

ORDINANCE 2000-02-01-01

**AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, ESTABLISHING STANDARDS FOR THE EXCAVATION AND CUTTING OF CITY STREETS AND RIGHT-OF-WAYS, AND FOR THE PLACEMENT, REMOVAL AND ALTERATION OF FACILITIES THEREIN; PROHIBITING CERTAIN ACTIVITIES; ESTABLISHING DUTIES AND RESPONSIBILITIES; REQUIRING PERMITS; ESTABLISHING FEES, CHARGES, AND RATES FOR PERMITS; ESTABLISHING BOND REQUIREMENTS; MAKING FINDINGS OF FACT; PROVIDING PENALTIES; PROVIDING SEVERABILITY, OPEN MEETINGS AND PUBLICATION CLAUSES; AND PROVIDING FOR CERTAIN OTHER MATTERS.**

**Whereas**, the City of Kempner, Texas, (the "City") a general law municipality, owns streets and right-of-ways within the City limits;

**Whereas**, damage, injury and failure to repair public streets and right-of-ways will require the City to unnecessarily expend public funds to repair the streets and right-of-ways;

**Whereas**, it is appropriate for the costs and expenses for repair and construction to be paid by the persons excavating, injuring or damaging public streets or right-of-ways;

**Whereas**, the occupation of right-of-ways and streets affects the public health, safety and welfare of the citizens and travelers thereon;

**Whereas**, regulating and setting standards for the cutting, excavation, digging, alteration of facilities, addition of facilities, occupation, obstruction and similar activities and requiring permits, bonds, licenses and/or franchises for work in and use of areas in, over, under, through, along and across the public streets and right-of-ways is necessary to protect the public property and general public health, safety and welfare of the citizens and travelers thereon, as well as, the value of property abutting or adjoining such public property; and

**Whereas**, the City Council, after holding a public hearing and accepting comments, has determined that a public necessity exists for the regulation of all construction activities, excavations and installations, repairs and removals of facilities in the streets and right-of-ways in the manner hereinafter provided;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, THAT:**

**Section 1. Findings of Fact.** The findings and recitations set out above in the preamble of

this Ordinance are found to be true and correct and that they are hereby adopted by the City Council and made a part hereof for all purposes.

**Section 2. Definitions.** As used in this ordinance, all words shall have the common meaning of such word and the following terms shall have the meaning indicated below unless the context clearly indicates otherwise:

*Building Inspector or Inspector* shall mean the person, his staff or employees, or entity designated by the City to perform the duties and responsibilities set forth herein to be performed by the City, or, if none has been designated, the City Administrator of the City.

*Construction Activity or Work* shall include, but is not limited to, the causing or carrying out of any man-made change in any property or facility through building, erecting, installing, bulkheading, filling, mining, dredging, clearing, paving, grading, excavating, boring, drilling, or the addition, removal or alteration of any facility or any improvement to property, including altering of the size of any facilities, or other similar work or activity in, over, under, through, along or across the right-of-ways or streets within the City limits.

*Contractor* shall mean and include, but is not limited to, the person possessing a permit, franchise or license agreement as required under this ordinance and all persons actually performing, directing, monitoring, managing or overseeing any construction activity, work or other such similar activity in, over, under, through, along or across any streets or right-of-ways within the City limits.

*Excavation* shall mean any man-made formation of a cavity, hole or hollow by way of any means of digging, plowing, quarrying, uncovering, blasting, scooping, drilling, dredging, bulldozing, relocating or making cuts, openings, borings or other action or processes to form a cavity, hole or hollow.

*Facility or Facilities* shall mean any plant, equipment and property, including, but not limited to, duct spaces, manholes, poles, towers, utility pipes, pipes, conduits, lines, wires, transmission media, underground and overhead passageways or other equipment, structures and appurtenances which are located in, over, under, through, along or across the right-of-ways or streets.

*Installation* shall mean the addition, removal, repair or alteration of any facility located in, over, under, through, along or across the right-of-ways or streets.

*Owner* shall mean any person having financial interests in property or facilities located in, over, under, through, along or across streets and right-of-ways in the City, including the person directing the actions of any Contractor, paying a Contractor, or for whose benefit the actions of the Contractor are undertaken.

