

Chapter 29

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

* **Cross References:** Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public land in the city saved from repeal, § 1-6(3); consumption of alcoholic liquor in public, § 3-2; dogs running at large, § 5-27; cable television, Ch. 9; library, Ch. 15; mobile homes and recreational vehicles, Ch. 17; littering and distribution of handbills, § 18-46 et seq.; parks and recreation, Ch. 21; planning, Ch. 23; signs, Ch. 26; subdivision regulations, Ch. 30; traffic and motor vehicles, Ch. 33; utilities and services, Ch. 34; waterways, Ch. 37; zoning, Ch. 38.

Art. I. In General, §§ 29-1--29-20

Art. II. Streets, §§ 29-21--29-185

Div. 1. Generally, §§ 29-21--29-45

Div. 2. Permits, §§ 29-46--29-65

Div. 3. Safety Requirements, §§ 29-66--29-85

Div. 4. Paving, Resurfacing, §§ 29-86--29-100

Div. 5. Moving of Buildings, etc., §§ 29-101--29-115

Div. 6. Litter, §§ 29-116--29-135

Div. 7. Bench Marks, §§ 29-136--29-150

Div. 8. Additional Regulations, §§ 29-151--29-185

Art. III. Sidewalks, Driveway Approaches and Boulevards, §§ 29-186--29-250

Div. 1. Generally, §§ 29-186--29-205

Div. 2. Permit, §§ 29-206--29-225

Div. 3. Clearing, §§ 29-226--29-250

Art. IV. Metropolitan Extension Telecommunications Rights-of-Ways Oversight Act, §§ 29-251--29-269

ARTICLE I.

IN GENERAL

Secs. 29-1--29-20. Reserved.

ARTICLE II.

STREETS*

* **Editors Note:** Ord. No. 473, § 1, adopted May 22, 1990, repealed former Art. II, Divs. 1--9, §§ 29-21--29-30, 29-46--29-53, 29-66--29-70, 29-86, 29-87, 29-101, 29-102, 29-116--29-119, 29-136--29-138, 29-151--29-153, and §§ 29-166--29-169, which pertained to streets; such provisions derived from §§ 4.1--4.13, 4.16, 4.18, 4.19, 4.24, 4.25, 4.28, 4.29, 4.35, 4.41--4.43, 4.46--4.48, and 4.51--4.54 of the city's 1977 Code, as amended by Ord. No. 371, § 1, adopted Mar. 16, 1981. Ord. No. 474, § 1, adopted May 22, 1990, enacted a new Art. II, Divs. 1--8, to read as herein set out.

DIVISION 1.

GENERALLY

Sec. 29-21. Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this article shall be as follows:

Construction means and includes any erection, formulation or removal of physical facilities, structures or equipment, whether temporary or permanent, within any street within the city.

Excavation means and includes any and all digging, hollowing out, tunneling, uncovering and removal of any material within any street located within the city.

Operation means and includes any and all processes, work and other modes of action connected with any construction, excavation or use occurring within any street located within the city.

Street means all of the land lying between property lines on either side of all streets, alleys and boulevards in the city, and includes lawn extensions and sidewalks and the area reserved therefor where the same are not yet constructed.

Use means and includes any and all excavation, construction, operations, parades, functions, activities or uses of whatever kind or nature which occur or are performed above, on or under any street located within the city, which are not otherwise hereinafter excluded from the provisions of this article.

Utility means and includes any entity producing and/or delivering electric, gas and telephone goods to residences and businesses within the city.

(Ord. No. 474, § 1, 5-22-90)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 29-22. Prohibited uses and activities.

It is unlawful for any person, firm or corporation to perform or otherwise undertake any excavation, construction, operation or use in, under, over or upon any street except under the conditions and in the manner permitted in this article; provided, however, that this provision shall not be deemed to prohibit such temporary uses as are incidental to the expeditious delivery or removal of tangible items of personal property to or from premises abutting any such street, nor to the operation or parking of vehicles within the street, nor to the use of

such streets by pedestrians or other types of traffic so long as such activities are otherwise lawful.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-23. Permit required.

No person, firm or corporation shall perform or otherwise undertake any excavation, construction, operation or use in, under, over or upon any street without having first obtained a permit therefor from the city engineer.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-24. Permit not required.

