

City of Wilmington
INTERDEPARTMENTAL MEMORANDUM

Date: September 29, 2008

To: Utility Providers Using City of Wilmington Streets and Rights-of-Way

From: Thomas C. Pollard, City Attorney

cc: Wilmington City Council
Sterling Cheatham, City Manager
Dolores Williams, Assistant City Attorney
Dave Cowell, City Engineer
Richard King, Director of Public Services

Re: Revised Wilmington City Ordinance relating to use of City rights-of-way

Attached for your information is a draft Ordinance amending Chapter 11 of the Wilmington City Code relating to excavations in and use of City rights-of-way. This Ordinance establishes uniform standards for users of City rights-of-way. Division 3 applies specifically to the use of City rights-of-way by utilities. Under these provisions, a utility would be required to either have a franchise or obtain a right-of-way master permit for the use of City rights-of-way. In addition, utilities would be required to obtain a utility work permit for specific work undertaken in City rights-of-way.

At the present time, I intend to present this Ordinance to the Wilmington City Council for its consideration on October 21, 2008. If you have any questions, please let me know.

Wilmington City Code
Proposed Amendments to Chapter 11

Article V. Excavation and Use of Rights-of-Way.

Division 1. Generally

Section 11-61. Purpose

The purpose of this article is to provide for the proper management of public street and utility rights-of-way in order to preserve the health, safety, and welfare of the citizens of the city. Specifically, this article is intended to provide for the reasonable regulation of persons making excavations in public street and utility rights-of-way and of the owners of public and private utility facilities located in the public rights-of-way, and the time, place and manner in which excavations are made, the public right-of-way is restored, and utility facilities are located and worked upon.

Section 11-62. Definitions

For the purposes of this article the following phrases, terms, words and their derivatives shall have the meaning given herein unless otherwise defined by federal or state law. When not inconsistent with the context, words used in the present tense include the future and words in the plural number include the singular number. Words not defined shall be given their common and ordinary meaning.

Bond: A bond, letter of credit or cash deposit.

Excavation: An activity that cuts, penetrates, or bores under any portion of the public right-of-way, street, sidewalk, plaza or city-owned utility. The term includes but is not limited to cutting, tunneling, jacking and boring, horizontal directional drilling, back-filling, restoring, repairing, and installing and maintaining a temporary surface in the public right-of-way.

Public right-of-way: The surface, the space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, utility easement or other public rights-of-way now or hereafter held by the city. The term "public right-of-way" also shall include any street maintained by the North Carolina Department of Transportation ("DOT Street") to the extent that any excavation or utility work in, on or under the DOT Street may affect a sidewalk, bike path or other improvement owned or maintained by the city.

Utility: A company that owns and provides services to customer~ through utility facilities, such as gas, electric, telephone, cable, telecommunications, water, wastewater and stormwater facilities, located in the public right-of-way. This definition shall include the city and any public water and sewer authority for purposes of the city's and authority's ownership of water, wastewater, and stormwater utility facilities.

Utility facility: A pole, tower, water main or service line, sanitary sewer pipe or service line, stormwater pipe, ditch, swale, creek or structure, gas pipe or

gas line, telecommunications line or equipment, power line, cable, conduit, or any like structure and related appurtenances.

Utility work: Any work undertaken to locate, install, construct, maintain, repair, test or remove any utility facility in a public right-of-way.

Section 11-63. No private rights in public right-of-way.

Nothing in this article shall be construed to give any person or Utility any property right in or to the use of public rights-of-way. No permit or permission issued under this article shall be deemed to be a representation or guarantee by the city that its title to any property is sufficient to permit its use for such purpose. All permits issued and held under this article shall be subject to the superior right of the city to control the use of public rights-of-way and to ensure the safe and orderly movement of traffic.

Section 11-64. Permits subject to exercise of police powers.

