

ARTICLE II. STANDARDS AND REGULATIONS

Sec. 13-11. Purpose and scope.

- (a) *Purpose.* The purpose of this article is to provide minimum standards and regulations to help safeguard and preserve life or limb, property and public welfare by regulating the location and maintenance of all plants and structures along streets, alleys, etc., within the city.
- (b) *Scope.* This article shall apply to all zoning districts, land, properties and structures within the city, including all vacant, occupied, residential, nonresidential, improved or unimproved land, properties and structures.
- (c) *Other ordinances.* If any other ordinances of the city conflict with this article and the standards and regulations established herein, the higher or stricter standard or regulation shall prevail.
- (d) *Purpose and intent.* It is hereby declared to be the purpose and intent in this article to regulate and control public nuisances and other conditions and circumstances, as herein set forth, that adversely affect the health, safety or welfare of the general public; it is not intended that this article be interpreted or enforced to require the city to intervene in matters which are primarily personal or private in nature and which may appropriately be resolved between or among private interests without material danger to the public health, safety or welfare.

(Ord. No. 1089-3-92, § 2, 3-19-1992; Ord. No. 1461-10-96, § 2, 10-17-1996)

Sec. 13-12. Definitions.

Where terms are not defined, they shall have their ordinary accepted meaning within the context with which they are used.

Enforcement authority. The city manager or the person or department to whom the city manager from time to time may delegate the enforcement responsibility.

Lateral clearance. The dimension measured horizontally and perpendicular to a sidewalk, street, paved alley or easement within which no encroachment is allowed; or the dimension measured horizontally and perpendicular to an alley or easement line beyond which no encroachment is allowed.

Nuisance. The following shall be defined as nuisances:

- (1) Any public nuisance known and established at common law or in equity jurisprudence;

(2) A live tree, shrub or other similar plant of any description which creates a hazard or risk of damage or destruction to persons or property, contrary to the public health, safety or welfare or in violation of the Code and ordinances of the city;

(3) Any other nuisance or public nuisance as defined by the Codes and ordinances of the city.

Owner. Owner shall mean any person claiming or in whom is vested: the ownership, dominion or title of real or personal property, including, but not limited to:

(1) Holder of fee simple title;

(2) Holder of life estate;

(3) Holder of a leasehold estate for an initial term of five (5) years or more;

(4) A buyer in possession, or having right of possession under a contract for deed;

(5) A mortgagee, receiver, executor or trustee in possession or control, or having right of possession or control, of real property;

(6) Any agent who is responsible for managing, leasing or operation of property.

Premises. Any parcel, lot or tract of land, including any structure, building, landscaping or trees thereon or other structure or improvement located thereon, to include right-of-way to the edge of pavement of the street or alley.

Structure. Structure shall mean any residential building, nonresidential building, dwelling, condominium, townhouse, apartment unit, detached garage, shed, awning, fence, screening wall, sign, swimming pool, excavation, or any other edifice, erection or material placed or located on any property within the city and any other improvement of any kind or nature.

Tenant. Tenant shall mean any person or their agent who occupies a structure or property.

(Ord. No. 1089-3-92, § 3, 3-19-1992; Ord. No. 1461-10-96, § 3, 10-17-1996)

Sec. 13-13. Enforcement and inspection.

(a) The enforcement authority for the article shall be the city manager of the city or the person or department to whom the city manager delegates the enforcement responsibility.

(b) Whenever it is necessary to make an inspection to enforce this article, or whenever the enforcement authority has reasonable cause to believe that there exists in any structure or upon any property a condition or violation which is unsafe, dangerous or hazardous or detrimental to the public interest, the enforcement authority may enter such structure or property at all

reasonable times to inspect the same; provided that if such structure or property is occupied, he shall first present proper credentials and request entry, and if such entry is refused, the enforcement authority shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 1089-3-92, § 4, 3-19-1992; Ord. No. 1461-10-96, § 4, 10-17-1996)

Sec. 13-14. Responsibility.

(a) *Owner.* Every owner of the premises shall maintain such premises in compliance with this article. An owner shall not let, rent or lease a premises in occupancy or use which does not comply with the provisions of the article.

(b) *Owner and tenant.* Every owner and every tenant of the premises shall maintain the premises in compliance with this article.

(Ord. No. 1089-3-92, § 5, 3-19-1992; Ord. No. 1461-10-96, § 5, 10-17-1996)

Sec. 13-15. Trees, shrubs and plants.