No permit will be required for work by utilities, both public and private, cable television organizations or city departments when such work is limited to the routine inspection, maintenance and repair of their existing facilities and equipment or when such work is necessary to provide, repair or restore service to a customer's premises and when such work does not involve excavation within the street right-of-way or the installation, removal or replacement of their facilities and equipment.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-25. Emergency conditions.

If the public health or safety requires the immediate performing or undertaking of any excavation, construction, operation or use in, under, over or upon any street, the provisions of this article shall be deemed to have been met if an application for permit or, in the case of an annual permit, a request to commence work is delivered to the city engineer on the business day next following the day on which the emergency work has commenced. The person, firm or corporation performing emergency work shall endeavor to notify the city engineer prior to the commencement of any emergency work.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-26. Responsibility for repair and restoration.

The person, firm or corporation to whom a permit is issued shall be responsible for the repair and restoration of the street right-of-way, inclusive of all improvements existing therein, to its original or better condition in accordance with such specifications as are from time to time promulgated by the city engineer. Such repair and restoration shall be undertaken and diligently pursued forthwith upon completion of any project for which a permit has been granted or a request to commence work approved under the provisions of this article; provided, further, that all materials utilized in the performance of such restoration shall be new materials of the original or better type and quality. In the event the person, firm or corporation to whom a permit is issued fails to repair and restore the street right-of-way to its original condition, the city may do so and charge such person the reasonable expense for such work.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-27. Maintenance of installations in street.

(a) Any person, firm or corporation which owns and/or occupies, controls or uses any legally established sidewalk vault, coal hole, manhole or any other excavation or any pole, post, sign, awning, wire,

pipe, conduit or other structure, equipment or other facilities in, under, over or upon any street shall maintain same in good repair and condition at all times and shall indemnify and save harmless the city against all damages or claims for damages, actions at law or equity and any and all expenses incurred by the city in connection with its investigation and defense of same, arising by reason of such sidewalk vault, coal hole, manhole or any other excavation or any pole, post, sign, awning, wire, pipe, conduit or other structure, equipment or other facilities in, under, over or upon any street.

(b) Any sidewalk vault, coal hole, manhole or any other excavation or any pole, post, sign, awning, wire, pipe, conduit or other structure, equipment or other facilities in, under, over or upon any street shall be removed or relocated as the city engineer shall from time to time direct.
(Ord. No. 474, § 1, 5-22-90)

Secs. 29-28--29-45. Reserved.

DIVISION 2.

PERMITS

Sec. 29-46. Application for permit; contents.

(a) Applications for permits to perform or otherwise undertake any excavation, construction, operation or use in, under, over or upon any street shall be made to the city engineer on forms provided by him for this purpose not less than seventy-two (72) hours prior to the planned commencement thereof. The application shall state:

- (1) The location of the intended excavation, construction, operation or use;
- (2) A specific and complete description of all facilities and equipment to be installed, whether temporarily or permanently;
- (3) The purpose therefor;
- (4) The person, firm or corporation for whom the excavation, construction, operation or use is being performed or undertaken;
- (5) The date when same shall be started;
- (6) The time required for completion thereof; and
- (7) Such further information as the city engineer may reasonably require inclusive of, but not limited to, detailed construction plans, engineering drawings and similar documents and information.

(b) The application required pursuant to the provisions of this article shall be deemed an agreement by the applicant to observe all pertinent state, county and local laws and regulations, to repair all damage done to the street right-of-way and to installations on, over or within such street, including trees, and to protect and save harmless the city from all damages or actions at law or equity that may arise or may result from the actions

taken by the applicant.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-47. Insurance.

Each person, firm or corporation applying for a permit, or on whose behalf a permit is applied for, pursuant to the provisions of this article shall also file and maintain during the term of any permit issued under the provisions of this article, as a prerequisite to the issuance thereof, a public liability insurance policy, issued by an insurance carrier acceptable to the city and naming the city as one of the name insureds and protecting against any and all claims for damages of whatever kind or nature arising from the excavation, construction, operation or use covered by such permit, with coverage for personal injuries and property damage in such amounts as are acceptable to the city.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-48. Performance bond.

(a) As a prerequisite to the issuance of a permit for which application has been made under this article, the person, firm or corporation to whom or which the permit is to be issued shall file a bond with such sureties and in such amount as are acceptable to the city and conditioned upon the following:

- (1) Complete and acceptable performance of the work authorized and covered by the permit;
- (2) Complete and acceptable performance of the conditions contained in the application for the permit; and
- (3) Compliance with all requirements of state, county and local laws and regulations.