All permits and privileges granted under this article are subject to the police powers of the city to adopt and enforce ordinances for the health, safety and welfare of the public. Nothing in this article shall be deemed to be a waiver of the city's right or authority to require a Utility to obtain a franchise. Subject to applicable law, any person issued a permit or permission under this article, shall comply with all applicable general laws and ordinances of the city. Nothing in this article, any permit issued hereunder or any franchise shall be deemed to be a waiver of the lawful, publicly available requirements of the various codes, ordinances, regulations, standards and specifications regarding permits and fees to be paid or manner of construction.

Section 11-65. Indemnification of city by users of public rights of way.

All persons (1) placing any encroachment, obstruction, facility or object; (2) undertaking any repairs or construction activity; or (3) making any excavation over, under or upon any public rights-of-way shall indemnify and hold harmless the City of Wilmington, its officers, and employees, from any loss, liability or damage, including expenses and costs, for bodily or personal injury, and for property damages sustained by any person as a result of such activities.

Section 11-66. Denial of permits under this article.

No permit shall be issued under this article where in the opinion of the city engineer the number of public streets, sidewalks, or public places to be opened, disturbed or encumbered is more than necessary to allow the orderly and efficient installation, construction or repair of utility facilities or other facilities and the protection of the public safety.

Section 11-67. Use of safety vests required.

No person shall enter the traveled portion of any street for the purpose of making any excavation of any kind as permitted pursuant to this article without wearing a safety vest or other clothing approved by the North Carolina Department of Labor as being designed to warn motorists of the person's presence.

Section 11-68. Excavations affecting underground utilities.

(a) The definitions set out in G.S. 87-101 are hereby adopted as a part of this section.

(b) No person shall undertake or make an excavation in any highway, public space or private easement of a utility in such a manner as to endanger, injure or damage any underground utility facility. For the purposes of this section, the failure to comply with G.S. 87-102 and G.S. 87-104 shall endanger underground utility facilities.

(c) Any person excavating in any highway, public space, including but not limited to any public right-of-way, or private easement of a utility shall take reasonable steps to protect any underground utility facility when excavating within thirty (30) inches ("tolerance zone") of either side of the outside edges of the marked location of a utility's underground utility facility as referenced in G.S. 87-101(5). This protection shall include hand-digging, air-jetting or vacuum excavation, or other means of safe excavation designed to avoid damage to the utility facility marked until the utility facility is exposed or is determined to be below the proposed excavation. Where a proposed excavation lies adjacent and/or parallel to an existing utility facility and within or partially within the tolerance zone, the existing utility facility shall be exposed by the above methods prior to beginning the excavation. Once the utility facility is exposed and the location markings are found to be correct, the excavation may proceed with mechanized equipment.

(d) Any person may assert as an affirmative defense to a violation of this section that (1) a utility failed to identify the location of an underground utility facility after being notified in accordance with G.S. 87-102; or (2) a utility otherwise failed to properly locate an underground utility facility after being so notified.

Section 11-69. Bond.

(a) As a condition of the issuance of any permit under this article, the city engineer may require any utility or person making an excavation to file a bond with the city to cover the cost of replacing or repairing any street, sidewalk or public facilities in as good condition in all respects as before the excavation. The estimated cost may be furnished by the city engineer based on the extent of the excavation, the nature of the repairs and compliance with this article. The city engineer shall make a determination about the need for a bond based on the extent of any necessary repairs, the utility's or person's past compliance with the provisions of this article and the need to protect public assets and the public health and safety.

(b) The bond required in subsection (a) of this section shall not be required from any person doing or performing any work or excavation under any contract with the city.

Section 11-70. Insurance.

A utility and any person making an excavation shall, at their own expense, purchase and maintain for the duration of its use of the public right-of-way Comprehensive General Liability Insurance including coverages for "C" and "U" (Collapse and underground property damage) and contractual liability insurance for the indemnities assumed under this article. Such policy or policies of insurance shall be for limits not less than \$2,000,000 for bodily injury and property damage liability and will be subject to future review and adjustment at the request of the city. Certificates of insurance shall be furnished to the

city containing the provision that thirty (30) days written notice shall be given to the city prior to cancellation or change in the required coverage. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the certificate of self-insurance from the North Carolina Department of Insurance or other documentation shall be furnished. The provision of such insurance shall in no way replace or otherwise limit the obligation to indemnify and defend as set forth in Section 11-65.