*Person* shall mean and include an individual human, partnership, firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, association, legal entity, or corporation of any kind, including but not limited to any provider of any Utility Service or Public Service, as those terms are defined below.

*Permanent Structure* shall mean any facility located in, over, under, through, along or across the right-of-ways or streets within the City limits that occupies, affixes or otherwise is to remain in the same location for a period of time of more than thirty (30) days.

*Public Service* shall mean any business or commercial activity which is not included in the definition of "Utility Service" that requires the use of the public streets or right-of-ways for the location of any facility or equipment to provide services to persons or property situated within the City, including but not limited to cable television service and services using a transmission media, but excluding telephone, taxi service and solid waste collection.

*Right-of-ways* shall mean the surface of, and the space above and below any and all present and future public thoroughfares, public utility easements, public ways, public grounds, public waterways and without limitation by the foregoing, any other public property within the corporate limits of the City.

*Streets* shall mean the surface of, and the space above and below, any and all present and future public streets, avenues, highways, boulevards, drives, roads, bridges, alleys, lanes, viaducts and all other public roadways within the City limits and any highways, county roads or other public roadways for which the City has an agreement or contract to control, regulate or maintain.

*Transmission Media* shall mean all cables, fibers, wires, tubes, pipes or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, video or data, or other purposes, which are physically located in the right-of-ways or streets.

*Utility Service* shall have its common meaning and shall specifically include, but not be limited to, electric, water, wastewater, gas and telephone service.

### **Section 3. Streets and Right-of-way.**

A. The City shall have exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and right-of-ways, and may provide for the improvement thereof by paving, re-paving, raising, draining, realigning, closing, or otherwise the use thereof. The provisions, without limitations, of law providing for assessments against abutting property for street improvements are expressly adopted. Such exclusive dominion, control and jurisdiction in, over,

under, through, along and across the streets and right-of-ways of the city shall also include, but not be limited to, the power to regulate, locate, remove or prohibit the location, installation, alteration or removal of any type of facility or other property in, over, under, through, along or across any streets or right-of-ways. The location, alteration or removal, including the route, of all facilities within the right-of-ways or streets shall be subject to the reasonable direction of the City.

B. It shall be unlawful for any Owner or Contractor, including his or her agents, servants, independent contractors, or employees to occupy or obstruct any portion of the right-of-way or streets or to perform any construction activity, or to cause another to do the same, for any purpose in, over, under, through, along or across any street or right-of-way without first having made all applications for permits and, when required, obtained all permits therefore, together with a bond approved by the Building Inspector in an amount determined as herein provided, conditioned that the principal therein will discharge all claims of every character arising from or occasioned by such occupancy or construction activity or by reason of damages or injuries sustained by persons or property because of such occupancy, construction activity, excavation or other such activity thereon and discharge all judgments obtained, together with all costs attached thereto against the City by reason of any such claim, injury or damage sustained. Contractor and Owner carrying on any construction activity or excavation shall keep all streets and right-of-ways adjacent to such construction activity or excavation carried on by such Contractor or Owner, in a clean, safe and orderly condition, and unobstructed, except as provided in this ordinance, during all such activities, and shall restore all such streets, right-of-ways, facilities and other structures damaged, altered or injured, in any way, to as good condition as they were before the beginning of such activities. The Owner or Contractor may, in lieu of providing a separate bond on each permit or construction project, annually file with the City a bond providing the above required coverage to the City, which bond shall be and remain in effect for a term of one year and applicable to all work performed by the Owner or Contractor within the City.

C. It shall be unlawful for any person to use or occupy any street or right-of-way for the purpose of providing abutting, adjoining or other property with any Utility Service, Public Service, data, voice or video transmission service, cable television, taxi or solid waste collection service, without having first obtained a franchise or license issued and approved by the City Council; except as specifically provided otherwise by state law.

D. Construction activity, excavation, obstruction or other work shall cease immediately upon the issuance of a stop work order from the Building Inspector or from any authorized law enforcement agent of the City. It shall be unlawful to remove a stop work order placed upon a construction or work site until compliance with this ordinance has been accomplished. No work so ordered to stop shall commence after issuance of the stop work order until the violation has been corrected and the Building Inspector in writing authorizes the Contractor to begin again.

