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ORDINANCE NO. 4285

FEB 24 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING PORTIONS OF DIVISION I OF CHAPTER 46 OF THE CHANDLER CITY CODE AND ADDING A NEW DIVISION VIII TO CHAPTER 46 OF THE CHANDLER CITY CODE, ALL RELATED TO THE ESTABLISHMENT OF AN ENCROACHMENT PERMIT POLICY AND PROCESS FOR VALET PARKING; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

**SECTION 1.** Division 1 of Chapter 46 of the Chandler City Code is hereby amended to read as follows:

**CHAPTER 46  
ENCROACHMENTS AND OTHER USES IN THE PUBLIC RIGHT-OF-WAY**

**DIVISION I. GENERAL PROVISIONS APPLICABLE TO ALL  
ENCROACHMENT PERMITS**

**46-1. 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, another division of this chapter provides a different meaning, or an existing license/franchise or use agreement has specific definitions approved as part of its terms:

*Access channel* shall mean a channel dedicated in whole or in part for local non-commercial programming which is not originated by a cable licensee; provided that such access programming shall not include (i) the retransmission of local television broadcast signals or (ii) programming produced by persons unaffiliated with the cable licensee under the provisions of Section 612 of the Cable Act.

*Affiliate* means any person who owns or controls, is owned by or controlled by, or is under common ownership or control with licensee.

*Applicant* means a person, as defined in this section, who submits a proposal to provide cable service to the City.

*Basic service* shall mean the tier that includes the retransmission of local television broadcast signals.

*Cable Act* means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and including the Telecommunication Act of 1996, as the same may be amended from time to time.

*Cable license* means that ordinance or resolution which contains the right, authority or grant, given by the City enabling a person to construct, operate and maintain a cable system.

*Cable service* means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

*Cable system* means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. Cable system does not include:

- 1) A facility that serves fewer than fifty (50) subscribers.
- 2) A facility that serves subscribers without using any public street, road or alley.
- 3) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations.
- 4) A facility of a common carrier that is subject, in whole or in part, to 47 United States Code Sections 201 through 276, except that the facility is considered a cable system, other than for purposes of 47 United States Code Section 541(c), to the extent the facility is used in the transmission of video programming directly to subscribers, unless the extent of the use is solely to provide interactive on-demand services.
- 5) An open video system that complies with 47 United States Code Section 573.
- 6) A facility of an electric utility that is used solely for operating its electric utility system.

*City* shall mean the City of Chandler, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

*City building* means a building that is both (a) occupied by the City or owned by the City and (b) used for municipal purposes.

*City Council* shall mean the present governing body of the City or any future Council constituting the legislative body of the City.

*City Manager* shall mean the City Manager of the City of Chandler or the City Manager's designee.

*Commercial mobile radio services* means two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code Section 157.

*Completion of construction or complete construction* shall mean "satisfactorily complete" and "fully activate." In each instance, these terms shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed, that power supplies have been installed, that construction of the head ends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the cable system to be ready to deliver cable service to subscribers has been completed. Final balancing shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire cable system will be activated and final balanced when completed.

Construction of any segment or of the entire cable system will not be considered complete until final balance has been conducted on such segment (or in the case of the entire cable system, until final balancing and proof of performance tests have been conducted on all segments of corrected.) The term "completion of construction" does not include marketing and installation of subscriber service.

*Days* shall mean calendar days, unless otherwise specified.

*Department* means that Department, Division or City employee to whom responsibility for the administration of this chapter has been delegated by the City Manager. Generally the Department will be the City Engineer or the Director of the Transportation and Development Department and persons seeking permits pursuant to this chapter may obtain necessary forms and information from the permit counter in the Transportation and Development Department.

*Downtown* means the land area bounded by Chandler Boulevard on the north, Frye Road on the south, Dakota Street on the west and the Union Pacific railroad tracks on the east.

*Downtown business* means a commercial establishment in the downtown.

*Encroach or encroachment* includes, but is not limited to, the performance of any of the following acts:

- 1) Excavating, filling or disturbing the surface.
- 2) Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, news stand, mailbox, pipe, conduit, wire or other structure on, over or under the surface of any public place, highway or watercourse.
- 3) Planting any tree, shrub, grass or other growing thing.
- 4) Placing or leaving any rubbish, brush, earth or other material of any nature whatsoever.

- 5) Constructing, placing, maintaining on, over or under the surface of any public place, right-of-way, street, pathway, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility, any pipe, conduit, wire, cable or telecommunication facility.
- 6) Traveling by any vehicle or combination of vehicles or object of dimension, weight or other characteristic prohibited by law without a permit.
- 7) Lighting or building a fire.
- 8) Constructing, placing, planting or maintaining any structure, embankment, excavation or other objects adjacent to a right-of-way or watercourse which causes or will cause an encroachment.
- 9) The application of paint or other marking materials to any pavement or curb.
- 10) Providing valet parking, including without limitation the establishment of a valet parking station and/or a valet parking zone or the storing of downtown business patrons' vehicles.

*Encroachment permit* means that document submitted to/and issued by the City in relation to specific in City right-of-way related to Chapter 46 activity.

*Facilities* means the plant, equipment, and property, including but not limited to boxes, poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under highways.

*FCC* means the Federal Communications Commission, or a designated representative.

*Fiber optic license* means a license related to interstate services and other communication facilities that are excluded from the definition of "telecommunications" in Division IV of this chapter.

*Franchise* shall mean the same as defined under Article XIII of the Arizona Constitution.

*Gross revenues* means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half (1.5) percent annually, that is received directly or indirectly by the cable licensee or its affiliates, or any person in which the cable licensee has a financial interest or that has a financial interest in the cable licensee and that is derived from the cable licensee's operation of its cable system to provide cable service in the City. Gross revenues include all revenue from charges for cable service to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive cable service, and any other receipts from subscribers derived from operating the cable system to provide cable service, including receipts from forfeited deposits, sale or rental of equipment to provide cable service, late charges, interest and sale of program guides. Gross revenues also include all income the cable licensee receives from the lease of its facilities located in the

streets and public ways, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the licensing authority. Gross revenues do not include revenues from commercial advertising on the cable system, the use or lease of studio facilities of the cable system, the use or lease of leased access channels or bandwidth, the production of video programming by the cable licensee, the sale, exchange, use or cablecast of any programming by the cable licensee in the City, sales to the licensee's subscribers by programmers of home shopping services, reimbursements paid by programmers for launch fees or marketing expense, license fees, taxes or other fees or charges that the licensee collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.

*Highway* means a street and public way as defined below.

*Intergovernmental contract* means the joint exercise of powers authorized by Arizona Revised Statutes, Title 11, Chapter 7, Article 3.

*Initial activation of cable service* shall mean with respect to a particular segment (as defined in any cable license issued hereunder), or with respect to a group of segments or the entire cable system, as the case may be, that, all proposed cable services and cable system capabilities as stated in the cable license are available and/or in place, construction has been completed and the completed segment or segments in question or the entire cable system, as the case may be, have been activated.

*Initial license* shall mean a cable license sought by, or granted to, a person who does not hold a license. Such person is an "initial licensee."

*Licensee* means the person granted a cable license, a fiber optics license and/or a telecommunications license.

*Licensing authority* means the City of Chandler.

