

**ORDINANCE NO - 2009-O-045**

**AMENDING CHAPTER 28 ARTICLE II ENTITLED "EXCAVATIONS" OF THE LAREDO CODE OF ORDINANCES, DIVISION I, II, III AND IV, SECTIONS 28-16 THRU 28-78, SAVE AND EXCEPT FOR SECTIONS 28-40, BY DELETING SAID SECTIONS AND ADDING ARTICLE IX TO BE ENTITLED "PUBLIC RIGHT OF WAY MANAGEMENT" SECTIONS 28-164 THRU 28-239; PROVIDING FOR A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City is charged with maintaining control of and access to the Right of Way in order to protect the health, safety and welfare of its citizens; and

**WHEREAS**, excavations in City Streets may significantly interfere with the public use of the Streets thereby resulting in a negative impact on air quality, parking and business to local merchants; and

**WHEREAS**, excavations in paved Streets may significantly degrade and shorten the life of the surface of the Streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance and repair, regardless of the quality of restoration; and

**WHEREAS**, it is desirable to adopt regulations that will provide the City greater control over the right of way in City Streets; and

**WHEREAS**, substantial public funds have been invested to build, maintain and repair the City Streets that are held as an asset in trust for its citizens, it is necessary to protect the structural integrity of the streets and safeguard the value of this public investment for the benefit of City residents; and

**WHEREAS**, providing incentives to reduce the number of Excavations also encourages coordination among Utilities and ensures Excavations are performed, to the extent possible, in Streets scheduled for resurfacing within the same or succeeding fiscal year as the Excavation; and

**WHEREAS**, when a repair fails in a paved Street that is not scheduled for resurfacing within the same or succeeding fiscal year, the Excavator should be required to make repairs necessary for proper use and appearance of the street, as Excavations and faulty repairs cause the greatest damage in newly surfaced Streets; and

**WHEREAS**, entities making and benefiting from an Excavation in a City street also should comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensures the best possible restoration of the paved surface over and adjacent to the trench; and

**WHEREAS**, regulation of Excavations in City Streets helps reduce disruption of and interference with public use of the Streets, helps prevent pavement damage, helps maintain the safe condition of the Streets, protects the public health, safety and welfare, is a valid and appropriate exercise of the

City's police power, and is a municipal responsibility; and

**WHEREAS**, the City Council find there is increasing demand for use of the Public Right of Way; and

**WHEREAS**, Chapter 283 of the Texas Local Government Code the (Act, 1999, 76<sup>th</sup> Leg., ch 840, et seg.) ("Act"), sets forth certain regulations governing municipalities and Certificated Telecommunications Providers ("CTPs"); and

**WHEREAS**, it is the City's responsibility to update its Code to be consistent with that of the Texas Local Government Code and to exercise the maximum authority preserved to local governments following creation of Chapter 283 of the Texas Local Government Code while at the same time to craft fair and reasonable rules for the use of The City's Public rights-of-way by entities not falling under the protection of Chapter 283, and

**WHEREAS**, this Ordinance is intended to promotes compliance with the Texas Utilities Code.

## **ARTICLE IX PUBLIC RIGHT OF WAY MANAGEMENT**

### **DIVISION 1. GENERAL PROVISIONS**

#### **SECTION 28-164 ADMINISTRATION**

The City Manager is the principal City official responsible for the regulation of the same and ordinances related thereto. The City Manager will delegate any and all duties hereunder to the Building Development Services Director.

- (a) The position of Right of Way Manager in the Building Development Services Department is hereby established. The Right of Way Manager in the Building Development Services Department shall have the duties and responsibilities as specified by the Director.
- (b) The position of Utility Coordinator is hereby established. The Utility Coordinator shall supervise Utility construction projects and Utility inspections.

The Director is authorized by the governing body with the written approval of the City Manager to petition the Public Utility Commission should a CTP be in violation of any of the terms of this Chapter.

#### **SEC. 28-165 DEFINITIONS**

The following definitions apply in this chapter of the City Code. The terms, phrases, words, abbreviations, and their derivations shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

- (a) ABANDONED FACILITIES means Facilities no longer in service or physically disconnected from the operation Facilities, or from any other Facilities that are in use or that still carry Service for a consecutive period of time in excess of two (2) years unless, within the aforesaid two year period, the City receives written confirmation and reasonable evidence that the ROW User intends to use the Facilities.
- (b) ADMINISTRATIVE FEE means the fee charged by the City to recover its costs incurred for Right of Way management; including, but not limited to, costs associated with registering Applicants; issuing, processing, and verifying Right of Way Permit applications; inspecting job sites and restoration improvements; determining the adequacy of Right of Way restoration; revoking Right of Way Permits and other costs the City may incur in implementing the provisions of this Ordinance.
- (c) APPLICANT means an owner or authorized agent of an owner, who submits an application for a Permit under these provisions of the City Code.
- (d) AREA OF INFLUENCE means that area around a Utility Excavation where the pavement and sub grade is impacted by the Excavation and is subject to more rapid deterioration due to the trench Excavation.
- (e) BIG PROJECT is defined as a capital improvements project that requires street closure or lane closure of more than forty eight (48) hours to complete.
- (f) CERTIFIED TELECOMMUNICATIONS PROVIDER or "CTP" means a Person who has been issued a certificate of convenience and necessity, certificate of operating authority, or Service provider certificate of operating authority by the Public Utility Commission of Texas or "PUCT" to offer local exchange telephone service as defined by Section 283 of the Local Government Code or "the Act."
- (g) CITY means the City of Laredo.
- (h) CONTRACTOR means any public or private Person or organization other than the City of Laredo.
- (i) DAY unless stated otherwise, means a business day, which excludes Saturdays, Sundays and holidays recognized by federal or state government or the City.
- (j) DEPARTMENT means the Building Development Services Department or a successor department that is responsible for management of the Right of Way and roadway infrastructure.
- (k) DIRECTOR means the Director of the City Building Development Services or his or her designee.

- (l) EMERGENCY or Emergency operations are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any Person and the work necessary to address a service interruption. Upgrading of Facilities, new service installation and neighborhood improvement projects are not emergency operations.
- (m) EXCAVATION means an activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the Right of Way and does include irrigation activity of the Right of Way.
- (n) FACILITIES means the plant, equipment, and property, including but not limited to lines, poles, mains, pipes, conduits, ducts, cables, and wires located under, on, or above the surface of the ground within the Right of Way and valves and related Facilities and equipment used or useful for the provision of Utility services.
- (o) FCC means The Federal Communications Commission.
- (p) GOVERNING BODY means the Mayor and the City Council of the City of Laredo, Texas.
- (q) GOVERNMENTAL ENTITY means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district, or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Texas or of any other state of the United States and any agency or instrumentality of the State of Texas or of any other state of the United States or of the United States.
- (r) MINOR ENCROACHMENT LICENSE – means the legal document outlining the rights and obligation of a non-CTP owner of a wire telecommunication system to be in the rights-of-way of the City.
- (s) NEW STREET means the paved portion of the Right of Way that has been constructed, reconstructed, or resurfaced with an asphalt overlay, hot in place recycling, full-length reclamation, reconstruction or other structural Street maintenance treatment. “New Street” includes all concrete paved Streets, Streets constructed or structurally resurfaced during the preceding seven years, for a collector or arterial Street or during the preceding five years for a residential Street or alley.
- (t) PERMIT means a Permit issued under this Chapter authorizing excavation in the Right of Way.
- (u) PERMITTEE means any Person or Right of Way User (including its authorized agents and representatives) to whom a Permit is issued to Excavate a Right of Way.
- (v) PERSON means any person, company, partnership, agency or other public or private entity including its authorized agents and representatives) except the City.

- (w) REGISTRATION means the application process of a ROW User to use any portion of the Right of Way.
- (x) REPAIR means the temporary or permanent construction work necessary to make the Right of Way useable.
- (y) REPAIR AREA means that area around an Excavation where the pavement and sub grade is impacted by an Excavation.
- (z) RESTORATION means the process by which an excavated Right of Way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.
- (aa) RESURFACING means any repaving; overlay; seal or reconstruction which creates a new pavement surface over the entire width of the Street, excluding crack seals and localized base and pavement repairs.
- (bb) RIGHT OF WAY or PUBLIC RIGHT OF WAY means the surface of, and the space above and below, any Street, road, highway, freeway, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter held by the City or over which the City exercises any rights of management or control and shall include but not be limited to all easements now held, or hereafter held, by the City but shall specifically exclude private property.
- (cc) RIGHT OF WAY-(ROW) USER means a Person, its successors and assigns, that uses the Right of Way for purposes of work, Excavation, provision of Services, or to install, construct, maintain and repair Facilities thereon, including, but not limited to, landowner and Service providers.
- (dd) ROUTINE SERVICE OPERATION means a work activity that makes no material change to the facilities and does not disrupt traffic.
- (ee) SERVICE means a commodity provided to a Person by means of a delivery system that is comprised of Facilities located or to be located in the Right of Way including but not limited to gas, telephone, cable television, Internet services, Open Video Systems, alarm systems, steam, electric delivery, water, telegraph, data transmission, petroleum pipelines or sanitary sewage.
- (ff) STREET means the pavement and sub-grade of a City residential, collector or arterial roadway.
- (gg) SUPPLEMENTARY APPLICATION means an application made to excavate or obstruct more of the Right of Way than allowed in or to extend a Permit that has already been issued.