E. It shall be unlawful and a violation of this ordinance for any person, Contractor or Owner

to maintain an existing excavation within the City or to work upon or assist in any way in the execution or operation of any such excavation, without an excavation permit having been issued by the City in accordance with this ordinance.

F. It shall be unlawful for the owner of any building or property abutting on any street or right-of-way in the City, or any tenant occupying such building or property, or any other person, to construct, build, operate or maintain any building, facility, or part thereof, including a show window, which extends over any part of any street or right-of-way.

G. It shall be unlawful to erect, remove, repair, install, build or alter, in any fashion whatsoever, any posts, poles, towers or other facilities that are erected for the purpose of bearing wires, cables or any other transmission media, or to alter in any fashion any existing posts, poles, towers or other facilities that are used in connection with any telegraph, electric light, telephone, street railway, transmission media, radio or like purpose, and none shall be erected, placed, kept or maintained upon any street or right-of-way within the City, unless a written permit shall have first been obtained from the Building Inspector to erect, install, remove, repair, build or alter, in any fashion whatsoever, such posts, poles, towers or other such facility.

**Section 4. Permits.** Application for a permit required by Section 3 of this ordinance shall be addressed to the City Secretary and made on a form furnished for that purpose, detailing the extent, character and purpose of any construction activity or other work to be performed.

A. Permits Required. The Owner or Contractor for all construction activity, installations, and similar activities must have applied for and have been issued all of the permits required for the work. A permit shall not be required from any holder of a franchise, license or holder of a permanent occupation permit to perform any minor alteration of an existing facility necessary to initiate service, repair service or for routine maintenance to an individual customer's property unless the repair or maintenance requires excavation or temporary closure of nonresidential traffic lanes. The types of activities which must have a permit issued pursuant to this ordinance are:

(1) Excavation of Right-of-way or Street. Any person considering excavation, cutting, boring, digging or demolition activity in, over, under, through, along or across the streets or right-of-ways shall, in advance of same, submit a design plan to the City for review and comment and shall secure proper permits and/or approvals and pay the fees as required.

(2) Construction Activity in Right-of-way or Street. Any person considering adding, repairing, removing or altering any facility or foliage, whether owned by such person or not, in, over, under, through, along or across the streets or right-of-ways within the City limits shall in advance of same, submit a design plan to the City for review and comment and shall secure proper permits and/or approvals and pay the fees as required.

(3) Permanent Structures Occupying Right-of-ways or Streets. The Owner of all permanent structures, appurtenances, or facilities, located in, over, under, through, along or across the streets or right-of-ways shall, in advance of installation, placement or construction thereof, submit a design plan and specifications as required herein and as required by the Building Inspector for review and comment, and shall secure the proper permits and/or approvals and pay fees as required. The Owners of permanent structures, appurtenances or facilities located in, over, under, through, along or across the streets or right-of-ways at the time of passage of this ordinance shall have (60) days to submit an application for a permit and secure such permit before enforcement action may be taken. One application may include all the Owner's permanent structures, appurtenances and facilities that are located in, over, under, through, along or across the streets or right-of-ways of the City.

(4) Temporary Obstruction of the Right-of-way or Street. Any person desiring to temporarily occupy or obstruct any portion of any street or right-of-way for the purpose of placing thereon material or rubbish for or from construction activities, obstructing any portion of any street or right-of-way for any purpose whatsoever connected with any construction activities or erection, installation, removal, alteration or repair of any facility or other structure or excavation that will temporarily obstruct any street or right-of-way, shall apply to the Building Inspector for a permit for such temporary obstruction and shall secure the proper permits, approvals and pay fees as required.

B. Permit Fees. In the event an application is made for a permit to perform any construction activity in any of the streets or right-of-ways, such permit shall be subject to the following permit fees to cover the costs and expenses of the City. Acceptance of any such permit shall constitute an acceptance by the permittee of the conditions of the permit and any of the obligations and duties to repair any cut, damage, injury or excavation in full compliance with the requirements set forth in Exhibit "A", attached hereto and incorporated herein as if fully transcribed herein. Payment for each such permit shall be made with the application for the permit. No permit shall be issued for less than the required permit fee.