*Licensing requirements* means the cable television licensing requirements in Division V of this chapter.

*Licensor* means the City of Chandler as represented by the City Council, City Manager or their designee acting within the scope of this authority.

*Multiple dwelling units* or "*MDU*" means any adjacent building(s) such as apartments under common ownership containing more than four (4) dwelling units used as living quarters.

*Other programming service* means information that a cable licensee makes available to all subscribers generally.

*Outage* shall exist whenever licensee's cable system experiences three (3) Subscriber complaints within any sixty-minute period of "no picture" within the same quarter (1/4) section.

*Permittee* means the person granted an encroachment permit pursuant to Chapter 46.

*Person* includes any individual, partnership, association, corporation, legal entity or organization of any kind. Whenever used in any clause prescribing a penalty, the term "person" as applied to partnerships or associations includes partners or members thereof, and if applied to corporations, the officers thereof. "Person" shall not include a municipal corporation unless otherwise indicated.

*Public highway* or *highway* means the surface of and the space above and below of any public road, sidewalk, street and alley.

*Public place* shall mean any property owned, maintained or controlled by the City.

*Right-of-way* means the same as streets and public ways as defined below.

*Service call* shall result when service problems occur relating to: (i) any "no picture" complaint, (ii) a degraded signal or picture on one (1) or more channels, (iii) property damage by licensee's employees or authorized contractors, or (iv) in-house cable equipment problems.

*Service interruption* means the loss of picture or sound on one (1) or more cable channels or the significant deterioration of signal or sound.

*Standard drop* means a cable connection that requires no more than a two hundred (200) foot drop measured from the nearest point of a subscriber's home or place of business to the nearest existing technically feasible point on the cable system from which an individual subscriber can be connected to the cable system. A standard drop involves only one (1) outlet and standard materials. A standard drop does not include the following (the cost of which may be assessed directly to the subscriber): (a) a wall fish; (b) custom installation work, including specific subscriber-requested work that requires non-standard materials or cable routing that requires construction methods exceeding reasonable underground or aerial work; or (c) the cost of any equipment or construction modifications necessary to provide an adequate signal over the standard drop to the subscriber's residence.

*Streets and public ways* means the surface of and the space above and below any public street, sidewalk, right-of-way, alley, easement, or other public way of any type whatsoever, now or hereafter existing as such within the City.

*Subscriber* shall mean any person receiving for any purpose the cable television service of a licensee's cable system

*Subscriber complaint* means any written or oral complaint by a subscriber to the City that the subscriber did not receive the cable service that the subscriber requested consistent with the requirements of this license.

*Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the

information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services or cable services.

*Telecommunications provider* means a telecommunications corporation who constructs, installs, operates and maintains telecommunications facilities in the City.

*Telecommunications corporation* means any public service corporation to the extent that it provides telecommunications services in the state.

*Telecommunications services* means the offering of telecommunications for a fee directly to the public or to such users as to be effectively available directly to the public, regardless of the facilities used.

*Two-way communication* shall mean the transmission of telecommunication signals from subscriber locations or other points throughout the cable system back to the cable system's control center as well as transmission of signals from the control center to subscriber locations. A cable license may authorize switching at a level other than the control center.

*User* shall mean a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

*Valet parking* means the service of parking motorized vehicles for patrons of a downtown business.

*Valet parking station* means the temporary, removable structure located near the valet parking zone as required by Division VIII of Chapter 46 of the City Code.

*Valet parking zone* means the area of the right-of-way where patrons of a downtown business served by valet parking may disembark from their vehicles.

*Video programming* means programming that is provided by, or generally comparable to programming provided by, a broadcast television station.

#### **46-2. Encroachment permit required.**

A. No person shall encroach nor place any encroachment upon, over or under the surface of any public place, highway, right-of-way, pathway, street, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility for any purpose whatsoever, without first obtaining a permit from the City in accordance with the provisions set forth herein.

B. No person shall excavate, erect, construct, place or maintain any pipe, conduit, wire, cable or other structure, on, over or under the surface of any public place, highway, right-of-way, pathway, street, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility for any purpose whatsoever, without first obtaining a permit from the City in accordance with the provisions set forth herein.

C. No person shall erect, place, display, maintain or use any obstruction, booth, stand, counter, furniture, sign, flag or temporary or permanent fixture upon any public place, highway, street, sidewalk, alley or other public right-of-way, for any purpose whatsoever, without first obtaining a permit from the City in accordance with the provisions set forth herein.

D. No work of any nature shall be performed in a public place or right-of-way, without first obtaining a permit from the City in accordance with the provisions set forth herein. The Department shall provide the forms for and set forth the rules, regulations and procedures governing the issuance of permits.

E. No person shall provide valet parking using a public street or public place for a valet parking zone, for locating a valet parking station, for storing patrons' vehicles, or for traveling without first obtaining a permit in accordance with the provisions set forth herein. A separate permit is required for each valet parking zone. Such permit shall not grant any right or priority of use for storage of patrons' vehicles or attendants' vehicles in parking facilities owned by the City, and storage of vehicles in parking facilities owned by the City shall be on a first-come-first-serve basis.

*46-2.1. Exceptions to permit requirement.*

A. The placement of traffic-control markings on pavements and curbs by the City and the marking of pavements, curbs and sidewalks by utility companies, engineers and surveyors to indicate the location of underground utility lines and monuments in connection with surveying, design, construction and maintenance work may be done without a permit; however, all other pavement, curb and sidewalk marking require a permit.

B. An encroachment permit for public utilities and other continuing uses may contain provisions allowing continuing maintenance of the permittee's facilities in the public rights-of-way and highways without securing a new and separate permit for each maintenance activity.

C. This chapter does not prevent any person from maintaining any pipe or conduit lawfully on or under any public highway, or from making excavations necessary for the preservation of life or property when an urgent necessity therefor arises while City offices are closed. A person making an emergency use or encroachment on a public street shall apply for a permit therefor within one (1) calendar day after the offices of the City are opened and shall pay all applicable fees, perform required pavement restoration and comply with all other applicable requirements of this chapter.

D. The City of Chandler is not required to obtain permits from itself pursuant to this chapter, however, contractors or other persons performing work under contract with the City or on behalf of the City in the City highway must obtain appropriate permits and comply with all the regulations set forth in this chapter, notwithstanding the provisions of section 46-2.6.G.

E. There are some public utilities who have ownership or easement interests in property obtained prior to the City of Chandler obtaining ownership interest in that same property. Nothing in this chapter shall extinguish such prior interests in such property.

*46-2.2. Application.*

A. The City shall prescribe and provide a regular form of application for the use of applicants for permits required by this chapter. The application shall show such information and details as the City deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed use or encroachment and shall be submitted to the Department together with the non-refundable application fee and other applicable fees established by council resolution.

B. The application shall be accompanied by construction plans, engineered designs, maps, sketches, diagrams or similar exhibits. The same shall be of the size and in the quantity prescribed by the City and of sufficient clarity to illustrate the method of construction, design, location, dimensions, nature and purpose of the proposed encroachment and its relation to existing and proposed facilities in the right-of-way.

C. The applicant shall also enclose with or attach to the application a certified statement that the applicant will obtain any and all other licenses, permits or approvals required by the City or any other governmental agency or other private party except as required under 46-6.4.F.

