CHAPTER 1

RIGHT-OF-WAY MANAGEMENT
(298,327,1487,3078,4570,5369)

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9-1-1: DEFINITION OF TERMS:

CITY ENGINEER: The director of the City’s Engineering Department and his or her designee. (5369)

DEVELOPMENT AND SUSTAINABILITY DIRECTOR: The director of the City’s Development and Sustainability Department and his or her designee. (5369)

EASEMENT, PUBLIC: An area of land over which the City of Mesa coordinates the locations of public or private improvements, underground or overhead, furnished for the use of the public; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, etc. owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. (3078, 3309)

ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public or private improvements within the right-of-way or public easements, prepared by a person, firm, company, corporation, public entity, or board in compliance with the code and rules of the Arizona State Board of Technical Registration, unless exempted thereunder; and conforming with (i) the public or private improvement standards of design and construction developed by the City Engineer; or (ii) standards developed by the person, firm, company, corporation, public entity, or board that the City Engineer accepts as substantially equivalent to the City Engineer’s standards in protecting the public health, safety, and welfare; or (iii) in the case of a political subdivision of the State of Arizona, standards of design and construction developed and approved by such political subdivision and filed with the City Engineer. (3309, 3766, 5369)

MESA PROJECTS: Public improvement projects for which the City of Mesa is the general contracting agency. (3309)

NEW PAVEMENT: Paving material applied in or near the right-of-way to construct a new street, highway, alley, road or bikeway where no such material previously existed. (5369)

PAVEMENT RECONSTRUCTION: Rebuilding a portion of the street by removing all the pavement material and re-paving. (5369)
**PAVEMENT RENOVATION:** A major rehabilitation of street pavement, which includes mill and overlay, cold in place recycle, hot in place recycle, fractured aggregate surface treatment, cape seal, and stress absorbing membrane interlayer or other similar roadway improvement that physically modifies the surface of the roadway. (5369)

**PAVEMENT RESTORATION FEE:** The fee required by the City when a permittee cuts into, excavates, opens, bores, trenches, potholes, damages, or disturbs pavement in the right-of-way. (5369)

**PERMIT CHARGES:** Fees assessed at the time of issuance of a right-of-way permit that are intended to cover costs incurred by the City for permit processing, plan review services, materials testing and inspections. Refer to latest schedule of fees and charges. (4570, 5369)

**PERMITTEE:** The governmental entity, person, or business entity that has received a right-of-way permit pursuant to this section or engaged in construction or maintenance in the right-of-way. (5369)

**RIGHT-OF-WAY:** An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public right-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state, or municipal regulations. (3078, 3309, 4570, 5369)

**RIGHT-OF-WAY IMPROVEMENT STANDARDS:** A set of regulations setting forth the details, specifications, instructions, and procedures to be followed in the planning, design, installation, and construction of public or private improvements within the right-of-way or within easements; formulated by the City Engineer, the County Health Department, the Maricopa Association of Governments, and other City departments. (3309, 3766, 5369)

**RIGHT-OF-WAY PERMIT:** An official document issued by the City authorizing performance of a specified activity or work within the right-of-way and public easements of the City of Mesa by a person, contractor, company, firm, or corporation duly qualified under the statutes and rules of the Arizona Registrar of Contractors, unless exempted thereunder. A Right-of-Way Permit may also authorize specified activity or work involving City utilities or facilities outside the corporate limits when issued in conjunction with the appropriate permit required for specified activity or work within another jurisdiction. (3078, 3309, 3766, 5369)

**STREET MAINTENANCE:** Application of slurry and fog seals to street pavement. (5369)

**9-1-2: RIGHT-OF-WAY PERMITS:**

(A) It shall be unlawful for any person, firm, company, corporation, business entity, public entity or board to grade, pave, fill, or level any street or alley within the right-of-way or public easements of the City of Mesa or to construct, alter, or repair therein any pavement, sidewalk, crosswalk, curb, driveway, gutters, landscaping, sewers, water mains, or other structures or to make therein any excavation or in any manner disturb or obstruct the same or perform any other activity or work without first obtaining a Right-of-Way Permit. (298, 1487, 3078, 3309, 3766, 5369)

(B) A person, firm, company, corporation, business entity, public entity or board seeking a Right-of-Way permit shall apply for said permit by submitting an application and engineering plans to the Development and Sustainability Director. The City Engineer shall review the application and plans, and approve the issuance of a Right-of-Way permit if the application and plans meet the requirements of this Chapter and the right-of-way improvement standards. (3309, 3766, 5369)
(C) All construction and maintenance activities in the right-of-way and public easements shall be subject to the inspection of the City Engineer. (5369)