(1) Construction Permit Minimum Fee. The fee for each permit required pursuant to this Ordinance for any construction activities, other than excavations, including but not limited to, installation, removal, repair, addition or other alteration of any facilities or foliage in the right-of-ways or streets shall be Two Hundred Fifty and No/100 Dollars (\$250.00), plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the City for and with respect to such permit. In the event that the permit is recommended for issuance, an additional fee of fifty and No/100 Dollars (\$50.00) per calendar month for the duration of the permit shall be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the construction process.

(2) Excavation Permit Minimum Fee. The fee for each permit required pursuant to this

Ordinance for any drilling, boring, cutting or otherwise any excavation of any portion of the right-of-ways or streets shall be Two Hundred Fifty and No/100 Dollars (\$250.00), plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the City for and with respect to such permit. In the event that the permit is recommended for issuance, an additional fee of fifty and No/100 Dollars (\$50.00) per calendar month for the duration of the permit shall be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the excavation process.

(3) Professional Fees. In addition to the above permit fees, the City shall be fully reimbursed for all reasonable costs associated with activities in the streets or right-of-ways pursuant to this ordinance that require inspection, plan review or any other reasonable overview or action by an engineer or other professional. All engineer and other professional fees shall be paid prior to issuance of a permit. Permits shall not be issued to, and may not be maintained by, any person owing engineer or other professional fees to the City.

(4) Plumbing Permits Fees. Any person who desires to install, repair or alter any pipes lines, tubes or pipes for which any water, solid waste, gas, oil or other such product may flow, in or under the right-of-ways or streets shall submit to the Building Inspector the plans and specifications showing the proposed improvements. It shall be the duty of the Building Inspector, when such plans and specifications have been submitted, to cause a qualified plumbing inspector to make an inspection of the proposed improvements. An inspection fee equal to the estimated time required for the inspections multiplied by 1.2 times the cost per hour of the plumbing inspector shall be paid by the applicant before such permit is issued.

(5) Electrical Permit Fees. Any person who desires to build, erect, alter, install, repair or remove any poles, posts, towers or other similar facilities for which any wires, cables, electrical wires or transmission media are located or will be located shall submit to the Building Inspector plans and specifications showing the proposed improvements and existing conditions on such poles, posts, towers or such similar facility. It shall be the duty of the Building Inspector, when such plans and specifications have been submitted, to cause a qualified electrical inspector to make an inspection of the proposed improvements. An inspection fee equal to the estimated time required for the inspections multiplied by 1.2 times the cost per hour of the electrical inspector shall be paid by the applicant before such permit is issued.

(6) Certificate of Occupation Fees. The fee for each certificate of occupation required pursuant to this Ordinance for a permanent structure to occupy any right-of-way or streets shall be One Dollar (\$1.00), per year per linear foot of street or right-of-way so occupied and such fee shall be paid in advance annually from the original date of the issuance of the certificate of occupation.

(7) Fee for Temporary Obstruction of the Right-of-way. A fee and special assessment for temporary obstruction or occupation of any right-of-way or street shall be One Hundred Dollars (\$100.00) per day of obstruction, to reimburse the City for costs of increased supervision and overview of such sight while such obstruction exists, plus any costs or charges for special assignment of police officers to monitor, escort, or otherwise provide services to help protect the public from the construction activities or excavation and any other similar expenses reasonably incurred by the City for and with respect to such temporary obstruction. Such requirement shall not excuse, diminish or waive the duty of the Owner or Contractor to conduct any such obstruction or excavation, and to erect warning signs, devices and barricades, in a manner to protect the general public, pedestrians and motorist.

C. Duration. All activities or construction authorized by a permit issued under this ordinance shall be commenced within six (6) months after the date of issuance of the permit and thereafter be continuously prosecuted to completion, or such permit shall be void and the person to whom the permit was issued must make a new application before commencing or continuing any further activities or construction. Each permit issued shall be issued for a specific time period with a maximum period of one year, after which period the permit shall be void and the person to whom the permit was issued must make a new application for a new permit for each succeeding year or portion thereof. If the permit is allowed to expire, the person shall apply for and procure a new permit, paying the fee therefore as before, prior to proceeding with any such work.