D. No substantial changes shall be made in the plans, design, location, dimensions, character or duration of the encroachment or use as granted by the permit except upon written authorization of the City. Such changes made without prior authorization are made at the applicant's risk.

*46-2.3. Other licenses.* An encroachment permit shall not be issued until any such other required licenses, permits or approvals are first obtained and certification thereof filed with the City, provided, however, some very complex encroachment permits for proposals also needing a license from the City may, at the discretion of the Department, be processed simultaneously with the application for the license.

*46-2.4. Determination of appropriate permit, need for a license and appropriate encroachment fees.*

A. Upon review of the application and other required documents, unless otherwise determined by City Council action, the Department shall determine which class of encroachment permit is appropriate, whether the use sought to be made of the City's highways requires a license or use agreement, which of the fees adopted by Council resolution apply to this permit, whether other fees, charges or taxes apply to such use and which approval process must be followed for that application. Additional licenses or fees may be required pursuant to other provisions of this code or other state or federal laws.

B. If a person files applications for more than one (1) type of encroachment permit or one (1) or more licenses together with an application for an encroachment permit, the Department may combine such applications and issue one (1) encroachment permit authorizing encroachments to be used for more than one (1) license or franchise. In no event, however, may required licenses be combined and applicants shall be required to apply for and obtain a separate license or franchise for each activity as required herein.

C. The City Council will establish a base application processing fee to be paid for each type of encroachment permit, however, for complex applications the non-refundable application processing fee shall be in an amount established by the Department as necessary to recover all reasonably related costs including outside consultants, incurred by the City to review and process the application.

D. Applications for encroachment permits and all documents and other information required to be submitted will be reviewed by such City staff or retained consultants as deemed necessary by the Department. Based on such review the encroachment permit application may be approved, conditionally approved or denied by the Department. If the City finds that the application is in accordance with the requirements of this chapter, it may issue a permit for the use or encroachment, attaching such conditions as are necessary for the health, safety and welfare of the public, including but not limited to aesthetic considerations. If the City finds the application is in conflict with the provisions of this chapter or any state or federal law, the permit shall be denied and the applicant given written reasons for the denial. No permit is valid unless signed by an authorized representative of the City.

*46-2.5. Non-interference with public works.* No permit shall be granted for a use which would unduly interfere with the public works of the City, endanger the public or permanently restrict, block or interfere with traffic.

*46-2.6. Terms and conditions of all encroachment permits.*

A. *Indemnification.* No encroachment permit shall be issued until the permittee has executed and filed with the City an indemnity agreement satisfactory to the City Attorney. The permittee shall be responsible for and indemnify the City from all claims, demands, expenses or liability including but not limited to personal injury and property damage arising out of or related to work performed by the permittee under the permit, arising out of the failure on the permittee's part to perform work under the permit, arising from or caused by the structures or encroachments placed in, on or under the City's right-of-way. If any claim of such liability is made against the City, its officers or employees, permittee shall defend, indemnify and hold the City harmless from such claim, including claims alleging the negligence of the City, its officers and employees.

B. *Insurance.* No encroachment permit shall be issued until and unless the applicant has filed and maintained on file with the City evidence of self insurance satisfactory to the City or a certificate of insurance demonstrating

sufficient public liability and property damage insurance coverage issued by an insurance carrier authorized to do business in the state, insuring the applicant and the City and its agents, against loss by reason of injuries to, or death of persons, or damages to property arising out of or related to work performed by the applicant, its agents or employees while performing any work under the permit. Such insurance shall be primary and provide coverage for all liability assumed by the applicant under subsection A of this subsection 46-2.6 and shall be provided by the permittee in minimum amounts as required by the City's Risk Manager.

C. *Performance bonds or other financial security.* The Department may require as a condition of issuing any encroachment permit, applicant to post performance bonds or other approved financial security to ensure satisfactory completion of any work to be performed in, on or under any public place, highway, or right-of-way and to insure adequate maintenance of encroachments.

D. *Commencement of work.* The permittee shall begin the work or use authorized by a permit issued pursuant to this chapter within one hundred eighty (180) days from date of issuance, unless a different period is stated in the permit. If the work or use is not so begun, then the permit shall become void. The permittee shall complete the work or use authorized by the permit within the time specified in the permit. Where an encroachment involves a permanent installation or obstruction, conditions so specified in the permit, license or other agreement with the City shall remain in effect until the construction or obstruction is removed.

E. *Term.* All permits shall specify the time, not longer than one (1) year, within which work or construction in the highway must be completed. Permits for continued use of the highway, shall be issued for a specified period of time. All permits may be renewed or extended upon such terms as are consistent with the provisions of this chapter.

F. *Relocation.* Any encroachment including but not limited to pipes, conduit, wire, cable, appurtenances or other structures or facilities installed or maintained in, on or under any public place, right-of-way or highway, shall be relocated, at the sole expense of the permittee, as may be necessary to facilitate a public purpose or any City project. Such relocations shall be under the same terms and conditions as the initial installation allowed pursuant to permit. The Department will not exercise the right to require such relocation in an unreasonable or arbitrary manner.

G. *Assignment.* Encroachment permits shall be applied for by and issued to the person or company who will make use of the permit and not to the contractor who has been employed to construct the improvements, provided, however, all contractors and subcontractors who will be performing work in the highway shall be named and identified in the encroachment permit application. The rights granted by the permit shall not be assignable without the express prior written consent of the Department.

H. *Supplemental.* The Department may require additional conditions for the issuance of a permit as are applicable and necessary to meet specific situations, for public safety and to insure compliance with this chapter and all other City, state or federal regulations.

I. *Acceptance.* Acceptance of any permit granted under the provisions this chapter shall not become effective until written acceptance thereof shall have been filed by the permittee with the Department. By accepting this permit, the permittee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City of Chandler, and the permit.

J. *Conflicts.*

1. In the event there is a conflict between the provisions of this Chapter 46 and the provisions contained in a franchise or license granted by the City to an applicant prior to the enactment of the conflicting provisions of Chapter 46, the provisions of the franchise or license shall prevail.

2. In the event there is a conflict between the provisions of this Chapter 46 and provisions contained in a franchise or license granted by the City to an applicant subsequent to the enactment of the conflicting provisions of Chapter 46, the provisions of Chapter 46 shall prevail.

3. The provisions in Divisions I and VIII of this Chapter 46 shall be construed so as to be harmonious and consistent whenever possible. In the event of a conflict between provisions in Division I and Division VIII, the provision in Division VIII shall prevail.

#### *46-2.7 Terms of construction.*

A. All work done or uses made under such permits shall be to the satisfaction of the City and shall be in accordance with the terms and conditions of the encroachment permit and all adopted regulations, standards and specifications of the City including the regulations and specifications for pavement restoration. Installation of all facilities shall meet the standard specifications, details and requirements of the Department. The Department may require a permittee to retain an approved utility line identification or locator service such as Arizona Blue Stake.

B. The permittee shall, to the satisfaction of the City, repair all water and sanitary service lines, streets, sidewalks, curbs, gutters or other property, structures, improvements or facilities damaged by construction or operation pursuant to the permit. All such repairs shall be done in accordance with City standard specifications, details and requirements of the Department.