(b) In lieu of the foregoing bond requirement, the person, firm or corporation to whom or which the permit is to be issued may make a cash deposit conditioned upon the same terms and conditions as apply to a bond with sureties as above provided. The amount of such cash deposit shall be determined by the city engineer, but in no case shall the cash deposit be less than the amount of the bond with sureties which would otherwise be required. Six (6) months after completion of the work for which a permit is issued, whether such work is done by the person, firm or corporation to whom or which the permit is issued, the city or any other person or entity, any remaining unexpended portions of the cash deposit shall be refunded.

(c) In any case where the amount of the bond or the cash deposit does not cover all costs and expenses of the city in the completion of the work authorized and covered by the permit, the deficit shall be paid by the person, firm or corporation to whom or which the permit is issued.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-49. Application; approval or disapproval.

The city engineer shall have the authority to approve or disapprove the application as made in whole or in part, or to approve same subject to the relocation or placement of the planned excavation, construction, operation or use to a different location than described in the permit application and/or subject to the use of specified materials, equipment and methods of performance.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-50. Permit; issuance.

Permits shall be issued to any person, firm or corporation complying with the provisions of this article, the provisions of any applicable state, county and local laws and regulations and having a legitimate need to perform such excavation, construction, operation or use within any street in the city, provided such excavation, construction, operation or use does not interfere with the public health, safety and welfare. Such permit shall be subject to such terms and upon such conditions as are imposed by the city engineer to protect such public health, safety and welfare. The permit shall describe the purpose for which the same has been granted, the name of the person, firm or corporation to whom or which the same has been issued, the location of the contemplated activity; the time within which the contemplated activity shall be commenced and completed and such further information as the city engineer may reasonably require. The activity for which the permit has been granted shall be started within one (1) week following the date specified in the permit as the commencement date and shall be completed within the time specified therein and, in default thereof, shall be considered null and void.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-51. Annual permit--Generally.

In lieu of applying for a permit pursuant to the provisions of sections 29-46, 29-47, 29-48, 29-49 and 29-50, utilities, both public and private, cable television organizations and city departments may complete an application and receive an annual blanket permit for any excavation, construction, operation or use to be performed or otherwise undertaken during the calendar year for which such permit is issued.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-52. Same--Request to commence work.

Not less than seventy-two (72) hours prior to the commencement of work, the holder of an annual blanket permit issued pursuant to section 29-51 shall deliver to the city engineer a request to commence work. Such request to commence work shall be on a form provided by the city and shall contain such information as is required by the city. A separate request to commence work form shall be provided for each location where work is performed or for work performed at the same location when work activities occur beyond the date for completion of work approved in a request to commence work form which had been approved previously. The city engineer shall have the authority, in the interest of the public health, safety and welfare, to approve or disapprove the request to commence work in whole or in part, or to approve same subject to the relocation or placement of the planned excavation, construction, operation or use to a different location than described in the request to commence work, and/or subject to the use of specified materials, equipment and methods of performance.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-53. Permit to be available.

The permit issued pursuant to this article or a photocopy thereof or, in the case of an annual blanket permit, the approved request to commence work or a photocopy thereof shall be readily available at all times at the location where the excavation, construction, operation or use for which the permit or approved request to commence work was issued is being performed or otherwise undertaken and shall be shown, upon request, to

any city officer or employee.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-54. Revocation of permit.

(a) The city engineer may suspend any permit and may cause such permit to be revoked when the materials, equipment and/or methods of performance do not conform to the plans and specifications authorized upon approval of the permit or request to commence work or when the terms of any permit or of this article are violated or for failure to comply with the requirements of Act No. 53 of Public Acts of Michigan of 1974 (MCL 460.701 et seq., MSA 22.190(1) et seq.), as amended.

(b) No person, firm, or corporation shall perform or otherwise undertake any excavation, construction, operation or use for which a permit has been issued or a request to commence work approved while the permit is suspended.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-55. Fees.

Fees for permits issued pursuant to the provisions of this article shall be established by the city council by resolution and shall be considered as payment for all work authorized pursuant to said permit.
(Ord. No. 474, § 1, 5-22-90)

Secs. 29-56--29-65. Reserved.

DIVISION 3.

SAFETY REQUIREMENTS

Sec. 29-66. Generally.