Sections 11-71 through 11-72 reserved.

Division 2. Non-utility public right-of-way excavations.

Section 11-73. Utility exception.

The provisions of this division shall not apply to a utility as defined in Section 11-62 or a person acting on behalf of a utility. A utility is subject to Division 3 of this Article.

Section 11-74. Permit required.

No person shall make any excavation in any public right-of-way without first making application and paying fees for and obtaining all permits for street cuts in writing from the city engineer. No excavations shall be permitted to remain after notice from the city engineer to properly repair such public right-of-way.

Section 11-75. Permit application.

Any person desiring a permit, as required by Section 11-72, shall file an application therefore with the city engineer. The application shall describe the nature and location of the excavation and include such other information as may be required by the city engineer to ensure compliance with this Article.

Section 11-76. Permit terms.

A permit for making an excavation in the public right-of-way shall describe the work to be performed and shall be conditioned upon compliance with the provisions of this article. The city engineer may include such other terms and conditions to ensure the protection of the public and public facilities. The permit shall be maintained at the site of the excavation.

Sections 11-77 through 11-78 reserved.

Division 3. Utility right-of-way use.

Section 11-79. Utility right-of-way master permit required.

(a) It shall be unlawful to own any utility facility located in, on, under, or above the right-of-way without a valid and un-expired utility right-of-way master permit issued by the city. A utility right-of-way master permit shall, among other things:

(1) Grant to the holder of the permit the general right to have utility facilities in the right-of-way provided, however, that the master permit does not constitute a permit for any particular installation, maintenance, repair or removal of a utility facility and the holder also shall obtain any utility work permits required under Section 11-80;

- (2) Specify the term of the permit (which term shall typically be for a period not to exceed five years, expiring on June 30);
- (3) Provide for the removal or terms of abandonment of unused utility facilities;
- (4) Acknowledge the city's right to require the removal or relocation of utility facilities when necessitated by a public need;
- (5) Provide for the defense and indemnification of the city, its officers, and employees for claims and suits arising out of the use of the right-of-way;
- (6) Require proof of suitable levels of insurance coverage;
- (7) State the rights, if any, to assign or transfer rights or obligations without the prior consent of the city;
- (B) Acknowledge the city's full retention of its police power;
- (9) Provide for the identification of all contractors who work in the right-of-way on behalf of the owner; and
- (10) Provide for the preparation and maintenance of maps of utility facilities located within the city.

(b) Exceptions. The holder of an unrevoked and unexpired franchise issued by the city shall not be required to obtain a utility right-of-way master permit for purposes of the utility facilities located in the public right-of-way that are used for the purpose authorized by the franchise. This section shall not apply to the city.

(c) Encroachment agreements not required, The holder of a utility right-of-way master permit or franchise shall not be required to obtain an encroachment agreement under Section 18-697 of this code for the facilities described in the permit or franchise.

(d) Time for Application. Within ninety (90) days of the effective date of this article, any existing utility shall apply for a utility right-of-way master permit. Any new utility shall apply for a utility right-of-way master permit prior to undertaking any utility work.

Section 11-80. Powers reserved.

A utility right-of-way master permit does not constitute a grant of all governmental approval necessary for the use and operation of utility facilities located in the public right-of-way. A utility right-of-way master permit is not a franchise, With respect to the holder of a utility right-of-way master permit, the city fully retains its franchising and police power authority and the holder of a utility right-of-way master permit is not relieved of its obligation to obtain all necessary franchises and permits and to comply with all other legal requirements.

Section 11-81. Utility work permits.

