

## PART II - CODE OF ORDINANCES

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### CHAPTER 24 - STREETS AND SIDEWALKS

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#### Article II. - Excavations

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##### Sec. 24-51. General Requirements.

No person other than officers, agents and employees of the city or the state, or officers, agents and employees of an agency or commission or division or department of the city or of the state, shall cut, dig, bore, tunnel, excavate, or otherwise disturb or change the surface or subsurface of any portion of the right-of-way of any public street or sidewalk in the city, for the purpose of laying, constructing, reconstructing, repairing, or maintaining gas lines, telephone lines, storm sewers, sanitary sewers, water lines, or other utility lines or devices, or rails, crossties, driveways, walkways, sidewalks, walks, or any other work or improvement, or for any other purpose, until after such person has:

1. *Application.* Made written application to be permitted to accomplish such purpose. Such application shall be directed to and filed with the city engineer in three original copies duly signed by such person. As part of such application, there shall be filed with such application a construction plan showing, in all reasonable detail, the location and elevation of all installations proposed to be constructed, reconstructed, repaired or maintained, and describing all work proposed to be done on or in such street or sidewalk.
2. *Written permit.* Received from the city engineer a written permit to perform such work in such street or sidewalk.

##### *Editor's Note:*

Ord. No. S2015-002, adopted January 26, 2015, became effective July 1, 2015. Changes: 24-51 (deleted former subsection (2) Bond; 24-54 (modified (a) and (b); 24-55 (b) and (2); 24-55 (d) and (e) (replaced with new d); replacement of 24-56; 24-57 and 24-60 (modified); Sec. 24-61 (delete (a)(4)); 24-70 and 24-71 (modified); replacement of 24-72; 24-73 (modified to add a subsection); and add Sec. 24-75 (new).

(Code 1961, § 26-25; Ord. S2015-002, §2, 1-26-2015)

Effective on: 1/26/2015

##### Sec. 24-52. Excavation Permit Required.

- a. *Generally.* Except as otherwise provided in this chapter or other chapters of this Code, no person shall excavate any right-of-way or place facilities in a right-of-way without first having obtained an excavation permit from the city. No person shall excavate the right-of-way or maintain an excavation in the right-of-way beyond the date or area specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to section 24-59, and a new permit or permit extension.
- b. *Permit display.* A copy of any permit issued under this chapter shall be made available at all times by the permittee at the indicated work site and shall be available for inspection by the city upon request.

(Ord. No. S1999-018, § 26-25.1, 11-15-1999)

Effective on: 11/18/2013

##### Sec. 24-53. Excavation Permit Application.

Application for a permit shall be made to the city. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Proof of completed registration with the city if required by this chapter;
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing proposed facilities;
3. Payment of all money due to the city for:
  - a. Applicable permit fees and costs as set forth in this subsection and section [24-54](#)
  - b. Subject to subsection (5) of this section, unpaid fees or costs due for prior excavations; or
  - c. Subject to subsection (5) of this section any loss, damage, or expense suffered by the city because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the city.
4. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a restoration bond for the additional facilities is insufficient, the posting of an additional or larger restoration bond for the additional facilities may be required.
5. The city shall not deny a registrant an excavation permit because of a dispute between the city and the registrant, related to section [24-52](#) and/or this section if:
  - a. The dispute has been adjudicated in favor of the registrant;
  - b. The dispute is the subject of an appeal filed by the registrant and no decision in the matter has at yet been rendered.

*(Ord. No. S1999-018, § 26-25.2, 11-15-1999)*

Effective on: 11/18/2013

#### **Sec. 24-54. Excavation Permit Fee.**

- a. *Fee.* The excavation permit fee shall be established by the city in an amount sufficient to recover the costs incurred by the city. The fee is noted in the City of Fayetteville's fee schedule to include permit, degradation, and any additional inspection fees.
- b. *City exemption.* The city and its contractors shall not pay a degradation fee.
- c. *Payment of permit fees.* No excavation permit shall be issued without payment of applicable fees, unless the applicant shall agree to pay such fees within 30 days of billing therefor.
- d. *Fees nonrefundable.* Permit fees paid for a permit that the city has revoked for a breach as stated in section [24-61](#) are not refundable.

*(Ord. No. S1999-018, § 26-25.3, 11-15-1999; Ord. No. S2015-002, §3, 1/26/2015)*

Effective on: 1/26/2015

#### **Sec. 24-55. Right-of-Way Repair.**

- a. *Timing.* The work to be done under the excavation permit, and the repair of the right-of-way as required in this section, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under section [24-60](#)
- b. *Repair.* In addition to repairing its own work, the permittee must repair the general area of the work, and the surrounding areas, including pavement markings, signal loops, any traffic devices damaged during the work, and the paving and its foundations, to the specifications of the city. The city shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the city. A permittee may request to have the city repair the right-of-way. If the permittee requests to have the city repair the right-of-way, the city may accept or reject the request at its sole option. If the city accepts, the permittee shall be billed for the city's costs, and shall pay the amount thereof within 30 days of billing.