C. No pavement cuts in new streets.

1. Permission to excavate in new streets shall not be granted for two (2) years after completion of street construction, reconstruction or

renovation (major rehabilitation). Utilities shall determine alternate methods of making necessary repairs to avoid excavating in new streets. Exceptions to the above are as follows:

- (a) Emergency which endangers life or property.
- (b) Interruption of essential utility service.
- (c) Work that is mandated by city, county, state or federal legislation.
- (d) Service for buildings where no other feasible means of providing service exists.

For the purposes of the section, a street is considered “new” when it is first constructed, when it is reconstructed or when it is renovated. Renovation shall mean a major rehabilitation which shall include mill and overlay or other similar roadway improvement work that physically modifies the surface of the roadway prior to applying new roadway surface or other similar work as determined by the City Engineer. Reconstruction shall mean completely rebuilding all the lanes of the street by removing all the pavement and aggregate base course material, re-compacting the sub-base and restoring the base material and then completely re-paving for a distance approved by the City Engineer. The Public Works Director/designee shall determine the date of completion for new streets and the date each street was last reconstructed or renovated, based on the date the street was opened or reopened for traffic.

2. In addition to the payment of the Pavement Restoration Fee, a condition of any street cut permit for cutting the pavement of a street within one (1) year of construction, reconstruction or renovation, shall be that the permittee renovate such street by mill and overlay/inlay, for a minimum of the full width of all lanes impacted by the cut(s) (outside lane includes to the curb) and for arterial streets extending a minimum length of fifty (50) feet both directions from the area of the cut(s) and for collector streets extending a minimum length of twenty-five (25) feet both directions from the area of the cut(s), all as more specifically directed by the City Engineer/designee. Provided, however, for pavement cuts smaller than two (2) square feet, the requirement to renovate the street by mill and overlay/inlay shall not apply. All permits which are issued under subsections (a) through (d) above shall be in accordance with the City of Chandler Standard Details and Specifications.

D. Pavement Restoration Fee.

1. Whenever any encroachment permit is required to cut into, open, bore, attach to, or make any break or disturbance to the street pavement of any arterial or collector street within the City, the permittee shall, in addition to the repairs required by this City Code, pay to the City the

Pavement Restoration Fee established by Council Resolution in the City Fee Schedule. The Pavement Restoration Fee adopted by Council resolution shall be reviewed annually with the budget for street repair.

2. The pavement restoration fee shall be paid to or at the time a street cut permit is issued. In the event changes or amendments to the street cut permit are required which would result in a change in the amount of the Pavement Restoration Fee, an adjusted fee shall be assessed and charged as follows:

(a) if the original pavement cut approved was from one (1) square yard up through twenty (20) square yards, the pavement restoration fee shall be recalculated and an adjusted fee assessed if the increase/decrease to the pavement cut is one (1) square yard or larger.

(b) if the original pavement cut approved was from twenty-one (21) square yards up through one hundred (100) square yards, the pavement restoration fee shall be calculated and an adjusted fee assessed if the increase/decrease to the pavement cut is more than five (5) percent of the original.

(c) if the original pavement cut approved was for more than one hundred (100) square yards, the pavement restoration fee shall be recalculated and an adjusted fee assessed if the increase/decrease to the pavement cut is more than five (5) square yards.

Such amended permit shall be applied for and any additional fees shall be paid within one (1) week of the field change or prior to any new encroachment permits issued to applicant.

3. The Public Works Director may authorize payment of the fee by the City upon finding that a street cut was made on an emergency basis to avoid a threat to public health, life or safety, or in an extraordinary circumstance the fee may be paid by the City upon approval of the City Council.

E. Construction signs required for work.

Whenever any work is being done in the City streets, easements or right of way for which approval by the City of a traffic control plan is required, the person or persons performing such work shall maintain at the site of such work at all times during which any such work is being done, signage meeting the requirements set forth below and providing information to the public as follows:

1. If the work will take one (1) week or longer to perform such signage shall:

- (a) Be installed so that the bottom of the sign is at least seven (7) feet above grade, or as otherwise approved by the City Transportation Engineer;
  - (b) Be at least three (3) by five-foot in size or large enough to contain all the information required below whichever is larger.
  - (c) Be placed in such positions that they can be read by traffic from each direction.
  - (d) Be colored “construction orange” with black letters.
  - (e) Have block letters at least six (6) inches in height;
  - (f) Contain the following information: the name of the company for whom the work is being performed; the name of the contractor actually performing the work; a general description of the work to be done; the time frame within which the work will be performed, i.e. the date work will commence and the date all work will be completed; a twenty-four-hour contact phone number where persons may speak with a representative of the company for whom the work is being performed or may leave a request to speak with such a representative and for which all calls will be returned by such a representative within twenty-four (24) hours.
2. If the work will take less than one (1) week to perform such signage shall:
- (a) Be installed on temporary supports at an approved location;
  - (b) Be placed in such positions that they can be read by traffic from each direction.
  - (c) Be colored “construction orange” with black letters.
  - (d) Have block letters at least six (6) inches in height;
  - (e) Contain the following information: the name of the company for whom the work is being performed; a twenty-four-hour contact phone number where persons may speak with a representative of the company for whom the work is being performed or may leave a request to speak with such a representative and for which all calls will be returned by such a representative within twenty-four (24) hours.

*46-2.8. Supervision and inspection of work.* The city may make any inspections deemed necessary in connection with permits issued under this section. During the construction, the City will inspect all trenching, backfilling, street or pavement cuts, and other work as

deemed necessary by the Department. Bus shelters and other construction utilizing electrical connections must obtain an electrical inspection from the City.

In addition to obtaining an encroachment permit pursuant to this chapter, before beginning any excavation in any City right-of-way, construction of or on any highway, sidewalk, curb, gutter or driveway approach, planting, trimming or removing trees, making, placing or causing an obstruction in any City right-of-way, the permittee shall notify the City at least twenty-four (24) hours in advance of the exact date and time work will commence unless, in the case of a continuing maintenance permit this requirement is not imposed. Upon completion of all work authorized in the permit, the permittee shall notify the City.

No work shall be deemed to be completed until notification of completion is given and the work is approved by the City.

*46-2.9. Abandonment or removal.*

A. Upon the expiration of any encroachment permit, if the permittee shall not have acquired an extension or renewal thereof and accepted the same, it may remove its structures, cable, equipment or other facilities and appurtenances.

B. If the permittee abandons use of structures, cable, equipment or other facilities placed in the right-of-way pursuant to the permit, then at City's option, City may require the permittee to remove all such structures, cable, equipment or facilities or may elect to accept ownership, in which case, title to such structure, cable equipment or other facilities shall vest in the City. Abandonment shall be presumed if the permittee does not remove its property, equipment, structures, facilities or other property placed in the highway, within one hundred eighty (180) days after expiration or termination of the permit. The permit may specify a different time period after which abandonment may be presumed.

*46-2.10. Condemnation by City.* Nothing in the permit shall be construed to deny the City the right to acquire the property of the permittee by the exercise of the right of eminent domain in accordance with the Arizona Revised Statutes.

*46-2.11. Encroachment permit is revocable.*

A. All encroachment permits may be revoked by the Department when the right-of-way, highway, or any portion thereof, occupied and used by the permittee is needed or required for a public use, and upon notice from the City, the permittee shall promptly remove all property belonging to permittee from the right-of-way.

