.

Section 606. Trees.

Section 600. Scope.

The construction activities discussed in this chapter are considered minor construction projects and must receive special attention in the permitting process, due to their frequency of occurrence and specific design/construction requirements. All of the activities herein require a permit in addition to other permits provided by other applicable ordinances.

Section 601. Sidewalks and Driveways.

- A. **Definitions.** Unless otherwise provided, for the purposes of this section, the following words and phrases shall have the meanings given herein.

Curb shall be construed to mean the raised paved structure along the edge of a street.

Driveway shall be construed to mean any vehicular entrance or exit connected to any street.

Sidewalk shall be construed to mean any paved walkway within City rights-of-way.

- B. **Permits.** No person shall construct or repair any sidewalk, driveway, or curb in City of Tulsa street right-of-way without having first procured a permit. This permit must be in accordance with the Rights-of-Way Minor Construction category which will require a contractor who has executed an annual contractor's contract with City for this type of work except as detailed below.
- C. **Sidewalk and Driveway Permit.** A Right of Way Minor Construction permit is required to construct or repair any sidewalk, driveway, or curb inside of City rights-of-way. A fee for each linear foot of the sidewalk, driveway, or curb to be constructed or repaired shall be charged in accordance with Title 49.
- D. **Single Family and Duplex Sidewalks and Driveways Within Non-Arterial Streets Rights-of-Way.** Annual contracts and bonds pursuant to Title 35, Tulsa Revised Ordinances, shall not apply. Any person issued a permit to construct or repair any sidewalk, driveway, or curb in the City of Tulsa Non-Arterial Rights-of-Way utilized for Single Family and Duplex use, shall be required to provide a good and sufficient bond or insurance, or a combination of both, in favor of the City of Tulsa in the sum outlined in Title 49. The permit and inspection fee for this work shall be as shown in Title 49.

- E. **Right-Of-Occupancy Permit requirements** shall be in accordance with Title 11, Chapter 12, Tulsa Revised Ordinances.
- F. **Maintenance by Property Owner.** The maintenance of sidewalks shall be a private responsibility. It shall be unlawful for any person, owner, his agent or representative, owning or having in his charge or under his control, any property in the City of Tulsa, to permit any sidewalk or driveway abutting upon such property to become dilapidated or out of repair so as to endanger the public safety and the public travel thereon. In any instance where the responsible private party fails to maintain an abutting sidewalk or driveway in a safe condition and such failure becomes known to the director, the director shall determine the nature and extent of any repairs necessary to eliminate any existing hazard to public safety and travel, and he shall give written notice to such person to repair the sidewalk or driveway within ten (10) days. If the sidewalk or driveway is not properly repaired within ten (10) days after the service of notice, then the owner, agent or representative of such owner having charge of such property shall be deemed guilty of violating this chapter, and each day that the sidewalk or driveway is left in an unsafe or dangerous condition after the expiration of the ten (10) days' time shall constitute a separate offense and be punished by a fine as hereinafter provided.

Section 602. Parkway and Arterial Street Sidewalks—Fee-in-Lieu Option

- A. **Fee-in-Lieu Option.** Parkway and arterial street sidewalk construction, required pursuant to ordinance, City regulation or Subdivision Regulations of the Tulsa Metropolitan Area Planning Commission, may be deferred by the director upon approval by the planning commission of a waiver of subdivision regulations which imposes the fee-in-lieu as a condition of the waiver; the payment of the fee-in-lieu, as calculated hereafter; and the director determining as follows:
 - 1. The developer elects not to construct the subject sidewalk but to pay the fee-in-lieu of sidewalk, as provided hereafter.
 - 2. Factors are known by the director which will make likely the impracticability of present construction at the site in question, such as, but not limited to, the following:
 - a. Anticipated construction, known to the director to be planned for the subject site, will substantially damage or cause the replacement of sidewalks, if presently constructed, and/or
 - b. Geographical (topographical) conditions/formations make present construction impractical;
 - c. Drainage issues and other surface conditions make present construction impractical;
 - d. Existing or planned utility-related construction make present construction impractical; and

- e. Other factors deemed by the director to make present construction of sidewalks at the site in question imprudent and/or impractical.