- c. *Standards.* The permittee shall perform repairs according to the specifications of the city and/or in the conditions specified in the permit. The city shall have the authority to prescribe the manner and extent of the repair, and may do so in written procedures of general application or on a case-by-case basis.
- d. *Warranty for work in public right-of-way.* Each franchise holder, licensee, utility or permittee performing an excavation or utility work shall warrant its excavation and restoration work against any and all defects in workmanship and materials until the road upon which the excavation or work occurred is re-surfaced extending beyond the point of the excavation or work. In the event that 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, licensee, utility, or permittee a written notice stating the repairs necessary, and requiring the repairs to be made within thirty (30) days after the date of the notice unless, in the city engineer's opinion, the scope of the work to repair the defect is limited and a shorter notice period which gives the utility sufficient time to do the work is warranted. Re-inspection by the city shall be performed upon completion of the work. 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, licensee, utility or permittee. The expenses, including any related administrative expenses, shall be charged to the franchise holder, licensee, utility or permittee, and the franchise holder, licensee, utility or permittee shall be required to pay the cost within (30) days following receipt of notification of the expenses. No additional permits will be issued for any particular franchise holder, licensee, utility or permittee until it is in compliance with the provisions of this article. At the discretion of the city engineer the warranty period referenced herein may be reduced to three (3) years if all restoration, compaction and testing requirements are followed in accordance with city standards. This ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, pursuant to G.S. 160A-175.

*(Ord. No. S1999-018, § 26-25.4, 11-15-1999; Ord. No. S2015-002, §4 and §5, 1-26-2015)*

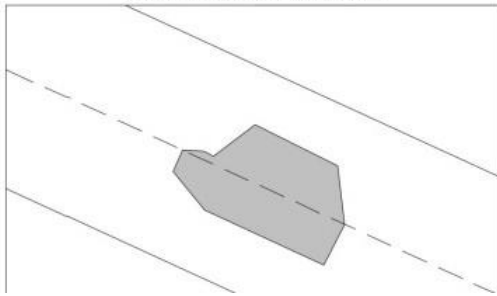
Effective on: 1/26/2015

#### **Sec. 24-56. Restoration Requirements.**

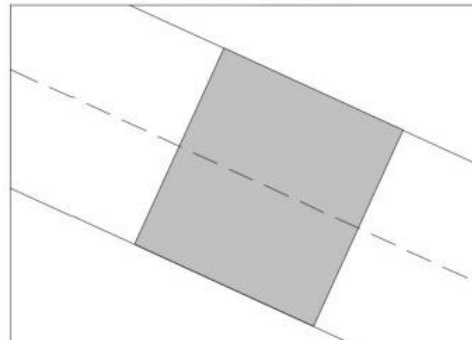
- a. *Generally.* The permittee shall restore the excavation, surrounding pavement and surrounding areas in accordance with this section (see Figure 24-56. Acceptable Restoration). The city shall specify the area to be restored and the methods and materials to be used for the restoration. The restoration area shall be adjusted in the field to meet special conditions including, but not limited to, previous paving and patching limits. Groundcover must be properly established no later than seven (7) days from completion of work in the specific area.
  - b. *Restoration Method.* After completion of the excavation, etc., any trench or opening in any street or sidewalk shall be carefully and thoroughly backfilled in uniform six-inch layers, using select materials of a type approved by the city engineer, in compliance with city standards for compaction. The material used in replacing the surface course shall be of the same type and thickness and equal in quality to that which was removed. Upon approval by the city engineer, excavatable flowable fill in accordance with the City's technical specifications may be used instead of backfill from the invert to the base layer elevation. In the discretion of the City Engineer, the warranty period may be reduced to one year if excavatable flowable fill is used.
- a.

Figure 24-56. Acceptable Restoration

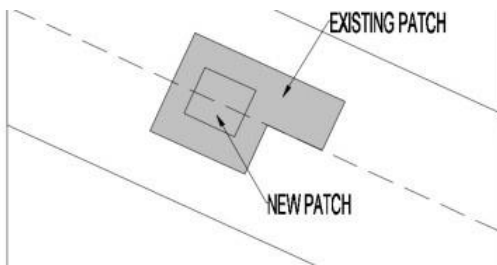
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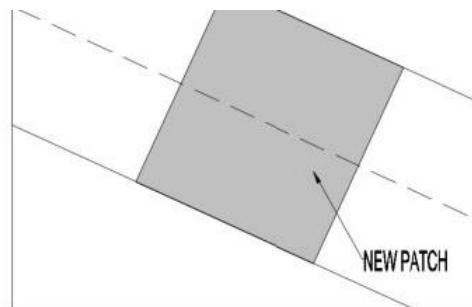
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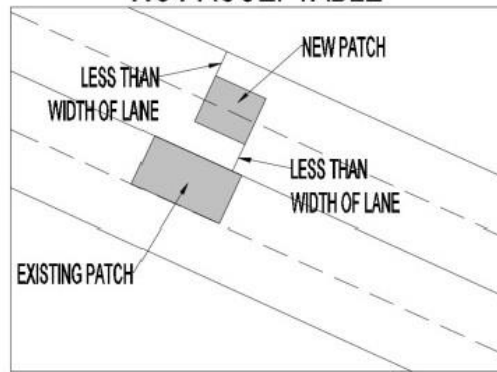
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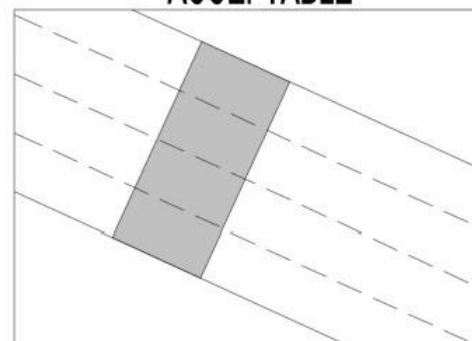
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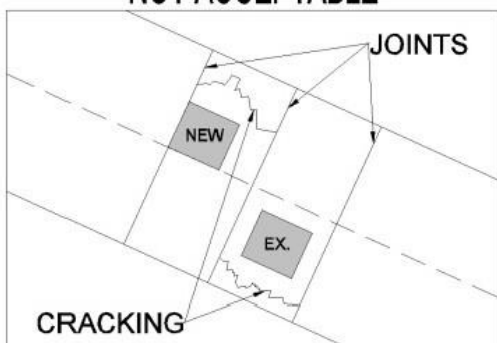
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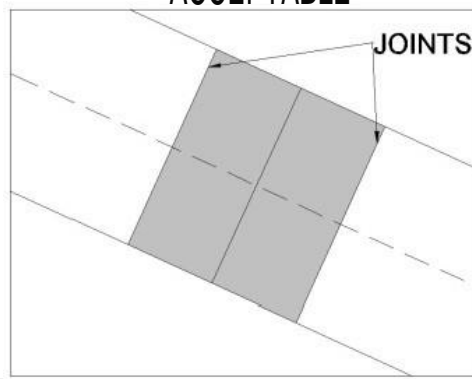
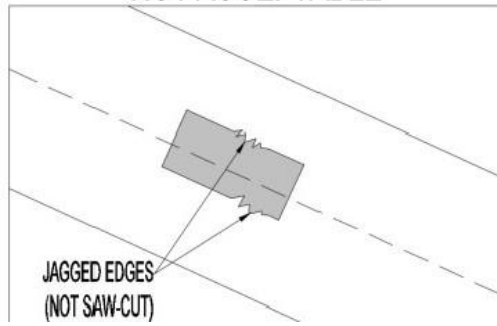
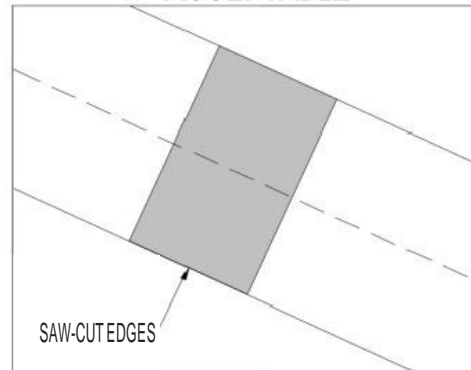


