

CHAPTER 1. GRADING CODE
ARTICLE a. GENERAL PROVISIONS

Sec. 5-10-101. Title reference to Code.

This chapter shall be known as and may be cited as the “Irvine Grading Code and Encroachment Regulations.” “Code” as referred to in this chapter, unless the context clearly indicates otherwise, shall mean the Irvine Grading Code and Encroachment Regulations.

Sec. 5-10-102. Grading Manual.

- A. The Chief Building Official shall formulate and modify as necessary such rules, procedures and interpretations as may be necessary to administer this division. Such rules, procedures and interpretations shall be referred to as the “City of Irvine Grading Manual” or the “Grading Manual,” and any amendments to it shall be as adopted by the Chief Building Official.
- B. The Grading Manual shall include provisions to assure that the Water Quality Requirements relevant to activities subject to this Chapter apply to such activities.
- C. In the event of any conflict between said Grading Manual and this Code, the provisions of this Code shall govern. The provisions of said Grading Manual shall, to the extent that they are made conditions of any Grading Permit by the Chief Building Official, be binding on the permittee.

Sec. 5-10-103. Purpose and intent.

It is the intent of this Code to safeguard life, limb, property and the public welfare by regulating Grading and controlling the quality of water runoff on private and public property in the incorporated areas of the City of Irvine.

Sec. 5-10-104. Scope.

- A. This Code sets forth rules and regulations to control Excavation, Grading and earthwork, construction, including Fills and embankments; establishes administrative requirements for issuance of Grading permits; maintenance of property; and provides for approval of plans and inspection of Grading construction in accordance with the requirements for Grading and Excavation as contained in the Building Code Regulations of the City of Irvine then in effect as adopted and modified by the Water Quality Requirements relevant to activities subject to this Title.
- B. In the event that a particular topic is not covered in either this Chapter or the Grading Manual, provisions of the Building Code Regulations of the City of Irvine shall govern. If a conflict arises between the Building Code Regulations of the City of Irvine and this Chapter or the Grading Manual, the specific provisions of the Code or manual shall govern.

Sec. 5-10-105. Definitions.

The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approval shall mean a written engineering or geological opinion by the responsible engineer, geologist of record or responsible principal of the engineering company concerning the progress and completion of the work unless it specifically refers to the Chief Building Official.

Approved Plans shall mean the current Grading plans which bear the stamp of approval of the Chief Building Official.

Approved Testing Agency shall mean a facility whose testing operations are controlled and monitored by a registered Civil Engineer and which is equipped to perform and certify the tests required by this Code, or the Grading Manual, as determined by the Chief Building Official.

Best Management Practices shall mean schedules of activities, pollution treatment practices or devices, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or the storm water Drainage System. Best Management Practices also include but are not limited to treatment practices, operating procedures, and practices to control Site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Best Management Practices may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this Chapter.

Bench shall mean a relatively level step excavated into Earth Material on which Fill is to be placed.

Chief Building Official is that person charged with the administration and enforcement of this Code or his or her authorized representative.

Civil Engineer shall mean a professional engineer registered in the State of California to practice in the field of Civil Engineering.

Civil Engineering shall mean the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials for the evaluation, design and construction of civil works for the beneficial uses of mankind.

Clearing, Brushing and Grubbing shall mean the removal of vegetation (grass, brush, trees and similar plant types) by mechanical means.

Code shall mean the Code of Ordinances of the City of Irvine.

Commercial coach is a vehicle with or without motive power, designed and equipped for human occupancy for industrial, professional or commercial purposes, and shall include a trailer coach.

Compaction is the densification of a Fill by mechanical means.

Dry Season is that part of the calendar year wherein a lower potential for rain exists starting on May 1 and ending on September 30.

Earth Material is any rock, natural Soil or Fill, and/or any combination thereof.

Engineering Geologist shall mean a geologist certified in the State of California to practice Engineering Geology.

Engineering Geology shall mean the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and Soil for use in the design of civil works.

Erosion is the wearing away of the ground surface as a result of the movement of wind, water and/or ice.

Erosion and Sediment Control Plan is a plan prepared, stamped and signed by a Civil Engineer in accordance with the Grading Manual and the City's Local Implementation Plan which shows the various temporary, semi-permanent and permanent Erosion and Sediment Control Devices and Systems, and incorporates appropriate Best Management Practices. The Plan shall accommodate construction sequencing, and both rainy and dry seasons.

Erosion and Sediment Control System is a combination of desilting facilities and Erosion protection, including effective planting, to protect property, watercourses, public or private facilities and receiving waters from an abnormal deposition of sediment or dust.

Excavation is the mechanical removal of Earth Material.

Fill is a deposit of Earth Material placed by artificial means.

Grade shall mean the vertical location of the ground surface.

- (1) *Existing Grade* is the ground surface prior to Grading.
- (2) *Finish Grade* is the final grade of the Site which conforms to the approved precise plan.
- (3) *Natural Grade* is the ground surface unaltered by artificial means.
- (4) *Rough Grade* is the stage at which the grade approximately conforms to the approved plan.

Grading is any excavating or Filling or combination thereof.

Grading Contractor is a contractor licensed and regulated by the State of California who specializes in Grading work or is otherwise licensed to do Grading work.

Grading Permit is an official document or certificate issued by the Chief Building Official authorizing Grading activity as specified by Approved Plans and specifications.

Hillside Site is a Site where the Existing Grade is ten percent or greater, and which may be adversely affected by drainage and/or stability conditions within or from outside the Site, or which may cause an adverse effect on adjacent property.

Local Implementation Plan see section 6-8-301 for definition.

Mobile Home means a structure, transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. "Mobile home" does not include recreational vehicle, Commercial Coach or factory-built housing.

Owner is any person, agency, firm or corporation having a legal or equitable interest in a given real property.

Permanent Erosion and Sediment Control Devices are improvements that remain throughout the life of the development. They include Terrace drains, down drains, Slope landscaping, channels, storm drains, etc.

Precise Grading Permit is a permit that is issued on the basis of Approved Plans that show the precise structure location, finish elevations and all on-Site improvements.

Rainy Season is that part of the calendar year wherein a higher potential for rain exists starting on October 1 and ending on April 30.

Rough Grading Permit is a permit that is issued on the basis of Approved Plans showing interim building pad drainage to the degree required by the Chief Building Official.

Semi-Permanent Erosion and Sediment Control Devices are devices that are used primarily during construction and are not relocatable. They include earthen berms, concrete spillways, desilting basins, riser/outlet pipes, etc.

Site is any lot or parcel or land or contiguous combination thereof under the same Ownership, where Grading is performed or permitted.

Slope is an inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

Soil is naturally occurring, surficial deposits overlying bedrock.

Soil Engineer or Geotechnical Engineer is a Civil Engineer duly registered in the State of California whose field of expertise is Soil mechanics.

Soil Engineering or Geotechnical Engineering shall mean the application of the principles of Soil mechanics in the investigation, evaluation and design of civil works involving the use of Earth Materials and the inspection and testing of the construction thereof.

Special Inspector is an inspector duly licensed by the Chief Building Official to perform specialized inspections of asphalt concrete placement and related construction work or other Grading related work as specified by the Chief Building Official.

Storm Water Permits are permits issued by a local, state or federal regulatory agency regulating storm water flow over and from any project subject to this Chapter including but not limited to NPDES permits and State General Permits as defined in section 6-8-301.

Surveyor shall mean a professional surveyor or Civil Engineer registered in the State of California to practice land surveying.

Temporary Erosion and Sediment Control Devices are devices that are removable and can be salvaged for subsequent reuse. In most cases they will last no longer than one Rainy Season. They include sandbags, gravel bags, plastic sheeting (visqueen), silt fencing, straw bales, and similar items.

Terrace is a relatively level step constructed in the face of a graded Slope surface for drainage and maintenance purposes.

Water Quality Requirements are the requirements relevant to the activities that are subject to this Chapter found in the Water Quality provisions contained in Division 8 of Chapter 3 of title 6 of the Codified Ordinances of the City of Irvine, and the DAMP and Local Implementation Plan as defined in section 6-8-301 including all appendices and guidance documents included in the DAMP as well as requirements relevant to the activities that are subject to this Chapter found in Storm Water Permits.

Wet Season shall mean Rainy Season.

Sec. 5-10-106. Reserved.

ARTICLE b. PERMITS REQUIRED

Sec. 5-10-107. Grading permit exemptions.