B. Payment of Fee-in-Lieu.

1. Should a parkway or an arterial street sidewalk be deferred by the director, a fee-in-lieu of sidewalk construction shall be paid by the developer.
2. The fee shall be equal to the amount required, at the time of deposit, pursuant to the City of Tulsa's current City-wide Infrastructure Rehabilitation and Improvement contract to construct a sidewalk appropriate for the site in question as determined by the director.
3. The fee-in-lieu of sidewalk shall be paid into a fund entitled the "Parkway - Arterial Street Sidewalk Fund." This fund shall be appropriated and available for use at the discretion of the director for sidewalk repair or construction throughout the City at other parkway or arterial street locations without site preference.

- C. Sidewalk Installation.** Sidewalk installation by the City at the site where a sidewalk would have been required, but for the payment of a fee-in-lieu of sidewalk, shall occur as street and related public infrastructure development is completed at the site.

Section 603. Paving and Sidewalk Cuts.

The provisions of this section shall apply to every person, firm, agency, institution or corporation and every City department, public trust, licensee or franchisee which makes or causes to be made any paving cuts as defined herein. The provisions of this section shall apply to sidewalk cuts when such sidewalk cuts are made in conjunction with paving cuts. The provisions of this section shall not apply to replacement or repair of a sidewalk when such replacement or repair is performed upon a sidewalk not located in a right-of-way.

- A. Definitions.** Unless otherwise provided, for the purposes of this section, the following words and phrases shall have the meanings given herein.

City engineering standards shall mean the official design specifications approved and promulgated by the director which set forth the requirements for paving cuts; (e.g., standard concrete pavement cut and repair; standard asphalt pavement cut and repair).

Emergency shall mean a sudden and urgent occasion necessitating immediate action to preserve the life, health, safety and/or welfare of people and/or property.

Paving cut shall mean the act of altering, cutting, removing, excavating or changing in any manner, the paved or traveled portion of any street right-of-way or public alley.

Sidewalk cut shall mean the act of altering, cutting, removing, excavating or changing in any manner, any sidewalk, driveway, curb, gutter or other appurtenance to a street right-of-way or public alley, but only when a necessary part of a paving cut as above defined.

B. Permit Process, Permit Fee, Surety.

1. Any person, firm or corporation before making any paving or sidewalk cut, shall apply for and obtain a rights-of-way—minor construction permit from the director, except in an emergency. In the event of an emergency, such person, firm or corporation may make a paving or sidewalk cut and shall apply for the permit at the earliest opportunity, but in no event later than the close of the next working day after such paving or sidewalk cut is commenced.
2. Applicants must meet all the requirements for a Rights-of-Way Minor Construction permit and the requirements of Title 11, Tulsa Revised Ordinances, Chapter 12, or employ the City's paving cut contractor.

Section 604. Retaining Walls, Wall Fences and Flood Walls.

- A. Definitions.** Unless otherwise provided, for the purposes of this section, the following words and phrases shall have the meanings given herein.

Flood Wall is defined as a vertical structure built from reinforced concrete or other material approved by the director for the purpose of retaining ponded water.

Retaining Wall is defined as a vertical structure built from stone or brick masonry, reinforced concrete, segmented block or other material approved by the director and built to support earth of a higher level on one (1) side than on the other.

Wall Fence is defined as a vertical structure built from stone or brick masonry, reinforced concrete, segmented block or other material approved by the director and built for security, screening, property boundary or other purpose with the earth at approximately the same elevation on both sides.