Trees, shrubs or plants shall not create a hazard or an obstruction and shall be maintained within the following minimum clearances:

TABLE INSET:

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| (1) | Overhead clearances of public sidewalks and other public pathways | Seven (7) feet vertical clearance. |
| (2) | Lateral clearance of public sidewalks and other public pathways | Six (6) inches from each edge of sidewalk or pathway. |
| (3) | Overhead clearance of streets | Thirteen (13) feet vertical clearance. |
| (4) | Lateral clearance of streets | No encroachment over or above the back of curb or edge of paving. |
| (5) | Sight clearance at intersections of city streets | Unobstructed sight distance of two hundred (200) feet. |
| (6) | Sight clearance for signs erected by the city | Unobstructed sight distance of one hundred (100) feet. |
| (7) | Overhead clearance of public alleys and easements which have been dedicated and improved for | Thirteen (13) feet vertical clearance. |

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| | vehicular use | |
| (8) | Lateral clearance of alleys and easements which have been dedicated and improved for vehicular use | No encroachment over the edge of paving nor shall any tree, shrub or similar plant extend into the alley or easement more than eighteen (18) inches, or in any way obstruct or interfere with vehicular traffic. |
| (9) | Overhead clearance of street at outside edge of parking lane. | Fourteen (14) feet. |

Trees shrubs or plants that are dead or which are hazardous to persons or property shall be removed.

(Ord. No. 1089-3-92, § 6, 3-19-1992; Ord. No. 1461-10-96, § 6, 10-17-1996)

Sec. 13-16. Notice of violation and abatement of nuisances.

(a) In the event a nuisance as defined by this article is found to exist upon any property within the city, or in the event that any person, firm or corporation owning, claiming occupancy or having supervision or control of any property within the city limits, fails to comply with the foregoing provisions of this article, it shall be the duty of the enforcement authority or his duly appointed representative to give a minimum of ten (10) days official notice in writing to such person, firm or corporation which is creating such nuisance or is violating the terms of this article. If such person, firm or corporation fails or refuses to comply with the provisions of this article within the specified period following notification, they shall be considered to be in violation and subject to fine and penalties as provided by this article.

(b) The notice shall be in writing and may be served on the property owner, or agent of same, by handing it to him in person, by United States Mail, addressed to such owner, or agent of same, at his post office address, or by posting such notices on the front door of the dwelling or establishment.

(c) The provisions above shall apply to all real properties occupied or unoccupied, except that the requirement of a ten (10) day official notification is met and fulfilled when the enforcement authority has given a ten (10) day notice in writing at least one (1) time in any calendar year to such person, firm or corporation which is creating such nuisance or is otherwise in violation of this article.

(d) The city shall further be entitled to go upon such above properties and do or cause to be done the work necessary to abate any public nuisance existing in violation of this article if such person, firm or corporation fails or refuses to comply with the provisions of this article within the specified period following official notification.

(e) All costs for abatement of any such public nuisance, or any part thereof, including costs for mailing of notice and filing of a statement with the county clerk, and interest, shall be levied, assessed and collected against such property abutting or upon which such public nuisance, or any part thereof, is located. If any owner of such property shall fail to pay the costs so assessed within thirty (30) days after being notified of such costs, the city shall file with the County Clerk of Collin County, Texas statement of said costs. The city shall have a privileged lien on the premises and the personal obligation of the owner of such property, second only to tax liens and liens for street improvements, to receive the costs so made and ten (10) percent interest on the amount from date payment is due. For any such costs and interest, suit may be instituted in the name of the City of Allen, Texas; and the statement of costs as provided previously in this article shall be prima facie proof of the costs expended in such work.

(Ord. No. 1089-3-92, § 7, 3-19-1992; Ord. No. 1461-10-96, § 7, 10-17-1996)

Sec. 13-17. Penalty.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction in the municipal court shall be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense; and each and every day such violation continues, it shall constitute a separate offense.

(Ord. No. 1089-3-92, § 8, 3-19-1992; Ord. No. 1461-10-96, § 8, 10-17-1996)

Secs. 13-18--20. Reserved.

Sec. 13-25. Construction standards.

(a) All construction shall be in conformance with all city codes and applicable local, state and federal laws.

(b) The department must be notified two (2) business days in advance that construction is ready to proceed by either the owner, its contractor or representative. At the time of notification, the owner will inform the department of the number (or other information) assigned from the appropriate one-call notification center. "Notification center" means the same as in V.T.C.A., Utilities Code ch. 251, or its successor. The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.

(c) Public notification of work to be performed.

(1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting six (6) days or less, the permittee shall conspicuously mark its vehicles with the permittee's name and telephone number.

(2) For projects scheduled to last more than seven (7) calendar days three (3) feet by three (3) feet informational sign stating the identity of the person doing the work, a local telephone number and owner's identity shall be placed at the location where construction is to occur forty-eight (48) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. The informational sign will be posted on public right-of-way one hundred (100) feet before the construction location commences, unless other posting arrangements are approved or required by the director.