- (hh) TMUTCD shall mean The Texas Manual on Uniform Traffic Control Devices, latest edition.
- (ii) UTILITY shall mean any privately or publicly owned entity which uses the public Right of way to furnish to the public any general public Service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the Right of Way. Poles are regulated herein only as specifically set forth in this Chapter.
- (jj) “Utility Structure” shall mean any structure, cabinet, or any other appurtenance other than a pole or device attached to a pole which is owned or used by a utility company, cable company, or telecommunications provider to provide service. The phrase does not include devices or structures used to control or direct pedestrian or vehicular traffic on an adjacent roadway or infrastructure that provides water used for fire suppression.
- (kk) “Above Ground Utility Structure” or “AGUS” shall mean any utility structure that extends higher than the surrounding grade.
- (ll) “Video Service” has the same meaning as that set out in §66.002 of the Texas Utility Code or as may be amended.
- (mm) “Video Service Provider” has the same meaning as that set out in §66.002 of the Texas Utility Code or as may be amended.
- (nn) WHITE LINING means marking the Excavation site with white washable marking paint or flags prior to requesting a Utility locate in order to further identify the site.
- (oo) WIRE TELECOMMUNICATION SYSTEM means a tangible closed facility for the transmission of voice, video or data services, including all instrumentalities, facilities and apparatus incidental to such transmission.

## **SEC. 28-166 UTILITY PLANNING AND COORDINATION COMMITTEE**

A) Each Utility shall name a Utility coordinator who shall participate in the Utility Planning and Coordination Committee.

B) Unless barred by the law, annually on the first day of October, each Utility shall prepare and submit to the Director a plan that shows all known plans of foreseeable excavations in the paved portion of the public rights-of-way anticipated to be done in the next three years or a statement that no excavations are planned. The Utility shall report to the Director promptly any changes in the plan as soon as those changes become reasonably foreseeable.

C) The City may disclose information contained in a three-year plan to another Utility only on a need-to-know basis in order to facilitate coordination and avoid unnecessary excavation. If a Utility clearly and appropriately identifies information contained in the plan as confidential proprietary, a trade secret, or otherwise protected from disclosure, then to the maximum extent permissible under federal or homeland security and state, and local laws applicable to public records, the City shall not disclose that information to the public. If the City determines that information is not clearly or appropriately identified, the City shall follow the procedures in the Texas Public Information Act for requesting a Texas Attorney General's Opinion regarding exemption of the information from disclosure.

D) A three-year repaving plan shall be prepared by the City Engineering Department showing all proposed repaving and reconstruction in the paved portion of the rights-of-way, revise and update the plan on an annual basis after receipt of the three-year plans from the Utilities, and make the plan available for public inspection.

E) The Director shall review and approve the three-year plans or plan available and identify conflicts and opportunities for coordination of excavations in the paved portion of the public rights-of-way.

F) If Utilities propose to do excavations in the same paved portion of the public rights-of-way within a three-year period, the city shall issue permits for the work in a manner that maximizes coordination and minimizes the total period of construction.

G) A developer shall provide a development with underground facilities for Utilities when required in accordance with Article III of the Land Development Code. The developer shall execute all required agreements relating to the underground facilities, including easements, and provide proof to the city that the agreements have been executed.

H) The City may require conduit for underground facilities in the paved portion of the public rights-of-way.

I) The City or another Utility may at its discretion install conduit and/or other facilities of its own when a street is cut by a utility. Such conduit or other facilities shall be installed at the City's or Utility Company's cost, but the City shall not pay any part of the cost of the street opening.

#### **SEC. 28-167 FIELD UTILITY COORDINATION**

The ROW User shall notify the Department at each of the following times during a project: a) forty eight (48) hours before the start of construction; b) upon completion of the initial backfill; and c) upon completion of the project. The ROW User shall mark the site of the proposed Excavation with White Lining and/or flags prior to making a request for locates and actual Excavation. White lining is not required for Excavations more than 60 feet long unless the Excavation is located in pavers, cobblestone, pavements, sidewalks, or other public flatwork.

The ROW User shall make a request for a Utility locate in accordance with the requirements of the Texas Underground Facility Damage Prevention and Safety Act, Texas Utilities Code Section 251.001 et sec.; not more than (fourteen) 14 days and not less than forty eight (48) hours prior to the commencement of the proposed Excavation. Such request shall be made to the ONE - CALL SYSTEM and the Utility Coordinator of the City. Such requests shall be made by telephone or facsimile and shall include the date, location, extent and reason for such proposed Excavation.

The use of markers, stakes, poles, barricades or other devices shall be used as appropriate in such a way to avoid damage to adjoining property. The use of "Non-washable" markers is prohibited.

The ROW User shall mark the proposed Excavation site with paint and/or flags in colors established by the One-Call System. The markings shall be placed a distance of not less than five (5) feet in all directions from the outside boundary of the site to be excavated.

All Excavations shall commence within fourteen (14) days of the date of the Utility locate. In the event that the excavator fails to commence work within fourteen (14) days of the Utility locate marks are not visible at the time the Excavation is scheduled to commence, the ROW User is required to request a new Utility locate.

Compliance with the Texas Utilities Code is required at all times.

All barricades, plates, cones, traffic directional equipment, and all other traffic control devices owned by the ROW User and used on or near any Excavation shall be clearly and visibly marked with the name of the Permittee and/or ROW User for any project with duration of more than twenty four (24) Hrs as applicable, at all times such equipment is used on or near the Right of Way. An exception to the marking requirement may be made in the event the traffic control equipment is not owned by the Permittee or ROW User.

#### **SEC. 28-168 NOTICE**

Notice for purposes of this ordinance shall be made to City via, overnight courier (generally used carrier with tracing available), or hand delivery with signed receipt, facsimile to the Department, or registered or certified United States mail return receipt required. Notice may also be given by e-mail if receipt of the e-mail is acknowledged by an e-mail from the Department referencing the notice e-mail.

#### **SEC. 28-169 REGISTRATION**

All ROW Users, except a franchisee or licensee of the City that authorizes the Service provider to use the Public Right of Way and whose franchise or license shall serve in lieu of registration, must register with the City within thirty (30) days of effective date of this Ordinance. Any Person who is not an existing ROW User prior to the effective date of this



Ordinance and who wishes to become a ROW User must first register with the City. All ROW Users shall report all changes in its registration information within thirty (30) days of such change. Except as set out above. No ROW User shall be authorized to utilize the Right of Way in any capacity or manner without registering and obtaining the necessary Right of Way Permit from the City.

#### **SEC. 28-170 REGISTRATION INFORMATION**

The information required for registration includes the following:

- A) Identity and legal status of ROW User and names under which it will own and operate of any Facilities on the Right of Way.
- B) Name, address, telephone number, fax number and e-mail address of officer, agent or employee responsible for the accuracy of the registration information.
- C) Name, address, telephone number, fax number and e-mail address of the local representative of the ROW User who shall be available at all times to act on behalf of the ROW User in the event of an emergency.
- D) If applicable, certification number issued by Public Utilities Commission of Texas. (PUCT)
- E) General Description of Services to be provided.
- F) Insurance and bonding information.
- G) Employee Safety Certification Information.
- H) ROW users shall provide all such other information as may be reasonably required by the City to complete the registration statement.

#### **SEC. 28-171 EMPLOYEE SAFETY CERTIFICATION**

The ROW User operating Facilities or constructing Facilities in any Public Right of Way is responsible for the safe movement of pedestrian and vehicular traffic through the construction area. The ROW User shall obtain traffic control training through a City approved training organization for a sufficient number of employees working within the Right of Way such that a trained employee is present at the job site during construction activities. The ROW User shall meet all requirements for barricading and traffic control as specified in the TMUTCD. Alternative training programs may be submitted to the Director for City approval, such as in-house safety training that complies with TMUTCD requirements. Only those individuals, who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, shall place and maintain the traffic control devices in the construction area. Training records shall be maintained

current by ROW User at all times. Upon request of the Director, the ROW User shall make such records available within a reasonable time.

### **SEC. 28-172 FOR UTILITY PLANNING AND COORDINATION GUIDE**

*Please see Utility Planning and Coordination guide as adopted by ordinance 2005-O-022*

### **SEC. 28-173 REPORTING OBLIGATIONS**

All ROW Users except a franchisee shall provide on demand, proof of any necessary Permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the City, State or Federal Government, including a description of the ROW User's intended use of the Right of Way, information sufficient to determine whether the ROW User is subject to franchising or licensing by the City, and information to determine whether the ROW User has applied for and received any certificate of authority required by the PUC. The information provided shall be sufficient to determine that the ROW User has applied for and received any Permit or other approvals required by the FCC. ROW Users shall provide all such other information as may be reasonably required by the City to complete the registration statement.

### **SEC. 28-174 PERMIT REQUIRED**

It is unlawful for any Person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, excavate or use the Right of Way for any purpose without first having made application and obtained a Permit. It is unlawful for any Person, its agents, servants or employees to make or cause to be made any Excavation in or under the surface of any Right of Way for the installation, repair or removal of any Facilities or for any other purpose without first obtaining from the Director a Permit in compliance with this chapter.