Any and all excavation, construction, operation or use within any street located within the city shall be performed in accordance with good and accepted safety practices as well as all applicable present and future state, county and local laws and regulations and specifications as are from time to time hereafter promulgated by the city engineer.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-67. Safeguards.

All openings, excavations and obstructions shall be properly and substantially barricaded and railed off and, at night, shall be provided with prescribed warning lights as set forth in the Michigan Manual of Uniform Traffic Control Devices. Warning lights perpendicular to the flow of traffic shall not be more than three (3) feet apart, and parallel to the flow of traffic not over fifteen (15) feet apart.
(Ord. No. 474, § 1, 5-22-90)

Sec. 29-68. Shoring excavations.

All openings and excavations shall, where necessary, be properly and substantially sheeted and braced as a safeguard to workers and to prevent cave-ins or washouts which would tend to injure the thoroughfare or subsurface structure of the street.

(Ord. No. 474, § 1, 5-22-90)

Secs. 29-69--29-85. Reserved.

DIVISION 4.

PAVING, RESURFACING

Sec. 29-86. Notice to utility companies.

Whenever the city council shall determine to pave or resurface any street, the city engineer shall, not less than ninety (90) days prior to commencement of construction, serve notice upon all utilities, public and private, cable television organizations, and property owners abutting the street, requiring them to install and repair all necessary underground work in advance of the paving or resurfacing.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-87. Sewer and water connections.

When street paving or resurfacing shall have been ordered or declared necessary by the city council, such sewer and water connections as are necessary shall be installed in advance of such paving or resurfacing, and the cost thereof shall be charged against the premises adjacent thereto, or to be served thereby, and against the owner of such premises. Where such paving or resurfacing is financed in whole or in part by special assessment, the cost of such sewer and water connections may be made chargeable against the premises served or adjacent thereto as a part of the special assessment for such paving or resurfacing. When such paving or resurfacing is financed otherwise than by special assessment, the cost of the sewer and water connections so installed shall be a lien on said premises adjacent thereto, or to be served thereby, and shall be collected as provided for assessments on single lots pursuant to the provisions of the Charter.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-88. Determination of necessity.

The necessity for such sewer and water connections shall be determined by the city engineer, which determination shall be based upon the size, shape and area of each abutting lot or parcel of land, the lawful use of such land under the zoning regulations of the city, the character of the locality and the probable future development of each abutting lot or parcel of land. The city engineer shall give written notice of the intention to install such sewer and water connections and to charge the cost of the same to the premises, to each owner of land abutting the street to be furnished with such connections, as shown by the records of the city assessor in accordance with section 1-9. Any owner objecting to the installation of any such sewer or water connection shall file his or her objections in writing, within seven (7) days after service of such notice, with the city engineer who shall, after considering each such objection made in writing, make a final determination of the sewer and water connections to be installed.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-89. Prohibited openings.

No permit to make any opening or excavation in or under a paved street shall be granted to any person within a period of two (2) years after the completion of any paving or resurfacing thereof. If a street opening is necessary as a public safety measure, the city engineer may suspend the operation of this section as to such street opening.

(Ord. No. 474, § 1, 5-22-90)

Secs. 29-90--29-100. Reserved.

DIVISION 5.

MOVING OF BUILDINGS, ETC.

Sec. 29-101. Permit required.

No person, firm or corporation shall move, transport, haul or convey any building, mobile home, trailer, truck, machinery, equipment or other load having a width of more than eight (8) feet eight (8) inches, or a height of more than thirteen (13) feet six (6) inches above the surface of the street, across or upon any street located within the city without having first applied for and obtained a permit as required in Division 2, sections 29-46 through 29-55 and having complied with all the provisions of this article, any and all applicable present and future state, county and local laws, regulations and such specifications as are herewith from time to time promulgated by the city engineer.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-102. Utility clearances; moving obstructions.

The applicant for a permit required by the provisions of this division shall file written clearances from utilities, both public and private, and cable television organizations, stating that all connections have been properly cut off and, where necessary, all obstructions along the proposed route of moving will be removed without delaying moving operations.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-103. Clearance by police department.

In addition to the other requirements of this division, clearance shall be obtained from the police department approving the proposed route through the city streets and the time of moving, together with an estimated cost of the police department due to the moving operations.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-104. Deposits, bond, insurance.

The applicant for a permit required by the provisions of this division shall deposit with the city the total established cost to the police department and department of public services and shall file such bonds and insurance policies as are required by this article, prior to the commencement of any activities associated with moving the building, mobile home, trailer, truck, machinery, equipment or other load.