B. If at any time the Department finds that the delay in the completion of the work or use authorized by an encroachment permit is due to lack of diligence on the part of the permittee, it may cancel the permit and restore the right-of-way to its former condition unless such restoration is completed by the permittee. The permittee shall reimburse the City upon demand for all expenses incurred by the City in restoring the public place or right-of-way.

46-2.12. *Termination.* All permits granted hereunder are subject to termination by the Department if:

- A. The permittee fails to comply with the requirements of the permit or this chapter or any other rule or regulation validly adopted by the City Council applicable to the permit granted hereunder; or
- B. The permittee fails to pay when due, any fee as required by the permit.

46-2.13. *Appeal.* Any person aggrieved by a decision of the Department acting under this chapter may appeal the decision to the City Council. The aggrieved person shall file notice, in writing, with the City Clerk within seven (7) days after final action of the Department. The City Council may affirm, modify or reverse the action of the Department. The decision of the City Council shall be final. This section does not apply to appeals taken under Division VIII of Chapter 46.

46-2.14. *Cease and Desist Orders.* Whenever any work is being done contrary to the provisions of this Code, the director of public works and/or the City Engineer may order the unauthorized work stopped by notice in writing served on any person engaged in the doing or causing such unauthorized work to be done, and any such person shall forthwith stop such unauthorized work. Any person performing work in the highway shall have a copy of a valid encroachment permit issued by the City at the site and make such permit available for inspection by the City at all times work is being performed or property or equipment is located in the highway.

46-2.15. *Penalty.* Any person violating any of the provisions of this chapter shall severally, for each and every such violation and non-compliance, be punished as provided in Chapter 1 of this Code.

**SECTION 2.** A new Division VIII to Chapter 46 of the Chandler City Code is hereby added to read as follows:

#### **DIVISION VIII. VALET PARKING – CLASS 9**

##### **46-11. Division VIII Definitions.**

In this Division VIII of Chapter 46, unless the context otherwise requires:

*Aggrieved person* or *person aggrieved* means any person, whose application for a valet parking permit has been denied, or whose valet parking permit is subject to revocation.

*Applicant* means the person making application for an encroachment permit pursuant to Section 46-13 below.

*Department* means the City Engineer. However, persons seeking permits pursuant to this Division VIII of Chapter 46 may obtain necessary forms and information from the permit counter in the Transportation and Development Department.

*Director* means the Director of the Transportation and Development Department or the Director's designee other than the City Engineer.

*Downtown Business Organization* means an Arizona non-profit corporation or other legal entity, whose membership principally consists of downtown businesses, which is recognized by the Chandler City Council as representing downtown businesses, commercial property owners, and other stakeholders in the marketing and promoting of business activity in the downtown, including, without limitation, through the provision of enhanced municipal services funded through the City's Enhanced Municipal Services District.

*Permittee* means the person in whose name a valet parking permit is issued to engage in valet parking, and who shall be the owner of the business providing valet parking.

*Valet parking permit* means the Class 9 permit or encroachment permit issued pursuant Section 46-13 below.

#### **46-12. Encroachment permit for valet parking - Class 9 permit.**

A. *Requirements.* A valet parking permit shall be issued in accordance with requirements of this Division VIII of Chapter 46 of the City Code.

B. *Purpose.* The City Council finds that valet parking is generally viewed as benefiting businesses and their patrons by helping to alleviate perceived parking deficiencies, to enhance customer service, and to encourage maximum use of less accessible parking spaces. This can be of particular benefit in the downtown, where the availability of private parking for many downtown businesses is limited. However, unregulated valet parking can cause traffic flow stoppages, unanticipated traffic movements, parking violations and unauthorized use of public areas and private parking spaces. The purpose of this Division VIII of Chapter 46 of the City Code is to regulate valet parking where its undesirable effects can significantly affect public areas or public safety. The regulations set forth herein are supplemental to other City regulations, including without limitation, zoning requirements under Chapter 35 of the City Code, and applicable business licensing, taxing and regulatory provisions of the City.

C. *Administration and approvals.*

1. The Department shall administer this Division VIII and may issue valet parking permits in accordance with the requirements set forth in Section 46-13 below. Valet parking permits shall only be issued for approved valet parking zone locations. A valet parking permit shall be for a period of one (1) year from the date the permit is issued, but may be suspended or revoked as provided for in this Division VIII and may be terminated as specifically provided for in Section 46-15.

2. In considering an application, the Department shall take into account the health, safety and welfare of the public, including but not limited to aesthetic considerations, and any conflicts in the application with other federal, state or local laws. Within a reasonable time after the application and all supporting documents are submitted

by the applicant, the Department shall take action to either approve, conditionally approve or deny the application.

D. *Fees.* The fees associated with a valet parking permit shall be those established by the City Council pursuant to a separate resolution setting fees for various encroachment permits, which may be amended, modified, supplemented or otherwise revised from time to time at the sole discretion of the City Council. The fees, which may be established as refundable or nonrefundable, may include, but are not limited, to a valet parking application fee and a valet parking permit fee.

E. *Approved locations.* The City Manager or designee shall designate the approved valet parking zone locations in accordance with the following procedures:

1. Prior to taking action to designate approved valet parking zone locations, the City Manager or designee shall hold a public hearing at which any of the following persons may be heard on the matter: (i) any owner of real property in the downtown; (ii) any downtown business; (iii) the Downtown Business Organization; (iv) any other interested member of the public.

2. Notice of the time, date and place of the public hearing shall be given at least fifteen (15) days prior to the date of the hearing in the following manner:

a. Notice shall be published at least once in a newspaper of general circulation in the City.

b. Notice shall be mailed by first class mail to: (a) the owner of real property in the downtown; (b) the owner of any downtown business; and (c) the Downtown Business Organization.

c. Notice shall be posted in a conspicuous place in the City as routinely practiced for official postings by the City Clerk.

3. After the public hearing, the City Manager or designee shall designate the approved valet parking zone locations and shall prepare a map showing the approved locations. The map shall be kept on file with the City Manager or designee and a copy of the map shall be placed on file with the City Clerk.

4. The City Manager or designee may cause subsequent changes to be made to the map in accordance with the procedures set forth in this Subsection E.

#### **46-13. Valet parking permit application process.**

The applicant for a valet parking permit shall be the person who is the owner of the business that will provide the valet parking or the owner's authorized agent. The application form shall be filled out completely, signed under oath by the applicant, signed by the owner of each downtown business to be served by the permittee under the valet parking permit, and submitted to the Department by delivering the same to the attendant at the permit counter in the Transportation and Development Department. The authority of the agent to act on behalf of the owner shall be evidenced by a writing, signed by the

owner, and included with the application at the time it is filed. If the business is owned jointly, then each person who is a joint owner of the business shall be a signatory on the application or on the written document designating the authorized agent.

Concurrent with the filing of the application, the applicant shall deliver notice of the application in accordance with the requirements set out in Subsection 46-1.3.

*46-13.1. Information required in or with the application form.* The application form for a valet parking permit shall include the following information:

A. The name of each person who will be a permittee and the permittee's business name, business location, business mailing address and business phone number; and, if different from the permittee, the name of the applicant and the applicant's business name, business location, business mailing address and business phone number.