- A) Before issuing a Permit, the Director shall have been provided a written application on a form furnished by the Director setting forth the name and residence or business address of the Applicant, the location and approximate area of the Excavation, including its approximate length and width, and, if the Excavation is in a Street, whether it is parallel or transverse to the direction of the travel lanes, and the purpose of the Excavation. The application form shall include plans prepared in accordance with City of Laredo Standard Technical Specifications Manual. In accordance with Section 1001.061 of the Texas Occupations Code, plans submitted by a CTP are not required to be certified by a Professional Engineer.
- B) At the time the Permit is issued, the Applicant shall pay a non-refundable Application Fee in an amount as provided for in this Chapter, except franchise or access fee payee of the City shall be exempt from the payment of such application fee.
- C) The proposed location, depth and other characteristics of Facilities for which the

Permit is issued shall be subject to approval of the Director, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of Chapter.

- D) No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way obligation of public and private Utilities with Facilities installed in any Right of Way to relocate the Facilities at no cost to the City, subject to state law, if applicable, in the event that relocation is required by the City to accommodate a proper governmental use of the Right of Way.
- E) Combinations of Permits shall be permitted at the discretion of the Director. Fees shall be assessed based on the Excavations permitted.
- F) Subdivision monuments, historical markers, and any other signs or structures with foundations in the Right of Way, excluding bill boards, are subject to this Chapter.
- G) Any work to be performed with in the State of Texas Right of Way shall secure a permit from the Texas Department of Transportation. A copy of the permit, if applicable, shall be provided to the City. Otherwise, all inspections are subject to joint inspections by The Texas Department of Transportation and the City.
- H) A permit is not required under this section if the activity in the Public Right Of Way consists exclusively of the connection of real property to a retail Utility Service or operation and maintenance of facilities, or provided such work does not involve making a pavement cut or excavation in the public Right Of Way. However proper traffic control if applicable must be installed.

#### **SEC. 28-175 EXCAVATION PERMIT APPLICATION**

Application for a Permit shall be addressed to the Director and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or Excavation to be made, the location, by street and number if possible where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing owned Facilities in the area of applicant to the extent available, and the location of the proposed Facilities, methodology of construction; proposed start and completion dates.

- A) JOINT APPLICATIONS – Applicants may apply jointly for Permits to excavate the Right of Way at the same time and place. Applicants who apply jointly for a Right of Way Permit may share in the payment of the Permit fee. Applicants must agree among themselves as to the portion each shall pay. The City will recognize only one point of contact.
- B) SUPPLEMENTARY APPLICATIONS – A Permit shall only be valid for the area of

the Right of Way specified within the Permit. Nor Permittee may cause any work to be done outside the area specified in the Permit, except as provided herein. Any Permittee who determines that an area greater than that which is specified in the Permit must be excavated must: (a) make application for a Permit extension and pay any additional fees required thereby; and (b) receive a new Right of Way Permit or Permit extension.

Permits will be issued or denied within five (5) days of application. Unless granted for a longer period, an Excavation Permit shall be valid for thirty (30) days and for the dates specified in the Permit. The applicant may request the Permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. City may approve or deny the application for such extended Permit period. No Permittee may commence work before the Permit start date or except as provided herein, may continue working after the end date. If a Permittee does not complete the work by the Permit end date, the Permittee must apply for and may receive a new Right of Way Permit or a Permit extension for additional time. This Supplementary Application must be submitted to the City prior to the Permit end date. If permit is allowed to expire, ROW user shall procure new permit paying the applicable fee, before proceeding with any work. No permit is transferable. A permit shall be void unless the excavation to be made is commenced within time stated on permit.

An extended Permit may be requested, and shall be issued within two days of application upon a showing of good cause.

#### **SEC. 28-176 EXCAVATION TO BE UNDER SUPERVISION OF THE DIRECTOR**

Any ROW User engaged in making or backfilling any Excavation in any Right of Way shall at all times while such work is in progress keep at the job location the Permit, or a copy thereof, and shall, on demand, exhibit the Permit to the Director, Right of Way Manager or any police officer. At all time while the work is in progress the ROW User shall also maintain at the job location, a sign, barricade, or other device bearing the ROW User's name.

The ROW User shall protect from damage, Utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, or other property at, near or encountered in his work.

All Excavations and other construction in the Streets shall be conducted so as to interfere as little as practicable with the use of Rights of Way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the policy and regulatory powers of the City necessary to provide for public convenience. The ROW User shall reasonably protect from damage, Utility Facilities, sewer Facilities, water Facilities, lawns, shrubbery, trees, fences, structures, or other property encountered in his work. The ROW User shall not trespass

upon private property. The ROW Users shall determine the boundary between public Right of Way and private property to avoid encroachment if deemed necessary by Director.

All transmission and distribution structures, lines, equipment and Facilities erected by a ROW User within the City shall be so located as to cause minimum interference with the proper use of the Public Right of Way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said Streets.

The City reserves the right to lay and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and Facilities, as well as drainage pipes and channels and Streets and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City, in, across, along, over or under any grade of any street and to maintain all the City's Facilities. In allowing such work to be performed by others, the City as manager of the Public Right of Way shall not be liable to a ROW User for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW User by such third party. If the City requires a ROW User to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the City, to use, or to use with greater convenience, any Right of Way or public place, the ROW User shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a ROW User for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a ROW User's Facilities; provided, however, that the City shall never be liable for such reimbursement.

Except where otherwise provided by federal or state law, a utility shall install its facilities underground to the fullest extent possible if:

1. electric and telephone utilities are already underground (for utilities other than electric and telephone);
2. the utility to which the utility's trunk and feeder lines are attached is underground; or
3. where required by law.

If other Utilities convert from aerial to underground cable so that electric and telephone utilities are underground, each utility shall relocate previously installed aerial cable underground in concert with the utility or utilities that are converting from aerial to underground.

All costs and expenses associated with the requirements of this subsection shall be borne by the Utility, except where otherwise provided by law or by a cost allocation agreement among Utilities.

#### **SEC. 28-177 ADDITIONAL EXCAVATION PERMIT**

Subsequent to issuance of a Permit, if it is necessary to excavate a larger area than originally estimated, the Permittee shall at once pay to City the amount necessary to obtain

the additional Permit necessary.

**SEC. 28-178 DENIAL OF PERMIT**

A permit may be denied or suspended for any of the following reasons:

- A) Failure to provide proof of a surety bond or liability insurance acceptable to the City; or
- B) Failure to secure a Contractor's license or other required license; or
- C) Failure to perform in accordance with the requirement of the City of Laredo Standard Technical Specification Manual or in accordance with these provisions; or
- D) The Excavation would be in a New Street and not otherwise permitted by this Ordinance; or
- E) The proposed warning or other traffic control procedures or equipment do not Comply with the requirements of the TMUTCD
- F) The proposed activity would violate a City ordinance or State or Federal statute; or
- G) The Permit application contains false or misleading information; or
- H) The activity would cause a public health or safety hazard; or
- I) The ROW User is not authorized within the City; or
- J) The ROW User is in violation of this Ordinance relative to work in progress.

Denied Permits may be appealed as set forth in this Ordinance.

**SEC. 28-179 APPEAL**

A Right of Way user that: (1) has been denied registration; (2) has been denied a Permit; (3) has had a Permit revoked; or (4) believes that fees imposed are invalid, may have the denial revocation, or fee imposition reviewed, upon written request as follows:

- A) Appellant shall provide, within five (5) business days of denial, a written notice of appeal filed with the Building Development Services Director. The notice must state the alternative available and routes explored, hardship encountered, cost comparison of other alternatives available and a statement of any other significant factors. The Building Development Services Director shall provide a written decision within five (5) business days of receipt of the appeal. Failure to render a decision within five (5) business days shall constitute a denial.

- B) If a further denial is given, the applicant may thereafter file a written Notice of Appeal with the City Manager within five (5) business days. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The City Manager shall provide a written decision within the ten (10) business days. Failure to render a decision within the ten (10) business days shall constitute a denial.

## **DIVISION 2. TECHNICAL SPECIFICATIONS**

### **SEC. 28-180 STANDARDS**

Construction standards for all Utilities and public improvements are in the City of Laredo Standards Technical Specification Manual.

### **SEC. 28-181 COMMENCEMENT AND COMPLETION**

After obtaining the Permit and prior to commencing the work, the Permittee shall notify the Right of Way Manager, and shall commence and complete all work within the time specified in the Permit unless an extension of time is granted by the Director.

### **SEC. 28-182 SAFE CONDUCT OF WORK**

Every Permittee and ROW User shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public using the Street or Right of Way where the work is being performed from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings, and Excavations. All material, implements and tools stored upon the premises and used in connection with the Excavation shall be stored in a safe and a non-hazardous manner.

### **SEC. 28-183 EMERGENCY EXCAVATIONS**

Nothing in this Ordinance shall be construed to prevent any Person operating and maintaining any pipe, conduit, or duct in or under any Street, or Right of Way by virtue of any law, ordinance or Permit, from making such Excavation as may be necessary to restore service due to unforeseen outage, for compliance with law or for the preservation of life or property when the necessity arises, provided that the Person making the Excavation shall notify the Right of Way Manager within twenty four (24) hours. Except as specifically provided otherwise in this Ordinance, Excavations authorized by this section shall be subject to all fees and requirements of this Ordinance.

### **SEC. 28-184 TRAFFIC CONTROL SAFETY**

In the event of non-compliance with the TMUTCD, the ROW User shall be notified in writing

of the violation, and all work must stop immediately until ROW user comes into compliance. In the event of continued non-compliance, the Director may revoke the Permit, in addition to any other remedies available to the City.