No person shall conduct any Grading, Clearing, Brushing or Grubbing on Natural or Existing Grade that is preparatory to Grading without first having obtained a Grading Permit from the City. Exemptions to this requirement are as follows or as otherwise determined by the Chief Building Official:

- A. An Excavation below Finished Grade for basements and footings of a building, Mobile Home, retaining wall or other structure authorized by a valid building permit or construction permit. This shall not exempt any Fill made with the

material from such Excavation nor exempt any Excavation having an unsupported height greater than five feet after the completion of such structure. This shall not prohibit a minimum fee Grading Permit or Soil or geologic report from being required for foundation design and inspection purposes when, in the opinion of the Chief Building Official, stability or flooding considerations warrant such inspection.

- B. Cemetery graves.
- C. Earthwork construction regulated by the federal, State, County or City government, or by any local agency as defined by Government Code § 53090 (special districts). This exemption, however, shall apply only when the earthwork construction takes place on the property, or dedicated rights-of-way or easements of the above agencies.
- D. Excavation and backfill for installation of underground utilities by public utilities or companies operating under the authority of a franchise or public property Encroachment Permit.
- E. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressures upon any adjacent or contiguous property.
- F. Exploratory Excavations under the direction of Soil engineers or Engineering Geologists, provided all Excavations are properly backfilled. All such elevations and trenches are subject to the applicable sections of title 8 of the State Orders, Division of Industrial Safety.
- G. An Excavation which does not exceed 50 cubic yards on any one Site and which is less than two feet in vertical depth, or which does not create a cut Slope greater than five feet in vertical height and steeper than two horizontal to one vertical (2:1).
- H. A Fill less than one foot in depth placed on Natural Grade with a Slope flatter than five horizontal to one vertical (5:1), or a Fill less than three feet in depth, not intended to support structures or Mobile Homes, which does not exceed 50 cubic yards on any one Site and does not obstruct a drainage course.
- I. Grading in conjunction with work performed pursuant to the provisions of Title 6, Division 5 of the Codified Ordinances of the City of Irvine (Oil and Gas Regulations) unless the Chief Building Official determines it is necessary to obtain a Grading Permit to assure proper construction of a building or other structure, or where it is necessary for the protection of adjacent properties not devoted to oil drilling or production.

Sec. 5-10-108. Grading Permit, paving.

No person shall construct pavement surfacing in excess of 3,000 square feet, on Natural or Existing Grade, for the purpose of a private road or commercial, industrial or multi-residential parking lot or travel way without a valid Grading Permit unless waived by the Chief Building Official or a separate improvement plan for such paving is approved and signed by the City Engineer. Resurfacing or maintenance of paved surfaces shall be exempt from this requirement.

Sec. 5-10-109. Grading Permit, watercourse alteration.

No person shall alter an existing watercourse, channel or revetment by excavating or placing Fill, rock protection or structural improvements without a valid Grading Permit unless waived by the Chief Building Official or performed as interim protection under emergency flood-fighting conditions or a separate improvement plan for such work has been approved by the City.

Sec. 5-10-110. Types of Grading Permits.

- A. Either a Rough Grading Permit or a Precise Grading Permit may be issued for Grading work upon completion of an application in accordance with the Grading Manual and approval by Chief Building Official. The Rough or Precise Grading Permit is the option of the permittee provided that the plans satisfy the requirements of the Grading Manual.
- B. Building permits may be issued for a Site graded under a valid precise Grading Permit upon completion and approval of Rough Grade inspection as specified in section 5-10-145, "Site inspection."
- C. Building permits shall not be issued for a Site graded under a Rough Grading Permit until a Precise Grading Permit has been issued and the provisions of B above have been satisfied.

ARTICLE c. ORGANIZATION AND ENFORCEMENT

Sec. 5-10-111. Enforcement.

- A. The provisions of section 202, Powers and Duties of Building Official, of the Uniform Administrative Code shall apply to Grading construction work.
- B. Stop orders. Whenever any building or Grading work is being done contrary to the provisions of this Code or the Grading Permit, the Chief Building Official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done; and any such persons shall forthwith stop such work until authorized to proceed by the Chief Building Official.
- C. Whenever any building or Grading work is being done contrary to the provisions of the Water Quality Requirements related to activities subject to this chapter in addition to the powers and duties specified in subsections A. and B. the Chief

Building Official may utilize any enforcement provision specified in section 6-8-305.

Sec. 5-10-112. Reserved.

Sec. 5-10-113. Violations and penalties.

- A. It shall be unlawful for any person, firm or corporation to conduct Grading in the City of Irvine, or cause the same to be done, in a manner that is contrary to or in violation of any of the provisions of this Code.
- B. The issuance of a building permit, performance of building permit inspections, or issuance of a certificate of use and occupancy may be withheld for property on which a violation of the provisions of this Code exists, including work performed not in accordance with Approved Plans, until such violation has been corrected to the satisfaction of the Chief Building Official.
- C. Any person, firm or corporation violating any of the provisions of this Code shall be deemed guilty of a misdemeanor; and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued or permitted; and upon conviction of any such violation such personnel shall be punishable by a fine or by imprisonment as prescribed in section 4-13-201 of the Code, or by both such fine and imprisonment for each offense.

Sec. 5-10-114. Hazardous conditions.

- A. *Existence.* Hazardous conditions exist when the state of any natural ground, Natural Slopes, Excavation, Fill or drainage device, any of which exist on public or private property, is a menace to life or limb, or a danger to public safety, or endangers or adversely affects the safety, usability or stability of adjacent property, structures, or public or private facilities.
- B. *Examination.* The Chief Building Official may examine or cause to be examined every condition reported as hazardous as set forth in subsection A of this section.
- C. *Notice of hazardous condition; hearing.* Whenever the Chief Building Official determines that a hazardous condition exists as set forth in subsection A of this section, the Chief Building Official shall give the Owner or other person or agency in control, or the permittee under any permit issued pursuant to this Code, of the property upon which such Excavation, Fill or condition is located, notice of such determination and demand for immediate corrective action of any such conditions, and the time and place that a hearing shall be held thereon before the Chief Building Official. The purpose of the hearing would be for the presentation of evidence concerning the hazardous conditions and demand for corrective work or submission of reports. The notice shall set forth the right of the Owner to be present at the hearing, at his or her option, and introduce such relevant evidence on the issues as he or she desires. If the time and place of any hearing scheduled

for the presentation of evidence is not included in the initial notice(s), it shall be included in a subsequent notice.

- D. *Evidence.* At the time and place so specified for the hearing, evidence shall be submitted as to the facts of any condition as to reasonably establish its existence; and the Chief Building Official, as hearing officer, shall determine whether the facts presented reasonably establish the existence of a hazardous condition to the satisfaction of the hearing officer. Evidence may further be submitted as to the work or reports considered necessary to correct or determine work to correct said hazard.
- E. *Order, finality and appeal.* If the hearing officer determines the existence of a hazardous condition, he or she shall determine whether such hazards are subject to corrective work and/or the need for more analysis through the preparation of reports and shall order such work or reports and specify a completion time.
1. *Finality of order.* The determination and order may be made orally at the hearing and shall be written and transmitted to the Owner within a reasonable time. The determination and order shall become final five days, excluding Saturdays, Sundays and holidays, from the time it is first rendered. In the event that the Owner was not present at the hearing, the determination and order shall become final five days from the mailing of the order to the last-known address of said Owner.
 2. *Appeal.* The Owner may, at any time prior to the determination and order becoming final, appeal in writing the decision of the hearing officer to the City Council.
- F. *Completion of work.* The Owner shall, following the finality of the determination and order of the hearing officer, or if appealed, the determination and order of the City Council, commence the corrective action ordered or preparation of reports; and such work or submissions shall be completed within the specified time.
- G. *Failure to complete work.* If the Owner neglects or fails to complete the corrective work or submit the reports ordered by the hearing officer or City Council within the specified time, the Chief Building Official may:
1. Cause the work to be performed or reports to be prepared; or
 2. Advise the Owner of the need for corrective work and warn him or her that in the absence of such corrective work, subsequent future hazards may occur which could result in an order to excavate the premises.
- Nothing in this subsection shall be construed to limit the type of remedy or relief which the Chief Building Official may have under any other provision of law.
- H. *Costs.* Costs incurred by the City to perform any corrective work or prepare reports per subsection G above may be charged to the Owner. The Chief Building

Official may apply to the City Council to cause the costs to be paid and levied as a special assessment against the property and collected in a manner provided for special assessments.