Figure 24-56. Acceptable Restoration

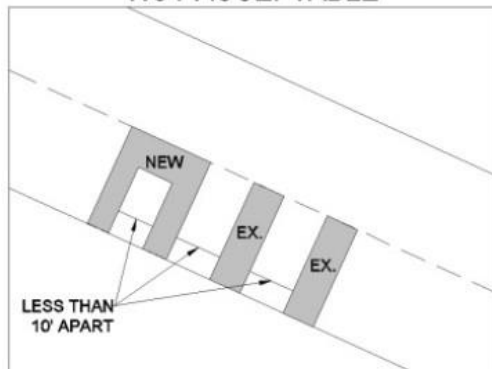
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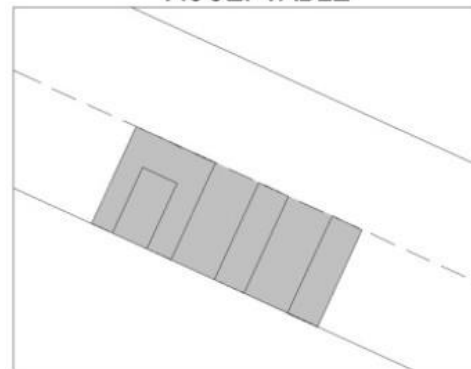
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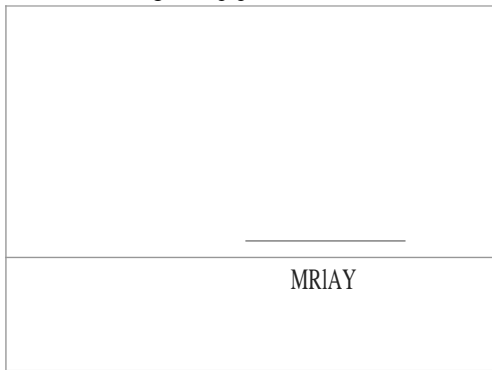
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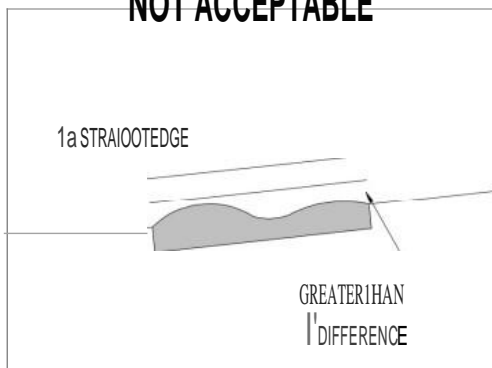
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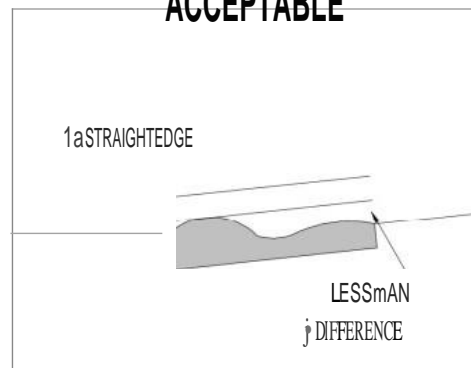
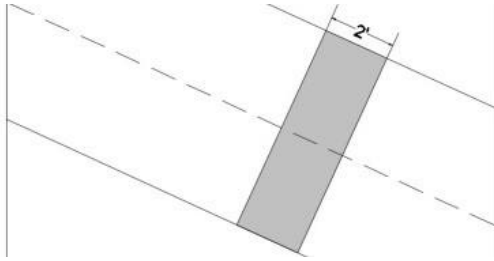
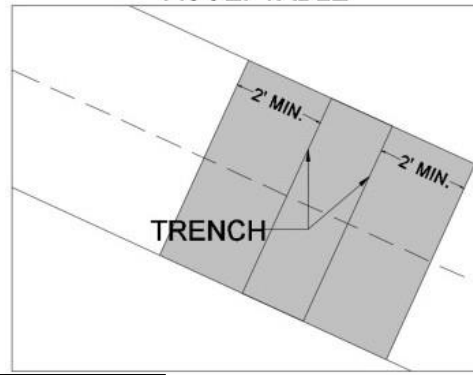