#### **SEC. 28-185 RESTORATION OF EXCAVATION IN PAVED SURFACES**

The Permittee shall complete pavement restoration of the excavated area within the approved time on the application on major arterial and collector Streets and on residential Streets after final backfill is completed and accepted by the Director. The Permittee shall conduct the work with a minimum disturbance to existing Utilities and shall coordinate all work in or near the existing Utilities with the Utility Owners.

##### **A) EXCAVATION IN NEW STREETS**

There shall be no Excavation in New Streets without the prior approval of the Director or Right of Way Manager. Any request for a Permit to excavate a New Street shall include a description of the proposed work and proposed restoration of the area, as well as a statement as to why alternate procedures cannot or should not be used in lieu of excavating a New Street. If excavation is approved by the Director or Right of Way Manager, depending on site and area of street, will require repavement of street.

##### **B) EXCAVATION IN ARTERIAL STREETS IN GOOD CONDITION**

A permit holder shall perform jacking and boring operations in a manner that does not weaken or impair the Right of Way upon completion of restoration of the Excavation.

Excavation in all Streets in good condition regardless of age should not occur without prior approval of the Director or Right of Way Manager.

Restoration of the excavated area of Streets in good condition shall be in accordance with this Ordinance.

##### **C) RESPONSIBILITY OF EXCAVATED AREA MAINTENANCE**

A Permittee or ROW User shall maintain their repairs in the Right of Way for a warranty period of one year.

#### **SEC. 28-186 LAWFUL USE OF RIGHT OF WAY**

A) The use of the Right of Way in any manner which violates federal, state, or local laws, or City codes and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All Permittee's shall provide satisfactory evidence of compliance with the foregoing upon request of the City.

B) Permittee shall dispose of all material removed from the Right of Way and any waste



created by Permittee in compliance with all state, federal and local laws and requirements.

- C) If a Permittee discovers any contaminated, regulated, or hazardous materials in The Right of Way, Permittee shall be responsible for environmental assessment, Excavation, testing, transportation, and disposal of any such contaminated or regulated material in accordance with applicable law, or the Permittee may elect to abandon the contaminated area of the Right of Way and reroute around the contaminated area. The Permittee shall promptly notify the Right of Way Manager or Director in writing of the condition.

#### **SEC. 28-187 TREE TRIMMING AND GRAFFITI ABATEMENT**

Permission is granted to a ROW User, to trim trees upon and overhanging the Public Right of Way, so as to prevent the branches of such trees from coming in contact with a ROW User's Facilities. ROW user will coordinate its vegetation management activities within and /or adjacent to the Public Right-of-way with appropriate City departments including Traffic Safety and Parks and Leisure. All vegetation management activities affecting the Public-Right-of-Way shall be performed in accordance with federal and state mandates regulating vegetation management activities. The City shall report damage or vandalism to the ROW User's Facilities as soon as practicable after City discovers or learns of such event. The ROW User shall make the necessary repairs or restoration, including cleaning of graffiti, within forty-eight (48) hours after the ROW User discovers or learns of any misuse, destruction, damage, or vandalism to its Facilities.

#### **SEC. 28-188 CONFORMANCE WITH MAJOR THOROUGHFARE PLAN**

A ROW User shall consult the City's Major Thoroughfare Plan ("MTP") prior to the acquisition of any interest in real property in the City for the installation or relocation of Service lines or other equipment or Facilities along or adjacent to any Street, Right of Way, thoroughfare, highway, or any proposed Street, Right of Way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such Facilities. All ROW Users are charged at all times with constructive notice of the MTP subsequent to the effective date of this Ordinance. The City shall have no liability for the value of or loss by a ROW User of any improvements constructed in the area shown in the MTP subsequent to the effective date of this Ordinance.

#### **SEC. 28-189 RIGHTS IN THE EVENT OF ABANDONMENT**

In the event the City closes, vacates, abandons or conveys any Right of Way containing Facilities of the ROW User, any such closure, vacation, abandonment or conveyance of land shall be subject to the rights of the ROW User.

#### **SEC. 28-190 SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUITS**

All poles in the Rights of Way shall be of sound material and reasonably straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed at locations within The Right of Way as specified by applicable law so as not to unduly interfere with either vehicular or pedestrian travel. The location and route of all conduits, fiber, cables placement of poles, stubs, guys, anchors and Utilities and Facilities placed and constructed by a ROW User in the Public Right Of Way shall be subject to the reasonable and proper control, direction and approval of the Director provided however that ROW User's installation and configuration of its Facilities in the Public Rights Of Way shall at all times comply with Federal and State laws respecting such construction.

#### **SEC. 28-191 ATTACHMENTS TO POLES**

- A) Nothing shall obligate or restrict a ROW User from exercising its right to enter into a pole attachment, pole usage, joint ownership or other wire space or Facilities agreement with an owner of the pole or with other wire-using companies authorized to operate within the Public Right of Way of the City.
- B) A ROW User shall utilize existing poles, conduits, and other Facilities whenever reasonable and/or economically feasible. Utility or facilities attached to poles in right of way will provide digital electronic files of utilities or facilities placement in ROW.

#### **SEC. 28-192 TEMPORARY REARRANGEMENTS OF AERIAL WIRES**

The ROW User shall rearrange its aerial wires temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay in advance the reasonable and necessary expense of such temporary rearrangements. The ROW User shall be given not less than five (5) days advance notice to arrange for such temporary rearrangements, provided however, ROW User shall have no obligation to undertake such work until all Federal and State permits and compliance requirements have been met. The ROW User shall remove its aerial wires in connection with the demolition of unsafe structures, including emergency or ordered demolitions and invoice the appropriate parties for the cost of this work where applicable. Nothing in this section however shall be read to impose any financial burdens on the City for requesting the temporary rearrangement of aerial wires.

#### **SEC. 28-193 BACKFILL OF EXCAVATED AREA**

Open trenches may be temporarily backfilled for the convenience of the Permittee or the public safety according to City of Laredo Standard Technical specification manual. At least one (1) hour prior to beginning permanent backfill operations, the Permittee shall notify the Director of the time the backfill will begin by calling an established single point of contact at the Building Developmental Services Department. A confirmation ID number will be issued to the permittee. Inspector must arrive within one hour of agreed time other wise permanent backfill can commence.

All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. The new roadway base material shall be according to the City of Laredo Technical Specification Manual.

#### **SEC. 28-194 RESTORATION OF PAVEMENT**

Unless otherwise specified in the Permit, restoration of the asphalt pavement of any Street, alley Right of Way or other public place shall be performed by the Permittee or by the City, upon request by the Permittee. Nothing in this section shall relieve the ROW User from the responsibility to maintain the Excavation or installation in a safe condition until it is repaved by City or otherwise restored. In addition to all other applicable fees or charges, if the City performs the repaving of the ROW User shall pay for the repaving based on type of construction repair as per Section 28-218.

- A) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than three hundred (300) feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the Director.
- B) All Excavations shall comply with the City of Laredo Standard Technical Specification Manual.
- C) Any excavated pavement, debris and other rubble shall be removed, together with any surplus material, within one (1) working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the ROW User shall remove all loose paving material and trim the edges of the Excavation at the street surface to the satisfaction of the Director.
- D) Whenever any caving occurs in the sidewalks of any Excavation, the pavements above such caving shall be cut away, trench backfilled and pavement restored in accordance with the City of Laredo Standard Technical Specification Manual. In no case shall any side or lateral tamping fill any void under a pavement.

#### **SEC. 28-195 EXCAVATION SPECIFICATIONS**

All Excavations shall be made in accordance with plans submitted with the Permit Application and in accordance with specifications set forth in the City of Laredo Standard Technical Specification Manual. All Excavations shall be repaired in such a way so as not to become depressed, cracked, broken, or in any way fail during the one year warranty period.

#### **SEC. 28-196 CLEANUP OF RIGHT OF WAY**

In every case and at all times, the work of removing from the Right of Way all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the Excavation shall be the responsibility of the ROW User. Streets shall be cleaned by use of a street sweeper, on big project. The ROW User shall clean the surrounding area, as outlined above, within two (2) days upon completion and approval of all trench work and pavement restoration unless the Director has been given sufficient reason to grant an extension of time. Failure to leave work area clean will result in citation.

#### **SEC. 28-197 SUBSTANDARD REPAIR OF PAVEMENT OR RIGHT OF WAY**

In the event the pavement or the surface of the Street or Right of Way in, over or near any Excavation should become depressed, cracked, broken or fail in any way within one year (1) from the date of completion of the Repair ROW User shall perform such additional restoration work to the reasonable satisfaction of the City, or pay the City for its reasonable cost to restore the Street or Right of Way, provided the Repair or initial construction has not been disturbed or ; undermined by another ROW User or through some other independent intervening event or condition beyond Permittee's reasonable control. Nothing contained herein shall limit any other remedies available to the City.

#### **SEC. 28-198 FAILURE TO COMPLETE WORK WITHIN SPECIFIED TIME**

In the event any work governed by this Ordinance is not completed by the ROW User within the time required or in accordance within the specifications required herein or by the Director, the Director may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The ROW User shall reimburse the City for the costs of securing the site.

#### **SEC. 28-199 PERMANENT PAVEMENT REPAIRS**

All permanent pavement repairs shall be made under one of the two following methods:

- A) PERMANENT PAVEMENT REPAIRS BY CITY – If the City is to make the permanent pavement repairs, the ROW User shall maintain the excavated area for a period of two (2) weeks after acceptance by the Director. After the two week period, the City will be responsible for maintaining the excavated area until final restoration is made. Backfill failures shall remain the responsibility of the ROW User. The ROW User shall reimburse the City based on Section 28-218 for all costs of any backfill failure before and/or after permanent repair.
  