- I. *Vacation of property.* If necessary, the notice and order in subsection C or E of this section shall include the requirement that the property, a portion thereof or adjacent Sites be vacated within a specified time, in the interest of public safety, pending the finality of a determination and order or completion of corrective work. The Chief Building Official shall cause the property to be posted at conspicuous locations with a notice containing, at least the following:

UNSAFE TO OCCUPY

DO NOT ENTER

Building and Safety Division

City of Irvine

Date Posted: _____

Said posted notice may also contain the date, time and place of the hearing and the name, address and telephone number of the office of Chief Building Official; and no person shall enter the property except for the purpose of making the required corrections or preparing reports.

- J. *Service of notices.* The notices and order required by subsections C and E of this section may be served either:
1. By mailing a copy by certified mail, return receipt requested, to the Owner's address as designated on papers, applications or permits on file with the City of Irvine; or
 2. By personally delivering a copy to the Owner's address as designated on papers, applications or permits on file with the City of Irvine; or
 3. If the Owner is absent from his or her place of residence and from his or her usual or designated place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy by certified mail, return receipt requested, addressed to the Owner or authorized representative at his or her place of residence; or
 4. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, building or structure and also delivering a copy to a person there residing, if any, or to the person in charge if any; and also sending a copy by certified mail, return receipt requested, addressed to the Owner at the place where the property,

building or structure is situated, or to the Owner at his or her last-known or designated address, or both.

ARTICLE d. GRADING PERMIT REQUIREMENTS

Sec. 5-10-116. Permit Application.

- A. To obtain a Grading permit, the applicant must first file an application in writing on a form furnished by the Chief Building Official. The permit application shall be accompanied by information required by the Chief Building Official and as specified in the Grading Manual. Each application for a Grading Permit for a construction Site required to be covered under the State General Construction Storm Water Permit (“General Permit”) shall include proof of the filing of a Notice of Intent with the State Water Resources Board.
- B. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans submitted for checking may thereafter be returned to the applicant or destroyed by the Chief Building Official. The Chief Building Official may extend the time for action by the applicant for a period not exceeding 180 days upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. In order to renew action for an application after expiration, the applicant shall resubmit plans and pay a new plan check fee.

Sec. 5-10-117. Plans and specifications.

- A. Each application for a Grading Permit shall be accompanied by plans and specifications, and supporting data consisting of Soils Engineering and Engineering Geology reports when required by the Chief Building Official, as specified in section 5-10-120, “Soil engineering, engineering geology and seismicity reports,” of this Code.
- B. Plans and specifications for earthwork projects of 5,000 cubic yards or more, and/or subdivisions and hillside commercial, industrial and multi-residential projects shall be prepared and signed by a Civil Engineer, unless otherwise approved by the Chief Building Official. This requirement may be extended to any project when, in the opinion of the Chief Building Official, critical drainage or geologic factors may be involved and there is a need for Civil Engineering design and control.

Sec. 5-10-118. Reserved.

Sec. 5-10-119. Information on plans and specifications.

Grading plans and specifications shall be prepared in accordance with the Grading requirements of section 5-10-141, “Responsibilities of the Responsible Professionals,” of this Code and of the Grading Manual.

Sec. 5-10-120. Soil Engineering, Engineering Geology and Seismicity Reports.

A Soil Engineering and Engineering Geology Report shall be required for Grading projects, unless otherwise waived by the Chief Building Official. A seismicity report shall be required for all residential development and other structures as specified in the Grading Manual. The reports shall include information appropriate for the Site, including any information required by the Chief Building Official. Recommendations included in the reports and approved by the Chief Building Official shall be incorporated in the Grading Plans or specifications.

Sec. 5-10-121. Issuance, expiration and renewal.

- A. A precise Grading Permit may not be issued for a project until the zoning conformance review and tentative tract or parcel map are approved unless otherwise approved by the Chief Building Official.
- B. In addition to the time limitations as specified in section 303.4 of the Uniform Administrative Code, every permit issued shall be valid for a period of one year from the date thereof.
- C. If a permit holder presents satisfactory evidence that the unusual difficulties have prevented work being started within 60 days, or completed within one year, or continued without being suspended for 120 days, the Chief Building Official may grant extensions of time reasonably necessary by reason of such difficulties. In no case shall such extensions of time exceed a total of one year.
- D. A Grading Permit issued hereunder shall expire upon a change of Ownership if the Grading work thereon, for which said Grading Permit was issued, has not been completed, and a new Grading Permit shall be required for the completion of the work. If the time limitations of B and C of this section are not applicable and if no changes have been made to the plans and specifications last submitted to the City, no charge shall be made for the issuance of the new Grading Permit under such circumstances. If, however, changes have been made to the plans and specifications last submitted to the City, additional fees shall be charged to the Grading Permit applicant for any additional plan checking and inspection.

Sec. 5-10-122. Denial of Grading Permit.

- A. The Chief Building Official shall not issue a Grading Permit in any case where he or she finds that the work as proposed by the applicant is liable to constitute a hazard to property or result in the deposition of debris on any public or private way or interfere with any existing drainage course. If it can be shown to the satisfaction of the Chief Building Official that the hazard can be essentially eliminated by the construction of retaining structures, buttress Fills, drainage devices or by other means, the Chief Building Official may issue the permit with the condition that such work be performed.
- B. If, in the opinion of the Chief Building Official, the land area for which Grading is proposed is subject to geological or flood hazard to the extent that no

reasonable amount of corrective work can eliminate or sufficiently reduce the hazard to human life or property, the Grading Permit and the building permits for habitable structures shall be denied.

- C. The Chief Building Official may require plans and specifications to be modified in order to mitigate anticipated adverse environmental effects of proposed Grading projects. The Chief Building Official may, under circumstances where the significant adverse environmental effects of a proposed Grading project cannot be mitigated, deny the issuance of a Grading Permit.
- D. The Chief Building Official may require plans and specifications to be modified in order to make them consistent with the City general plan, specific plans, zoning code, Water Quality Requirements or other rules, regulations or conditions applicable to the project. He or she may deny the Grading Permit if the proposed project cannot be designed in accordance with such rules, regulations or conditions.

Sec. 5-10-123. Time of Grading operations.

As provided in the provisions set forth in chapter 2, division 8 of title 6 of the Codified Ordinances of the City of Irvine, Grading operations may generally be conducted between 7:00 a.m. and 7:00 p.m. Mondays through Fridays, and 9:00 a.m. and 6:00 p.m. on Saturdays. No Grading operations shall be conducted on Sundays or federal holidays, unless otherwise approved by the Chief Building Official. Grading operations shall not be conducted between 3:00 p.m. and 9:00 a.m. within the travelway of an arterial highway open for public use, unless otherwise approved by the Chief Building Official.

Sec. 5-10-124. Reserved.

Sec. 5-10-125. Responsibility of Permittee. It shall be the responsibility of the permittee to be knowledgeable of the conditions and/or restrictions of the Grading Permit as outlined in applicable sections of this Code, the Grading Manual, and as contained on the approved Grading Plans and in the approved Soil and Geology Reports. The permittee shall also be responsible to maintain, in an obvious and accessible location on the Site, a copy of the Grading Permit, and Grading Plans bearing the stamp of approval by the City.

- B. All Grading Permits, waivers or exemptions issued hereunder shall be deemed to include the provisions that the permittee, the permittee's agents, contractors, and employees, shall carry out the proposed work in accordance with the Approved Plans and specifications, where such approval is required, and in accordance with any applicable Water Quality Requirements prepared and maintained pursuant to federal, state or county requirements or a City directive, and in compliance with all requirements of the Grading Permit and this chapter. Failure to carry out the work in accordance with Approved Plans and specifications, the applicable Water Quality Requirements, and in compliance with all requirements of the Grading Permit and this chapter shall be a violation of this chapter.

Sec. 5-10-126. Protection of adjoining property. Each adjacent Owner is entitled to the lateral and subadjacent support which his or her land receives from the adjoining land, subject to the right of the Owner of the adjoining land to make proper and usual Excavations on the same for purposes of construction or improvement as provided by law.