Figure 24-56. Acceptable Restoration

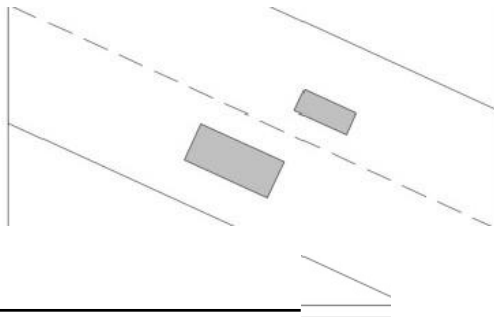
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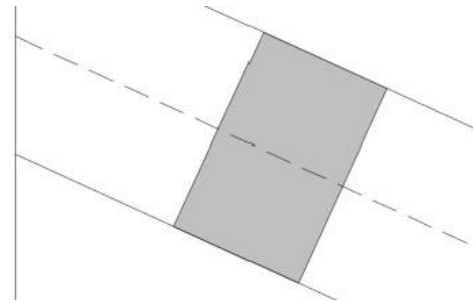
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(Ord. No. S1999-018, § 26-25.5, 11-15-1999; Ord. No. S2015-002, §6, 1-26-2015)

Effective on: 1/26/2015

#### **Sec. 24-57. Inspection.**

- a. *Notice of completion.* When the work under any permit provided for in this article is completed, the permittee shall notify the city. At such time the city engineer will inspect and determine the area of degradation. In the event repairs are necessary, re-inspection fees consistent with the fee schedule shall apply.
- b. *Site inspection.* Permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. If failures occur, repairs shall be made in accordance with Sec. [24-56](#).
- c. *Authority of city.* At the time of inspection the city may order the immediate cessation of any work which poses a threat to the life, health, safety or well being of the public. The city may issue an order to the registrant for any work that does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the registrant shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to section [24-61](#)

(Ord. No. S1999-018, § 26-25.6, 11-15-1999)

Effective on: 1/26/2015

#### **Sec. 24-58. Joint Applications.**

- a. *Generally.* Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.



- b. *With city projects.* Registrants who join in a scheduled excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portion of the excavation permit fee.
- c. *Shared fees.* Registrants who apply for permits for the same excavation, which the city does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the portion they will pay on their applications.

(Ord. No. S1999-018, § 26-25.8, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-59. Supplementary Applications.**

- a. *Limitations on area.* An excavation permit is valid only for the area of the right-of-way specified in the permit. No permittee may perform any work or excavate outside the area specified in the permit, except as provided in this article. Any permittee which determines that an area greater than that specified in the permit must be excavated must, before working in that greater area, (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
- b. *Limitations on dates.* An excavation permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided in this article, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit.
- c. *Fees for supplementary applications.* A permittee shall pay administration costs for any additional permits. A permittee is not required to pay an additional degradation fee for the same excavation, if one has already been paid on the original permit.

(Ord. No. S1999-018, § 26-25.9, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-60. Other Obligations.**

- a. *Traffic Control.* All work shall be performed with the appropriate traffic control necessary for the work. All traffic control shall be in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD), published by the Federal Highway Administration, and any city ordinances or standard drawings that may be applicable unless otherwise directed by the City Engineer.
- b. *Compliance with other laws.* Obtaining a permit to excavate and/or occupy the right-of-way does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- c. *Prohibited work.* Except in an emergency, or with the approval of the city, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- d. *Stabilization.* All disturbed ground area inside the right-of-way must be stabilized no later than seven (7) days from completion of work in the specific area.
- e. *Pipe Abandonment.* Any pipe abandoned inside the right-of-way shall be properly removed. The City Engineer may allow abandonment in-place with plug and grout filling in the event removal is not feasible.

(Ord. No. S1999-018, § 26-25.10, 11-15-1999; Ord. No. S2015-002, §8, 1/26/2015)

Effective on: 1/26/2015

#### **Sec. 24-61. Revocations, Suspensions, Refusals to Issue Or Extend Permits.**

- a. *Grounds.* The city may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

1. The applicant or permittee is required by section 24-3 to be registered and has not done so;
  2. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival, or other event;
  3. Misrepresentation of any fact by the applicant or permittee;
  4. *Deleted*
  5. Failure of the applicant or permittee to complete work in a timely manner;
  6. The proposed activity is contrary to the public health, safety or welfare;
  7. The extent to which right-of-way space where the permit is sought is available;
  8. The competing demands for the particular space in the right-of-way;
  9. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permit applicant;
  10. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
  11. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or
  12. The applicant or permittee is otherwise not in full compliance with the requirements of this chapter or state or federal law.
- b. *Discretionary issuance.* The city may issue a permit where issuance is necessary (i) to prevent substantial economic hardship to a customer of the permittee or applicant, (ii) to allow such customer to materially improve its utility service, or (iii) to allow the permittee or applicant to comply with state or federal law or city ordinance or an order of a court or administrative agency.
- c. *Appeals.* Any person aggrieved by a decision of the city revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the city manager or his designee. A request for review shall be filed with the city engineer in writing, 433 Hay Street, Fayetteville, North Carolina, 28301 within ten days of the decision being appealed. Following a hearing, the city manager may affirm, reverse or modify the decision of the city.