- B. Permit Required.** All retaining walls defined under this section, require a building permit for construction as defined in Title 51. Such walls must be designed by a Licensed Professional Engineer.
- C. Projection on street or alley or construction in rights-of-way prohibited.** No part of any wall coming under the provisions of this section shall be built or constructed, which shall extend beyond the property line along any street or alley or any other public way. Nor shall such a wall be built within a dedicated public utility easement or rights-of-way without approval of the director.

Section 605. Irrigation systems.

- A. Definition.** Irrigation systems shall mean lawn and landscape watering or sprinkling systems.
- B. Irrigation systems authorized.** The installation of irrigation systems shall hereafter be allowed within the City of Tulsa on public rights-of-way, both arterial street and non-arterial street. Public rights-of-way shall be defined as the property lying between any curb or street line and adjacent property lines.

C. **Backflow preventer permits required.** Any person desiring to construct or install an irrigation system must have a plumbing permit for the installation of a backflow preventer that is required for all irrigation systems that connect directly or indirectly to the public water system. Such permits shall be substantially the same, if not identical to permits issued by the office of the plumbing inspector, pursuant to the provisions of the plumbing code of the City of Tulsa; and the construction and installation of back-flow preventers and water mains which are a part of or to be connected to any irrigation system shall be in full compliance with the provisions, conditions and terms of the plumbing code of the City of Tulsa. See Title 49, Tulsa Revised Ordinances, for appropriate fees.

D. **Restrictions and conditions.** The following restrictions and conditions shall attach to and become a part of this grant of permissive use of the public rights-of-way of the City of Tulsa for the construction or installation of irrigation systems.

1. No irrigation system shall be constructed or installed or maintained so as to interfere with pedestrian or vehicular traffic along the public rights-of-way, streets, alleys or sidewalks.
2. Any irrigation system shall be so constructed, installed and maintained by the owner of the property adjacent to the right-of-way, so that no maintenance costs shall inure to the disadvantage of the City of Tulsa on the public rights-of-way, streets, alleys or sidewalks adjacent thereto. The City of Tulsa shall bear no costs of future maintenance of that portion of the right-of-way upon which or under which such irrigation system is installed and constructed, but such maintenance shall be the exclusive responsibility of the property owner.
3. No liability for property damage or personal injury shall attach to the City of Tulsa as a municipal corporation arising out of the construction, installation or maintenance of an irrigation system.
4. Permission for the construction or installation of irrigation systems shall be authorized as herein provided without waiving or abandoning any privilege or rights in favor of the City of Tulsa in, to or under the public rights-of-way on or under which an irrigation system is constructed or installed; nor shall there be a waiver of any privileges or rights previously acquired by any of the agents, servants or employees of the City of Tulsa, including utility companies.
5. In the event it becomes necessary for any public purpose (including construction, installation, maintenance, repair or discontinuance of utilities on or under the public right-of-way occupied by an irrigation system) to remove such irrigation system because it interferes with the prior privileges or rights of the City of Tulsa, its agents, servants and employees, including utility companies, the system shall be removed by the owner of the property adjacent thereto. In the event such removal is not accomplished as herein provided, such system may be removed by the City of Tulsa, its agents, servants or employees, including utility companies and independent contractors, at the expense of the person who is the owner of the property adjacent thereto.

Section 606. Trees.

A. **Definitions.** For the purposes of this section, the following words and phrases shall have the meanings given herein.

Abutting property owner shall mean any person, firm, partnership or non-municipal corporation owning property abutting a public right-of-way.

Arterial street shall mean that street as defined in Section 200 hereof.

City shall mean the City of Tulsa, Oklahoma, a municipal corporation.

Code official shall mean the person or persons designated by the City to implement the provisions of this chapter.

Council shall mean the governing body of the City of Tulsa, Oklahoma.

Expressway shall mean a divided highway for through traffic with full or partial control of access.

Freeway shall mean an expressway with full control of access.

Mayor shall mean the Mayor of the City of Tulsa, Oklahoma, or his or her designated representative.