(Ord. No. 474, § 1, 5-22-90)

Secs. 29-105--29-115. Reserved.

DIVISION 6.

LITTER*

* **Cross References:** Littering and distribution of handbills, § 18-46 et seq.; garbage and rubbish generally, § 34-16 et seq.
State Law References: Littering, MCL 752.901 et seq.; MSA 28.603(1) et seq.

Sec. 29-116. Sweeping.

No person, firm or corporation shall sweep or cause to be swept any dirt or litter of any kind or type whatsoever out of or off of any building or private property and into any public sidewalk, parkway, alley or roadway of the city.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-117. Deposits prohibited.

No person, firm or corporation shall place or cause to be placed in or on any public sidewalk or on any pavement, gutter, drain, ditch, alley or roadway in the city any grass clippings, leaves, lawn rakings, tree or bush trimmings, tree trunks, stumps, ashes, soil, dirt or household debris, unless specifically approved by the city engineer.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-118. Load security.

No person, firm or corporation shall drop, leave or scatter on any sidewalk, park, alley or roadway within the city any coal, sand, dirt, gravel, brick, scrap materials or any other material or substance that is being hauled or carried about in a truck, trailer, wagon or cart or any other vehicle.

(Ord. No. 474, § 1, 5-22-90)

Secs. 29-119--29-135. Reserved.

DIVISION 7.

BENCH MARKS

Sec. 29-136. Zero plane established.

A standard zero or plane of reference of grades of streets, sidewalks, sewers, water pipes and all other levels in the city is hereby established.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-137. Improvements to conform.

All sidewalk grades, street grades and other levels established by anyone in the service of the city shall be referred to the zero plane, and all benches established by anyone in the employ of the city engaged in such work shall be recorded in the office of the city engineer.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-138. Interference with bench marks.

No person, firm or corporation shall move, injure or destroy any bench mark without permission of the city engineer. The city engineer may require as a condition to such permission that such bench mark be replaced.

(Ord. No. 474, § 1, 5-22-90)

Secs. 29-139--29-150. Reserved.

DIVISION 8.

ADDITIONAL REGULATIONS

Sec. 29-151. Obstructions.

No person, firm or corporation shall place on or use any street located within the city, or any portion thereof, for any purpose incidental to the construction, demolition or repair of any building adjacent to the street or for any other purpose, without first obtaining a permit and complying with all other provisions of this article, inclusive of any and all applicable present and future state, county and local laws, regulations and such specifications as are from time to time hereafter promulgated by the city engineer.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-152. Removal of encroachments.

Encroachments and obstructions in the street may be removed and excavations refilled and the expense of such removal or refilling charged to the abutting land owner when made or permitted by him or her or suffered to remain by him or her, otherwise than in accordance with the terms and conditions of this article. The procedure for collection of such expenses shall be as prescribed in the Charter.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-153. Temporary street closing.

The city engineer shall have authority to temporarily close any street or portion thereof when the city engineer shall deem such street to be unsafe or temporarily unsuitable for use for any reason. The city engineer shall cause suitable barriers and signs to be erected on the street, indicating that the same is closed to public travel. When any street or portion thereof shall have been closed to public travel, no person shall drive any vehicle upon or over the street, except as the same may be necessary incidentally to any street repair or construction work being done in the area closed to public travel. No person shall move or interfere with any sign or barrier erected pursuant to this section without authority from the city engineer.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-154. Vacating streets.

When the city council shall deem it advisable to vacate, discontinue or abolish any street, alley or public ground or any part thereof, it shall by resolution so declare and in the same resolution shall appoint a time, not less than two (2) weeks thereafter, when it shall meet and hear objections thereto. Notice of such meeting, with a copy of the resolution, shall be published in a newspaper published in the city at least seven (7) days prior to the date of the hearing. Any resolution or ordinance discontinuing or vacating any street, alley or public ground shall be recorded in the office of the register of deeds, and the records shall be prima facie evidence of all the matters therein set forth.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-155. Additional regulations.

The city engineer may make such additional regulations as are necessary to effectuate the terms and provisions of this article, which regulations shall be subject to the approval of the city council. No person, firm or corporation shall fail to comply with any such regulations.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-156. Delegation of powers.

The city engineer is authorized to delegate any of the powers conferred on him by this article to any other city employee so designated by him, subject to the approval of the city manager.