Sec. 5-10-127. Import and export of Earth Material. Where an excess of 5,000 cubic yards of Earth Material per project Site is moved on public roadways from or to the Site of an earth Grading operation, all the following requirements shall apply:

- A. Either water or dust palliative or both must be applied for the alleviation or prevention of excessive dust resulting from the loading or transportation of earth from, to or within the project Site on public roadways. The permittee shall be responsible for maintaining public rights-of-way used for hauling purposes in a condition free of dust, earth or debris attributed to the Grading Operation.
- B. Loading and transportation of earth from or to the Site must be accomplished within the limitations established in section 5-10-123, "Time of Grading operations," of this chapter.
- C. Access roads to the premises shall be only at points designated on the approved Grading Plan.
- D. The last 50 feet of access road, as it approaches the intersection with the public roadway, shall have a grade not to exceed three percent and be constructed of gravel or equivalent material to prevent mud and debris from dropping from wheels onto street travel lanes. There must be 300 feet clear, unobstructed sight distance to the intersection from both the public roadway and the access road. If the 300 feet sight distance cannot be obtained, flagmen shall be posted. (Correct error in copying, this is not a change)
- E. A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway
- F. An advance warning sign must be posted on the public roadway 400 feet on either side of the access intersection, carrying the words "truck crossing." The sign shall be diamond shaped, each side being 30 inches in length, shall have a yellow background, and the letters thereon shall be five inches in height. The sign shall be placed six feet from the edge of the pavement, and the base of the sign shall be five feet above the pavement level. The advance warning sign shall be covered or removed when the access intersection is not in use.
- G. If the Grading project includes the movement of Earth Material to or from the Site in an amount considered substantial by the Chief Building Official, the permittee shall submit the haul route for review and approval by the Chief Building Official. Special conditions of the Grading Permit may be imposed which require alternate routes or other measures in consideration of the possible impact on the adjacent community environment or effect on the public Right-of-Way itself.

ARTICLE e. FEES AND SECURITY

Sec. 5-10-128. Fees.

- A. *Plan checking fees.* The applicant shall pay a plan checking fee in an amount established by resolution or the City Council.
- B. *Grading permit and inspection fees.* A fee for each Grading Permit shall be paid to the City in an amount established by resolution of the City Council.
- C. *Preinspection fee.* Prior to issuance of a Grading Permit, the City may require a Grading pre-inspection fee as stated by resolution for each Site that requires pre-inspection as determined by the Chief Building Official.
- D. *Reinspection fee.* When any reinspection is required due to the negligence of the permit holder, his or her agent or other responsible persons, or due to the failure of said parties to comply with previous correction instructions, a fee may be charged by the Chief Building Official for each such reinspection. The fee shall be paid before any further inspections are made.
- E. *Violation; penalty.* Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this Code, except when it can be proven to the satisfaction of the Chief Building Official that an emergency existed which made it impractical to first obtain a permit. A violation shall result in an assessment of penalty fees for work done prior to permit issuance. Payment of a penalty fee shall not relieve any person from fully complying with the requirements of this Code nor from any other penalties prescribed herein.

Sec. 5-10-129. Security.

- A. *Security required.* A Grading Permit shall not be issued unless the permittee shall first post with the Chief Building Official a bond executed by the Owners, and a corporate surety authorized to do business in the State of California as a surety in a form prescribed by the Chief Building Official and approved as to form by the City Attorney. The amount shall be sufficient to cover the cost of construction of drainage and protective devices, any corrective work necessary to remove and eliminate engineering and geological hazards, including those impacting adjoining properties, and/or to correct conditions that pose a threat to adjacent public or private property or environmental resources including but not limited to a threat to water quality.

In lieu of a surety bond, the applicant may file a cash bond or, if approved by the City, a letter of credit or certificate of deposit from one or more financial institutions subject to regulation by the State or federal government in an amount equal to that which would be required in the surety bond, and for the purposes as stated above.

The requirement of said security instruments may be waived at the discretion of the Chief Building Official, if he or she determines that:

1. No hazardous situation is likely to occur as a result of incomplete or improper Grading; or
 2. No adverse effect is likely to occur to subject property, adjacent property or an existing or proposed structure thereon as a result of incomplete or improper Grading; or
 3. No significant drainage, Erosion, flooding or siltation problems will exist as a result incomplete or improper Grading; or
 4. No adverse geological or environmental impacts will occur as a result of incomplete or improper Grading; or
 5. No conditions of the Grading Permit warrant a financial guarantee to assure their satisfactory completion.
- B. *Blanket bonds.* On developments where progressive individual Grading projects or several concurrent projects are being constructed by one Owner, a continuing (blanket) bond or single letter of credit which will cover all such projects may be accepted and the amount determined by the Chief Building Official.
- C. *Completion bond.* An additional bond in the amount determined by the Chief Building Official may be required to ensure the completion of Finish Grading under the Grading Permit as a condition of occupancy and energizing utilities. A bond in an amount determined by the Chief Building Official may be required for Grading Permits involving temporary earthen stockpiles to ensure their timely removal.
- D. *Failure to complete work.* In the event of failure to comply with all of the conditions and terms of the Grading Permit, the Chief Building Official may order the work authorized by the Grading Permit to be completed or put in a safe condition to his or her satisfaction. The surety executing such bond or letter of credit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended in causing any and all such work to be done.
- E. *Default in performance of conditions.* Whenever the Chief Building Official finds or determines that a default has occurred in the performance of any requirement of a condition of a Grading Permit, or there is a failure to comply with an order issued pursuant to subsection D. of this section, written notice thereof shall be given to the permittee and when applicable, to the surety on the bond or other security. Such notice shall specify the work to be done, the estimated cost thereof and the period of time deemed by the Chief Building Official to be reasonably necessary for the completion.

After receipt of such notice, the permittee and if applicable, the surety shall, within the time specified, cause or require the work to be performed, or failing therein, shall pay over to the City the estimated cost of doing the work as set forth in the notice. Upon receipt of such monies, the City may cause the required work to be performed and completed. The surety shall pay the City actual costs in excess of the estimate amount plus a mobilization charge.

- F. *Refunds.* Any refunds due to the applicant shall be made in accordance with the established City administrative policy.
- G. *Term of security.* The term of security shall begin upon the date of Grading Permit issuance and shall remain in effect until the completion of the work to the satisfaction of the Chief Building Official.

ARTICLE f. CUTS AND FILLS

Sec. 5-10-130. Reserved.

Sec. 5-10-131. Cuts.

- A. Cut Slopes shall be no steeper than two horizontal to one vertical (2:1) unless otherwise recommended in the Soil engineering or engineering geology report and approved by the Chief Building Official. The Slope of cut surfaces shall be no steeper than is safe for the intended use.
- B. All cuts steeper than that approved by the City pursuant to subsection A of this section shall be supported by an approved retaining wall.

Sec. 5-10-132. Fills.

- A. Unless otherwise approved by the Chief Building Official and recommended in the approved Soil Engineering Report, Fills shall conform to provisions of the Grading Manual. The provisions therein may be waived for minor Fills not intended to support structures upon approval of the Chief Building Official.
- B. The Chief Building Official may require that the Soil tests or testing be performed by an approved testing laboratory. Fill Slopes shall be no steeper than two horizontal to one vertical (2:1) unless otherwise recommended in the Soil Engineering Report and approved by the Chief Building Official. The Slope of Fill surfaces shall be no steeper than is safe for the intended use.
- C. All Fills steeper than that Slope approved by the Chief Building Official hereunder shall be supported by an approved retaining wall.

ARTICLE g. SETBACKS

Sec. 5-10-133. Setbacks.

The setbacks and other restrictions specified by provisions of the Grading Manual are minimum and may be increased by the Chief Building Official or by the recommendation of a Civil Engineer, Soil Engineer or Engineering Geologist, if necessary for safety and stability or to prevent damage to structures or adjacent properties from sediment deposition, Erosion, water runoff of the Slopes or to provide access for Slope and drainage structure maintenance. The minimum setback may be reduced only in special circumstances where stability is proven to the satisfaction of the Chief Building Official by the Soil Engineer or Engineering Geologist and other factors are of primary importance.

ARTICLE h. DRAINAGE AND TERRACING

Sec. 5-10-134. Drainage and terracing.

Drainage facilities and terracing shall conform to provisions of the Grading Manual unless otherwise approved by the City and delineated on the approved Grading Plan.

ARTICLE i. ASPHALT CONCRETE PAVEMENT

Sec. 5-10-135. Asphalt concrete pavement.

- A. Asphalt concrete pavement for surfacing of parking lots, private streets or other similar use shall conform to provisions of the Grading Manual unless otherwise approved by the Chief Building Official.
- B. The Site Soil Engineer or Special Inspector shall inspect the construction of asphalt paved areas and verify to the Chief Building Official that the work has been performed in compliance with the provisions of this section.

ARTICLE j. EROSION AND SEDIMENT CONTROL

Sec. 5-10-136. Reserved.

Sec. 5-10-137. Erosion and sediment control and water quality requirement systems.

- A. Prior to the issuance of Grading Permits, an Erosion and Sediment Control Plan for the proposed development shall be approved by the Chief Building Official. The Chief Building Official may require that Grading operations and project designs be modified if delays occur which incur weather-generated problems or other conditions not considered at the time the permit was issued, and further subject to provisions of section 5-10-122, "Denial of permit," of this Chapter.
- B. The faces of cut and Fill Slopes shall be prepared and maintained to control against Erosion. This control may consist of effective planting. The protection for

the Slopes shall be installed as soon as practicable and prior to calling for final approval.