(Ord. No. S1999-018, § 26-25.11, 11-15-1999; Ord. No. S2015-002, 1/26/2015)

Effective on: 1/26/2015

## **Sec. 24-62. Work Done Without A Permit.**

- a. *Emergency situations.* Each registrant shall immediately notify the city by verbal notice on an emergency phone number provided by the city of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this chapter. If the city becomes aware of an emergency regarding a registrant's facilities, the city may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The city may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
- b. *Nonemergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for such permit, pay double all the other fees required by this chapter or other chapters of this Code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

(Ord. No. S1999-018, § 26-25.12, 11-15-1999)

Effective on: 11/18/2013

## **Sec. 24-63. Supplementary Notification.**

If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the city of the accurate information as soon as this information is known.

(Ord. No. S1999-018, § 26-25.13, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-64. Location of Facilities.**

- a. *Undergrounding.* Under conformity with local, state and federal law, unless existing aboveground facilities is used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- b. *Corridors.* The city may assign specific corridors within the right-of-way, consistent with state utilities commission standards. All excavation or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the state utilities commission's corridor selection standards.
- c. *Limitations of space.* The city may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare.

(Ord. No. S1999-018, § 26-25.14, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-65. Relocation of Facilities.**

- a. Except as prohibited by state or federal law, a registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the city requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to such removal or relocation. The city may make such request to prevent interference by the company's facilities (i) with a present or future city use of the right-of-way (ii) with a public improvement undertaken by the city, (iii) with an economic development project in which the city has an interest or investment, (iv) when the public health, safety and welfare require it, (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.
- b. Notwithstanding the provisions of subsection (a) of this section, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a nongovernmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

(Ord. No. S1999-018, § 26-25.15, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-66. Interference with Other Facilities During Municipal Construction.**

- a. When the city performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the city shall notify the local representative. The registrant shall meet with the city's representative within 24 hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within 72 hours, unless the city agrees to a longer period.
- b. In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the city may arrange to do the work and bill the registrant, such bill to be paid within 30 days.

(Ord. No. S1999-018, § 26-25.16, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-67. Indemnification.**

The registrant/permittee expressly acknowledges and agrees, by acceptance of the permit, to indemnify, defend, and hold harmless the city, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all loss or expense, including liability costs and attorney's fees, by reason of any claim or suit, or of liability imposed by law upon the city or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of registrant/permittee or their agents, officers, or employees in the exercise of its rights under this permit, whether caused by or contributed to by the city or its agents or employees;

(Ord. No. S1999-018, § 26-25.17, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-68. Abandoned Facilities.**

- a. *Discontinued operations.* A registrant/permittee who has determined to discontinue its operation in the city must either:
1. Provide information satisfactory to the city that the registrant's obligations for its facilities under this chapter have been lawfully assumed by another registrant; or
  2. Submit to the city a proposal and instruments for dedication of its facilities to the city. If a registrant proceeds under this subsection, the city may, at its option:
    - a. Accept the dedication for all or a portion of the facilities;
    - b. Require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or
    - c. Require the registrant to post a bond or provide payment sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the city waives this requirement.

- b. *Abandoned facilities.* Facilities of a registrant who fails to comply with this section, and which for two years remain unused, shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the city may, at its option, (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

(Ord. No. S1999-018, § 26-25.18, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-69. Reservation of Regulatory and Police Powers.**

The city, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has now or may be hereafter granted to the city under the Constitution and statutes of the state to regulate the use of the right-of-way by the permittee. The permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or may be from time to time vested in or reserved to the city shall be in full force and effect and subject to the exercise thereof by the city at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law and ordinances enacted by the city pursuant to such powers.

(Ord. No. S1999-018, § 26-25.19, 11-15-1999)

Effective on: 11/18/2013

#### **Sec. 24-70. Trenching Requirements.**

When, in the course of excavating, etc., in any street or sidewalk, it is necessary to dig a trench in such street or sidewalk, such trench shall be dug or made in a workmanlike manner and in suitable widths and, when necessary to prevent caving, shall be braced in a manner to be approved by the city engineer. All trenching must comply with all local, state, and federal safety regulations to include those set forth by the Occupational Safety and Health Administration (OSHA).

*(Code 1961, § 26-26; Ord. No. S2015-002, §10, 1/26/2015)*

Effective on: 1/26/2015

## **Sec. 24-71. Tunneling Requirements.**

When, in the course of excavating, etc., in any street or sidewalk, it is necessary to tunnel or bore under the surface of such streets or sidewalks, the tunneling or boring shall conform to the following standards:

1. The diameter of the hole to be bored shall not exceed the outside diameter of the pipe by more than three inches unless otherwise approved by the city engineer.
2. When it becomes necessary to make an opening into any improved street surface, and it becomes necessary to excavate a greater area than the opening that has been cut in the improved surface, or if the sides of the excavation are allowed to cave in so that the area of the subgrade opening becomes greater than the area of the improved surface, the opening in the improved surface shall be enlarged to fit the opening in the subgrade.
3. All tunneling must comply with all local, state and federal safety regulations, including but not limited to, OSHA regulations.