Park trees shall mean trees in designated public parks or in any area owned by the City to which the public has free access.

Person shall mean every natural person, firm, partnership or non-municipal corporation.

Public land shall mean any real property within the corporate limits of the City in which the City has any ownership interest.

Shrub shall mean a low woody plant, usually multi-stemmed.

Sight-distance triangle shall mean the area within an imaginary triangle formed at a street corner as follows: Extend the curb lines (or the edge of the pavement where no curbs exist) into the street to a point where those lines intersect; from that point of intersection measure along both curb lines (or edges of pavement) to two (2) points, the length of each arm shall be defined by the Traffic Engineer based upon type of street and traffic counts; the connecting of these three (3) points shall form the sight-distance triangle.

Street trees shall mean trees within the entire width of every public way or right-of-way when any part thereof is open to the use of the public for the purpose of vehicular and pedestrian traffic.

Topping shall mean the cutting back of tree limbs within the tree's crown to stubs larger than three (3) inches in diameter thereby removing the natural canopy and/or disfiguring the tree.

Tree shall mean a woody perennial plant having a well-defined stem or trunk and a definite crown which attains a mature height of at least eight (8) feet.

B. Street trees.

1. **Approved street trees.** The mayor shall adopt, subject to the approval of the Council, and file with the City Clerk an official list of approved street trees designating small trees, medium trees and large trees. No species other than those included on the official list of approved street trees may be planted as street trees unless permission to do so is given by the Director.
2. **Spacing and clearance.** Spacing requirements for street trees are as follows:
 - a. No tree on an arterial street shall be planted closer than seven (7) feet from the face of the street curb or closer than four (4) feet from a sidewalk, except that in the central business district street trees may be planted two (2) feet from the curb; provided that where no curb exists, the measurement shall be taken from the edge of the paving;
 - b. At the intersection of any arterial street with any other street, no abutting property owner shall allow any tree or shrub to exceed a height of thirty (30) inches above street grade within the sight-distance triangle as defined herein;
 - c. No tree or shrub planted closer than fifty (50) feet from the end of any arterial street median shall be allowed to exceed a height of thirty (30) inches above street grade; trees on arterial street medians should be spaced no closer than thirty (30) feet from each other;
 - d. At the intersection of any arterial street with any other street, no abutting property owner shall allow any tree within one hundred (100) feet of the intersection, measured from the point of intersecting curbs or curb lines or from the edge of the paving where no curbs exist, to have any branches within five (5) feet of the street grade;
 - e. Tree plantings on freeways and expressways shall be no closer than thirty (30) feet from the edge of the outside driving lanes and twenty (20) feet from any fencing and spaced no closer than twenty-five (25) feet apart; provided, however, that trees may be planted in a cluster and mulched so that mowing between the clustered trees is not required; and
 - f. No tree shall have limbs which project over a public sidewalk or street which are less than eight (8) feet above the surface of the public sidewalk and nine (9) feet above the surface of the street.
 - g. No tree or shrub shall be planted within fifteen (15) feet of any fire hydrant so as to obstruct the fire hydrant when viewed from the street.

- C. **Trees in public utility easements.** No trees other than those species listed as small trees on the official list of approved street trees on file with the City Clerk may be planted under or within twenty (20) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground public utility line.

D. **Care of trees.**

1. The City shall have the right to prune and remove trees, plants and shrubs within the right-of-way lines of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary for construction, to ensure public safety, to preserve or enhance the symmetry and beauty of the public area or to protect public utility facilities thereon.
2. The City may remove, or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water, lines or other public improvements, or is infected with any injurious fungus, insect or other pest.
3. This section shall not prohibit the planting of street trees by abutting property owners, providing that the selection and location of such trees is in accordance with Chapter 5 herein.