- C. Temporary, Semi-Permanent, and/or Permanent Erosion and Sediment Control Devices such as desilting basins, gravel bags, check dams, cribbing, riprap or other devices or methods, as required by the approved Erosion and Sediment Control Plan shall be fully implemented.
- D. Paved streets, sidewalks and other improvements shall be maintained in a neat and clean condition free of loose Soil, construction debris and trash. Street sweeping or other equally effective means shall be used on a regular basis to prevent wind, vehicle tracking or storm flows from carrying sediment and debris outside the project boundaries. Watering to clean streets is prohibited.
- E. Unless otherwise approved by the Chief Building Official, the Owner shall be required to retain a Civil Engineer who will be responsible for inspecting the Erosion and Sediment Control Systems, and for the initial approval of installation of Permanent and Semi-Permanent Erosion and Sediment Control Devices during each Rainy Season until the work authorized by the Grading Permit is given final approval. The Owner shall retain the Civil Engineer to periodically review the field conditions and modify, as needed to ensure effectiveness, the Erosion and Sediment Control Plan during the Rainy Season. Installation and maintenance of all Erosion and Sediment Control Devices shall be the responsibility of the Owner. The Civil Engineer or other qualified individual who prepared the Grading Plan and the Erosion and Sediment Control Plan shall be responsible for inspection and any necessary plan revisions during the Rainy Season.
- F. Desilting facilities shall be provided at drainage outlets from the Graded Site.
- G. Desilting basins shall be designed to provide a minimum desilting capacity equal to the current City of Irvine standards.
- H. Desilting basins shall be constructed around the perimeter of projects whenever feasible when it provides improved maintenance access from paved roads during wet weather.
- I. Desilting basins constructed of compacted earth shall be compacted to a relative Compaction of 90 percent of maximum density. A Soil Engineering Report, prepared by the Soil Engineer, which includes the type of field testing performed, location and results of testing shall be submitted to the Chief Building Official for approval upon completion of the desilting basins.
- J. During the rainy season, disturbed site areas that are not complete and that are not being actively graded shall be fully protected from erosion with appropriate BMPs deployed. Materials needed to install standby erosion and sediment control BMPs sufficient to completely protect other exposed portions of the site from erosion and to prevent sediment discharges shall be stored on site and shall be deployed prior to a storm event.

- K. During the dry season, sufficient materials needed standby sediment control BMPs necessary to prevent sediment discharges from exposed portions of the site shall be stored on site. There shall be a “weather triggered” action plan and the ability to deploy standby sediment control BMPs as needed to completely protect the exposed portion of the site within 48 hours of a predicted storm event (a predicted storm event is defined as a forecasted, 50% chance of rain).
- L. Erosion protection shall include effective planting of all Slopes in excess of five feet high unless otherwise approved by the Chief Building Official. Slopes exceeding 15 feet high may require an adequate irrigation system, as determined by the Chief Building Official. Protection for the Slopes shall be installed as soon as practicable, which may be prior to Rough Grade approval. Effective planting shall be installed, fully germinated and effectively cover the required Slopes prior to final approval unless otherwise approved by the Chief Building Official.
- M. The Erosion and Sediment control provisions shall take into account drainage patterns during the current and future phases of Grading throughout the Rainy Season.
- N. Graded areas around the tract perimeter must drain away from the face of Slopes at the conclusion of each working day.
- O. In addition to the requirements specified above, the permittee shall perform all work in accordance with the Water Quality Requirements.
- P. Any violation of an applicable federal or state-issued Storm Water Permit, or failure to conform to the City’s Water Quality Requirements prepared pursuant to such a permit or pursuant to this Chapter or to Title 6, Division 8, Chapter 3, or failure to comply with storm water related provisions of a City-issued Grading Permit or Grading plan prepared to secure such a permit, is also a violation of this chapter.

Sec. 5-10-138. Erosion and Sediment Control and Water Quality Control System Maintenance.

- A. After each rainstorm, silt and debris shall be removed from check berms and desilting basins and the basins pumped dry following approved Best Management Practices for storm water disposal and state discharge requirements.
- B. After each rainstorm, the performance of the Erosion and Sediment Control System shall be evaluated and repaired as necessary. If the design is found to be ineffective, the Erosion and Sediment Control Plan shall be revised by the Civil Engineer responsible for the design and approved by the Chief Building Official.
- C. The contractor shall be responsible for and shall take necessary precautions to prevent public trespass onto areas where impounded water creates a hazardous condition.

- D. The contractor and permittee or project Owner shall be responsible for continual maintenance of all Erosion and Sediment Control devices as required by the Erosion and Sediment Control Plan. In the event of failure or refusal by the contractor, permittee or project Owner to properly maintain the devices, the Chief Building Official may cause emergency maintenance work to be done to protect adjacent private and public property and environmental resources. The cost shall be charged to the Owner and shall include an initial mobilization cost plus the cost of doing the work.
- E. In the event the Chief Building Official must cause emergency maintenance to be done, he or she may revoke the Grading Permit in writing. The Grading Permit shall not be renewed until an Erosion Control System and/or other systems necessary to comply with Water Quality Requirements approved by the Chief Building Official are installed and any penalty fee has been paid by the Owner.
- F. If any Grading subject to section 5-10-107, “Grading permit exemptions,” of this Code has commenced on private property without a valid Grading Permit, the property Owner may be required to prepare and implement an Erosion and Sediment Control Plan as well as other plans required under the Water Quality Requirements which have been approved by the Chief Building Official. In the event of failure by the property Owner to install an approved Erosion and Sediment Control System and/or other systems necessary to comply with Water Quality Requirements, the Chief Building Official may cause emergency work to be done to protect adjacent private and public property. The procedures of section 5-10-114, “Hazardous Conditions,” of this Code need not apply for emergency Erosion control work and emergency work necessary to protect environmental resources. The cost shall be charged to the Owner in accordance with subsection E of this section.

Sec. 5-10-139. Erosion control—Agricultural.

- A. *Resource conservation plans.* For all lands used for agricultural production within the City of Irvine, the property Owner shall cause to be prepared a resource conservation plan, utilizing Best Management Practices for the prevention of erosion and sediment discharges.
- B. *Implementation of resource conservation plans.* The resource conservation plans to be prepared for Best Management Practices implementation are to be prioritized with those areas of high Erosion hazard receiving top priority. Resource conservation plans for agricultural areas shall be submitted for review and filing by the property owner to the City, County of Orange and the Santa Ana Regional Water Quality Control Board.

ARTICLE k. GRADING INSPECTION

Sec. 5-10-140. General.

All Grading operations for which a permit is required shall be subject to inspection by the Chief Building Official.

Sec. 5-10-141. Responsibilities of the responsible professionals.

- A. It shall be the responsibility of the Civil Engineer, architect or other qualified individual who prepares the Grading plan approved by the Chief Building Official to incorporate all recommendations from the Soil Engineering and Engineering Geology Reports into the Grading plan. Civil Engineer, architect, or other qualified individual shall also be responsible for the professional inspection and approval of the Grading within that person's area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, Grade and drainage of the development area. The project Civil Engineer and/or general contractor shall act as the coordinating agent in the event the need arises for liaison between the project professional, Grading Contractor, and the Chief Building Official. The Civil Engineer or other qualified person who prepares and signs the Grading plan shall also be responsible for the preparation of revised plans, revised Erosion and Sediment Control Plans, and the submission of as-graded Grading plans when required by the Chief Building Official upon completion of the work.
- B. Soil Engineering and Engineering Geology Reports shall be required as specified in section 5-10-120, "Soil engineering, engineering geology and seismicity reports," of this Code. During Grading, all necessary reports, Compaction data, Soil Engineering and Engineering Geology recommendations shall be submitted to the Owner by the Soil Engineer and Engineering Geologist. The Owner shall submit copies of the report to the Civil Engineer and two copies of all reports to the Chief Building Official or his or her authorized representative.
- C. The Soil Engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning this preparation of ground to receive Fills, testing for required Compaction, stability of all finish Slopes, design of buttress Fills, subdrain installation and incorporation of data supplied by the Engineering Geologist.
- D. The Engineering Geologist's area of responsibility shall include, but need not be limited to, professional inspection and written approval of the adequacy of natural ground for receiving Fills, the stability of cut Slopes with respect to geological matters, and the need for subdrains or other groundwater drainage devices. He or she shall report his or her finding to the Soil Engineer and the Civil Engineer for engineering analysis.