(D) All improvements, construction and maintenance activities in the right-of-way and public easements shall be in accordance with the terms and conditions of a Right-of-Way Permit and in compliance with right-of-way improvement standards. (5369)

(E) While work is being done in the right-of-way and public easements, permittee shall provide to the City, upon demand, proof of the Right-of-Way Permit that authorizes the work, including a description of the work and construction limits. (5369)

(F) A Right-of-Way Permit may be revoked by the City Engineer under any of the following circumstances: (5369)

1. When the right-of-way or a public easement, or any portion thereof, occupied and used by the permittee is needed in connection with the construction of a Mesa project, upon reasonable notice from the City Engineer, unless a City license, franchise or agreement provides otherwise. (5369)

2. If the permittee does not comply with the terms and conditions of the Right-of-Way Permit or performs work that is not in compliance with right-of-way improvement standards. (5369)

3. If the City Engineer finds that a delay in completion of work authorized by a Right-of-Way Permit is due to lack of diligence on the part of the permittee, the City may revoke the permit and restore the right-of-way or the area of the public easement to its former condition unless such restoration, relocation, or removal is completed by the permittee. The City will give the permittee fifteen (15) days’ written notice before restoring the right-of-way or public easement area. However, if the City Engineer determines that the circumstances warrant an extension, the City may extend this time period. The permittee shall reimburse the City for all documented costs and expenses incurred by the City in connection with locating and removing the work, and restoring the right-of-way or the public easement area. (5369)

(G) Permittee shall participate as a member of the Arizona Location Service, as set forth in A.R.S. § 40-360.21, ET SEQ. A copy of each permittee’s agreement or proof of participation shall be submitted to the City Engineer. (5369)

(H) Permittee shall prepare and maintain accurate record drawings of its facilities in the right-of-way and in public easements, and shall furnish such record drawings to the City upon request, subject to all applicable statutes for the protection from disclosure of critical utility infrastructure information. If accurate record drawings of a permittee’s facilities are not provided to the City, and the City incurs costs or expenses locating the permittee’s facilities in connection with the construction of a Mesa project, the permittee shall reimburse the City for documented costs associated with locating and potholing permittee’s facilities. (5369)

9-1-3: NOTIFICATION:
Right-of-Way Permits shall require that the person, firm, company, corporation, public entity, or board to whom the same is issued shall give the Engineering Department twenty-four (24) hours' notice of the commencement of such activity or work authorized by said Right-of-Way Permit and shall carry on such activity or work to the satisfaction and subject to the approval of the City Engineer. The permittee shall diligently prosecute the same to completion, shall leave the right-of-way or public easements in a good and safe condition, and shall at all times keep signal lights, barricades, or other safety devices functioning properly to prevent injury to persons and property, and such person, firm, company, corporation, public entity, or board shall comply with such additional reasonable provisions and conditions as may be prescribed by the City Engineer. (298, 3078, 3309, 3766, 5369)
9-1-4: PLAN REVIEW AND INSPECTION CHARGES: (3309, 4570, 5369)

A Right-of-Way Permit shall not be issued under the provisions of this Chapter until the applicant has paid all applicable fees and charges as established in the most recent City of Mesa Schedule of Fees and Charges. The Development and Sustainability Director and the City Engineer are authorized to enter into agreements with the United States, the State of Arizona, political subdivisions of the State of Arizona, and agencies thereof, establishing offsets or credits for fees or charges applied by both agencies. (298, 1487, 3078, 3241, 3309, 3766, 4570, 5369)

9-1-5: RELOCATION, JOINT LOCATION: (3309, 5369)

(A) If a public or private improvement has been installed in a public easement in accordance with the requirements of this Chapter and the City of Mesa subsequently requires relocation of said public or private improvement to accommodate a Mesa project, the City shall reimburse the owner of the public or private improvement for documented relocation costs; unless an existing City license, franchise, or agreement provides otherwise. (298, 3078, 3309)

(B) As part of the coordination of public or private improvements and as a condition of obtaining a Right-of-Way Permit for activity or work within the Right-of-Way and all easements, the City may require joint location of all underground and overhead public or private improvements when said joint location is not otherwise prohibited by applicable safety or design standards. (3309, 5369)

9-1-6: PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS: (5369)

(A) Pavement Restoration Fees. A permittee shall pay a pavement restoration fee in connection with any Right-of-Way Permit to cut into, excavate, open, bore trench or disturb street pavement within a period of five (5) years after the City’s acceptance of street construction that includes new pavement, pavement renovation or pavement reconstruction at the location for which the Right-of-Way Permit is being sought. The amount of the pavement restoration fee shall be as established in the City’s fee schedule. The pavement restoration fee shall be paid before a Right-of-Way Permit is issued unless the permittee has a written agreement with the City that allows for payment of the pavement restoration fee after the pavement cut is made. The pavement restoration fee will be in addition to, and will not be offset by, all license and franchise fees, expenses and taxes. (5369)

