

Sec. 95-34. Use and occupancy--Regulation by city.

- (a) *Temporary rearrangement or removal of aerial facilities.* Upon request, a registered user shall remove, raise, or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the person requesting them, and the registered user may require payment in advance. The registered user shall be given fifteen (15) working days notice to arrange for such temporary arrangements.
- (b) *Right to trim trees.* The registered user, its contractors and agents have the right, permission and license to trim trees upon and overhanging the rights-of-way to prevent trees from coming in contact with the registered user's facilities. Registered users shall notify the city forty-eight (48) hours prior to tree trimming activities beginning within the city and provide an estimate of the duration of the tree trimming activity. All trimming shall be done in consideration of the health of the trees. When directed by the city, tree trimming shall be done under the supervision and direction of the city or under the supervision of the city's delegated representative. Any tree trimmings generated by the registered user, its contractors or agents, shall be removed within twenty-four (24) hours. Should the registered user, its contractors or agents, fail to timely remove such trimmings, the city may remove same or have them removed, and shall bill registered user for all costs incurred, which costs shall be promptly paid by the registered user. Nothing herein shall be construed to grant to a registered user the right of access to private property.
- (c) *City work.* The city shall have the right at all times to lay, and to permit to be laid, sewer, gas, water and other pipelines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the city, in, across, along, over or under any right-of-way occupied by a registered user, and to change any curb or sidewalk or the grade of any street and to maintain all of the city's facilities.
- (d) *Removal of facilities.* Whenever by reason of widening, straightening, relocating, realigning, or closure of streets, or whenever by reason of public work projects (such as the installation or improvement of storm drains, water lines, sewer lines, or similar projects), it shall be deemed necessary by the city to remove, alter, change, adapt, or conform the underground or overhead facilities of a registered user, such alterations shall be made by the owner of the facilities at its expense within ninety (90) calendar days from receipt of written notice from the city to make such alterations, unless a different schedule has been approved by the director. Additionally, the city shall have the power at any time to order and require the registered user to remove and abate any facility that is dangerous to life and property. In the event the registered user, after notice, fails or refuses to comply with either type of notice described herein, the city shall have the power to remove

the same at the expense of the registered user, all without compensation or liability for damages to the registered user. At the city's option, in lieu of removing registered user's facilities, the city may deem such facilities abandoned.

- (e) *Public safety.* The city retains the right to move any facilities within the rights-of-way to cure or otherwise address a public health or safety emergency. The city shall cooperate to the extent possible with the registered user in such instances to assure continuity of service and to afford to the registered user the opportunity to make such relocation itself.
- (f) *Third party convenience.* If the city requires a registered user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other person, except the city, to use, or to use with greater convenience, any right-of-way, a registered user shall not be required to make any such changes until such other person shall have undertaken with solvent bond, to reimburse the registered user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of the registered user's facilities; provided, however, that the city shall never be liable for such reimbursement.
- (g) *Abandonment of facilities.* Whenever a registered user intends to abandon any of its facilities within the rights-of-way, it shall submit to the director notification of its intent to abandon the facility, describing the facility to be abandoned, and the date of the proposed abandonment. City may require the registered user, at the registered user's expense: (a) to remove the facility from the rights-of-way, or (b) to modify the facility in order to protect the public health and safety. Unless such notification is received or unless otherwise provided in this article, a registered user shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the city and shall restore any affected rights-of-way to their former state at the time such facilities and equipment were installed, so as not to impair their usefulness. In removing its plant, structures, and equipment a registered user shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. The city shall have the right to inspect and approve the condition of the rights-of-way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article shall continue in full force and effect during the period of removal and until full compliance by a registered user with the terms and conditions of this section. Upon abandonment of any facilities in place, a registered user, if required by the city, shall submit to the city a written instrument, satisfactory in form to the city, transferring to the city the ownership of the abandoned facilities or transferring to the city the right of use of the abandoned facilities. Notwithstanding anything to the contrary set forth in this article, a registered user may abandon any underground facilities in place so long as it does not materially interfere with the

use of the rights-of-way or with the use thereof by any public utility, cable operator, or other registered users.

(Ord. No. 00-1631, § 1, 7-3-2000)