E. **Tree topping.**

1. **Tree topping prohibited generally.** It shall be unlawful as a normal practice for any person or for any City department to top any street tree, park tree or other tree on public property.
2. **Exception.** Where other pruning practices are impractical, the code official may exempt from this section trees which have been severely damaged by storms or other causes and certain trees under utility wires or other obstructions.

F. **Removal of trees which obstruct light or view.**

1. **Owner's responsibility.** Notwithstanding anything herein to the contrary, the owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that the branches shall neither obstruct the light from any street lamp nor the view of any street intersection.
2. **City's right to prune.** The City shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or street sign.

G. **Dead or diseased trees.** The code official shall have the right to cause the removal of any dead or diseased trees on private property within the City according to the provisions of Title 24, Tulsa

H. **Interference with City personnel.** It shall be unlawful for any person to prevent, delay or interfere with City personnel while they are engaged in planting, cultivating, mulching, pruning, spraying or removing any street trees, park trees or trees on private grounds as authorized by this section.

I. **Appeals.** Any person aggrieved by a decision of a code official may appeal that decision by following the procedures outline in Section 803 hereof.

J. An approved License Agreement is the "permit" for this activity.

CHAPTER 7. PENALTY

Section 700. Penalty.

Section 700. Penalty.

Unless otherwise provided in this title, any person, firm or corporation violating any of the provisions of this title shall be guilty of an offense, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), including costs. Each day of such violation shall constitute a separate offense.

CHAPTER 8. INFRASTRUCTURE DEVELOPMENT ADVISORY BOARD

Section 800. Membership.

Section 801. Duties.

Section 802. Officers, meetings.

Section 803. Appeal process.

Section 800. Membership.

The Infrastructure Development Advisory Board shall consist of eleven (11) members appointed by the Mayor and approved by the Council. The membership shall be as follows:

- Consulting engineers in the project development business (2).
- Member at large appointed by the Mayor (1).
- Attorney specializing in development (1).
- Developer (1).
- Independent business person (1).
- Construction contractor (2).
- Banker or insurance agent engaged in financial aspect of development (1).
- Representative from homebuilder's association (1).
- Homeowner or neighborhood association member (1).

All appointments shall expire on September 30. Initially, four (4) members shall be appointed for terms of one (1) year, four (4) members for terms of two (2) years and three (3) members for terms of three (3) years. Thereafter, all appointments shall be for terms of three (3) years; provided, however, that all members shall serve until their successors are appointed and qualified. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Mayor by appointment for the unexpired term, subject to confirmation by Council. All members of the Board shall serve without compensation.

Section 801. Duties.

The Infrastructure Development Advisory Board shall have the following duties and responsibilities:

- A. The Infrastructure Development Advisory Board shall be available to assist the City of Tulsa in all aspects of the City's infrastructure development process, including all stormwater design standards;
- B. It shall advise the director on policies, standards, ordinances and codes that relate to commercial development within the City;

- C. It shall serve as a review alternative for all parties involved in the planning, design and construction of the infrastructure in support of subdivisions, business parks and other development; and
- D. Should an appeal to the Infrastructure Development Advisory Board be requested as hereafter provided, it shall hear the appeal and its determination shall serve as a non-binding recommendation to the director, who shall make the final decision.

Section 802. Officers, meetings.

At the October meeting of each year, the Board shall elect to serve for the ensuing year a chairman and vice-chairman and such other officers as it may determine are necessary for the performance of its duties. Insofar as possible, all business meetings shall be conducted in accordance with the parliamentary rules set forth in Robert's Rules of Order. The Board shall keep a record of its resolutions, transactions, findings, proposals and determinations. Meetings shall be at the call of the Chairman or three (3) members of the Board, or on a regular basis if the Board so determines. A quorum which represents a simple majority of the members shall be required to conduct business of the Board.

Section 803. Appeal process.