D. Applications. Applications for permits required by this ordinance shall be made to the Building Inspector and must be made in writing by the person to do the work, the Contractor, or his authorized agent, that will be submitted in duplicate upon forms provided to the Building Inspector for that purpose. An application for such permit may be deposited at the office of the City Secretary for delivery to and action by the Building Inspector. Such application shall contain:

(1) Date application is submitted; Name, address, phone, fax and other pertinent information of owner(s) and name of all Contractor(s), including subcontractors, employed, or that will be employed, to perform any portion of any construction activity or excavation; Name of person actually presenting the application to the inspector; Name, address, phone, fax and other pertinent information of the person(s) designated to be the 24 hour contact or emergency contact at all times while the permit is active [the applicant must immediately notify the Building Inspector in writing, if such emergency contact changes, and no later than 24 hours after such change, to maintain an active permit]; exact location and legal description of any property, streets or right-of-ways where the construction activities or excavation is proposed to occur; to the extent that information can be reasonably obtained, all design plans shall show the location of other permanent structures, facilities and utilities which will be crossed or paralleled within eight (8) feet of the location of the proposed permanent structure and identify the owner(s) thereof, including the topography of the area to be affected, and



other development and protective measures, considered necessary to create a reasonable transition to, and protection of, the adjacent property and facilities.

(2) A fee, appropriate to the number and kinds of installations, alterations, removals or construction activities to be made or activities to be performed.

(3) Proof of liability insurance or bond in the amount of not less than \$500,000 personal injury and property damage:

(a) An applicant must provide proof of liability insurance in the required amount;

(b) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards as applicable to the size and type of project;

(c) Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits; and

(d) The applicant shall file the required original certificate of insurance or bond prior to any commencement of work.

(4) A description of the work to be performed. Where deemed necessary by the inspector to accomplish the objectives of this ordinance, applications shall be accompanied by as many copies of specifications, plans and a complete layout drawn to scale and in detail to show the nature and character of the work to be performed as the inspector may deem necessary. The plan or diagram shall show the manner in which the installations or construction activities are to be made or the character of any of the repairs to existing installations or construction activities. When such plans, specifications and layout are demanded, it shall be a violation of this ordinance for any person to perform construction activities or install any part of the electrical, plumbing, cables, facilities or structure or perform further excavation or construction activity until the appropriate inspector approves such installation or construction activity.

(5) Estimated duration of any construction activity, installation and/or excavation which will result in the disturbance or modification of any right-of-ways, streets or property and the exact locations for each such disruption or disturbance, including an estimation of the duration of each disruption or disturbance at each location.

(6) Excavations. If any site is to be excavated the application must include:

- (a) the purpose or reason for the removing or moving of the soil;
  - (b) the quantity in cubic yards of soil to be moved or removed;
  - (c) the location where the soil will be move or deposited;
  - (d) identification of each building, residence or structure within one hundred fifty (150) feet of the proposed excavation;
  - (e) a positive statement that the proposed excavation shall not block, encumber or close any street or disturb the lateral support thereof;
  - (f) a positive statement that the proposed excavation is not and shall not be located in an area which has a public record restrictions or covenants prohibiting such a use of the property;
  - (g) the proposed slopes and lateral supports to be used in the excavation shall be set forth;
  - (h) the present and proposed arrangements made for surface water drainage;
  - (i) the safety precautions to be installed and maintained at the site, such as fences around the excavation, traffic control devices and drainage systems to keep the excavation from collecting water within or creating a hazard to workers, travelers and citizens;
  - (j) specifications of all materials to be used in repair of the excavation;
  - (k) the intended use or condition of the land upon completion of the excavation process; and
  - (l) such other pertinent data as the Building Inspector may require.
- (7) Permanent Structure. If a permanent structure is to be added or remain within any street or right-of-way, the owner(s) of such structure must complete an application for certificate of occupation for the permanent occupation of the right-of-way, including:
- (a) the person or firm which will operate or maintain the permanent structure;
  - (b) the origin point and the destination of the permanent structure;