- B) PERMANENT PAVEMENT REPAIRS BY ROW USER – If the ROW User is authorized to make permanent pavement repairs, the ROW User will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW User shall make final repairs within five (5) working days on residential, local streets after the Director makes final inspection. Backfill failures

shall remain the responsibility of the ROW User.

**SEC. 28-200 RESPONSIBILITIES FOR SIGNS, BARRICADES, AND WARNING DEVICES**

The ROW User working in any Right of Way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW User shall meet all requirements for barricading and traffic control as specified in the TMUTCD.

- A) Only those individuals, who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, shall place and maintain the traffic control devices in the construction area. All signs and barricades must conform to the requirements of the TMUTCD and be inspected and approved by the Director or designee.
- B) The ROW User may subcontract the barricading to a firm specializing in traffic control, Either the ROW User or its subcontractor must submit a traffic control plan to the Director for review. All signs and barricades must conform to the requirements of the TMUTCD.
- C) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and approved by the Director or designee.
- D) Non-Compliance with the TMUTCD shall be cited in writing. In the event of non-compliance after citation, the Director may place the necessary devices as required and the ROW USER shall pay the charges therefore. The ROW User shall reimburse the Building Development Services Department for all such expenses as well as \$500.00 for non-compliance. Failure to comply with this provision may result in denial of application for future permits.
- E) All traffic control devices must be removed immediately upon completion of work.

**SEC.28-201 DUTY TO BARRICADE**

At all times during construction activity, the Contractor and/or ROW User, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including certified person in accordance with the safety training described in this Ordinance, if necessary, upon and around the work for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

**SEC. 28-202 INSPECTIONS**

The Permittee shall make the work-site accessible to the City, and others as authorized by law, for inspection at all reasonable times during performance of the work.

**SEC. 28-203 MATERIALS TESTING**

The Department may require testing of materials used in construction in or near the Right of Way to determine conformance to required specifications, including, but not limited to, compaction tests on backfill materials, sub grade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction material as deemed necessary by the Department.

#### **SEC. 28-204 DUTIES OF PERSONS MAKING EXCAVATIONS OR CREATING OBSTRUCTIONS**

Any Person who shall cause to be made any Excavation or obstruction in any Street or Right of Way may not remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such Street, or Right of Way so as to restore the same to its condition previous to the making of such cut or obstruction. It shall be the duty of the excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or Right of Way in as good condition as before the Excavation.

- A) In this section, "obstruction" means any object or structure that blocks or impedes the construction or maintenance of public works, including private facilities that provide electricity, gas, information services, sewer service, steam, telecommunications, traffic controls, transit service, video, water, or other services to customers; shrubbery or plants of any kind; and storage materials.
- B) If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the City may shift, adjust, accommodate, or remove the obstruction, and the City will charge the person having or maintaining the obstruction for the cost of performing the work.
- C) Conflicts among right-of-way users. In case of a conflict among utilities as to placement of facilities in the public rights-of-way, the City shall have the authority to direct the resolution of such conflict. In such a resolution the City shall seek to accommodate the reasonable needs of each utility, as well as the public health, safety, welfare, and convenience, to the maximum extent possible.

#### **SEC. 28-205 CEASE WORK ORDER**

At any time, the Director may order the immediate cessation of any work which poses a threat to the health, safety or well being of the public. The Director may revoke the Permit of any Permittee in any instance where there is a threat to the health, safety or well being of the public.

#### **SEC. 28-206 REVOCATION OF PERMIT**

The City reserves its right, as provided herein, to revoke any Permits, without refund of the Permit fee, in the event of a breach by the Permittee of the terms and/or conditions of the Permit or of this Chapter or any City Ordinance. A breach of the Permit shall include, but not be limited to the

following:

- A) The violation of any provision of the Permit; or
- B) An evasion or attempt to evade any provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or
- C) Any material misrepresentation of any fact in the Permit Application; or
- D) The failure to meet insurance, surety bond, or indemnification requirements; or
- E) The failure to complete the work in a timely manner; or
- F) The failure to correct a condition indicated on an order issued pursuant to this Ordinance; or
- G) Repeated traffic control violations; or
- H) Failure to repair Facilities damaged in the Right of Way; or
- I) Violation of any part of this Ordinance.

If the Director determines that the Permittee has committed a breach of any law or condition of the Right of Way Permit, the Director shall make a written demand upon the Permittee to remedy such violation. Continued violation may be cause for revocation of the Permit, or legal action, or both. The Director may revoke the Permit; provide specifications to cure the breach, or both. Within five days calendar days of receiving notification of the breach, Permittee shall contact the Director with a plan, acceptable to the Director, for correction of the breach. Permittee's failure to do so or Permittee's failure to timely implement the approved plan shall be cause for revocation of the Permit.

#### **SEC. 28-207 RIGHT OF WAY RESTORATION REQUIREMENTS**

The work to be done pursuant to the Permit and any repair and subsequent restoration of the Right of Way must be completed within the dates specified in the Permit. In the event of circumstances beyond the control of the Permittee or when work is prohibited by unseasonable or unreasonable conditions, the Director may extend the dates on receipt of a substantiated supplementary application for a Permit extension.

All earth, materials, sidewalks, paving crossing, or improvement of any kind which are owned or possessed by City and damaged, disturbed, or removed by a ROW User shall be fully repaired promptly by the ROW User at its sole expense, as per the City of Laredo Standard Specification Manual. After any Excavation, the ROW User shall, at its expense, restore the Right of Way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was

prior to the Excavation.

In the event the ROW User fails to restore the Right of Way in the manner and to the condition required herein, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the ROW User that, unless within five (5) days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the Right of Way by the ROW User, the City for any and all costs incurred by the City by reason of such prosecution and completion, including, without limitation, the applicable Public Inconvenience Penalty will bill ROW user. Nothing contained herein shall limit any other remedies available to the City.

If any Excavation cannot be backed-filled immediately, the ROW User shall securely and adequately cover the Excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the Excavation until the Excavation is surfaced and opened for travel.

In all Right of Way restoration, the ROW User guarantees its work and a one year warranty shall be given following completion of the restoration. During the period following completion, the ROW User shall, in the event of any failure of the restoration, upon notification from the Director, reimburse City for (i) pavement restoration costs, and additionally, the ROW User in the event of such failure shall within forty-eight (48) hours of notice from City, repair the subject trench envelope.

A one year warranty guarantee period shall be applicable to failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by City, the ROW User retains repair responsibility at all times during the guaranty period for the trench envelope.

A Right of Way User whose work is completed by the City shall, on completion of the work and according to the certified bill of the cost thereof to be prepared by the Director, pay to the City, on its order, the amount of the certified bill as reimbursement for such work.

#### **SEC 28-208 REMOVAL AND RECONSTRUCTION WHERE WORK DEFECTIVE**

All construction work in the Streets, Right of Way, sidewalks and public places of the City is declared to be subject to the exclusive control of the City, and whenever, in the opinion of the Director, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specifications thereof given to him by the Director, then upon written demand or notice from the Director, such ROW User or Contractor shall promptly remedy, complete or remove and reconstruct such incomplete or defective work all as the Director may require, and these provisions shall also apply to all repair and maintenance work. If the Contractor or ROW User shall fail or refuse to do so within a reasonable time to be specified by he Director, then, if the Director shall so order, such work shall be completed or corrected or removed and wholly or partially reconstructed by the City, in such manner as in the opinion of the Director may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the Director. The expenses for such corrective work



shall be changed to the ROW user.

### **SEC. 28-209 LOCATIONS AND RELOCATION OF FACILITIES**

The ROW User shall, upon the request of the City, locate and/or relocate its Facilities situated within any Right of Way, at no expense to the City, where reasonable and necessary to accommodate street widening and straightening, and also when applicable State or Federal law requires the ROW users to pay such cost and expenses for other public improvement projects of the City. When applicable State or Federal law requires the ROW users to pay such cost and expenses when relocation is necessitated by federal government requirement, and includes reimbursements, the City will reimburse Applicant for its proportionate share from funds provided the City in such reimbursements.

### **SEC. 28-210 PRE-EXCAVATION FACILITIES LOCATION**

The ROW User shall contact the one call center number so long as that center is in existence or such other center at the time utilized by City, at least 48 hours prior to Excavation. The ROW User shall protect and support all Utility Facilities during construction.

### **SEC. 28-211 RELOCATION FACILITIES FOR CITY**

In the event the City finds it necessary to move a ROW User's facilities to protect it, City shall notify the local representative of the ROW User. ROW User shall promptly move or facilitate the relocation of the subject Facilities at ROW User's expense.

### **SEC. 28-212 RIGHT OF WAY VACATION AND RESERVATION OF RIGHT**

In the event of vacation of a Right of Way requiring the relocation of Facilities, the ROW User shall have the discretion to agree or decline any third party request seeking the ROW's user removal or relocation, such removal or relocation shall be done at the expenses of the third party requesting the removal or relocation.

### **SEC. 28-213 ABANDONED FACILITIES**

A ROW User owning Abandoned Facilities in the Right of Way shall:

- A) Remove its Facilities and repair, at its expense, any damage caused by the removal. The Director may allow some or all Facilities to remain if the Director determines same is in the best interest of the public to do so; or
- B) Provide information satisfactory to the City that the ROW User's obligations for its Facilities in the Right of Way have been lawfully assumed by another authorized ROW User.