(3) When projects last more than seven (7) calendar days, the owner shall also provide written notification to all adjacent property occupants forty-eight (48) hours prior to the beginning of construction. Informational fliers shall include the person doing the work, a local telephone number, owner's identity, and proposed schedule.

(d) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.

(e) Lane closures on major thoroughfares will be limited to one (1) lane between 9:00 a.m. and 3:30 p.m. unless the director grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices.

(f) Without affecting the legal relationship between the owner and their contractor, owners are responsible for the workmanship of, and any damages by, their contractors or subcontractors. A responsible representative of the owner will be available to the department at all times during construction.

(g) Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request owner may be required to furnish documentation submitted or received from federal or state government.

(h) Owner or contractor or subcontractor will notify the department immediately of any damage to other utilities, either city or privately owned.

(i) It is the city's policy not to cut streets or sidewalks; however, except in case of emergency when a street or sidewalk cut is required, prior approval must be obtained from the department and all requirements of the department shall be followed in all

street and sidewalk cuts. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with exhibit A, Standard Specifications and Details for Restoration within Public Rights-of-Way.

(j) Installation of facilities must not interfere with city utilities, in particular gravity dependent facilities. Facilities shall not be located over, or within three (3) feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the director.

(k) New facilities must be installed to a minimum depth required by state and federal codes and standards.

(l) All directional boring shall have a locator place bore marks and depths while the bore is in progress. Locator shall place a mark at each stem with a paint dot and depth at least every other stem.

(m) No directional boring zones. In the city, the public infrastructure must be maintained and protected by all owners and contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no person, agency, or contractor will be allowed to directionally bore longitudinally with water mains that are larger than twelve (12) inches and sewer mains that are twelve (12) inches or larger, unless this requirement is waived in writing by the director. The installation of facilities in the public rights-of-way or easements will be installed by open excavation to assure the protection of the city's water and sewer system. The city has available mapping that identifies such mains. The owner is responsible for obtaining and using this information in the design of new facilities

(n) The working hours in the rights-of-way are 7:00 a.m. to 8:00 p.m., Monday through Friday, unless otherwise approved by director. Any work performed on Saturday must be approved by the utility inspector by 9:00 a.m. on the Thursday prior to the proposed Saturday. No work will be done, except for emergencies, on Sundays or city holidays.

(o) Persons working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of a geographic information system or the plans of records does not satisfy this requirement.

(p) Owner will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the department, owner shall verify locations by pot holing, hand digging or other method approved by the department prior to any excavation or boring.

(q) Placement of all manholes and/or handholds must be approved in advance by the department. Handholds or manholes will not be located in sidewalks, unless approved by the director.

(r) Locate flags shall not be removed from a location while facilities are being constructed.

(s) When construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the department.

(t) A person shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable city requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public right-of-way. The city shall waive the requirements of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the city by the person. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A person shall follow all reasonable construction directions given by the city in order to minimize any such interference.

(u) All construction shall conform to the City of Allen tree preservation ordinance.

(v) Excavation safety. On construction projects in which excavation will exceed a depth of five (5) feet, the agency must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with state law and occupational safety and health administration (OSHA) standards and regulations.

(Ord. No. 1950-6-1, § 2, 6-7-2001)

Sec. 13-26. As-built plans.

(a) Right-of-way users will provide the director with "as-built plans" within ninety (90) days of completion of facilities in the right-of-way. The plans shall be provided to the city with as much detail and accuracy as required by the director. All the requirements specified for the plans submitted for the initial permit, as set forth in section 13-24(b)(3) shall be submitted and updated in the "as-built plans." users which have facilities in the right-of-way existing as of the date of this article who have not provided "as built plans" shall provide one (1) quarter of the information concerning facilities in city right-of-way within one (1) year after the passage of the article and one (1) quarter each six (6) months thereafter. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and

welfare concerns. Submittal of "as-built plans" shall be in digital format compatible with city hardware and software or shall be subject to a conversion fee. Owner shall include one set of plans in a paper format.

(b) If as-built plans submitted under this section include information expressly designated by the owner as a trade secret or other confidential information protected from disclosure by state law, the director may not disclose that information to the public without the consent of the owner, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, V.T.C.A., Government Code ch. 552, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an owner to designate all matters in its as-built plans as confidential or as trade secrets.

(c) This requirement, or portions of this requirement, may be waived by the director for good cause.

(Ord. No. 1950-6-01, § 2, 6-7-2001)

Sec. 13-27. Conformance with public improvements.