(Ord. No. 474, § 1, 5-22-90)

Sec. 29-157. Savings clause.

All applications and permits, and the terms and conditions contained therein, on file with the city or in effect at the time of the adoption of the ordinance from which this article derives are hereby validated and shall remain effectual so far as the same shall conform to the provisions of this article.

(Ord. No. 474, § 1, 5-22-90)

Secs. 29-158--29-185. Reserved.

ARTICLE III.

SIDEWALKS, DRIVEWAY APPROACHES AND BOULEVARDS

DIVISION 1.

GENERALLY

Sec. 29-186. Definition.

For the purposes of this article, the word "sidewalk" shall mean the portion of the street right-of-way designed for pedestrian travel.

(Code 1977, § 4.61)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 29-187. Specifications adopted.

The city engineer shall adopt detailed specifications for the construction, reconstruction and repair of sidewalks which shall be effective upon approval by the city manager. The city engineer shall maintain copies of such specifications in his or her office available for public inspection.

(Code 1977, §§ 4.62, 4.64)

Sec. 29-188. Line and grade stakes.

The city engineer shall furnish line and grade stakes as may be necessary for proper control of the work, but this shall not relieve the owner of responsibility for making careful and accurate measurements in constructing the work to the lines furnished by the city engineer. Where it is necessary to replace engineer's stakes disturbed or destroyed without fault on the part of the city, or its employees, a charge per stake shall be paid as prescribed by resolution of the council.

(Code 1977, § 4.63)

Sec. 29-189. Ordering construction.

The council may, by resolution, require the owners of lots and premises to build sidewalks in the public street adjacent to and abutting upon such lots and premises. When such resolution shall be adopted, the city clerk shall give notice thereof, in accordance with section 1-9, to the owner of such lot or premises requiring him or her to construct or rebuild such sidewalk within thirty (30) days from the date of such notice.

(Code 1977, § 4.66)

Sec. 29-190. Construction by city.

If the owner of any lot or premises shall fail to build any particular sidewalk as described in the notice, and within the time and in the manner required thereby, the public services director is hereby authorized and required, immediately after the expiration of the time limit for the construction or rebuilding by the owner, to cause such sidewalk to be constructed and the expense thereof shall be charged to such premises and the owner thereof, and collected as provided in chapter 28.

(Code 1977, § 4.67)

Sec. 29-191. Maintenance of sidewalks, driveway approaches and boulevards.

(a) All sidewalks and driveway approaches between the lot line and the street curb, except crosswalks at intersections, and boulevards between the sidewalk and curb, shall be repaired and maintained by the abutting property owner and shall comply with all requirements set forth in this article.

(b) If any owner shall neglect to keep and maintain the sidewalks, driveway approaches and boulevards along the front, rear or side of the land owned by him or her in good repair and safe for the use of the public, the owner shall be liable to the city for any damages recovered against the city sustained by any person by reason of such sidewalks, driveway approaches or boulevards being unsafe and out of repair.

(Code 1977, § 4.68)

Sec. 29-192. Sidewalk repair.

Whenever the city manager shall determine that a sidewalk, driveway approach or boulevard is unsafe for use, notice may be given to the owner of the lot or premises adjacent to and abutting upon the sidewalk, driveway approach or boulevard of such determination which notice shall be given in accordance with section 1-9. Thereafter, it shall be the duty of the owner to place the sidewalk, driveway approach or boulevard in a safe condition. Such notice shall specify a reasonable time, not less than seven (7) days, within which such work shall be commenced, and shall further provide that the work shall be completed with due diligence. If the owner of such lot or premises shall refuse or neglect to repair the sidewalk, driveway approach or boulevard within the time limit therefor, or in a manner otherwise than in accordance with this article, the city manager shall have the sidewalk, driveway approach or boulevard repaired. If the city manager determines that the condition of the sidewalk, driveway approach or boulevard is such that immediate repair is necessary to protect the public, he or she may dispense with the notice. The cost of repairs hereunder shall be charged against the premises which the sidewalk, driveway approach or boulevard adjoins and the owner of the premises, and shall be collected as a hazard assessment pursuant to section 10.7 of the Charter.

(Code 1977, § 4.69)

Secs. 29-193--29-205. Reserved.

DIVISION 2.

PERMIT

Sec. 29-206. Required.