The Facilities of a ROW User who fails to comply with this section, and those Facilities which

remain unused for two (2) years, shall be deemed to be abandoned unless, within the aforesaid two year period, the City receives written confirmation and reasonable evidence that the ROW User intends to use the Facilities. The City may exercised any remedies or rights it has at law or in equity including, but not limited to, taking possession of the Abandoned Facilities or requiring the removal of the Facilities by the ROW User.

### **SEC. 28-214 ROUTING AND SPATIAL ASSIGNMENT**

The City reserves the right, in the Permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, including the depth and horizontal and vertical orientation of any facility and Utility structure in the Right of Way.

### **DIVISION 3. COSTS, FEES, AND ENFORCEMENT**

#### **SEC. 28-215 FEES**

- A) PERMIT APPLICATION FEE – There is a Permit application fee of (\$50.00) fifty dollars. Permits shall be issued or denied within five (5) days. There is an Expedited Application Fee of (\$250.00) Two-Hundred Fifty dollar for Permits which shall be issued or denied within two (2) days. The fees are paid by an Applicant when a Permit is issued. The fees are charged for administration and input of Permit data. An expedited permit may be requested upon a showing good cause, including but not limited to a pending order for service that cannot be met by means of existing Facilities of the ROW User. In such event an expedited Permit may be requested and shall be issued or denied within two (2) days of application.
  
- B) INSPECTION FEE – The work allowed by each Permit shall be subject to inspection and approved by the Director. There is an Inspection fee of two hundred dollars (\$200.00). The Department shall conduct a minimum of three inspections during regular working hours. The fee shall be paid at the time of application for a Permit. Inspections may be performed on any and all Excavations, at the discretion of the Director, based on previous performance of the Utility Owner, location of Excavation, type of work and/or construction methodology. Overtime inspection fees are incurred at a rate of \$40.00 per hour Monday thru Friday and \$70.00 per hour on Saturday, Sundays and holidays. Residential driveways and sidewalks are exempt from the two hundred dollars (\$200.00) inspection fee.
  
- C) PERMIT EXPIRATION DATE – A fee of thirty dollars (\$30.00) will be charged for any Permit that has not been extended before its expiration date and for any Permit when work has not been completed by the expiration date provided for in the Permit. The thirty (30) day period begins with the date of issuance of the Permit.
  
- D) ELECTRONIC MAPS SUBMITTAL FEE – A fee of forty dollars (\$40.00) per hour will be charged for each hour of labor necessitated by information submitted to City in hard copy format in lieu of submittals to City in electronic format. There is a

minimum of two hours.

- E) REGISTRATION FEE – There is a fee of fifty (\$50.00) dollars per Right of Way User per year for processing registration information, which fee will be collected upon registration.
- F) When administration of this article for a particular activity is or will be unusually costly to the city, the Director may require an applicant or Permittee to pay any sum in excess of the amounts provided herein. This additional sum may not exceed actual costs incurred by the city and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director shall provide in writing the basis for the additional fees.
- G) Fees under this section shall not be applicable to the holder of a state-issued certificate of franchise authority to the extent such a franchise holder is exempted from permit fees.

**SEC. 28-216 PENALTIES FOR VIOLATION OF THIS CHAPTER**

Each violation of this Ordinance for failure of a ROW user to secure a permit shall be punishable as follows: for the first offense a permit fee for (five hundred) \$500 dollars shall be imposed for the second offense a permit fee of (one thousand) \$1,000) dollars shall be imposed and for a third offense a permit fee of (two thousand) \$2,000 dollar shall be imposed. After the third offense an offender’s registration shall be suspended for a period of 90 days during which no permits of any kind shall be approved for such ROW user. Any such suspended ROW users shall pay a reinstatement fee of two thousand five hundred (\$2500.00) dollars if and when the Director approves the ROW user’s reinstatement. Any fines that are collected pursuant to this Section shall be deposited in to Fund no. 1530.

**SEC. 28-217 PUBLIC INCONVENIENCE PENALTY**

Public Inconvenience Penalties are assessed and calculated from the date of expiration of the Permit until date of completion of work or repair or of final backfill if turned over to the Department for repair. This penalty shall not exceed and is capped by statutory limits. Public Inconvenience Penalties are charged per day as follows: unless exempt by state law.

<u>Type of Facility</u>	<u>Unit of Cost</u>	<u>Fee Rate</u>			
		<u>31-75 Days</u>	<u>76-90 Days</u>	<u>90-100 Days</u>	<u>&gt;100 Days</u>
<u>(a) Traffic Lane</u>	<u>Per Square Foot</u>	<u>\$0.0521</u>	<u>\$0.1042</u>	<u>\$0.1563</u>	<u>\$0.2084</u>
<u>(b) Sidewalk</u>	<u>Per Square Foot</u>	<u>\$0.0026</u>	<u>\$0.0052</u>	<u>\$0.0078</u>	<u>\$0.0104</u>
<u>(c) Driveway</u>	<u>Per Each</u>	<u>\$39.00</u>	<u>\$78.00</u>	<u>\$117.00</u>	<u>\$156.00</u>
<u>(d) Parking</u>	<u>Per Meter</u>	<u>\$14.00</u>	<u>\$21.00</u>	<u>\$ 28.00</u>	<u>\$ 42.00</u>

Metered Traffic Lane (Parking meter)\*In addition to Traffic Lane Fee

**SEC. 28-218 CITY CONSTRUCTION REPAIR COST**

If the City is to make the permanent pavement repairs, the ROW user shall pay City for reasonable cost to restore the Street or Right of Way, in accordance with the following schedule:

<b>TYPE OF REPAIR</b>	<b>UNIT COST</b>
<i>Street with concrete with asphalt surface</i>	<i>\$40.00 SF</i>
<i>Street with flexible base or soil stabilized base with asphalt surface.</i>	<i>\$25.00 SF</i>
<i>Concrete sidewalk or driveway</i>	<i>\$15.00 SF</i>
<i>Concrete curb and gutter</i>	<i>\$25.00 LF</i>
<i>Full depth colored concrete for accessible ramps</i>	<i>\$30.00 SF</i>
<i>Full colored stamp concrete</i>	<i>\$25.00 SF</i>
<i>* Any other such as drainage structure inlet, manhole, culvert, concrete lined channel pipe, and water and waste water lines.</i>	<i>* based on actual cost + bond and insurance</i>

**DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING, AND LIABILITY**

**SEC. 28-219 LIABILITY OF RIGHT OF WAY USER**

To the extent allowed by law, the Right of Way User shall be liable to the City for any damage or loss occasioned by any act or omission occurring in connection with his Excavation, and subject to state law, the ROW User shall fully indemnify, hold harmless and defend City, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the City, its officers or employees may be subjected for injury of any type, death or property damage arising from or connected with any such act or omission. City shall promptly notify a Permittee, or ROW User, at the address set forth in the Permit, or last known address, of any claim or suit served upon the City and alleging negligent or wrongful conduct by the Permittee or ROW User in connection with an Excavation.

**SEC. 28-220 INSURANCE**

- A) Right of Way Users shall furnish an original completed Certificate of Insurance or The City's Standard Certificate of Insurance form to the City's Finance Department, Purchasing Division, Building Development Services and Risk Management Division which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or

indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Ordinance until such certificate shall have been delivered to the City's Finance Department, and Building Development Services Department, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- B) The City reserves the right to review the insurance requirements of this section to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Ordinance, but in no instance will the City allow modification whereupon the City incur increased risk.
- C) Subject to the Right of Way User's right to maintain reasonable deductibles in such amounts as are approved by the City, Right of Way Users shall obtain and maintain in full force and effect for the duration of the Permit, and any extension thereof, and/or duration of time it maintains Facilities in the public Right of Way, at the Right of Way User's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better, in the following types and amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	<u>Worker's Compensation</u>	<u>Statutory</u>
	<u>Employer's Liability</u>	<u>\$1,000,000/\$100,000/\$1,000,000</u>
2.	<u>Commercial General (Public) Liability Insurance to include coverage for the following:</u>	
	<u>a) Premises/Operations</u>	<u>Bodily Injury and</u>
	<u>b) Independent Contractors</u>	<u>Property Damage of \$2,000,000 per occurrence</u>
	<u>c) Products/completed operations</u>	<u>\$5,000,000 General</u>
	<u>d) Contractual Liability</u>	<u>aggregate or its equivalent in umbrella or excess liability coverage.</u>
	<u>e) Personal Injury</u>	
	<u>f) Explosion, collapse, underground</u>	
	<u>g) Broad from property damage, to include fire legal liability</u>	
*3.	<u>Business Automobile Liability</u>	<u>Combines Single Limit for Bodily Injury and</u>
	<u>a) Owned/Leased vehicles</u>	<u>Property Damage of \$1,000,000 per occurrence</u>
	<u>b) Non-Owned vehicles</u>	<u>or its equivalent.</u>
	<u>c) Hired vehicles</u>	
*4.	<u>Professional Liability</u>	<u>\$1,000,000 per claim to pay on behalf of the</u>
	<u>(Claims made from)</u>	<u>insured all sums which the Insured shall become legally obligated to pay as damages</u>

by Reason of any act, malpractice, error or omission in professional services.

