

ARTICLE XVIII. RELOCATION OF PRIVATELY-OWNED FACILITIES

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**Sec. 40-391. Definitions.**

As used in this article, the following terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

*Director* means the director of the public works and engineering department or his designee.

*Facility* means any structure, device or other thing whatsoever that is installed or maintained in, on, within, under, over or above a public right-of-way within the city.

*Public right-of-way* means any public street right-of-way located in the city, including the entire area between the boundary lines of every right-of-way (including but not limited to roads, streets, alleys, highways, boulevards, bridges, tunnels, or similar thoroughfares).

*Public works project* means any construction, reconstruction, improvement, repair or maintenance project undertaken by or on behalf of the city, including but not limited to projects included on the city's capital improvement plan regardless of source of funding.

*Relocate* means to move, remove or replace a facility.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-392. Registry of facilities and owners.**

- (a) The owner of any facility as defined in this article, other than a pipeline that is subject to the provisions of article IX of this chapter, shall provide to the director, and thereafter maintain, current: (1) contact information indicating the name and address of the owner of the facility and the individual at that address designated as a contact person for the owner; and (2) information describing and locating any facilities of the owner in the public right-of-way. The information shall be in the form prescribed by the director. If an owner does not have contact information on file, the owner shall

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provide the contact information at the time application is made for an excavation permit pursuant to article V of this chapter. It shall be unlawful for any owner to fail to provide or maintain current information as required by this section.

- (b) Any location information submitted under this section that is designated by the owner as "confidential," "trade secret," or "proprietary" will not be disclosed to the public by the city without the consent of the owner, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act ("TPIA") or by order a court having jurisdiction of the matter pursuant to applicable law. Upon receipt of a request for such location information, the city will notify the contact person of the request in writing. If the owner elects to protect the location information from disclosure, the owner shall immediately notify the city and submit to the Texas Attorney General a brief that: (1) identifies the legal exceptions that apply; (2) identifies the specific parts of each document that are covered by each exception; and (3) explains why each exception applies. The city shall have no obligation or duty to submit any argument or brief to the Texas Attorney General on behalf of the owner.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-393. Relocation required.**

- (a) Whenever the city engineer determines, in the exercise of sound engineering judgment, that a facility should be relocated for the accomplishment of a public works project, the owner of the facility shall relocate the facility at the owner's sole expense in accordance with this article. In the event that an owner's failure to timely relocate a facility in accordance with this article causes the city to incur expenses, damages or losses, including loss of grant funds, for any resulting delay, the owner of the facility shall be responsible for the city's expenses, damages or losses.
- (b) It shall be the policy of the city to design public works projects to minimize the relocation of facilities, but the city shall not be obligated to design a public works project to avoid facility relocation and the determination of the city engineer of the appropriate design of the public works project shall be final.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-394. Notice of annual adopted capital improvement plan.**

The city engineer shall provide notice of the passage of the annual adopted capital improvement plan for the city within 60 days of its passage by the city council. Notice shall be given by first class letter deposited into the United States postal service to the person and at the address on file with the city pursuant to section 40-392 of this Code and shall identify the location on the city's website or provide notice of other locations where the adopted capital improvements plan can be reviewed.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-395. City engineer's preliminary notice.**

When during the design of a public works project the city engineer, based on information then available to him, determines that the presence of a facility in a public right-of-way may interfere with a public works project so that the relocation of the facility may be necessary, the city engineer shall provide the owner of the facility written notice of the planned public works project and the potential for relocation. The city engineer shall make this determination as soon as practicable, but no later than a reasonable period following receipt of a preliminary engineering report for the public works project, and shall give the notice to the owner as soon as practicable thereafter. The notice shall be given to the contact person identified pursuant to section 40-392 or section 40-232 of this Code, as applicable, by any means that

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requires proof of delivery. The notice shall identify the public works project and provide the owner with an opportunity to discuss with the city engineer the public works project and potential design alternatives that could avoid facility relocation. Notice pursuant to this and the preceding section of this Code is for the purpose of coordination only and is not a condition precedent to the city's exercise of its rights and remedies under this article nor to the facility owner's obligations hereunder.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-396. City engineer's final determination and notice.**

- (a) The city engineer shall determine before completion of final design of a public works project whether the design of the public works project requires relocation of a facility and shall provide notice thereof to the owner of any facility required to be relocated. The notice shall be given in the manner provided in section 40-395 of this Code. In making a determination pursuant to this section, the city engineer or the director, as applicable, shall consider the purpose and complexity of the public works project and timetable for its construction, the number of facilities potentially affected by the project, the number of facility relocations required for the project, the cost and complexity of relocating each facility and any other factors he determines in the exercise of sound engineering judgement are relevant to the public works project.
- (b) Notwithstanding the notice provisions of this Code that are otherwise applicable, if the city engineer discovers during the construction of a public works project:
  - (1) That a facility located in the public right-of-way not previously known to the city engineer requires relocation; or
  - (2) That inaccurate information about the location of the facility was provided by or on behalf of the facility owner and relocation is required which was not previously anticipated;the city engineer shall give notice of the necessity for relocation in the manner provided in section 40-395 of this Code.
- (c) Except for facilities discovered under section 40-396 (b)(1) or (2), the owner of the facility shall have a period of 60 days following the date of the notice sent pursuant to subsection (a) of this section to submit a proposed schedule for relocation of the facility for approval by the city engineer. The city, through the city engineer, and the owner may enter into a memorandum of agreement, in a form approved by the city attorney, evidencing agreement on the relocation schedule. The city engineer for good cause may extend, for a period not to exceed an additional 60 days, the time for submission or re-submission of a relocation schedule. The owner of facilities discovered under section 40-396(b)(1) or (2) shall provide to the city engineer at the earliest possible date, but not later than five business days following the owner's receipt of notice under that section, a proposed schedule for relocation of the facility and shall diligently prosecute the relocation of such facility until completed.
- (d) No schedule for the relocation of a facility shall provide a period for relocation of longer than 180 days without written approval of the director, who for good cause shown by the facility owner, may extend the period of time for relocation. The time allowed for relocation shall commence on the date agreed to by the city engineer and the facility owner, but no later than the date of the notice to proceed for the public works project, unless extended by the city engineer for good cause shown by the facility owner, and shall be suspended upon the occurrence, and extended for the duration of, an event of force majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage or other events, where the facility owner has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of the facility owner. For good cause shown by the facility owner, the city engineer may determine

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that the failure of the city to timely process a properly filed, complete application for a city permit or approval required for the facility relocation constitutes an event of force majeure.