No person shall construct, rebuild or repair any sidewalk without first obtaining a written permit from the public services director, except that sidewalk repairs of less than fifty (50) square feet may be made without a permit.

(Code 1977, § 4.62)

Sec. 29-207. Display.

Every permit issued under the provisions of this division shall be prominently displayed on the construction site.

(Code 1977, § 4.62)

Sec. 29-208. Revocation.

The city manager may revoke any permit issued under the terms of this division for incompetency or failure to comply with the terms of this article, or the rules, regulations, plans and specifications established by the city.

(Code 1977, § 4.65)

Secs. 29-209--29-225. Reserved.

DIVISION 3.

CLEARING

Sec. 29-226. Required.

The occupant of every lot or premises adjoining any street, or the owner of such lot or premises, if same are not occupied, shall clear and keep cleared all sidewalks adjoining such lot or premises from snow, ice, filth and other obstructions.

(Code 1977, § 4.75)

Sec. 29-227. Failure to clear.

If any occupant or owner shall neglect or fail to clear ice, snow, filth or other obstructions from the sidewalk adjoining his or her premises, for a period of twenty-four (24) consecutive hours or more, he or she shall be guilty of a violation of this article, and in addition the city manager may cause such sidewalk to be cleared and the expense of clearing shall become a debt to the city from the occupant or owner of such premises and shall be collected as a single lot assessment in accordance with section 10.7 of the Charter.

(Code 1977, § 4.76)

Secs. 29-228--29-250. Reserved.

ARTICLE IV.

METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT ACT

Sec. 29-251. Purpose.

The purposes of this article are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the city qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-252. Conflict.

Nothing in this article shall be construed in such a manner as to conflict with the Act or other applicable law.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-253. Terms defined.

- (a) The terms used in this article shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

City means the City of Owosso, Michigan.

City council means the city council of the City of Owosso or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the city council.

City manager means the city manager or his or her designee.

Permit means non-exclusive permit issued pursuant to the Act and this article to a telecommunications provider to use the public rights-of-way in the city for its telecommunications facilities.

(b) All other terms used in this article shall have the same meaning as defined or as provided in the Act, including without limitation the following:

Authority means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to section 3 of the Act.

MPSC means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "commission" in the Act.

Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public right-of-way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

Telecommunications facilities or *facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunications services or signals. Telecommunications facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications provider, *provider* and *telecommunications services* mean those terms as defined in section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunications providers does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this article only, a provider also includes all of the following:

(1) A cable television operator that provides a telecommunications service.

(2) Except as otherwise provided by the Act, a person who owns telecommunications facilities located within a public right-of-way.

(3) A person providing broadband Internet transport access service.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-254. Permit required.

(a) *Permit required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the city of its telecommunications facilities shall apply for and obtain a permit pursuant to this article.

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with section 6(1) of the Act. A telecommunications provider shall file one (1) copy of the application with the city clerk, one (1) copy with the city manager, and one (1) copy with the city engineer. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with section 6(5) of the Act.

(c) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(d) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of five hundred dollars (\$500.00).

(e) *Additional information.* The city manager may request an applicant to submit such additional information which the city manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the city manager. If the city and the applicant cannot agree on the requirement or additional information requested by the city, the city or the applicant shall notify the MPSC as provided in section 6(2) of the Act.

(f) *Previously issued permits.* Pursuant to section 5(1) of the Act, authorizations or permits previously issued by the city under section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the city to telecommunications providers prior to the 1995 enactment of section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this article.

(g) *Existing providers.* Pursuant to section 5(3) of the Act, within one hundred eighty (180) days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located within a public right-of-way in the city as of such date, that has not previously obtained authorization or a permit under section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251, shall submit to the city an application for a permit in accordance with the requirements of this article. Pursuant to section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to

pay the \$500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional one hundred eighty (180) days to submit the permit application if allowed by the Authority, as provided in section 5(4) of the Act.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-255. Issuance of permit.

(a) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the city manager. Pursuant to 15(3) of the Act, the city manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under section 29-254(b) of this article for access to a public right-of-way within the city. Pursuant to section 6(6) of the Act, the city manager shall notify the MPSC when the city manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The city manager shall not unreasonably deny an application for a permit.

(b) *Forms of permit.* If an application for permit is approved, the city manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with section 6(1), 6(2) and 15 of the Act.