(c) a description of the substance to be transported through the permanent structure;

(d) Engineering plans, drawings and/or maps with summarized specifications showing the horizontal and vertical location of all permanent structures, including covering depths, poles, towers, etc. and the location of any shutoff valves or other such disconnect locations, where applicable. If the City has computer generated mapping system, the applicant will provide final as built plans in a format compatible with uploading into the City's system;

(e) a description of the consideration given to matters of public safety and the avoidance, as far as practicable, of existing inhibited structures and congregated areas;

(f) detailed cross section drawings of all streets, right-of-ways and easement crossings to be affected;

(g) the design criteria under which the permanent structure will be constructed and maintained; and

(h) any other pertinent data as the Building Inspector may reasonably require.

(8) Certificate Telecommunications Provider. If the applicant for a permit purports to be a telecommunications entity, in addition to the above required information the application shall include:

(a) specifications as to the form of transmission media to be utilized;

(b) design plans and specification concerning the transmission media;

(c) a copy of the certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority from the Public Utilities Commission authorizing local exchange telephone service in the City;

(d) verification of current payment of all fees and right-of-way fees to the Public Utilities Commission; and

(e) other such pertinent information as the Inspector may reasonably require.

E. Review of Application. The City Council shall have the power and reserves the authority to refuse to issue a permit under this ordinance, including a certificate of occupation, to any

person, Contractor or Owner who has not complied with this ordinance, has previously failed to comply with the terms, requirements or standards of any prior permit issued for a similar project, or who has failed to provide insurance and bond as required. Additionally, the City Council shall have the power and reserves the authority to refuse any permit, or to modify or amend any application for permit, where the particular location, by reason of the nature of such particular location, the character and value of the permanent improvements already erected on or approximately adjacent to the particular location, and the use of which the land and surroundings, when in the Building Inspector's opinion, or on appeal to the City Council in the City Council's opinion, the excavating, operation of an excavation or addition or alteration of any such proposed facility on such particular location or construction activity would constitute a nuisance, be injurious to public health, be a public hazard to the inhabitants as a whole, or to a substantial number of its inhabitants or travelers, or be a disadvantage to the City in its planned growth, or otherwise have a negative impact on the property values of property within the City.

F. Factors to be Considered. In considering and reviewing all plans submitted and applications for permits, including a certificate of occupation, the Building Inspector shall be guided by the general purpose of orderly municipal planning, avoiding conditions or the doing of any act constituting or creating a nuisance, health hazard or endangering the public safety. As aids in accomplishing these purposes, the following points shall be considered by the inspector in reviewing applications for permits; however, such aids shall not be exclusive in the Inspector's consideration and ultimate recommendation:

- (1) The plan's compliance with all provisions of this Ordinance and other ordinances of the City;
- (2) The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood;
- (3) The relationship of the development to adjacent uses in terms of harmonious use and design, maintenance of property values, and negative impacts;
- (4) The provision of a safe and efficient vehicular and pedestrian circulation system;
- (5) Surface water drainage and water drainage facilities of the excavation or installation, including soil and earth erosion by water and wind;
- (6) Lateral supports of the excavation, including protections for existing buildings, facilities, streets and other property to be affected thereby;
- (7) Conditions in which the excavation, construction activities or installation are to be

maintained and safeguards to be taken to prohibit creating a nuisance, health or safety hazard, attractiveness to children, and features provided to dispense with the endangering of the lives and property of the public;

(8) Proposed use or condition of land upon completion of excavation process, construction activity or installation;

(9) Protection, access and encumbrance such installation, construction activity or excavation will have upon existing facilities and the location of the facilities in reference to the proposed excavation or installation, including the size, quantity, location and permanent nature of the all facilities currently located or proposed to be located therein; and

(10) Such other facts as may bear or relate to the coordinated, adjusted and harmonious physical development of the City.

In arriving at the ultimate recommendation, the inspector may attach such special conditions thereto as may be reasonably necessary to attain the overall propose of this ordinance.

G. Appeals. Appeals from the denial or granting of a permit, including a certificate of occupation, shall be made to the City Council.