*(Code 1961, § 26-27; Ord. No. S2015-002, §11, 1/26/2015)*

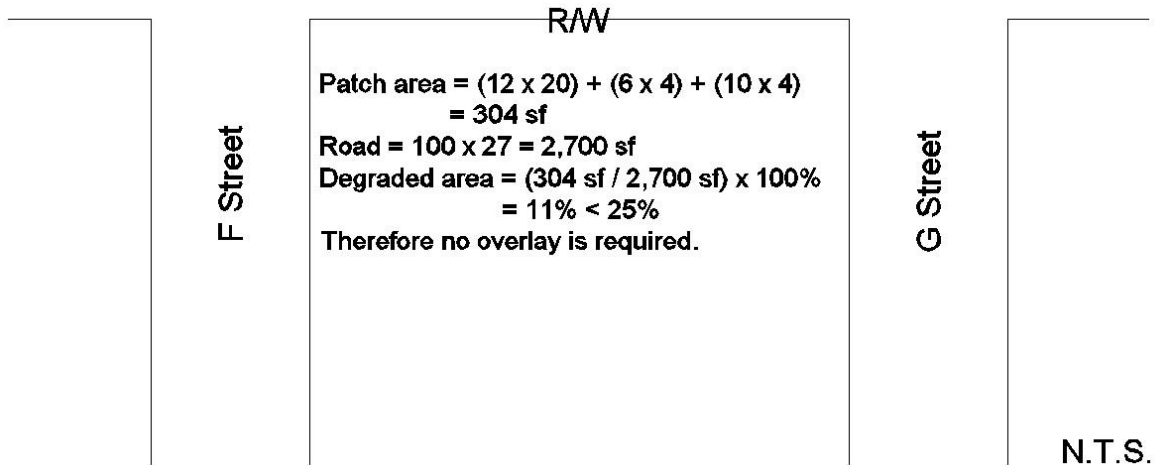
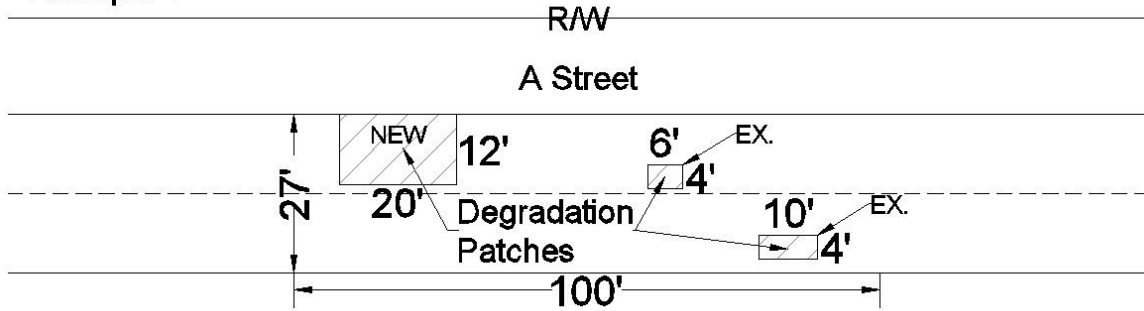
Effective on: 1/26/2015

## **Sec. 24-72. Resurfacing Requirements.**

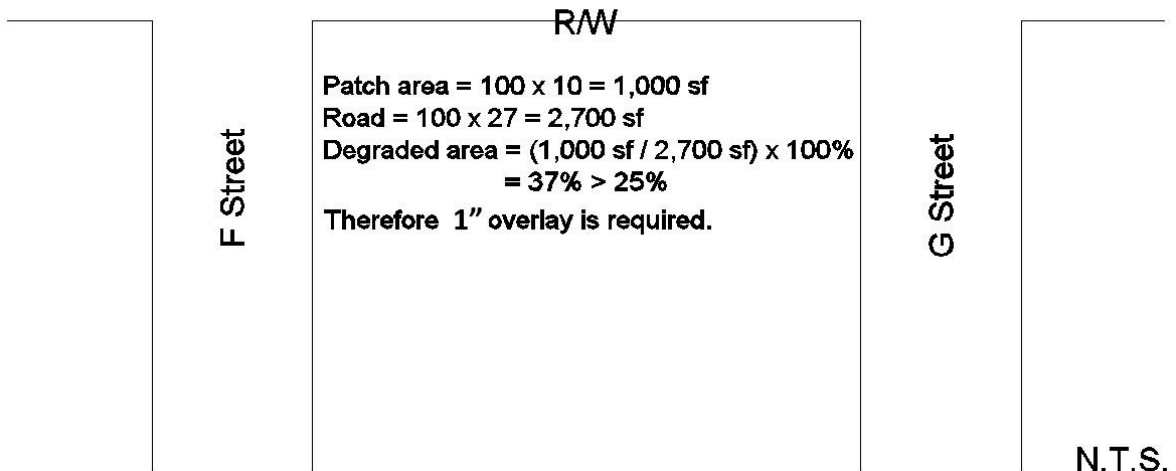
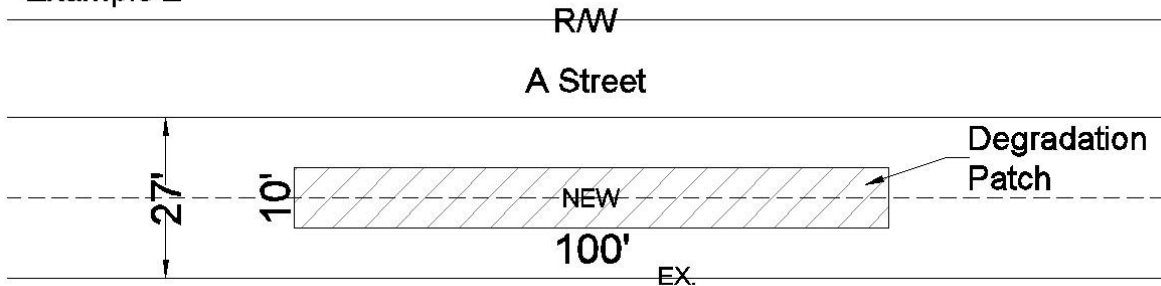
- a. *Degradation.* Any street that is degraded 25% or greater between intersections shall be overlaid with a minimum of one (1) inch of asphalt for the entire length of the street between the intersecting streets. Percentage of degradation, including new and existing degradation, will be determined by the city engineer prior to excavation as illustrated in Figure 24-72 below. The resurfacing limits shall be adjusted in the field to meet special conditions including, but not limited to, previous paving and patching limits. A temporary patch flush with the existing asphalt elevation shall be used for at least one (1) year but no longer than eighteen (18) months to allow settlement prior to completion of the final asphalt layer. The asphalt mix to be used shall comply with the City's pavement specifications for the specific use type. Edge milling will be required if determined to be necessary by the city engineer based on existing conditions. No additional permits will be issued for any utility or permittee until it is in compliance with the provisions of this section. No franchise holder, licensee, utility, or permittee will be exempt from this section.