(c) *Conditions.* Pursuant to section 15(4) of the Act, the city manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond required.* Pursuant to section 15(3) of the Act, and without limitation on subsection (c) above, the city manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-256. Construction/engineering permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the city without first obtaining a construction or engineering permit as required under this chapter of this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-257. Conduit or utility poles.

Pursuant to section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this article does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-258. Route maps.

Pursuant to section 6(7) of the Act, a telecommunications provider shall, within ninety (90) days after the substantial completion of construction of new telecommunications facilities in the city, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the city. The route map shall be in paper or electronic format unless and until MPSC determines otherwise, in accordance with section 6(8) of the Act.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-259. Repair of damage.

Pursuant to section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the city, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-260. Establishment and payment of maintenance fee.

In addition to the non-refundable application fee paid to the city set forth in subsection 29-254(d) above, a telecommunications provider with telecommunications facilities in the city's public right-of-way shall pay an annual fee to the Authority pursuant to section 8 of the Act.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-261. Modification of existing fees.

In compliance with the requirements of section 13(1) of the Act, the city hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of section 13(4) of the Act, the city also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the city's boundaries, so that those providers pay only those fees required under section 8 of the Act. The city shall provide each telecommunications provider affected by the fee with a copy of this article, in compliance with the requirement of section 13(4) of the Act. To the extent any fees are charge telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the city's policy and intent, and upon application by a provider or discovery by the city, shall be promptly refunded as having been charged in error.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-262. Savings clause.

Pursuant to section 13(5) of the Act, if section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under section 29-261 above shall be void from the date the modification was made.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-263. Use of funds.

Pursuant to section 10(4) of the Act, all amounts received by the city from the authority shall be used by the city solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the city from the authority shall be deposited into the major street fund and/or the local street fund maintained by the city under Act No. 51 of the Public Acts of 1951.
(Ord. No. 621, § 1, 11-18-02)

Sec. 29-264. Annual report.

Pursuant to section 10(5) of the Act, the city manager shall file an annual report with the authority on the use and disposition of funds annually distributed by the authority.
(Ord. No. 621, § 1, 11-18-02)

Sec. 29-265. Cable television operators.

Pursuant to section 13(6) of the Act, the city shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband Internet transport access services.
(Ord. No. 621, § 1, 11-18-02)

Sec. 29-266. Existing rights.

Pursuant to section 4(2) of the Act, except as expressly provided herein with respect to fees, this article shall not affect any existing rights that a telecommunications provider or the city may have under a permit issued by the city or under a contract between the city and a telecommunications provider related to the use of the public rights-of-way.
(Ord. No. 621, § 1, 11-18-02)

Sec. 29-267. Compliance.

The city hereby declares that its policy and intent in adopting this article is to fully comply with the requirements of the Act, and the provisions hereof shall be construed in such a manner as to achieve that purpose. The city shall comply in all respects with the requirements of the Act, including but not limited to the following:

- (1) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in section 29-254(c) of this article;
- (2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with section 29-254(f) of this article;
- (3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the five hundred dollar (\$500.00) application fee, in accordance with section 29-254(g) of this article;

- (4) Approving or denying an application for a permit forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the city, in accordance with section 29-255(a) of this article;
- (5) Notifying the MPSC when the city has granted or denied a permit, in accordance with section 29-255(a) of this article;
- (6) Not reasonably denying an application for a permit, in accordance with section 29-255(a) of this article;
- (7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 29-255(b) of this article;
- (8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public rights-of-way, in accordance with section 29-255(c) of this article;
- (9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use, in accordance with section 29-255(d) of this article;
- (10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 29-255 of this article;
- (11) Providing each telecommunications provider affected by the city's right-of-way fees with a copy of this article, in accordance with section 29-261 of this article;
- (12) Submitting an annual report to the authority, in accordance with section 29-264 of this article; and
- (13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 29-265 of this article.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-268. Reservation of police powers.

Pursuant to section 15(2) of the Act, this article shall not limit the city's right to review and approve a telecommunications provider's access to and ongoing use of a public right-of-way or limit the city's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. No. 621, § 1, 11-18-02)

Sec. 29-269. Authorized city officials.

The city manager or his or her designee is hereby designated as the authorized city official to issue municipal civil infraction citations directing alleged violators to appear in court or municipal civil infraction

violation notices directing alleged violators to appear at the municipal chapter violations bureau for violations under this article as provided by the city Code.
(Ord. No. 621, § 1, 11-18-02)