(B) Pavement Cut Restrictions. The City Engineer shall not approve a Right-of-Way Permit to cut into, excavate, open, bore, trench, or disturb street pavement for a period of two (2) years after the City’s acceptance of street construction that includes new pavement, pavement renovation, pavement reconstruction, or street maintenance at the location for which the permit is being sought. The City Engineer may authorize an exception to this pavement cut restriction under any one of the following conditions: (5369)

1. A verifiable emergency exists that endangers life or property; (5369)

2. There is an interruption of essential utility service; (5369)

3. Utility or other service for buildings is required where no other feasible means of providing such service exists; or (5369)

4. A pavement cut is required by city, county, state or federal regulation. (5369)

(C) Between one (1) year and two (2) years after acceptance, if the City Engineer determines, upon reviewing evidence submitted by the permittee, that the cost to mill and overlay/inlay is substantially less than the cost of alternate routing for permittee’s facilities the permittee may choose to cut the pavement and perform a mill and overlay/inlay as described in Subsection (E) below. (5369)
(D) If the City Engineer authorizes a pavement cut pursuant to an exception set forth in Subsection (B) the permittee shall: (5369)

1. Pay the pavement restoration fee established by the City Council in the City’s fee schedule; and (5369)

2. Repair the pavement, after making the permitted cut, to meet right-of-way improvement standards. (5369)

(E) If the City issues a street cut permit within one (1) year of construction, reconstruction or renovation of pavement, permittee shall renovate such street by mill and overlay/inlay, for a minimum of the full width of all lanes impacted by the cut(s) (outside lane includes to the curb) and for arterial streets extending a minimum length of fifty (50) feet in both directions from the area of the cut(s) and for collector and residential streets extending a minimum length of twenty-five (25) feet both directions from the area of the cut(s), all as more specifically directed by the City Engineer/designee. Provided, however, for one pothole smaller than two (2) square feet, the requirement to renovate the street by mill and overlay/inlay shall not apply. (5369)

9-1-7: AUTHORITY TO INSPECT: (5369)
The City Engineer is hereby authorized and directed to conduct inspections and testing for violations of this Chapter. (5369)

9-1-8: STOP WORK ORDERS: (5369)
If the City Engineer determines that work in the right-of-way or a public easement is being conducted in a manner that is contrary to the provisions of this Chapter or presents a public health or safety threat, the City Engineer is authorized to issue a Stop Work Order. (5369)

(A) Issuance. The Stop Work Order shall be in writing and shall be given to the permittee, owner’s agent, or the person doing the work. Upon issuance of a Stop Work Order, the cited work shall immediately cease and the permittee shall make the work area safe. The Stop Work Order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. (5369)

(B) Unlawful Continuance. Any person who continues any work after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or a condition that threatens the public health or safety, shall be subject to penalties pursuant to this Chapter. (5369)

9-1-9: UNAUTHORIZED WORK: (5369)
Unauthorized work in the right-of-way or a public easement does not exempt a person from the requirements of this Chapter. Any person who commences work before obtaining the necessary Right-of-Way Permit shall be subject to a separate unauthorized construction fee as adopted in the City’s Schedule of Fees and Charges. (5369)

9-1-10: APPEALS: (5369)
Any decision made by any City official in connection with the enforcement of this Chapter may be appealed by submitting an appeal to the City Clerk within thirty (30) calendar days after the determination for which the appeal is being filed. All appeals must include a written Notice of Appeal that contains an explanation of why the appellant believes that the determination was in error. (5369)

The appeal will be heard by the City’s Right-of-Way Manager, who shall render a decision within three (3) business days of the submission of the appeal. The decision of the Right-of-Way Manager may then be appealed to the City Manager or his designee, who shall render a decision within five (5) business days of receiving the appeal. The determination of the City Manager, or his designee, may be appealed to the City Council committee that is designated by the City to hear such appeals. The determination of the City Council committee shall be final. (5369)
(A) Notice of Violation. The City Engineer is authorized to issue a Notice of Violation for unauthorized work, a violation of the provisions of this Chapter, or for the violation of a permit issued pursuant to the provisions of this Chapter. (5369)

(B) Penalty Clause. Any person, firm, or corporation violating any provision of this Chapter and any amendment to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the city jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570, 5369)

(C) Remedies not Exclusive. Penalties under this Chapter are in addition to any other penalties established by law, and this Chapter shall not be interpreted as limiting the remedies, actions, or abatement procedures that may be taken by the City. (5369)