(1) If an application for a permit is refused, the applicant may, not later than ten (10) days from the date of receiving notice of such refusal, appeal to the City Council by directing a letter to the City Council setting forth therein the date of denial of the permit and the reasons the permit should be granted.

(2) If the Inspector grants the permit, any citizen of the City who is or may be injured or damaged thereby may, within ten (10) days of the recommendation to grant the permit, appeal to the granting of the permit to the City Council, by directing a letter to the City Council addressed to the office of the City Secretary, at the City Hall, setting forth therein the date of the action by the inspector and the reasons the person appealing believes that (s)he has been or will be injured by the action from which (s)he is taking such appeal.

(3) Upon the filing of such appeal, the right to operate under any such permit shall be suspended until final determination by the City Council.

(4) The City Council shall, on receiving such notice of appeal, direct the City Secretary to place it on the City Council's work agenda to be considered in the due order of City business. The City Secretary shall then notify the applicant and any other appellant as to the date and place where the City Council will consider the appeal and publish a notice one time in the official newspaper at least five (5) days before the date when the City Council will

consider the appeal.

(5) The City Council on considering the appeal may, by majority vote of all members in attendance and voting, either grant or refuse to grant the permit. The decision of the City Council shall be the final decision and binding on all parties.

H. Conditions of Permit. All permits, including certificates of occupation, shall be issued based upon the representations made within the application for the permit, information provided from the applicant, information known to the Inspector and/or City Council, and all plans and specifications submitted with the application. Violations of any conditions of the permit or the general conditions listed herein shall constitute a forfeiture of all rights and privileges granted by the permit(s). The following general conditions of permit are in addition to the specific conditions identified in the specific permit:

- (1) Permit holders may not deviate from the plans and specifications approved with the permit without prior written permission from the Building Inspector and amendment of such permit.
- (2) Permit holders must comply at all times with the requirements of this Ordinance and other applicable City Ordinances as well as State and Federal laws.
- (3) No permit issued under the terms of this ordinance shall ever be transferred, sold, assigned, or otherwise disposed of in any manner to any other person without the written consent of the Building Inspector.
- (4) No permit shall be issued for less than the required permit fees.
- (5) Bonds must be maintained at all times applicable to the permitted project.
- (6) All applications for permit must contain complete and accurate information, plans and specifications for the project.
- (7) No work shall be done under any permit issued under this ordinance except as stated in the permit and in compliance with State and Federal laws. The permittee shall ensure compliance at all times therewith.
- (8) The Building Inspector shall at all times have authority to inspect the project site and stop all work not in conformity with the permit, Ordinances of the City, or State or Federal law. A copy of all permits shall be maintained at the construction site and made available for inspection at all times when construction or installation work is occurring. It shall be a violation of this ordinance to interfere with a Building Inspector in the performance of his

or her duties.

(9) Any changes to the information provided in the application approved by the Building Inspector must be submitted to the Building Inspector within 72 hours after the information has changed to amend the permit and, if such changes are of a sufficient degree to cause reconsideration, the Building Inspector shall have the same authority as in an original application to approve or deny such amendments.

(10) Approval of a permit does not constitute an agreement to undertake construction activities contrary to State, Federal or City requirements.

(11) No permanent structure shall remain in the right-of-ways or street without all proper permits and a current occupation permit authorizing permanent occupation.

I. Revocation of Permit. Any permit, including a certificate of occupation, issued under this ordinance may be cancelled if a notice to cease operations or activities thereunder is issued, and such notice is not immediately complied with. Any such non-compliance shall constitute grounds for immediate revocation of any and all permits, or portions thereof, for the project, when the following conditions exist:

- (1) a violation of any condition of the permit;
- (2) a violation of any provisions of this ordinance or any other applicable ordinance or law relating to the specifications of the permit, excavations, construction or installation of the type of facility being installed, repaired, altered or removed;
- (3) failure to cease construction activities or correct such violations as directed by the Building Inspector; or
- (4) the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.