B. A phone number that shall be answered in person twenty-four (24) hours a day by the permittee while the valet permit is in effect.

C. The name of each downtown business served by the permittee and, for each such downtown business, the name and phone number of the owner and operator, the business address and business phone number.

D. The square footage of indoor and outdoor floor area that is used by or made available to the patrons of the downtown business to be served by the permittee, and, if the downtown business to be served by the permittee is a theater, a bar or a restaurant, or will or is allowed to have live entertainment, the seating capacity of the downtown business. If the permittee serves more than one downtown business this information shall be provided for each business served.

E. A map showing:

1. The location of the proposed valet parking zone, specifying the dimensions of the zone, and, if applicable, the number of public parking spaces to be used for the valet parking zone; and

2. The location of the public or private parking spaces proposed for storing patron's vehicles and attendants' vehicles.

F. A scale drawing of the proposed valet parking station.

G. A scale diagram of the valet parking zone showing the location of the valet parking station, the removable signs, if any, and the removable cones to delineate the valet parking zone.

H. The minimum number of attendants proposed to attend the valet parking station during each hour of operation, which shall not be less than

two (2) attendants per hour unless the number is changed after a review as set forth in Section 46-13.6.D.

I. For all privately owned parking spaces, written authorization to use the parking spaces for storing patrons' vehicles and attendants' vehicles. The applicant shall provide a contract with the owner of the parking spaces which shall be valid for the term of the valet parking permit and which specifies the number and location of the parking spaces allowed to be used, the time periods of availability, and all other conditions under which the parking spaces may be used.

J. For all parking spaces in parking facilities owned by the City, the applicant shall provide a map showing the public parking structure(s) or lot(s) proposed to be used for storing patrons' vehicles and attendants' vehicles. The applicant shall state the time periods of proposed use and an estimate of how many parking spaces may be used.

K. The proposed hours of operation.

L. An estimate of the number of vehicles to be parked during the peak hour of operation on a typical day and the number of parking spaces needed for valet parking.

M. Samples of the receipts and tags to be used as specified in Sections 46-13.7.B.3 and B.4.

N. Copies of notices and proof of their delivery to the owner of each business required to have received the notices, all as specified in Section 46-13.3.

O. In addition to the information specified above, the applicant shall provide such supplemental information as the Department reasonably determines is necessary to evaluate fully the application.

*46-13.2. Changes in information.*

A. Except as set forth in Subsection B below, the applicant or permittee shall submit, in writing, to the Department, any changes in or additions to the information required under Section 46-13.1, within ten (10) days of the change or addition.

B. If the change or addition reflects the information specified below, the applicant or permittee shall resubmit the application or the valet parking permit to the Department for review within ten (10) days of the change or addition. The applicant shall pay the fee for such review as may have been set by the City Council pursuant to Section 46-12.D. The applicant or permittee shall also submit any other information that the Department reasonably determines is necessary to review the resubmitted application or permit.

1. The number or type of downtown businesses served or to be served by the permittee.
2. A twenty (20) percent or more increase in the square footage of indoor and outdoor floor area used by the public of the business served or to be served by the permittee, or twenty (20) percent or more increase in the seating capacity of each, theater, bar or restaurant or business that has or is allowed to have live entertainment that is served or to be served by the permittee.
3. The location of the proposed valet parking zone in the right-of-way, or a twenty (20) percent or more increase in the size of the valet parking zone, or any increase in the number of public parking spaces to be used for the valet parking zone.
4. The location of the public or private parking spaces proposed for storing patrons' vehicles and attendants' vehicles.
5. The contract to use privately owned parking spaces for storing patrons' vehicles.
6. The hours of operation.
7. A twenty (20) percent or more increase in the number of vehicles to be parked during the peak hour of operation on a typical day or in the number of parking spaces needed for storing vehicles.

C. The Department shall issue or reissue the valet parking permit or deny the resubmitted application for valet parking permit within thirty (30) days of receipt of all the new information necessary to evaluate the resubmittal.

*46-13.3. Notices required of applicant.*

A. The applicant shall deliver notice of the proposed valet parking zone to the Downtown Business Organization.

B. If the applicant proposes that the hours of operation will be limited to hours within the period of 5:00 p.m. through 3:00 a.m. the next morning, the applicant also shall deliver notice of the proposed valet parking zone to each owner of:

1. A business that fronts on the proposed valet parking zone;
2. A business located next to a business that fronts on the proposed valet parking zone; and

3. The permittee is not delinquent in the payment of any City taxes, fees or other payments due.

4. The permittee submits the insurance documents and signed indemnification form required by Section 46-13.4 and the additional sections of Chapter 46 referenced therein.

5. The Department has determined that there are no reasonable objections to the proposed valet parking permit made by the Downtown Business Organization or a business owner who received or should have received notice under Section 46-13.3.

6. The Department has determined that no grounds for denial otherwise exist.

B. *Denial of permit.* The Department shall deny an application for a valet parking permit or, if applicable, for renewal of a valet parking permit, when:

1. The applicant has failed to complete the application required in Section 46-13.1, or to fully disclose the information required in Section 46-13.2, or to send the notices required in Section 46-13.3, or to submit the insurance documents and signed indemnification form required in Section 46-13.4; or

2. The Department has determined that grounds for denial exist, including, but not limited to, the following:

a. The location of the proposed valet parking zone or valet parking station will cause or result in undue interference with public works of the City, will endanger the public, or will unduly restrict, block or interfere with traffic.

b. The manner or operation of the valet parking use proposed in the application threatens or will threaten the public health, safety or welfare;

c. A reasonable objection to the proposed valet parking zone has been made by the Downtown Business Organization or one (1) or more business owners who received or were entitled to receive notice under Section 46-13.3.

C. *Notice of denial.* The Department shall give written notice of any denial of an application for a valet parking permit or for renewal of a valet parking permit as required in Section 46-17.1. The aggrieved person may appeal the denial as provided in Section 46-17.4.

7. The valet parking zone shall be operated to avoid illegal parking by patrons awaiting valet parking.

8. Patrons' vehicles shall not be backed into the right-of-way from the valet parking zone. (Not applicable to a valet parking zone using angled parking.)

9. Patrons' vehicles and attendants' vehicles shall be stored only in the parking spaces approved in the permit.

10. If, at any time, a vehicle stops outside the valet parking zone, the driver shall be requested to move into the valet parking zone or move on.

11. Valet parking shall not be provided to vehicles stopped outside the valet parking zone.

12. Valet parking shall not be provided if the operations have been suspended by a police officer, or a code inspector in the presence of a police officer, except to retrieve vehicles already subject to valet parking.

13. A valet parking station or a valet parking zone shall not be operated if the operations have been suspended by a police officer, or a code inspector in the presence of a police officer, except to retrieve vehicles already subject to valet parking.

14. At the end of the hours of operation each day, all litter shall be removed from all parking spaces (and their immediate vicinity) that are used for storing vehicles, and from the valet parking zone and its immediate vicinity.