- A. **Initiation of an appeal.** Any person aggrieved by a decision of a code official related to infrastructure development may appeal the decision to the Infrastructure Development Advisory Board. The initiation of such an appeal shall be in writing and shall be filed with the Director of Development Services or his designee no later than twenty (20) days after the code official's decision was served. The notice of appeal shall:
 - 1. Set forth in detail the precise decision or requirement being appealed;
 - 2. State precisely why the decision or requirement is in error;
 - 3. Designate the section(s) of the code, ordinances, statute(s), design standards and manuals or policy which support(s) the appellant's position; and
 - 4. Be accompanied by a fee as provided in Title 49, Tulsa Revised Ordinances.
- B. **Informal review.** Upon receipt of the notice of appeal, the Director of Development Services shall conduct an informal review to determine if a formal appeal is necessary. Upon finding that an appeal is necessary, the Director of Development Services shall notify the Chairman of the Board, who shall then proceed in accordance with the Board's rules to schedule the hearing and notify the appellant accordingly.
- C. **Board investigation and hearing.** Upon receipt by the Board of notice of an appeal from the Director of Development Services or his designee, the Board shall make such investigation into the complaint which it may deem necessary and hold a hearing upon the appeal.
- D. **Notice of hearing.** The Board shall meet upon notice from the chairman within twenty (20) days of the filing of an appeal or complaint or at a stated periodic meeting. The Board shall serve written notice of the hearing upon the person against whom the appeal

was filed. The notice shall be served either personally or by certified mail, return receipt requested, at least ten (10) days prior to any scheduled hearing, and shall include:

1. A statement of the date, time, place and nature of the hearing;
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 3. A reference to the particular section(s) of the code and rules involved;
 4. A short, plain statement of the complaint or appeal and a statement of the issues before the Board;
 5. A statement that the nature of the proceeding before the Board will be an informal inquiry into the complaint, at which time an opportunity will be afforded for the individual to respond to the allegations in the notice of appeal by the presentation of testimony or documentary evidence; and
 6. A statement that the individual has a right to be represented by legal counsel.
- E. **Board recommendation.** At the conclusion of a hearing on an appeal, the Board shall recommend, in writing, to the Director to affirm, modify or reverse the decision of the code official by a concurring vote of a majority of the members attending.
- F. **Decision of the Director.** Within twenty (20) days from receipt of the Board's recommendation, the Director shall decide the matter on appeal. His decision shall be in writing which shall be mailed to the appellant and other interested parties.
- G. **Enforcement of Director's decision stayed.** If any ruling, requirement, decision, or interpretation by the Director is appealed to the City Council, the enforcement of the Director's decision shall automatically be stayed until the Council has rendered a final decision.
- H. **Appeals to the City Council.**
1. Any persons aggrieved by a decision of the Director may perfect an appeal to the City Council by filing a written notice of appeal with the City Clerk and the Director within ten (10) days from the date of the Director's decision. Such notice shall specify the grounds for the appeal. A hearing on the appeal shall be conducted by the Council no later than thirty (30) days from the date the notice of appeal was filed with the City Clerk.
 2. The City Council shall have jurisdiction to affirm, modify or reverse the decision of the Director. Where practical difficulties or an unnecessary hardship will result from the strict application of this code, the Council shall have the power, in a specific case, to grant a variance from any provision, in accordance with the general purpose and intent of the code, so that the public health, safety, convenience, prosperity and general welfare may be secure and substantial justice done. Any such variance shall not be construed as an amendment or general waiver of any provision of this code.

1. **Appeal from City Council.** Any rulings, requirements, decisions or interpretations of the City Council shall be final and binding upon all parties, provided that any right of appeal to the courts shall not be abrogated.

CHAPTER 9. PERMIT FEES AND ESCROW ACCOUNTS

Section 900. Permit fees and escrow accounts.

Section 900. Permit fees and escrow accounts.

Before any permit shall be issued for the construction, reconstruction, replacement or alteration of any infrastructure development, the applicant shall pay to the City of Tulsa a fee or fees and make escrow deposits, in accord with Title 49, Tulsa Revised Ordinances.