- \*5 Contractor's Pollution Liability Coverage \$1,000,000 written on a claim made from with a two year extended reporting period.
- \*6 Pollution Liability Motor Carrier & Trucker Coverage endorsing the upset, overturn and remediation of a load in transport. \$1,000,000 per occurrence written on an occurrence form) (Combined Single Limit for Bodily Injury and Property Damage.

\* If applicable

- D) The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusion (except where policy revisions are established by law or regulation binding upon either of the parties hereto or the underwriter of an such policies). Upon such request by the City, the Rights-of-Way User shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- E) Right of Way Users shall ensure that all insurance contracts and Certificate(s) of Insurance contain the following required provisions.
- Name and City and its officers, employees, volunteers, agents, and elected representatives as additional insured's with respect to the operations and activities of, or on behalf of, the named insured performed in the Right of Way under provision of this Ordinance, with the exception of the professional liability, worker's compensation and liability policy; and
  - Right of Way User's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City; and
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Laredo where the City is an additional insured shown on the policy; and
  - Worker's compensation and employer's liability will provide for a waiver of subrogation in favor of the City.
- F) Right of Way User shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be

accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

<u>City of Laredo</u>	<u>City of Laredo</u>
<u>Building Development</u>	<u>City Secretary</u>
<u>Services Dept.</u>	
<u>1120 San Bernardo Ave</u>	<u>1110 Houston</u>
<u>Laredo, TX</u>	<u>Laredo, TX</u>

- G) Nothing herein contained shall be construed as limiting in any way the extent to which the Right of Way User may be held responsible for payments of damages to persons or property resulting from the Right of Way User's or its subcontractors performance of the work performed in the Public Right of Way. Any subcontractor hired by the Right of Way user shall maintain insurance coverage equal to that of the Right of Way user. It is the responsibility of the Right of Way user to assure compliance with this provision. The City of Laredo accepts no responsibility arising from the conduct, or lack of conduct of the Subcontractor.
- H) The City owned Utilities and City Public Works Departments shall not be required to provide the insurance specified herein.
- I) With respect to the Right of Way User's obligation to comply with the requirements for Commercial General (public) Liability Insurance coverage to include pollution coverage, the City may allow the Right of Way User to self-insure upon annual production of evidence that is satisfactory that is satisfactory to the City's Risk Manager. With respect to the Right of Way User's obligation to comply with the requirements for automobile liability insurance and for worker's compensation insurance, a Right of Way User may self-insure, provided the Right of Way User tenders satisfactory evidence of self insurance as contemplated by the State motor vehicle financial responsibility law, Tex. Transportation. Code §601.124, and the Texas Worker's Compensation Act, Tex. Labor Code §407.001 et. seq.

#### **SEC. 28-221 PERFORMANCE/ASSURANCE BOND**

Except as stated in section 66.011(A)(5) of the Utilities Code, before a Permit shall be issued, the Applicant thereof shall execute and deliver to the City, to be kept on file in the City's Secretary's office, a good and sufficient bond of performance or assurance, in the sum of (\$10,000) ten thousand dollars to be approved by the Risk Manager and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from carelessness, negligent or imperfect construction thereof, and to hold the City free and harmless from liability on all such claims for damages to the performance or assurance bond

shall cover the cost of repairs in or upon the street, sidewalk, or other public place where the work is to be done that may become necessary by reason of such pavement cut or Excavation having been made. The bond shall be maintained until the work is accepted by the City.

**SEC. 28-222 OPTIONAL CONTINUING BOND AND DEPOSIT**

In lieu of a bond performance or assurance required for each Permit issued, under the Performance/Assurance Bond Section of this Ordinance, the Applicant may maintain a one-time bond of performance or assurance with the Director for the sum of one hundred thousand dollars (\$100,000) for the purposes specified in Section 28-221, and shall have on file, in the City Secretary's office, an approved bond of performance or assurance in the like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than one hundred thousand dollars (\$100,000); provided, further, that Section 28-223 shall apply to applications for Permits to make cuts, openings or Excavations in any street, plaza or other public place paved under contract with the City, unless the contract of maintenance and the maintenance bond thereof shall have expired. The bond shall be maintained until the Applicant is no longer working in or on City Streets.

**SEC. 28-223 LIABILITY OF CONTRACTOR AND SURETIES FOR MAINTENANCE AND REPAIR WORK**

Any defects of workmanship or material relating to work done by an excavator during the initial Project or becoming known or which should have been known during the guarantee period (the Life of the Street) shall be known as maintenance or repair work and both the excavator and the sureties and/or the Contractor's bond shall be fully liable for any default of such Contractor under this section. In the event of a failure in the restoration of an Excavation, the ROW User shall have one opportunity to repair, in a timely manner, the section of the restoration that has failed at its expense, which repair shall be in accordance with the standards set forth in this chapter. In the event of any subsequent failure of that section of the restoration, the City retains the right and option to terminate the ROW User's guaranty, upon written notice to the ROW User. In such event, the ROW User shall reimburse the City for its direct costs associated with the repair of the failure of the restoration work.

**SEC. 28-224 WHEN ADDITIONAL SECURITY REQUIRED**

In the event the Director reasonably believes the Contractor or ROW User's solvency is threatened, the Director may, at any time, make written demand on a Contractor or ROW User for bonds and the Contractor or ROW User shall immediately furnish such additional bond or bonds.

**SEC. 28-225 DECISION OF DIRECTOR BINDING ON CONTRACTOR, ROW USER, AND SURETIES**



Any question about when any work was actually begun or any other specific date shall be determined by the director and shall be binding on the Contractor, ROW User, and the sureties on all such bonds.

## **DIVISION 5 VARIANCES AND EXEMPTIONS**

### **SEC. 28-226 VARIANCES/EXEMPTIONS**

A Permittee or ROW User may request a variance from any of the requirements of this Chapter by Filing a written request with the Director stating the requirement and the basis for requesting the variance. Incomplete variance requests may be rejected. The applicant shall bear its own expenses of the application process.

- A) Any request for a variance from any Right of Way restoration requirement shall be made in writing in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- B) Any request for an exemption from any penalty or fee other than as provided in this, Shall be made in writing, and shall be accompanied by a written detailed request stating the reason thereof.
- C) Any request for an exemption from any Permit, or any other requirement of this Chapter shall be made in writing, by detailed written request therefore, stating all pertinent reasons.
- D) The Department shall grant or deny an application for a variance within ten (10) days of receipt of the application for variance.
- E) Denial of the variance may be appealed in accordance with the Appeal Section of this Chapter.

## **DIVISION 6 SPRINKLER SYSTEM INSTALLATION**

### **SEC. 28-227 COMMERCIAL AND RESIDENTIAL IRRIGATION, SPRINKLER SYSTEMS INSTALLATION**

For sprinkler system installation please refer to chapter 25 Plumbing of The City of Laredo Code of Ordinances. Other references is The City of Laredo Standard Technical Specification Manual.

## **DIVISION 7 CERTIFIED TELECOMMUNICATION PROVIDERS**

### **SEC. 28-228 CERTIFICATED TELECOMMUNICATION PROVIDERS AUTHORITY REQUIRED/NON-EXCLUSIVE USE**

A CTP must provide evidence to the Director that the CTP has acquired authorization from the Texas Public Utility Commission of Texas pursuant to state law, prior to obtaining a permit to use the Public Rights of Way. The Director shall also confirm with the City Communication Officer that the CTP is registered as a CTP authorize to provide service in Laredo. The CTP's right to use and occupy the Public Rights of Way shall not be exclusive and CTP recognizes that the City reserves the right to exercise the maximum amount of authority its retains following adoption of Chapter 283 of the Texas Local Government Code.

#### **SEC. 28-229 ADDITIONAL AUTHORITY REQUIRED**

Neither the CTP nor any of its Affiliates are authorized to provide cable television service as a cable operator or to operate an open video system in the City, unless they have first obtained a separate cable franchise agreement under such terms and conditions as may be required by law. This section does not preclude the CTP from providing its services to cable television companies. Unless a cable television operator shows proof of appropriate authorization, nothing herein shall authorize the CTP to license, sublicense, lease, and sublease or by any instrument authorize any cable television operator the right to use or utilize the transmission media or Facilities of the CTP.

#### **SEC. 28-230 TRANSFER AND NOTICE**

A CTP shall notify the Director and the City's Director of Information Services and Telecommunication of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within at least thirty (30) days prior to such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the Director and the City's Director of Information Services and Telecommunication at all times during which the CTP uses the Right of Way.

#### **SEC. 28-231 EXEMPTION FROM FEES**

In compliance with state law Certified Telecommunications Providers are exempted from the following fees provided for in this Ordinance:

- Permit Application Fee, including Expedited Application Fee, and Permit Expiration Fee;
- Additional Excavation Permit Fee;
- Inspection Fee;
- Registration Fee;

Should state law be amended to make collection of any of these fees permissible, then the above granted exemption shall cease to exist for that fee.

#### **SEC. 28-232 INDEMNIFICATION**

A CTP shall indemnify the City as specified by Section 283.057 of the Texas Local Government Code, as may be amended. A CTP shall be exempt from all requirements of this Ordinance that are inconsistent with Section 283.057 of the Texas Local Government Code.