(a) The city engineer is authorized to adopt, amend and repeal standards and policies specifying those types of activities involving the installation, maintenance, repair and removal of utility facilities in, on, under and above the public rights-of-way that:

- (1) Require a utility work permit;
- (2) Do not require a utility work permit but must be done in accordance with the standards set forth in this article; and
- (3) Are exempt.

The standards and policies shall also address emergency situations and activities. An emergency situation is considered as a sudden loss of service or system failure or accident at a utility facility where the impacts are deemed a danger to the public health, safety and welfare. In the case of an emergency, the utility facility may be accessed for the necessary repairs and site control. Application and fees for all necessary permits must be made within reasonable time thereafter as determined by the city engineer.

(b) It shall be unlawful to install, maintain, repair, or remove any utility facility in the public right-of-way without a utility work permit if the standards adopted pursuant to subsection (a) require a utility work permit for such activities.

(c) If a utility work permit is required it shall be maintained at the site of the work.

Section 11-82. Identification of contractors.

Any contractor or subcontractor performing utility work shall prominently identify on any vehicles and equipment the utility on whose behalf the contractor or subcontractor is performing the utility work. Any contractor or subcontractor performing utility work shall promptly identify itself and the utility on whose behalf the contractor or subcontractor is performing the utility work when requested to do so by the city engineer.

Section 11-83. Maps of utility facilities.

Each utility must maintain accurate maps and records of its facilities. The information shall be provided to the city in electronic format compatible with city software within five (5) days of request by the city engineer. The maps and records shall depict horizontal and vertical locations of all facilities in and near the public right of way.

Section 11-84. Removal and relocation of utility facilities.

Whenever the city or the city acting in concert with the North Carolina Department of Transportation or its successor shall construct, maintain or repair any public improvement in a public right-of-way or shall widen, modify, close, relocate, grade or resurface any public street, sidewalk, or other public way in which a utility shall have installed any utility facility, and such work requires the removal or relocation of the utility facility or a portion thereof, it shall be the duty of the utility, upon reasonable notice by the proper authority, and at no cost to the city, to remove or relocate as necessary its utility facility. Provided, however, this requirement shall not preclude the utility from being eligible for reimbursement from any federal, state, or other funds provided or to be provided by any entity other than the city for locating or relocating, moving or removing the utility's facilities. Sufficient notice of the need to remove or relocate of not less than ninety (90) days will be given to the extent practicable. Where such notice is given, then a utility shall perform such work as the utility deems necessary for the extension of new facilities or the repair of existing facilities within said street prior to the time the city begins paving or repaving of the street.

Section 11-85. Information to be filed by utility.

Any utility issued a utility right-of-way master permit or granted a franchise agreement file with the city and keep current the following information:

(a) The name, address, telephone number, fax number and e-mail address of a local representative(s) * A local representative shall be available during normal business hours.

(b) Information regarding how to contact the utility in an emergency.

(c) Certificates of authority to provide utility services from the North Carolina Utilities Commission or other applicable state or federal agency.

(d) The utility shall file changes or additions to the above required information within fifteen (15) business days following the date on which utility has knowledge of any changes or additions. Notwithstanding the foregoing, emergency contact information and information regarding authorized contractors shall be kept current at all times.

Section 11-86. Abandoned facilities.

A facility that is not used and maintained by a utility shall be deemed to be abandoned. Upon abandoning a facility, a utility shall either remove the utility facility or ask the city for permission to leave the abandoned utility facility in place. If the city refuses to allow an abandoned utility facility to be left in place, the utility shall remove the utility facility within a reasonable period of time as prescribed by the city. The city, its officers, employees, agents, servants, and contractors shall not be liable to a utility for damage to or removal or destruction of an abandoned utility facility.

Section 11-87. Notification of sale or transfer; non-assignability of permits.

(a) Any utility shall notify the city of the sale or transfer of title to any utility facilities located in the public right-of-way within fifteen (15) days of such sale or transfer.

(b) No permit issued under this division may be transferred or assigned.

Sections 11-88 through 11-90 reserved.