In determining "good cause" as used in this section (excluding the failure of the city to act timely as set forth in the preceding paragraph) the director shall be entitled to consider such factors, not attributable to any fault or negligence of the facility owner, including, but not limited to the following:

1. Availability of materials or supplies required for a relocation.
2. Availability of sufficient labor or technical personnel to timely effect a relocation.
3. Any loss or damage to the public or users of the facility to be relocated.
4. The availability of any alternative means of providing to the public or other users the services of the facility to be relocated.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-397. Relocation authorized; other legal action.**

- (a) If upon the expiration of 60 days from the date of the city engineer's notice to the owner pursuant to subsection 40-396(a) of this Code, or five business days from the date of the city engineer's notice to owner pursuant to subsection 40-396(b) of this Code, or any extension of time approved by the city engineer, the city and the owner have not agreed upon a schedule for the relocation of the facility at the owner's expense, the city engineer is authorized to:
  - (1) Refer the matter to the city attorney for appropriate legal action; or
  - (2) Relocate the facility, or cause the facility to be relocated, on behalf of the owner and, subject to subsection (d) of this section, recover the cost of the relocation from the owner.
- (b) If the city engineer determines that the owner has not timely complied with the terms of an agreed relocation schedule and that the unfinished relocation of the facility will delay completion of the affected city project, the city engineer is authorized to:
  - (1) Refer the matter to the city attorney for appropriate legal action; or
  - (2) Relocate the facility, or cause the facility to be relocated, on behalf of the owner and, subject to subsection (e) of this section, recover the cost of the relocation from the owner.
- (c) No later than the date of the commencement of any construction activity for the relocation of any facility by the city pursuant to this section, the city engineer shall give notice of the date on which the relocation shall begin by first class letter deposited into the United States postal service to the person and at the address on file with the city pursuant to section 40-392 of this Code. Not less than three days before the transfer of service to a facility relocated pursuant to this section is feasible, the city engineer shall give notice of such fact by first class letter deposited into the United States postal service to the affected person and at the address on file with the city pursuant to section 40-392 of this Code. If the facility owner fails to commence the transfer of service within 24 hours after the expiration of the third calendar day following the giving of notice to the facility owner, the city may deem the original facility abandoned and cause it to be removed without further liability and, at the city's election, transfer such service to the relocated facility.
- (d) Failure of a facility owner to provide a relocation schedule satisfactory to the city engineer, applying reasonable engineering judgment, within the initial 60 or 5 day period, whichever is applicable, or any extension thereof, shall constitute authorization for the city to assess damages, including expenses, damages or losses for project delay, and, subject to subsection (e) of this section, recover costs of relocating the facility from the owner and shall also constitute a waiver by the owner of any claim for damages against the city.

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- (e) Failure of a facility owner to comply with an agreed relocation schedule shall constitute authorization for the city to recover damages, including expenses, damages or losses for project delay, and recover costs of relocating the facility from the owner and shall also constitute a waiver by the owner of any claim for damages against the city.
- (f) All relocations required under this article shall be at the sole expense of the owner of the facility, except to the extent provided otherwise in a current, valid city franchise held by the owner of the facility or by section 40-234(k) of this Code. In addition, if the city requires the relocation of a facility from a location approved by the city as part of a public works project pursuant to this article within five years following the date of a relocation of the facility pursuant to this article, the city shall bear the cost of the subsequent relocation of the facility. Nothing in this subsection shall preclude the application of funds from sources other than the city to the payment of relocation expenses on behalf of the owner of a facility.
- (g) The city engineer's certification of the costs of relocation of any facility undertaken on behalf of an owner shall constitute prima facie evidence of the reasonableness of the costs chargeable to the owner.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-398. Notice after relocation.**

If a facility is relocated under section 40-397 of this Code, the city engineer shall, within 30 days of the completion of the relocation, notify the owner of the facility that is relocated of the owner's right to a hearing under section 40-399 of this Code.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-399. Hearing upon written request.**

The owner of a facility that is relocated under section 40-397 of this Code shall, upon written request within 10 days from the mailing of the city engineer's notice under section 40-398 of this Code, be entitled to a hearing on the issue of the reasonableness of the city's costs of relocation. The hearing shall be conducted by a hearing officer designated by the director, and the director shall promulgate rules for hearings. The hearing officer's decision on the issue of the reasonableness of the city's costs of relocation is final.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-400. Conflicts.**

The provisions of article IX of this chapter shall control for those facilities governed thereby to the extent inconsistent with this article.

(Ord. No. 05-371, § 2, 4-13-05)

**Sec. 40-401. Actions authorized to enforce article.**

The city attorney is authorized to institute appropriate civil proceedings to compel the relocation of any facility whose relocation the city engineer determines to be necessary for a public works project and seek other relief consistent with this article.

(Ord. No. 05-371, § 2, 4-13-05)

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**Secs. 40-402—40-430. Reserved.**