15. Each lawful order of a police officer enforcing this Section 46-13.7.E shall be obeyed.

F. *Required record; inspection of premises and records.*

1. Copies of the following documents shall be available at the valet parking station during the hours of operation specified in the valet parking license: the valet parking permit; the certificate of insurance and indemnification form required in Section 46-13.5; the written authorization to use private parking spaces for valet parking; the approved drawing of the valet parking station; the approved diagram of the valet parking zone showing the location of the valet parking station, the valet parking zone, the removable signs, if any, and the removable cones; the location of the parking spaces used to store patrons' vehicles and routes to the parking spaces; a copy of this Division VIII with Section 46-13.7.E highlighted, and a current roster of all attendants, including their

names, addresses, phone numbers, dates of birth and driver's license numbers.

2. Copies of the receipts given to patrons for the three (3) most recent months of operation shall be available for inspection by the City at all reasonable times.

3. The permittee shall allow police officers and other city agents to inspect the valet parking station, the valet parking zone and all the records required to be kept under this subsection F during the hours of operation specified in the valet parking permit.

G. *Valet parking for one-time events.*

1. Upon ten (10) days' written notice to the Department, a permittee may provide valet parking for one-time events under the permittee's current permit without additional fees. The permittee shall use the approved valet parking zone, valet parking station, and parking spaces used to store vehicles. Except for providing valet parking outside the approved hours of operation, the permittee shall operate in conformance with Section 46-13.7.A through Section 46-13.7.F.

2. A permittee may, upon approval, provide valet parking for one-time events in downtown under a special events permit.

**46-14. Suspension of valet parking operations.**

A. A police officer, or a code inspector in the presence of a police officer, shall suspend all operations at a valet parking station and a valet parking zone, except for retrieval of vehicles already subject to valet parking, for the remainder of one (1) evening's hours of operation (which may extend into the early morning hours of the next day), upon the issuance of two (2) citations in one (1) evening (which may extend into the early morning hours of the next day), for any of the following hazardous conditions:

1. Failure to avoid unsafe conditions, including obstruction of traffic flow, patrons' stopping, opening doors or disembarking outside the valet parking zone, and reckless driving of attendants.

2. Failure to avoid illegal parking by patrons awaiting valet parking.

3. Failure to avoid attendant's backing of patrons' vehicles into the right-of-way. (Not applicable to a valet parking zone using angled parking.)

4. Failure to store patrons' vehicles only in parking spaces approved in the permit.

B. A police officer shall suspend all operations at a valet parking station and in a valet parking zone, except for retrieval of vehicles already subject to valet parking, for

the remainder of one (1) evening's hours of operation (which may extend into the early morning hours of the next day), upon the occurrence of any traffic accident arising out of unsafe operating conditions within or around a valet parking station or valet parking zone.

C. Where a notice of revocation of a valet parking permit has been issued by the Department, the permittee's valet parking permit shall not be suspended pending the conclusion of any revocation hearing or subsequent administrative appeal, except as provided in Sections 46-16.C and 46-17.3.H.

#### **46-15. Termination of valet parking permit.**

A. Notwithstanding any other provision of this Chapter 46 to the contrary, a valet parking permit shall be deemed to have automatically terminated under the following circumstances:

1. If the term of the permit expires without having been renewed prior to the date of expiration; or

2. Thirty (30) days following written notice being delivered to the permittee that the highway, or any portion thereof, occupied and used by the permittee or by the permittee's business for the valet parking authorized under the permit is needed or required by the City for a public use.

B. Upon termination, the permittee shall promptly remove all property belonging to the permittee or the permittee's business from the highway.

#### **46-16. Revocation of valet parking permit.**

A. A valet parking permit is subject to revocation for any of the following reasons:

1. The permittee's operation of a valet parking station and/or a valet parking zone have been suspended two or more times in any thirty-day period;

2. The permittee's insurance required in Section 46-13.4 is canceled or lapses;

3. The permittee is in arrears in making payment of any City fees, charges, taxes or assessments associated with the permittee's business or this valet parking permit; or

4. The Department has reasonable grounds to believe that:

a. The applicant or the permittee has given false or misleading information in making any application for a permit or renewal of a permit or in the supporting material provided as part of the application or has failed or refused to make full disclosure of information required by the Department to obtain the issuance or renewal of a permit; or

b. The permittee has been given written notice of a violation of any of the terms and conditions of the valet parking permit as set out in this Chapter 46 and has failed to cure or correct the violation within ten (10) days after delivery of the notice.

B. When grounds for revocation exist, the Department shall give the permittee written notice of a revocation hearing in accordance with Section 46-17.3 below.

C. Where a notice of revocation hearing of a valet parking permit has been issued by the Department, the Department may declare a valet parking permit suspended immediately if, in the reasonable judgment of the Department, the continuation of the valet parking conducted pursuant to the permit constitutes an unreasonable danger to the health or safety of any individual or the community in general. Such a suspension shall be lifted immediately where the valet parking permit is not ordered revoked at the conclusion of the revocation hearing.

#### **46-17. Denial or revocation procedures.**

The following procedures shall be followed in denying an application for issuance of a valet parking permit or a renewal of a valet parking permit or in revoking a valet parking permit.

##### *46-17.1. Notices.*

A. All notices of denial or revocation shall be given by the Department in writing; shall state the basis for the denial or revocation; shall give notice of any right to appeal a denial or of a revocation hearing, as applicable; and, where applicable, shall give notice of any immediate suspension of a valet parking permit.

B. All notices required to be given by the Department pursuant to this Section 46-17 shall be sent to the mailing address of record provided on the most recent application for issuance of a permit or for renewal of a permit, as applicable.

C. Notices of denial or revocation shall be either personally delivered to the applicant or permittee or mailed to the applicant or permittee. Notice given by mail shall be by certified mail, restricted delivery, deliver to addressee only and a return receipt shall be requested. Mailed notices shall be posted with the United States Postal Service and sent to the address referenced in subsection B above. The results of any hearing provided for in this Section 46-17 shall be given to the applicant or permittee, as applicable, in same manner provided in herein.

D. When the Department has reasonable grounds to believe that the address of record is incorrect, the Department may send the notice to any address of the permittee known to the Department, including the address listed on any criminal citation, police report or record, if the Department believes it to be the most current address of the applicant or permittee.

E. Compliance with the mailing provisions of this Section 46-17.1 constitutes notice of the denial or revocation, and the right of appeal or of a revocation hearing, as applicable. The City is not required to prove actual receipt of the notice or actual knowledge of the denial or revocation. Any notice that is the subject of this Section 46-17.1 is complete upon mailing.

*46-17.2. Revocation hearing – general provisions.*

A. A revocation hearing under Section 46-17.3 shall be conducted by the City Engineer or the City Engineer’s designee or a person retained by the City for the specific purpose of conducting such hearing. Whosoever is conducting the revocation hearing is designated herein as the “Hearing Officer.”

B. The Hearing Officer shall preside over the revocation hearing, direct the course of the proceedings and make all rulings necessary to conduct the hearing in a fair and orderly manner.

C. The City may be represented at such hearings by any member of the city staff, including, without limitation, an attorney with the Chandler City Attorney’s office, or by outside counsel. The permittee or appellant, as applicable, may be represented by counsel. Each party to a hearing may present evidence in support of their position through testimony by witnesses, documents and other materials.