Division 4. construction and technical standards for excavations and use of public right-of-way.

Section 11-91. General standard of use.

Any person making an excavation or performing utility work in the public right-of-way shall take reasonable actions and precautions to ensure that such work and the utility facilities do:

(a) Not endanger or interfere with the health, safety or lives of persons;

(b) Not interfere with any improvements the city, county or state may deem proper to make;

(c) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent necessary during actual construction, repair or removal;

(d) Not interfere with the rights and reasonable convenience of private property owners, except to the least practicable extent necessary during actual construction, repair or removal; and

(e) Not obstruct, hinder or interfere with any underground utility facilities, such as gas, electric, water, wastewater, cable, telecommunication or telephone facilities or surface structures such as roadways, pavements, curbing, sidewalks, driveways, foundations, pads, monuments, utility frames and covers.

Section 11-92. Compliance with law, construction and technical standards.

Any person making an excavation or performing utility work in the public right-of-way shall undertake such work in an orderly and workmanlike manner and in compliance with all applicable, lawful, publicly available construction standards, current technological standards, governmental regulations including but not limited to the city's Technical Standards and Specifications Manual, North Carolina Department of Transportation Standards, North Carolina Department of Environment and Natural Resources regulations and this article.

(a) Utility facilities shall be installed with proper vertical and horizontal separation distances as required by state law and common engineering practice including separation from other utility facilities in parallel or in crossing as well as adequate distance from the ground surface.

(b) Utility facilities shall be constructed and maintained to avoid damage to existing utility facilities. In addition to compliance with Section 11-68, sub-surface investigation may be necessary to identify the location or presence of existing facilities prior to construction activities. The required investigation may include hand digging, potholing, air-jetting or vacuum excavation. The city engineer may require sub-surface investigations, at no costs to the city, prior to a permit or release for construction in areas with potential facility conflicts or in areas where non-standard configurations of facilities are encountered.

Section 11-93. Adoption of standards.

The city engineer is authorized to adopt additional standards governing the location and making of excavations and the performance of utility work in, on, under, and over the public rights-of-way in order to achieve the purposes of this article. The standards shall cover the need for the submission and review of construction plans prior to the issuance of any permit. The type of plans and level of detail required for submission may be varied depending on the nature of the construction activities.

Section 11-94. Traffic control; lane closure.

(a) Any person making an excavation or performing utility work in the public right-of-way shall provide at all times proper signs, signal lights, flag men, barricades, and other warning devices for the protection of pedestrian and vehicular traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto.

(b) No person shall close any portion of the public right-of-way to vehicular, pedestrian or other traffic unless such closure is specifically allowed in any permits for the work.

(c) If a closure is allowed, it shall be unlawful for any person to fail to comply with the terms of the permit and this section during the closure.

Section 11-95. Special provisions concerning excavations and underground installations.

(a) Excavation procedures. Any person making an excavation or performing utility work in the public right-of-way shall follow all applicable state and local laws regarding the need for proper notification, locate requests, marking, verifying locate status and excavating, including but not limited to, Section 11-68 of this code and Article 8 of Chapter 87 of the North Carolina General Statutes, the procedures of the North Carolina One-Call Center and the Best Practices Manual, prepared by the Common Ground Alliance, latest edition.

(b) Directional drilling. Directional drilling installations shall be conducted in conformance with industry standards and practices, including but not limited to the Horizontal Directional Drilling Good Practices Guidelines prepared by the HDD Consortium, latest edition, and any applicable City of Wilmington Technical Standards and Specifications.

Directional bores shall not be made under bridge footings, wingwall footings and retaining walls. Any person conducting directional drilling shall track such drilling using electronic locating equipment, pipe lasers or similar means and shall maintain records documenting the tracking for a period of three (3) years from the completion of the drilling.

(c) Safety. Any person making an excavation or performing utility work in the public right-of-way shall follow applicable OSHA regulations and work safety guidelines applicable to their work site environment. Employees shall exercise due care to avoid unsafe working conditions and to control or eliminate any hazards or exposures to injury.