- E. The Chief Building Official may inspect the project at the various stages of work requiring approval and at any intervals necessary to determine that adequate control is being exercised by the professional consultants.
- F. When preliminary Soil engineering reports are not required by the Chief Building Official, the Chief Building Official may require inspection and testing by an Approved Testing Agency. The testing agency's responsibility shall include, but need not be limited to, approval of cleared areas and benches to receive Fill, and the Compaction of Fills.
- G. The Chief Building Official shall not issue any Grading Permit, waiver, or exemption pursuant to this Chapter unless he nor she finds that the work authorized by the Grading Permit, waiver or exemption complies with applicable Water Quality Requirements.

Sec. 5-10-142. Reserved.

Sec. 5-10-143. Notification of noncompliance.

If, in the course of fulfilling their responsibility under this Code, the Civil Engineer, the Soil Engineer, the Engineering Geologist, or the testing agency finds that the work is not being done in conformance with the provisions of the approved specifications and Grading Plans, the discrepancies shall be reported immediately in writing to the person in charge of the Grading work and to the Chief Building Official. Recommendations for corrective measures, if necessary, shall be submitted to the Owner. The Owner shall submit two copies of all recommendations and reports to the inspection division.

Sec. 5-10-144. Transfer of responsibility for approval.

If the Civil Engineer, the Soil Engineer, the Engineering Geologist, the testing agency, or the Grading contractor of record is changed during the course of the work, the work shall be stopped unless:

- A. The Owner submits a letter of notification verifying the change of the responsible professional; and
- B. The new responsible professional submits in writing that such person has reviewed all prior reports and/or plans (specified by date and title) and work performed by the prior responsible professional and the professional concurs with the findings, conclusions and recommendations, and is satisfied with the work performed.

The professional person may modify or revise recommendations, specifications or work performed if accompanied by supporting data and approved by the Chief Building Official. The new responsible professional must state that the professional assumes all responsibility within its purview as of a specified date. All exceptions must be justified to the satisfaction of the Chief Building Official.

Exception: Where clearly indicated that the firm, not the individual engineer and/or geologist, is the contracting party, the designated engineer or geologist may be reassigned and another engineer and/or geologist within the firm may assume responsibility.

Sec. 5-10-145. Site inspection.

- A. Prior to the approval of any building or Grading plans and specifications, the Chief Building Official may inspect the Site to determine that the plans and specifications are current and reflect existing conditions.
- B. The permittee or his or her agent shall notify the City inspector when the Grading Operations specified in the Grading Manual are ready for inspection.
- C. If the City inspector finds the Soil or other conditions not as stated in the Approved Plans and Soil or Geology Reports or as in additional information which was required for issuance of the Grading Permit, the inspector may, using reasonable judgment, refuse to allow further work until approval is obtained for a revised Grading plan which will conform to the conditions.
- D. The provisions of section 202.4, “Stop Orders,” of the Uniform Administrative Code shall apply to all Grading work; and whenever the Chief Building Official determines that any work does not comply with the terms of a Grading Permit, or this Code, or that the Soil or other conditions are not as stated on the Grading Permit, he or she may order the work stopped by notice in writing served on any persons engaged in doing or causing of such work to be done; and any such persons shall forthwith stop such work until authorized by the Chief Building Official.
- E. Prior to the issuance of building permits for a Graded Site, the Rough Grading shall be completed in accordance with provisions of the Grading Manual and to the satisfaction of the responsible Civil Engineer, or architect, Engineering Geologist, Soil Engineer and the Chief Building Official.
- F. Whenever any work on which inspections are required is covered or concealed by additional work without first having been inspected, the Chief Building Official may require by written notice that such work be exposed for examination. The work of exposing and recovering shall not entail or be subject to expense by the City of Irvine.

Sec. 5-10-146. Special inspections.

The Chief Building Official may establish special inspection requirements in accordance with the Building Code Regulations of the City of Irvine for special cases involving Grading or paving-related operations. Special cases may apply to work where in the opinion of the Chief Building Official it is necessary to supplement the resources or expertise available for inspection.

Sec. 5-10-147. Final reports.

Upon completion of the Rough Grading work and at the final completion of the work, the Chief Building Official may require the written approvals, reports, drawings and supplements thereto as specified in the Grading Manual.

Sec. 5-10-148. Reserved.

Sec. 5-10-149. Notification of completion.

The permittee or his or her agent shall notify inspection services when the Grading operation is ready for final inspection. All work, including installation of all drainage facilities and their protective devices and all Erosion and Sediment control measures, must be completed in accordance with the final approved Grading Plan and the required reports approved by the Chief Building Official before final approval of the Grading Permit is given by the Chief Building Official. He or she may approve the Grading work prior to completion of all work in special cases of extreme hardship and if no hazard exists and an adequate bond is posted to assure completion of all remaining work.

CHAPTER 2. ENCROACHMENT REGULATIONS

Sec. 5-10-201. Definitions.

The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Encroachment means any physical obstruction and includes any structure or object of any kind or character placed, without the authority of law, either in, under, over or across any City street or crossing of a parkway at locations other than existing driveways. Provisions of section 5-10-245 shall apply to this chapter.

Encroachment Permit shall mean a permit issued by the Chief Building Official for the purpose of encroaching within public rights-of-way.

Permittee shall mean any person, firm, corporation, Public Utility or Public Agency desiring to obtain or having obtained an Encroachment Permit as defined herein.

Public Agency shall mean any City, County, public corporation or public district established through due process of law.

Public Improvements include street improvements, storm drainage, sewer, water, landscaping and other related improvements that the City will maintain upon completion.

Public Street includes all or any part of the entire width of public Right-of-Way of a City street, whether or not such entire area is actually used for street purposes.

Public Utility shall mean private corporations authorized by law to establish and/or maintain any works or facilities in, under or over any Public Street. This chapter shall not

limit the powers and duties vested by law in the Public Utilities Commission of the State, and in the event of any conflict the Public Utilities Commission rules shall govern.

Right-of-Way shall mean land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the general public for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other purposes.

Sec. 5-10-202. Unlawful acts, permit required.

Any person performing any Excavation, construction or involved in placement of any object, material, device over, under or across the Public Right-of-Way or any activity performed within same, without first obtaining a permit, shall be guilty of a misdemeanor.

Sec. 5-10-203. Permit required.

No person shall cause, place or maintain an Encroachment in a Public Street without having first obtained a permit to do so from the Chief Building Official unless explicitly exempted by section 5-10-204, "Exemptions from permit requirements."

Sec. 5-10-204. Exemptions from permit requirements.

The provisions of this chapter shall not prevent any Public Utility from maintaining any facility lawfully on or under any Public Street, or from making emergency Excavations as may be necessary for the preservation of life or property.

Sec. 5-10-205. Application for permit—When filed.

Applications for permits required by the provisions of this Chapter shall be filed not less than 48 hours before the work is proposed to be done or within 24 hours prior to placement of containers approved within this chapter.

Sec. 5-10-206. Reserved.

Sec. 5-10-207. Application for permit—Contents.

Application for permits required by this chapter shall be filed with the Chief Building Official upon printed forms to be prescribed and supplied by the Chief Building Official. The application shall be signed by the applicant and shall state:

- A. The name and address of the applicant.
- B. The location, purpose, extent and nature of the proposed Encroachment.
- C. The time during which it is estimated that the Encroachment will exist.
- D. That the applicant agrees to indemnify, defend and save the City, its authorized agents, officers, representatives and employees, harmless from and against any and all penalties, liabilities or annoyances or loss resulting from any claims or

court action and arising out of any accident, loss or damage to persons or property happening or occurring as a proximate result of any work undertaken under the permit granted pursuant to the application.

- E. That the applicant agrees that any Encroachment which is placed in the Public Right-of-Way for which the permit is issued which at any future time interferes with use, repair or modification to any public facility; the applicant or his or her successors or assignees within ten days after the receipt of a written notice from the Chief Building Official to do so, will at his or her own expense either remove such tank, pipe, conduit, duct, tunnel or other installation, or, subject to the approval of the Chief Building Official, relocate them to a Site which may be designated by the Chief Building Official.
- F. Any additional information that the Chief Building Official may deem necessary for the proper disposition of the application.
- G. The permit procedure may be amended by the Chief Building Official where continuous activities for which Encroachment Permits are required by the same permittee occur. For such activities, an annual permit may be established subject to the conditions of this Chapter in a similar manner as permits under sections 5-10-201, 5-10-202, and 5-10-203.

Sec. 5-10-208. Permit application and procedures.