D. Hearings conducted pursuant to this Section 46-17 will be informal and the formal rules of evidence will not apply. The burden of proof shall be upon the City to prove the grounds for denial or revocation by a preponderance of evidence. All revocation hearings shall be recorded stenographically, on magnetic voice tape or on video tape or other comparable means of recordation. The resulting record shall be maintained as a public record of the City for such period of time as may be required by law, but in no event for less than one (1) year.

*46-17.3. Revocation hearing – specific procedures.*

A. When grounds for revocation exist, the Department shall give the permittee written notice of a revocation hearing. The notice of hearing shall be given in accordance with this Section 46-17 and shall contain the following information:

1. The grounds for the revocation, including citations to applicable Code provisions.

2. Notice of the date, time and place set for the revocation hearing. The date and time of the hearing shall be not less than ten (10) days, nor more than fifteen (15) days, after giving notice. Upon written stipulation of the parties, the Hearing Officer may extend the date and time of hearing.

B. A copy of the provisions of this Division VIII shall accompany the notice of the permit revocation hearing.

C. At the time of the revocation hearing, the Hearing Officer will state the grounds for revocation. The City shall then make its presentation, followed by the permittee. Presentations, including the introduction of any witness testimony and documents as evidence, will be limited to the issue of whether the permit that is the subject of the hearing should be revoked. At the close of both presentations, each of the parties may give final argument in support of their positions.

D. If the permittee is not present at the place and at the time the hearing is scheduled, or within fifteen (15) minutes thereafter, the Hearing Officer may infer that the permittee's absence is voluntary. Unless there is good cause, the hearing shall go forward without the permittee. An authorized legal representative, who is present within the required time, may represent the permittee in the absence of the permittee.

E. The Hearing Officer may rule on the revocation at the close of the evidence and argument, but shall enter a ruling within ten (10) days of the completion of the hearing.

F. The ruling of the Hearing Officer shall be in writing and signed by the Hearing Officer (and, if the Hearing Officer is not the City Engineer, then also by the City Engineer) and shall contain the Hearing Officer's findings in respect to the allegations and the evidence supporting the findings. No permit shall be revoked unless the Hearing Officer finds by a preponderance of the evidence that one (1) or more of the grounds alleged for revocation are true. The Department shall give notice of the ruling as provided in this Section 46-17 and any revocation of a permit shall be effective when notice is given to the permittee and:

1. The time permitted for filing a notice of appeal, pursuant to Section 46-17.4, has expired without a notice of appeal having been filed; or
2. The revocation has been affirmed by the City Manager or designee following consideration of a timely filed notice of appeal; or
3. The aggrieved person has filed a timely notice of appeal, but has abandoned or withdrawn the appeal prior to consideration and ruling by the Director.

G. When a revocation becomes effective, as provided herein, the affected permittee shall surrender the valet parking permit to the Department immediately and shall no longer conduct any business pursuant to the permit.

H. Notwithstanding provisions to the contrary, following a ruling by the Hearing Officer as provided in subsection E above, the Department may declare that the valet parking permit be revoked immediately if, in the reasonable judgment of the Department, the continuation of the valet parking conducted pursuant to the permit constitutes an unreasonable danger to the health or safety of any individual or the community in general. A revocation made effective

under the provisions of this subsection H shall be reactivated immediately upon the taking of a successful appeal by the aggrieved party.

*46-17.4. Appeal.*

A. An aggrieved person may appeal the denial of an application for a valet parking permit or for the renewal of a valet parking permit, or the revocation of a permit, to the City Manager or designee by filing a written notice of appeal with the City Manager or designee not later than ten (10) days after notice of the action to be appealed from has been given by the Department. The right to appeal is waived if the notice of appeal is not timely filed.

B. The notice of appeal must be accompanied by any written argument the aggrieved person wishes to make in support of the appeal. The City Manager or designee shall give a copy of the notice and the written argument to the Department and to the person representing the City at the revocation hearing. The City shall file a responding written argument not later than ten (10) days after notice of the appeal and written argument have been given by the City Manager or designee, and shall give a copy to the aggrieved person. The aggrieved person may file a written rebuttal to the City's argument not later than five (5) days after the City's written argument has been given to the aggrieved person.

C. The City Manager or designee shall consider, as applicable, the permit application and supporting information, the record of the revocation hearing and any documents introduced into evidence at the hearing, together with the arguments of the parties and any other matters of record. The City Manager or designee shall issue a ruling based upon the application, hearing record, written arguments and any other matter of record within ten (10) days following the last written argument submitted.

D. The City Manager or designee shall uphold or sustain the action appealed if the action is supported by a preponderance of evidence. The City Manager or designee shall notify the aggrieved person and the Department of the City Manager or designee's ruling in writing, by mail.

E. When a permit revocation is the subject of an appeal under this section, the revocation shall not be effective unless it is sustained by the City Manager or designee. The revocation shall be effective immediately after the ruling of the City Manager or designee is made and written notice thereof has been given to the aggrieved person and the Department. The aggrieved person shall surrender the valet parking permit to the Department when the revocation becomes effective.

F. This article contains all the appellate relief to which an aggrieved person is entitled through city procedures. The exhaustion of appellate remedies at the city level does not preclude an aggrieved person from seeking any other remedies provided by law.

**46-18. Reapplication for valet parking permit.**

A. Except as provided in Subsection B below, any person who, pursuant to this Division VIII, has previously been denied an application for a valet parking permit or for renewal of such permit, or who has had a valet parking permit revoked, may reapply for a valet parking permit at any time after the decision affecting the permittee's permit has become final and is no longer subject to appeal pursuant to this Division VIII. No new permit shall be issued to the permittee except upon full compliance with this Division VIII.

B. Any person who, pursuant to this Division VIII, has previously been denied an application for a valet parking permit or for renewal of such permit, or who has had a valet parking permit revoked, for the following reasons, shall not be allowed to apply for a valet parking permit until two (2) years after the decision affecting the permittee's permit has become final and is no longer subject to appeal pursuant to this article:

1. False or misleading information was given in any permit application or permit application supplement as required in Section 46-13.2, or was submitted in support of any permit or permit supplement.
2. The applicant or permittee failed or refused to make full disclosure of all information required for the completion of the application.
3. The valet parking permit was revoked because the permittee's operations of a valet parking station and valet parking zone were suspended two (2) or more times in any thirty-day period.
4. On at least three (3) occasions within a twelve-month period, the permittee was given written notice of a violation of the terms and conditions of the valet parking permit as set out in this Chapter 46 and failed to cure or correct the violation within ten (10) days after delivery of the notice.

**SECTION 3. PENALTY CLAUSE.**

A person convicted of a violation of a provision of Division I or Division VIII of Chapter 46 of the Chandler City Code as enacted or as modified by this Ordinance No. 4285 is guilty of a Class 1 misdemeanor, which is punishable by a fine not exceeding \$2,500.00, by imprisonment for a term not exceeding 6 months, by probation for a term not exceeding 3 years, or by any combination thereof. The sentence to pay a fine that is imposed on an enterprise convicted of a Class 1 misdemeanor shall be an amount not more than \$20,000.00.

INTRODUCED AND TENTATIVELY approved by the City Council of the City of Chandler, Arizona, this \_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4285 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_ day of \_\_\_\_\_, 2011, and that a quorum was present thereof.

\_\_\_\_\_  
CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY *EAB*