Section 11-96~ Restoration of public right-of-way, streets and sidewalks.

(a) General standards. Any person performing an excavation or performing utility work in the public right-of-way, upon completion thereof, shall be responsible for the restoration of the public right-of-way to the condition in which it was before such work or excavation was commenced at such person's expense. Without limiting the generality of the foregoing such person shall:

(1) Promptly and properly refill any excavations according to the lawful, publicly available specifications and policies of the city;

(2) Restore and replace landscaping destroyed, disturbed, or damaged by such work in accordance with the lawful, publicly available specifications of the city and subject to inspection by the city engineer;

(3) If the work in the public rights-of-way requires the temporary removal of bricks, granite curbing, grates, trees or other property or materials belonging to the city, until such materials are reinstalled, and in the exercise of due care, deliver such materials to a location designated by the city or store said property or materials in a safe place satisfactory to the city to avoid damage or theft;

(4) Preserve and protect all trees and shrubbery located in the public rights-of-way from damage by the permittee. Any person making an excavation or performing utility work in the

public right-of-way shall comply with the regulations of the city concerning the preservation and protection of trees and shrubs. The franchise holder or permittee for the work shall pay to the city the cost of treating, removing and replacing any tree or shrub in the public right-of-way which has been damaged or destroyed as a result of the work; and

(5) Restore and replace any city-owned improvements destroyed, disturbed or damaged by such work including but not limited to signs, sidewalks and bike paths.

(6) Comply with the City's Technical Standards and Specifications and/or North Carolina Department of Transportation standards for the excavation, backfill, compaction and installation of pavement.

(b) Restoration of pavement. The person making an excavation or performing utility work in the public right-of-way shall restore any pavement damaged by the excavation or work unless the city agrees to perform the restoration work. Nothing in this section shall relieve the person making an excavation or performing utility work from the responsibility to maintain the excavation or installation in a safe condition until it is repaved or otherwise restored. If the city agrees to restore the pavement, the person making an excavation or performing utility work shall pay to the city all applicable street cut application, and long-term resurfacing fees and all repair fees or the estimated cost of the restoration work, whichever is the higher amount. Where the nature and number of excavations or utility cuts significantly degrade the pavement surface within one or more traffic lanes or portions of a block, the city engineer may require resurfacing sufficient to address the degradation such as resurfacing block to block and curb to curb.

(c) Responsibility for temporary repairs. The person making an excavation or performing utility work shall be responsible for all costs associated with maintaining the temporary repairs until the pavement is permanently restored. Such costs shall include but not be limited to the cost of traffic control and maintaining proper fill and compaction, temporary patches or plating and costs incurred by the city relating to the temporary repairs.

(d) Failure to make repairs. Except in the event of an emergency, if a person making an excavation or performing utility work in the public right-of-way fails, neglects, or refuses to make repairs to the public right-of-way, refill an excavation immediately after the work requiring the excavation or utility cut has been completed, or fails, neglects or refuses to restore landscaping, the city may provide for the repair and restoration and charge the cost to the person.

(e) Warranty for work in public right-of-way. Each franchise holder, Utility and permittee for an excavation or utility work shall warrant its excavation and restoration work against all defects in workmanship and materials for a period of eighteen (18) months after final completion. Whenever within the eighteen (18) months period the city engineer determines that any portion of the pavement or surface of any public right-of-way affected by an excavation or utility work is in need of repairs, by reason of any defect in workmanship or materials, the city engineer shall serve upon the franchise holder, Utility, or permittee a written notice stating the repairs necessary, and requiring the repairs to be made within ten (10) days after the date of the notice, If the repairs are not timely made, the city engineer shall at once make or cause the repairs to be made at the expense of the franchise holder, Utility or permittee. The expenses, including any related administrative expenses, shall be charged to the franchise

holder, Utility or permittee, and the franchise holder, Utility or permittee shall be obliged to pay the cost within thirty (30) days following receipt of notification of the expenses.