- A. *General.* Application for Encroachment Permits may be obtained at the office of the Chief Building Official. Encroachment Permit application forms and processing procedures shall be as established by the Chief Building Official.
- B. *Plans.* The Chief Building Official may require such plans and details as deemed necessary to determine the exaction location, nature, dimensions, duration and purpose of the desired Encroachment. Improvement plans prepared by or under the direction of a registered Civil Engineer may be required by the Chief Building Official when deemed necessary. The form and content of all plans shall be in accordance with standard approved by the Director of Public Works.
- C. *Documents.* When required by the Chief Building Official, the permittee shall provide detailed engineering calculations for which the design of any Public Improvements are based.
- D. *Consent of public agencies, utilities or adjacent property Owners.* The applicant shall be responsible for securing the consent of any other public agencies that may be required or for permissions from adjacent property Owners for construction outside of the permittees property boundary. Evidence of any required consents in a form satisfactory to the Chief Building Official shall be submitted with the permit application. The applicant shall be responsible for coordinating his or her work with the City and other public agencies as required.

Sec. 5-10-209. Proof of right to use highway.

If the applicant is other than the Owner of the underlying fee, each such applicant for a permit shall submit to the Chief Building Official satisfactory proof of the applicant's right to use the highway for the purposes set forth in the application.

Sec. 5-10-210. Application may be modified.

The Chief Building Official may require such changes in the application respecting the location, dimensions, character or number of the proposed Excavations of Fills or as in his or her opinion may be necessary for the protection of the highway, the prevention of undue interference with traffic, or to assure the safety of persons using the highway.

Sec. 5-10-211. Action by Chief Building Official.

- A. *Approval.* Upon finding the requested permit conforms to the provisions of this chapter and other applicable provisions of the Irvine Municipal Code, the Chief Building Official may issue the permit.
- B. *Denial.* If the Chief Building Official finds that the requested permit is in conflict with any provisions of the Irvine Municipal Code, the Chief Building Official shall deny the permit.

Sec. 5-10-212. Reserved.

Sec. 5-10-214. Conditions of Permit.

The permit required by this chapter shall be subject to the following conditions, which shall be stated thereon:

- A. The permit must be kept at the Site of the work and be shown, on demand, to any authorized representative of the City or any law enforcement office.
- B. The permit shall authorize work to be performed only as to such portion of the highway over which the City has jurisdiction.
- C. All work shall be performed in accordance with the provisions of this chapter and of all applicable laws, rules and regulations of the City and any other Public Agency and to the satisfaction of the Chief Building Official.
- D. The permit shall be nontransferable.
- E. The Chief Building Official may cancel the permit unless the work authorized therein is commenced within 60 days of the issuance of the permit and thereafter, in the opinion of the Chief Building Official, is diligently prosecuted to completion. Cancellation may be effected by giving written notice thereof by sending the same to the applicant by ordinary mail to the address shown on the application.

- F. The Chief Building Official may, either at the time of the issuance of the permit or at anytime thereafter until the completion of the work, prescribe such additional conditions as he or she may deem reasonably necessary for the protection of the highway or for the prevention of undue interference with traffic or to assure the safety of persons using the highway.

Sec. 5-10-215. Conditions of Permit Approval.

The Chief Building Official in issuing an Encroachment Permit may impose reasonable requirements or conditions upon the use of the permit as may be necessary to ensure the adequate and safe use of the Public Right-of-Way and as may be necessary to ensure Public Property is restored to a condition equal to or better than that which existed prior to the Encroachment.

Sec. 5-10-216. Permit Term.

The term of the Encroachment Permit shall be as set forth in the approved permit. An Encroachment Permit for maintaining an Encroachment may be granted by the Chief Building Official for a period not to exceed six months from the date of issuance. For maintaining an Encroachment Permit for a period of over six months may be granted by the Chief Building Official, provided the City Council approves, by resolution, such Encroachment. The Chief Building Official may terminate a continuing permit by written order mailed 15 days prior to this date of termination. The permit term may be renewed or extended at the discretion of the Chief Building Official.

Sec. 5-10-217. Revocation of Permit.

- A. Any Encroachment Permit may be revoked at any time at the option of the Chief Building Official whenever:
 - 1. It appears to him or her that the continuing allowance of the Encroachment, whether because of changed conditions or otherwise, interferes with full, adequate or safe public use of the Right-of-Way involved; or
 - 2. The permittee fails to comply with or violates any City ordinance, City standards, safety regulations or any condition of the issuance of the Encroachment Permit.
- B. Upon revocation of the Encroachment Permit, the permittee shall immediately restore the Public Right-of-Way to a condition as required by the Chief Building Official within the time specified by the Chief Building Official; and the City may take any and all necessary action so required to restore the Right-of-Way. Any and all costs incurred by the City for enforcement of this section shall be at the expense of the permittee. Cost incurred by the City will be deducted from any deposits posted by the permittee and if necessary recovered by legal action.

Sec. 5-10-218. Reserved.

Sec. 5-10-219. Display of Permit.

The permittee shall keep any Encroachment Permit issued pursuant to this chapter at the Site of the work, or in the cab or a vehicle when movement on a Public Street is involved. The Encroachment Permit shall be shown to any authorized representative of the Chief Building Official or law enforcement officer on demand.

Sec. 5-10-220. Permittee Liability.

The permittee shall agree to hold the City, its officers and employees, harmless from any and all liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittees installation, operation, maintenance or removal of the Encroachment.

Sec. 5-10-221. Nonassignment of Permit.

Encroachment Permits shall be issued only to the person making application and may not be assigned to another person by the permittee. If any permittee assigns an Encroachment Permit to another person or entity, the permit will be revoked.

Sec. 5-10-222. Compliance with Terms of Permit.

A permittee shall not make any Excavation or Fill under, on or across any Public Right-of-Way other than that described in the application as approved by the Chief Building Official as set forth in the terms of the Encroachment Permit under the provisions of this chapter.

Sec. 5-10-223. Changes in Permit and Work.

No changes may be made in the location, dimension, character or duration of the Encroachment or use as granted by the Encroachment Permit except upon written authorization of the Chief Building Official.

Sec. 5-10-224. Reserved.

Sec. 5-10-225. Encroachment Fees.

Prior to the issuance of an Encroachment Permit, the applicant shall pay all fees provided by resolution of the City Council. Public utilities and public agencies may, at the option of the Chief Building Official, make payments for the fees billed by the City instead of the advance permit.

Sec. 5-10-226. Required deposits.

Prior to issuance of an Encroachment Permit, the permittee shall deposit with the City cash, or a certified or cashier's check, in the sum to be fixed by the Chief Building Official as sufficient to reimburse the City for costs of restoring the Public Right-of-Way to its former condition and for the cost of inspection.

Sec. 5-10-227. Authority to Remove Encroachments.

- A. If there is no valid permit for an Encroachment, or if the terms of the Encroachment Permit are not complied with, the Chief Building Official may immediately summarily abate, remove, or by notice may require the removal of any of the following Encroachments:
1. An Encroachment that obstructs or prevents the use of a City street by the public.
 2. Any Encroachment that consists of refuse, trash, garbage, construction debris or containers for refuse, trash, garbage or construction debris.
 3. An Encroachment that is a traffic hazard.
 4. An Encroachment that is an advertising sign or device of any description.
- B. The Chief Building Official may return such Encroachment to its Owner, or otherwise dispose of it in his or her discretion; except that if the Chief Building Official determines in good faith that the Encroachment is of more than nominal value, he or she shall not effect such other disposition until he or she has made a reasonable attempt to identify and notify the Owner of the Encroachment and has provided a reasonable time for the Owner to retrieve it under the provisions of this chapter. The return of such Encroachment may be conditioned upon payment of an amount sufficient to reimburse the City for the expenses for removal and storage. The Chief Building Official may recover from the person causing any of the above Encroachment, in an action brought in the name of the City for that purpose, the court costs of the City, the expense of such removal, and any other damages caused by the Encroachment.

Sec. 5-10-228. Notice to Remove Encroachment.

The Chief Building Official may, by notice, require the removal of any other Encroachment not specified in section 5-10-227 from any City street if there is no valid permit for an Encroachment or if the terms of the permit are not complied with.

Sec. 5-10-229. Service of notice; Contents.

The notice referred to in sections 5-10-227 and 5-10-228 shall be served upon the occupant or Owner of the land, or the person causing, controlling or owning the Encroachment, or shall be left at the place of residence of such occupant, Owner or person if he or she resides in Orange County and is known to the person giving such notice. If the person upon whom notice is to be served does not reside in Orange County, the notice shall be posted on the Encroachment. The notice shall specify the breadth of the highway, the place and extent of the Encroachment, and shall require the removal of such Encroachment within ten days.