Figure 24-72. Resurfacing requirement – Calculation example

Example 1

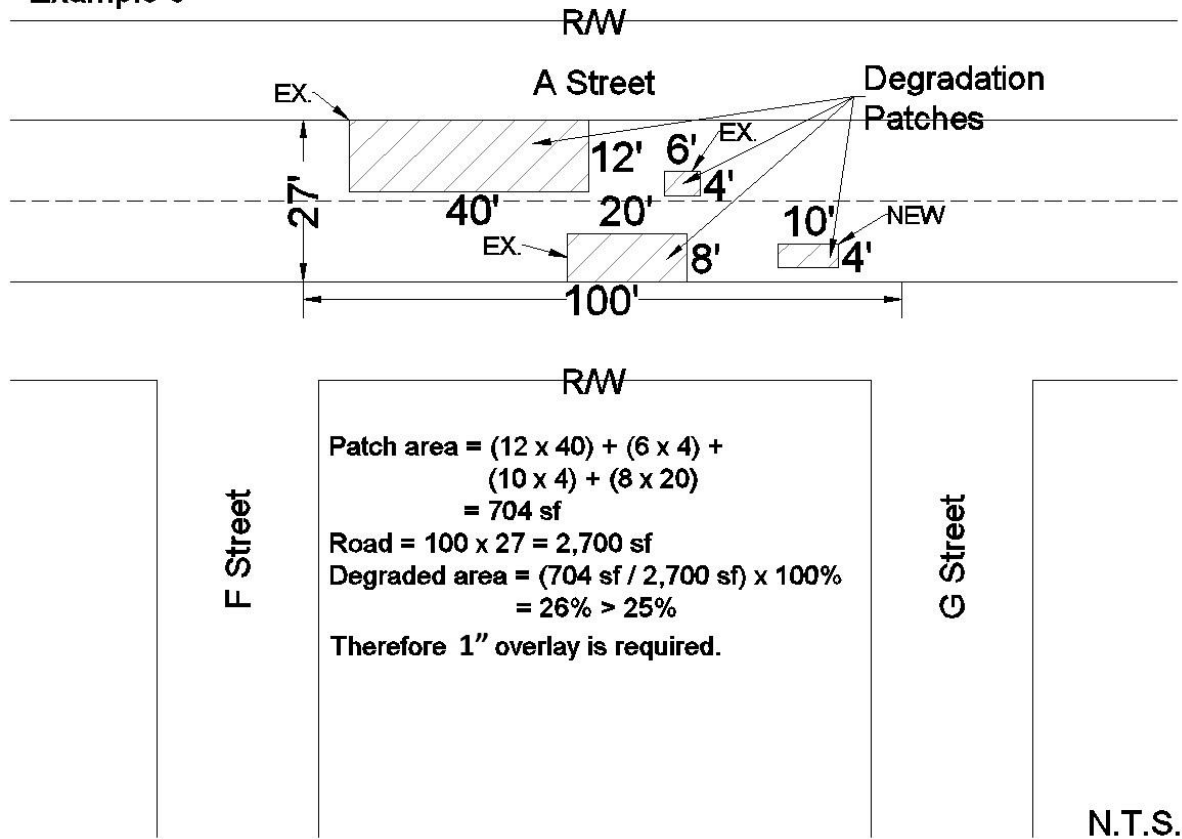


Example 2





### Example 3



- b. *Backfill.* After completion of the excavation, etc., any trench or opening in any street or sidewalk shall be carefully and thoroughly refilled in uniform six-inch layers, using select materials of a type approved by the city engineer, in compliance with city standards for compaction and testing. The material used in replacing the surface course shall be of the same type and thickness and equal in quality to that which was removed. Excavatable flowable fill that is in accordance with the City's technical specifications may be used instead of backfill from the invert to the base layer elevation upon approval of the City Engineer.
- c. *Warranty.* Each franchise holder, licensee, utility or permittee performing resurfacing work shall warrant its work against any and all defects in workmanship and materials for a period of one (1) year from the date of completion.
- d. *Payment-in-lieu.* The permittee may elect to pay-in-lieu-of overlay in accordance with the City of Fayetteville's fee schedule. **Said fee will be contributed to the City's resurfacing program.**