Section 11-97. Special provisions for newly constructed or reconstructed or resurfaced streets.

(a) Except as provided in subsection (h) below, no permit shall be issued for an excavation or utility work in any public way that has been constructed, reconstructed, repaved, or resurfaced in the preceding period of five (5) years, as measured from the date of acceptance by the city. Persons shall determine alternative methods of making necessary repairs and facility installations to avoid utility work and excavations that are subject to this section.

(b) The city engineer, for good cause, shall grant a variance to an applicant for repair of existing utilities, to respond to emergencies, or to afford a person the means to provide service to buildings that the person has no other reasonable means of serving in the determination of the city engineer. Variances shall be granted subject to special conditions that the city engineer determines to be appropriate to the circumstances, such as special coordination with other excavations and utility work, special paving requirements as referenced in Section 11-96(h), additional soil compaction test reports, or any other requirements needed to restore the integrity of the public right-of-way to "as new" condition. In addition to the information provided on the submission of plans and/or application, the applicant shall provide the following with respect to that part of the public right-of-way subject to this provision:

- (1) Reason why the excavation or utility work was not performed before or when the public right-of-way was paved;
- (2) Reason why the excavation or utility work cannot be delayed until after the five (5) year period expires; and
- (3) Reason why the excavation or utility work cannot be performed at another location or the applicant's need cannot be accomplished by a method that does not require excavation or work in the public right-of-way.

Sections 11-98 through 11-99 reserved.

Division 5. Enforcement and appeals.

Section 11-100. Administration and enforcement.

(a) This Article shall be administered and enforced by the city engineer.

(b) In addition to the assessment of the civil penalties set forth in Section 11-1 of this Code and any other remedies set forth herein, the city engineer shall have the authority to take the following administrative actions:

(1) Prohibiting contractors from working in right-of-way. The city engineer shall have the right to prohibit a contractor or subcontractor from working within the right-of-way because of repeated violations of the provisions of this article.

(2) Issuance of stop work orders. A stop work order shall be in writing, state the work to be stopped, state the reasons therefore, and state the conditions under which the work may be resumed. A stop work order may be issued for:

(A) Working in the right-of-way without a valid and unexpired utility right-of-way master permit or unrevoked and unexpired franchise or other permit, if required, issued by the city;

(B) Use of a contractor or subcontractor that has been prohibited from working in the public right-of-way;

(C) Failure to comply with any construction standards; and

(D) Failure to restore the public right-of-way.

(3) Denial of permits. The city may refuse to issue utility work permits required by this article to a utility that does not possess a valid and unexpired utility right-of-way master permit or unrevoked and unexpired franchise or to a utility that is in violation of the terms and conditions of a utility right-of-way master permit or franchise.

The city may refuse to issue permits required by this article to a person that has not paid civil penalties within forty-five (45) days after the date the penalties were assessed if the person has not appealed the assessment, or within forty-five (45) days of a final decision on appeal. The city may refuse to issue permits required by this article to a person that has not paid costs assessed hereunder within forty-five (45) days of the assessment.

(4) Assessment of cost of remediation. In the event that a person fails to properly repair and restore the right-of-way as required by this article, the city may provide for the repair and restoration and charge the cost to the person.

Section 11-101. Appeals.

(a) Any person whose permit application has been denied or who has been assessed a civil penalty may appeal such decision within ten (10) days after the date of the notice of such denial or civil penalty assessment. A person that has been charged repair and restoration costs may appeal such decision within ten (10) days after the date the city invoices such charge, Any contractor that has been prohibited from working in the public right-of-way may appeal such decision within the ten (10) days after the date of the notice of such prohibition. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the Development Services Department. The appellant shall have the right to present evidence at said hearing.

(b) A ruling on appeal is subject to review in the superior court of New Hanover County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within thirty (30) days after the date of notice of the decision is mailed to the appellant.