Sec. 5-10-230. Reserved.

Sec. 5-10-231. Action for Abatement of Encroachment.

If the property Owner or Owner of encroaching equipment denies that an Encroachment exists, and the Owner or occupant of the land, or the person causing, owning or controlling the alleged Encroachment refuses either to remove it or permit its removal, the City shall commence, in any court of competent jurisdiction, an action in declaratory relief and abatement in the name of the City.

Sec. 5-10-232. Removal of Encroachment at Owner's Expense.

If the property Owner fails to deny that an Encroachment exists, and if the Encroachment is not removed within ten days from and after service or posting of the notice, the City may remove the Encroachment at the expense of the Owner of the Encroachment or at the expense of any other person causing the Encroachment to exist.

Sec. 5-10-233. Violation.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to fines and penalties as prescribed in section 4-13-201 of this Code.

Sec. 5-10-234. Special Deposit of Costs; Furnishing of Surety Bond.

- A. Unless the Chief Building Official shall have authorized the applicant to perform the resurfacing or repair of the surface of any highway which may be removed in part or damaged by the proposed Excavation or Fill, each applicant shall, in addition to the issuance fee, deposit with the Chief Building Official the estimated cost of resurfacing or repairing the surface of the highway which may be damaged or destroyed. The special deposit required hereunder shall in no event be less than an amount established by resolution of the City Council.
- B. In cases where the applicant is granted authority to make the repairs required under this chapter, the Chief Building Official may, in order to ensure the completion of said repairs in a satisfactory manner, require the applicant to furnish a surety bond. Such bond shall be executed by a surety company authorized to transact business in the State and shall be in an amount equal to twice the estimated cost of performing the work authorized; provided, however, that the minimum amount of said bond shall not be less than an amount established by resolution of the City Council, nor the minimum period less than one year. The condition of said bond shall be that the applicant will perform the work authorized by any permit issued pursuant to this chapter in a good and workmanlike manner and to the satisfaction of the Chief Building Official.

Sec. 5-10-235. Applicant May Make General Deposit.

In lieu of making the special deposit required by section 5-10-234, the applicant may make and maintain with the Chief Building Official a general deposit in an amount estimated by the Chief Building Official to be sufficient to pay for the cost of permit issuance fees, inspection fees and expected repairs occasioned by future Excavations or Fills.

Sec. 5-10-236. Reserved.

Sec. 5-10-237. Cost Computation where not provided.

Whenever in this chapter any costs are to be charged to any permittee and no other method for the calculation thereof is specified, such costs shall be the actual cost, including the proportionate part of the salaries, wages or other compensation of any deputy or employee, plus the cost of overhead, not to exceed 15 percent of the total cost.

Sec. 5-10-238. Restoration and Specifications Therefore; Resurfacing After Refilling and Compacting.

After completion of the refilling and compacting of the backfill material in the Excavation, and the removal of the Encroachment, the permittee shall promptly replace, with temporary or permanent patching material, or repair any portion of the highway surface removed or damaged by the Excavation, Fill or construction operations not specified elsewhere herein, to the satisfaction of the Chief Building Official; or the Chief Building Official may at his or her option elect to do the surfacing or repairing himself or herself.

Sec. 5-10-239. Cost of further repairs.

If at any time subsequent to the first repair of a surface of a highway damaged or destroyed by any Excavation or Fill in such highway, it becomes necessary again to repair such surface due to settlement or any other cause directly attributable to such Excavation or Fill, the permittee shall pay to the City the cost of such additional repairs made by the Chief Building Official. The cost shall be computed by the Chief Building Official as provided in section 5-10-234 or section 5-10-237 of this chapter whichever in the judgment of the Chief Building Official will most fairly compensate the City for the expenses incurred by it.

Sec. 5-10-240. Exemption of Public Agencies.

If the United States, this State, this or any other County, any municipal corporation, school district or other public body files with the Chief Building Official a written guarantee of payment of all costs for which they may become liable to the City hereunder, then no deposit for costs shall be required from such persons. No permit issuance fee shall be required of any Public Agency entitled to exemption therefrom pursuant to Government Code § 6103.

The Chief Building Official may, either at the time of the issuance of the Encroachment Permit or at the time thereafter, elect to do the resurfacing or repair of any highway surface removed or damaged by the proposed Excavation or Fill pursuant to an Encroachment Permit hereunder.

Sec. 5-10-241. Resurfacing by Chief Building Official.

The Chief Building Official may, either at the time of the issuance of the Encroachment Permit or at the time thereafter, elect to do the resurfacing or repair of any highway surface removed or damaged by the proposed Excavation or Fill pursuant to an Encroachment Permit hereunder.

Sec. 5-10-242. Reserved.

Sec. 5-10-243. Specifications generally.

All streets, alleys, sidewalks and other public ways within the City shall be constructed, reconstructed, repaired and maintained in accordance with specifications and plans therefor promulgated by the Director of Public Works, approved by the City Council and on file in the office of the City Clerk.

Sec. 5-10-244. Street maintenance.

- A. *Public streets.* Public Streets and highways, after receiving official acceptance by the City Council, shall be maintained by the City of Irvine.
- B. *Private streets.* Private streets and highways shall be maintained by the recorded Owner(s) free of defects and in a clean condition at least equivalent to that of comparable Public Streets.
- C. *Unaccepted streets and highways.* All Public Street and highway construction prior to City acceptance and all private streets and highways under control of a developer:
 - 1. Shall be maintained in a clean and safe condition by the Owner of record;
 - 2. Shall have signs posted at all street intersections and tract entrances. The signs shall be installed prior to any occupancy and shall state, with minimum three-inch letters, as follows:

MAINTENANCE OF THIS STREET AND RIGHT-OF-WAY ARE
DEVELOPER RESPONSIBILITY.

DEVELOPER: _____
PHONE: _____
 - 3. Shall have inspection approval within 60 days after occupancy is authorized for any adjacent property unless otherwise approved by the Chief Building Official.

Sec. 5-10-245. Openings in Existing Streets.

- A. All openings and Excavations in streets and highways shall be backfilled immediately after completion of work pursuant to Encroachment Permit approval.

- B. Where temporary patching occurs in streets, permanent approved paving repairs shall be affected within 30 days thereafter. Where landscaping Excavation occurs in a Right-of-Way, it shall be restored to its original condition within 30 days.
- C. The Director of Public Works shall retain the right to designate shorter time limits when necessary for the public safety, health or welfare.
- D. All work described in this section shall comply with the provisions described in this Chapter.
- E. A cash bond or equivalent may be required to assure timely completion of work.

Sec. 5-10-246. Construction Traffic Control.

- A. All detours caused by construction on City streets shall have a detour plan approved by the City prior to construction. Detours shall be defined as the closure of any part of the traveled Right-of-Way.

Exception: Emergency repairs by utility companies shall be exempted.

- B. The minimum traffic delineation shall conform to the State of California “Standard Specifications” (latest edition approved by the City), the California Department of Transportation “Manual of Traffic Control for Construction and Maintenance Work Zones” (latest edition approved by the City), and the “Work Area Traffic Control Handbook” published by Building News Services (latest edition approved by the City). Where City inspectors or transportation engineers or police find unusual conditions, added requirements may be specified and shall be provided by the contractor, installer or entity conducting construction or repair activities.
- C. The City may restrict the use of, or close, any Right-of-Way whenever persons authorized by the City consider such closing or restriction of use necessary:
 - 1. For the protection of the public.
 - 2. For the protection of such street or related area from damage during storms or during construction, improvement or maintenance operations thereon.
- D. To notify the public that a City street is closed or its use restricted, the City may:
 - 1. Erect suitable barriers or obstructions upon such Right-of-Way.
 - 2. Post warnings and notices of the condition of any such highway.
 - 3. Post signs for the direction or traffic upon it, or to or upon any other highway or detour open to public travel.

4. Place warning devices on such highway.
 5. Assign a flagman to warn, detour or direct traffic on such highway.
- E. Any person who willfully fails to observe any sign, marker, warning, notice or direction placed or given under provisions of this Code is guilty of a misdemeanor.

SECTION 2: Severability.

The City of Irvine hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance be declared for any reason to be invalid, it is the intent of the City Council that would have adopted all other provisions of this Ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SECTION 3: This Ordinance shall be effective 30 days after adoption.

SECTION 4: The City Clerk of the City of Irvine shall certify to the passage and adoption of this Ordinance and shall cause the same to be posted and published in the manner required by law.