*Editor's Note:*

*(Code 1961, § 26-28; Ord. No. S2015-002, 1/26/2015 replaced this section. Effective date was 7/1/2015.)*

Effective on: 1/26/2015

**Sec. 24-73. Safety Precautions.**

- a. *Generally.* Adequate protection against injury or damage which may be caused by excavating, etc., in the streets or sidewalks shall be provided at all times. Suitable barricades and warning lights shall be constantly provided in a manner adequate to warn both vehicular and pedestrian traffic. All necessary precautions shall be taken to protect utility lines and other improvements and structures and installations in such street or sidewalk from damage.
- b. *Steel Plating.* Steel plating may be used during periods of no work activity upon approval of the city engineer in accordance with city standards.

*(Code 1961, § 26-29; Ord. No. S2015-002, §13, 1/26/2015)*

Effective on: 1/26/2015

**Sec. 24-74. Replacing Installations; Data on Installations.**

- a. Any person engaging in the excavation, etc., in any city street or sidewalk, at his expense, shall fully repair and replace any and all paving, curbing, guttering, utility lines, and other installations, structures, and improvements in such street or sidewalk that are necessarily, deliberately, or accidentally, whether with or without fault on the part of such person, moved, changed, damaged, or destroyed in the course of the work.
- b. The city, through its city engineer and other officers, agents, and employees, shall make available to such person all knowledge and data which the city has on existing paving, utilities, and other installations and structures in such street or sidewalk, but inability or failure to furnish any such or the furnishing of such which may prove to be incorrect, shall in no wise relieve such person from any responsibility under this article, the intent of the article being that such person must assume full responsibility for any and all damage and cost caused or occasioned by such work.

*(Code 1961, § 26-30)*

Effective on: 11/18/2013

**Sec. 24-75. Newly constructed, reconstructed or resurfaced streets.**

- a. *Permitting.* Except as provided in subsections (b) and (c) below, no permit shall be issued for an excavation or utility work in any right-of-way that has been constructed, reconstructed, or resurfaced in the preceding period of thirty-six (36) months as measured from the date of acceptance by the city. Any repairs or facility installations that are necessary during this thirty-six month period shall be designed to utilize alternative methods to excavation.
- b. *Application.* Application may be made to the city engineer to request an exception from the prohibition outlined in subsection (a) of this section under the following circumstances:
  1. To respond to an emergency.
  2. To comply with applicable state or federal regulation.
  3. To provide service to a building or structure that cannot reasonably be served by other means. Application for an exception shall include the submission of plans detailing the proposed excavation or utility work and the applicant shall provide the following justifications with respect to that part of the public right-of-way subject to this provision:
    - a. Reason why the excavation or utility work was not performed before or when the public right-of-way was paved;
    - b. Reason why the excavation or utility work cannot be delayed until after the thirty-six-month period expires; and



- c. Reason why the excavation or utility work cannot be performed at a reasonable cost 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.
- c. Exception. The city engineer, for good cause shown, may grant an exception to subsection (a) for the repair of existing utilities, subject to special conditions that the city engineer determines to be appropriate to the circumstances. These conditions include, but are not limited to, special coordination with other excavations and utility work, special paving requirements, additional soil compaction test reports, or any other requirements needed to restore the integrity of the public right-of-way to "as new" condition. Any permittee granted an exception under this section will be assessed five (5) times the current degradation fee provided in the City of Fayetteville's fee schedule. Emergency repairs are not exempt.
- d. Newly Constructed Streets. All backfill operations related to utility installation for newly constructed streets shall be performed in accordance with the city standards for compaction and testing. Upon approval by the City Engineer, excavatable flowable fill may be used instead of backfill from the invert to the base layer elevation in accordance with the City's technical specifications.
- e. Scheduled Resurfacing. Any excavation on a street that is scheduled for re-surfacing within twelve (12) months of the date of excavation will require compaction testing in accordance with city standard.

§15, 1/26/2015)

Effective on: 1/26/2015

## **Sec. 24-76. Exemptions**

Exemptions from the requirements of Article II shall be issued for the following:

- a. Annexation Projects with the Public Works Commission (PWC): Pursuant to written agreements including but not limited to the standards included in the "Agreement between the City and PWC Establishing a Formal Agreement to Fund the Construction of Water and Sanitary Sewer Systems in the Annexed Areas Referred to as Phase V" (entered into on or about May 12, 2008 (amended June 27, 2016)), none of the requirements of Article II shall be applicable to PWC except for the following provision: for streets within the Phase V Annexation Areas, PWC may elect to pay-in-lieu of complete overlay in accordance with the resurfacing contract bid prices in which streets are included. All streets will be included in the next available resurfacing contract within twelve (12) to eighteen (18) months after completion of the utility installation project to allow any settlement of the temporary patch to occur.
- b. Resurfacing Program: For permittees whose approved work is to occur on a street slated or included in the City's Resurfacing Program, the permittee is only required to restore the area disturbed by the excavation. (Neither the restoration requirements delineated in Section 24-56 nor the degradation requirements in Section 24-72(a) will apply.)

## **Secs. 24-77—24-100. Reserved.**

Effective on: 1/26/2015