CHAPTER 10. PERMIT REQUIRED TO USE NATURAL GAS PIPELINE

Section 1000. Definitions.

Section 1001. Permit required.

Section 1002. Fee.

Section 1003. Permit requirements.

Section 1004. Revocations and penalties.

Section 1000. Definitions.

- A. **City** shall mean the City of Tulsa, Oklahoma, a municipal corporation.
- B. **Consumer** shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust or public corporation that uses or consumes natural gas in the City.
- C. **Pipeline system** shall mean a system of works, pipes, pipelines, apparatus, machinery, structures, appliances and appurtenances reasonably necessary for the transportation, distribution or sale of natural gas.
- D. **Lease** shall mean a lease of capacity of a pipeline system by a consumer.
- E. **Permit** shall mean the rights, licenses and privileges granted by the City of Tulsa to a consumer to use the public ways for a lease.
- F. **Permittee** shall mean a consumer granted a permit under this chapter.
- G. **Public ways** shall mean any streets, alleys, avenues, boulevards, lanes, parks, parkways, sidewalks, driveways, utility easements, rights-of-way and any other public ways, places, areas or grounds within the corporate limits of the City of Tulsa as now constituted or as may be added hereafter.

Section 1001. Permit required.

No consumer shall receive or deliver gas within the City pursuant to a lease of any pipeline system installed in the public ways, unless the consumer shall hold a valid permit from the City. Such permit shall be issued for the purpose of granting the permittee authority to use the public ways.

Section 1002. Fee.

In consideration of the issuance of a permit by the City, a permittee shall pay to the City a fee for use of the public ways as follows:

- A. Through April 23, 1987, an amount equal to two and one-half percent (2½%) and, thereafter, an amount equal to three percent (3%) percent of the purchase price of natural gas transported and received or delivered within the City under the lease; plus

- B. For all permittees not otherwise exempt from the payment of municipal sales tax, an amount equal to three percent (3%) of the purchase price of the natural gas transported and received or delivered within the City under the lease.

Section 1003. Permit requirements.

Any permit issued shall contain the following material terms:

- A. The permittee shall pay the fee set forth in Section 1002 to the City or its designated agent on a monthly basis, as directed by the City;
- B. The permittee shall subordinate its lease to the right of the City to construct, operate and maintain facilities in the public ways;
- C. The permittee shall grant to the City the right to audit at reasonable times the books and records of the permittee to verify the correct payment of the fee set forth in Section 1002; and
- D. The permittee shall assume jointly with the franchise holder the indemnification terms of the franchise insofar as the terms apply to the lease.

Section 1004. Revocations and penalties.

- A. A permit shall be revocable by the City at any time upon a ten-day written notice to permittees.
- B. Any violation of this chapter shall be an offense. Any consumer adjudged guilty of violating this chapter shall be punished by a fine of Five Hundred Dollars (\$500.00), excluding costs, for each offense; and each day of a continuing violation shall be deemed a separate offense.”

Section 2. REPEAL OF CONFLICTING ORDINANCES. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby expressly repealed.

Section 3. SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

Section 4. EMERGENCY CLAUSE. That an emergency is now declared to exist for the preservation of the public peace, health and safety, by reason whereof this ordinance shall take effect immediately from and after its passage, approval and publication.

Tai

ADOPTED by the Council: MAR 14 2013
Date

Paul P. [Signature]
Chairman of the Council

ADOPTED as an emergency measure: N/A
Date

N/A
Chairman of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____
Date Time

Dewey F. Bartlett, Jr., Mayor

By _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: MAR 18 2013
Date

at _____
Time



Dewey F. Bartlett, Jr.
Mayor

(Seal)
ATTEST:

Russell Kill
Deputy City Clerk

APPROVED:

Ray McNeilie 3/14/13
City Attorney vre