(a) Whenever by reasons of widening or straightening of streets, side walks, water or sewer line projects, or any other city project, it shall be deemed necessary by the governing body of the city to remove, alter, change, adapt, or conform an owner's underground or overhead facilities within the right-of-way to another part of the right-of-way, such alterations shall be made by the owner of the facilities at the owner's expense (unless provided otherwise by state law, a franchise, a license or a municipal authorization until that grant expires or is otherwise terminated). The owner shall be responsible for conforming its facilities within mutually agreed upon time limits. If no time limits can be agreed upon, the time limit shall be ninety (90) days from the day the city secures any additional right-of-way and transmits final plans and notice to make the alterations. The owner of facilities shall be responsible for any direct costs associated with project delays associated with failure to conform facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this paragraph shall be made within thirty (30) calendar days.

(b) An owner may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the national arborist association and the international society of arboriculture. Should the owner, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the city may remove the trimmings or have them removed, and upon receipt of a bill from the city, the owner shall promptly reimburse the city for all costs incurred within thirty (30) calendar days.

(c) An owner shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures. The owner shall temporarily remove, raise or lower its aerial facilities within fifteen (15) working days of receiving a copy of a permit issued by the city. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

(Ord. No. 1950-6-1, § 2, 6-7-2001)

Sec. 13-28. Improperly installed facilities.

(a) Any owner doing work in the city right-of-way shall properly install, repair, upgrade and maintain facilities.

(b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:

(1) The installation, repair, upgrade or maintenance endangers people or property;

(2) The facilities do not meet the applicable city codes;

(3) The facilities are not capable of being located using standard practices;

(4) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the department or the plans approved by the department.

(Ord. No. 1950-6-1, § 2, 6-7-2001)

Sec. 13-29. Location of utility structures.

(a) Utility structures not exceeding twenty (20) cubic feet are allowed in the right of way or utility easements, subject to available room and located as approved by the director. The placement of utility structures larger than twenty (20) cubic feet, but not exceeding thirty (30) cubic feet will be reviewed on a case by case basis by the director. Such structures shall not encroach within a sidewalk area, including a vertical clearance of 7.5 feet above the sidewalk or within the sight visibility area.

(b) Utility structures larger than thirty (30) cubic feet shall be located as close as practical to the back of a public or private utility easement and subject to available room and located as approved by the director.

(c) Above-ground facilities such as pedestals, switching boxes and similar facilities shall be located no less than three (3) feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway or alleys. They shall also not be located in front of residential lots creating an unreasonable visual or aesthetic impairment for the property owner.

(d) The owner's identity and telephone number shall be placed on all utility structures placed in the rights-of-way.

(Ord. No. 1950-6-1, § 2, 6-7-2001)

Sec. 13-30. Restoration of property.

(a) Owners shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Owners shall submit photographs and/or a video of the construction area at the time of the issuance of the permit. Restoration must be approved by the department.

(b) Restoration must be made within ten (10) working days of completion of trench backfill for a length of three hundred (300) feet, or within the limits of one city block, unless otherwise approved by the director. If restoration is not satisfactory and performed in a timely manner, after written notice, then all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any future permits until all restoration is complete.

(c) Upon failure of an owner to perform such restoration, and five (5) days after written notice has been given to the owner by the city, and in the event restoration has not been initiated during such five-day period, the city may repair such portion of the public rights-of-way as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the city, the owner will reimburse the city for the costs so incurred within thirty (30) calendar days from the date of the city invoice.

(d) If the city determines that the failure of an owner to properly repair or restore the public rights-of-way constitutes a safety hazard to the public; the city may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the city, the owner shall promptly reimburse the city for the costs incurred by the city within thirty (30) calendar days from the date of the city invoice. If payment is not received within the thirty (30) calendar days, the city shall initiate a claim for compensation with the appropriate bonding company.

(e) Should the city reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape

treatment requires additional restoration work to meet the standards of subsection (a), an owner shall perform such additional restoration work to the satisfaction of the city, subject to all city remedies as provided herein.

(f) Restoration must be to the reasonable satisfaction of the department. The restoration shall include, but not be limited to:

(1) Replacing all ground cover with the type of ground cover damaged during work to a condition equal to or better either by sodding or seeding, or as directed by the department;

(2) Adjusting of all manholes and handholds, as required;

(3) Backfilling all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the department. Holes with only vertical walls shall be covered and secured to prevent entry. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded to secure the work site as approved by the department;

(4) Leveling of all trenches and backhoe lines;

(5) Restoration of excavation site to city specifications;

(6) Restoration of all paving, sidewalks, landscaping, ground cover, trees, shrubs and irrigation systems.

(g) Removal of all locate flags during the clean up process by the owner or his/her contractor at the completion of the work.

(Ord. No. 1950-6-1, § 2, 6-7-2001)