**DIVISION 8 MINOR ENCROACHMENT LICENSE**

**SEC. 28-233 MINOR ENCROACHMENT LICENSE**

- a) In addition to any Permit and Application fees required by this Ordinance, a non CTP ROW user shall obtain a minor Encroachment License, including the payment of an annual fee for each wire telecommunications system installed by boring or open-cut trenching beneath Right of Way or deployed aerially above the Right of Way. The terms and fees of the license issued by the Director shall be consistent with the guidance below.
- b) In the absence of an agreement between the City and the ROW user to the contrary, each license shall authorize the installation of wiring or conduit that shall not exceed four and one-half (4 1/2) inches in external diameter unless granted permission by the Director upon a showing of need.
- c) In the absence of an agreement between the City and the ROW user to the contrary, each active or non-active fiber optic conduit license shall be for a term of five (5) years, with the option to renew for a five year term. Each license shall not be transferable or assignable without first obtaining City Council approval.
- d) In the absence of an agreement between the City and the ROW user to the contrary, the annual fee from each minor encroachment license shall be the greater of two thousand five hundred dollars (\$2500.00) or the number of linear feet of encroachment times two dollar and fifty cents (\$2.50) for the first year following enactment of his Ordinance. The linear foot rate shall increase by CPI per year.
- e) The processing fee for each minor encroachment license shall be (\$500.00) five hundred dollars.

**SEC.28-234 ADMINISTRATION OF MINOR ENCROACHMENT LICENSES**

- a) The position of City Communications Officer shall be maintained and the City Communications Officer shall be an employee of the City, who shall report to the City manager.
- b) The duties of the City Communications Officer shall include:
  - 1) To receive complaints from members of the public regarding Licensees uses and occupancy of the Right-of-Way, to advise Licenses concerning such complaints, to communicate with other municipal, state and federal regulators concerning complaints and related matters and to report to the Council and to the City Manager on all complaints received and the resolution of these complaints as appropriate.
  - 2) To prepare reports, recommendations, and other documents concerning Licensees uses and occupancy of the Right-of Way, and to submit the same to the City

Manager.

- 3) To advise the City Manager concerning any matters pertaining to the City's management of the use and occupancy of the Right-of-Way by Licensees.
- 4) To procure and review audits of the operational activities of CTPs and Licensees to ensure conformity of their use and occupancy of the Right-of-Way to this Ordinance and the terms of their respective Licenses.
- 5) The City Manager shall from time to time submit to the Council a proposed budget for the Office of the City Communications Officer showing the salaries to be paid to the City Communications Officer and any other personnel to be assigned to the office and all other projected expenses of the office.

## **DIVISION 9 WEIGHT-LIMITED BRIDGES**

### **SEC. 28-235 BRIDGE WEIGHT LIMIT VIOLATION**

It shall be unlawful for the operator of any vehicle to drive haul push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load bearing wheels travels onto the bridge.

### **SEC. 28-236 PENALTY UPON CONVICTION**

Any violation of the provisions of this division is hereby declared to be a health and safety related violation. A culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized, directed or permitted. An offense under this Section is punishable by a fine of not less than \$500 or more than \$2000. Any other offense under this article is punishable by a fine of \$500. The article may be enforced by civil court action in accordance with State or Federal law, in addition to any other remedies, civil or criminal, the City has for a violation of this article.

## **DIVISION 10 AGUS (ABOVE GROUND UTILITY SYSTEM)**

### **SEC. 28 – 237 PERMIT AND OTHER REQUIREMENTS**

- (1) A permit shall be required for all AGUS in the public right-of-way when;
  - (A) Placing new AGUS on or adjacent to residentially zoned property; or
  - (B) Replacing or upgrading AGUS in residentially zoned property in accordance with following; or
    - (i) The upgrade or replacement AGUS is larger than the existing

- (ii) The upgrade or replacement AGUS is taller than 39 inches
- (C) An AGUS replaces a utility structure that was previously below ground
- (2) A permit is not required for:
  - (A) Placing AGUS on property not zoned residentially or adjacent to properly zoned residentially.
  - (B) Replacements or upgrades to existing AGUS that are in compliance with the AGUS Guidelines in effect at the time of the replacement or upgrade.
  - (C) Replacements or upgrades that do not increase the size or change the location of an existing AGUS that is less than 39 inches tall
  - (D) Maintenance or service to an existing AGUS
- (3) Permit applicants shall identify appropriate locations for the AGUS that Comply with the placement criteria set forth in the AGUS Placement Guidelines
- (4) AGUS shall comply with all requirements of other City ordinances and other State and federal laws and regulations. The AGUS owner shall be responsible for obtaining other permits, as required.
- (5) The owner of an AGUS shall maintain the AGUS free of graffiti and other defacements such as posters, stickers, decals, and signs, except those placed on the AGUS by the AGUS owner. The exterior finish of a utility structure shall be maintained relatively free of rust, peeling or faded paint, or other visible deterioration. An AGUS and its supporting foundation or pad shall be maintained in such a way as to prevent or eliminate leaning and soil erosion underneath. AGUS that lean beyond fifteen degrees (15°) from the perpendicular shall be corrected to be as close as possible to perpendicular. Any open space between the bottom of a foundation or pad and the ground underneath shall be filled with either additional soil or concrete to maintain continuous contact with the ground. The permit application for installation of an AGUS shall include the name, mailing address and telephone number of a single point of contact responsible for resolving graffiti and other appearance issues should they occur.
- (6) The AGUS shall be clearly marked with the owner's name and telephone number.

**SEC. 28-238 AGUS – REQUEST FOR WAIVER**

- (1) A request for a waiver from placing AGUS in accordance with one or more of the AGUS Placement Guidelines may be made to the Director with respect to a particular site for a proposed utility structure. The request for a waiver must

include a detailed justification for the waiver, including alternative sites sought and reviewed; proof that compliance with the guideline is impracticable; and the necessity of the AGUS and its size at the proposed site to provide service.

(2) Within 10 business days of receipt of a written request for a waiver, the Director may grant a waiver for good cause shown. Waiver requests not granted within that time period are deemed denied.

(3) In making this decision, the Director shall consider:

- (A) the feasibility of other sites not located in the public right-of-way and a AGUS Owner's efforts to secure those sites;
- (B) the size, location and impact of the proposed AGUS at the proposed site and the on the surrounding properties;
- (C) the AGUS owner's need to provide services to a property or area to be served by the proposed site;
- (D) the AGUS owner's need for the proposed size of the AGUS to provide services to a property or area to be served by the proposed site;
- (E) the public health, safety, welfare and convenience; and
- (F) the size and location of other nearby AGUS.

(4) The Director shall indicate in written communication the basis for granting or denying any waiver pursuant to this subsection.

(5) If a waiver is deemed denied because of it was not granted within the allowed timeframe, the AGUS Owner may resubmit the request to the Director or appeal as set out below.

(6) The Director's decision regarding the waiver may be appealed to the City Manager or his or her representative within 10 calendar days of the Director's decision. The City Manager decision shall be subject to the same time constraints and considerations as set out above for the Director.

## **SEC. 28 – 239 AGUS - PLACEMENT GUIDELINES**

- A. Identification of appropriate location so that:
  - i. Pedestrian travel is not unreasonably impeded, paying particular attention to the needs of persons with disabilities.
  - ii. access to city or other service provider facilities is not obstructed.
  - iii. Travel on public streets is not impeded.

- iv. Property owners are not unreasonably inconvenienced.
- B. Locate AGUS as close as practical to the common lot line.
- C. Place AGUS on a common side of the building.
- D. The AGUS supporting pad should extend no more than 1 foot from the structure unless required for structural stability or for safe access or to provide a stable surface for workers to stand on while servicing the AGUS.
- E. AGUS should not be larger than the necessary to contain and protect the required equipment.
- F. AGUS should not obstruct the view of traffic and signals
- G. AGUS should not front the boundaries of a park
- H. AGUS should not front the boundaries of a park

#### **DIVISION 11. REPEALING CLAUSE**

*All ordinances of the City of Laredo, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed; provided, however that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.*

#### **DIVISION 12. SEVERABILITY**

*Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.*

#### **DIVISION 13. SAVINGS CLAUSE**

*All rights or remedies of the City of Laredo, Texas, are expressly saved as to any and all violations that have accrued at the time of the effective date of this Ordinance, and, as to such accrued violations and all pending litigation, both civil or criminal, whether pending in court or not, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.*

#### **DIVISION 14. PENALTY FOR VIOLATION**

*Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this Ordinance shall be deemed guilty of a Class C Misdemeanor and upon conviction in the Municipal Court, shall be punished by a fine not to exceed two thousand dollars (\$2,000) if the offense involves fire safety, public health, sanitation, or zoning, and not to exceed five hundred (\$500) for other offenses. Each day a violation or noncompliance continues constitutes a separate offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in V.T.C.A. Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.*

#### **DIVISION 15. EFFECTIVE DATE**

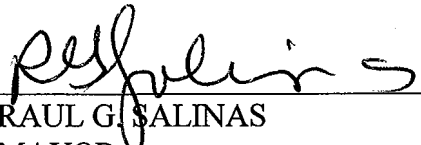
*This ordinance shall take effect immediately from and after its passage, and publication of the caption, as the law and charter in such cases provide.*

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR ON THIS THE

6<sup>th</sup> DAY OF April, 2009.

ATTEST:

  
\_\_\_\_\_  
GUSTAVO GUEVARA, JR  
CITY SECRETARY

  
\_\_\_\_\_  
RAUL G. SALINAS  
MAYOR

APPROVED AS TO FORM:

RAUL CASSO  
CITY ATTORNEY

BY:   
\_\_\_\_\_  
KRISTINA LAUREL HALE  
ASSISTANT CITY ATTORNEY