J. Appeals from Permit Revocation or Other Action. A permit holder, including a person having certificate of occupation, pursuant to this ordinance, who is aggrieved by a revocation or any other action by the Building Inspector regarding such permit, may appeal to the City Council. The appeal shall be made by filing with the City Secretary a written notice thereof within ten (10) calendar days from the date of the revocation of the permit, or other action appealed from, including, but not limited to, notices to repair and stop work orders. A fee of One Hundred Dollars No/100 (\$100.00) shall be collected for processing the appeal. The aggrieved person shall be given a hearing before the City Council, in due order of business, after which the City Council may affirm, modify or overrule the Inspector's decision. Written notice of the time and place of such hearing shall be

served upon the permit holder at least five (5) days prior to the date set for such hearing. Notice of the hearing may be given by personal delivery thereof to the permit holder or by deposit in the United States mail in a sealed envelope with postage prepaid, addressed to such person at the address appearing in the application or notice of appeal. All work shall be stopped at the construction site while the appeal is pending.

K. Franchise Holders. Utility Service providers and Public Service providers having a current franchise or license agreement with the City shall be governed by the terms of the franchise or license agreement and shall not be required to: obtain an additional certificate of occupation or permit; post additional bond or insurance; and shall be exempt from paying any permit fees when required hereby to obtain a permit; but shall otherwise be subject to, bound and governed by each and every term and provision of this ordinance except as explicitly exempted in the franchise or license agreement. Where the terms and conditions of the franchise or license agreement conflict with the provisions of this ordinance, the terms and conditions of the franchise or license agreement shall govern. Unless otherwise exempted by a current franchise, license agreement or state law, the Utility Service provider or Public Service provider shall:

- (1) complete all applications for permits required herein but shall not be required to pay the fees;
- (2) provide the City the information required in the application;
- (3) coordinate with the City as directed by the Building Inspector based upon the size of the project and construction activities;
- (4) apply for all permits not less than five (5) working days prior to commencing any activity for which a permit must be issued as required by this Ordinance; and provide an estimation of time for completion of each project.

L. Exception to Certain Fees. Telecommunication entities that are certificated telecommunications providers, certificated by the State of Texas to service the City, and that pay the City compensation as required by *Chapt. 283, Tex. Loc. Gov't. Code*, shall be exempt from such fees as are set forth therein upon verification from the Public Utilities Commission that the telecommunications entity seeking a permit is, at the time of application, a certificated provider holding a current certificate of convenience and necessity to service the City, and is paying the City compensation as required by Chapter 283. The telecommunications entity shall be subject to all other provisions of this ordinance for which the entity is not exempt.

**Section 5. Bond and Liability.** A person considering any construction activity, installation of facilities, excavation, cutting, boring, digging or demolition activity in, over, under, through,



along or across the streets or right-of-ways within the City, and who is not under a written contract, franchise, license or other express written agreement with the City, shall post a bond, make a cash deposit with the City, or provide other suitable forms of financial security as determined by the Building Inspector in an amount that approximates the projected costs of inspection, observation, labor, equipment, materials, and overhead associated with the permit work, and the restoration, reconstruction and repair of the cut, work or excavation in compliance with the standards and requirements set forth in Exhibit "A" attached hereto and incorporated herein for all purposes. Such security shall be posted prior to the issuance of a permit and the start of construction.

A. Bond Required. A good and sufficient bond shall be filed with the application for the permit required by this ordinance, executed by a bonding company, which bond shall be approved by the Building Inspector as to form and sufficiency and shall be in the sum of not less than two thousand dollars (\$2,000.00). The bond shall be conditioned, among other things, that the Contractor shall faithfully, at his or her own expense, furnish all proper materials, tools and appliances, and perform, execute, construct and complete all such work undertaken by such Contractor, and observe and comply with the specifications, requirements and provisions of this ordinance. The bond shall be and remain in effect at all times in which the excavation or construction activities are commenced or in progress.

B. Maintenance Provisions in bond.

- 1) Every permittee issued a permit under this ordinance shall be bound and obligated to construct all work, and use such materials in the construction thereof, so that the same shall be in as good or better condition that prior to the work, and will remain in such as good or better condition for and during a period of not less than one (1) year from and after the date of completion of the work, free from all cracks, breaks, disintegration, undue wear, scaling or departures from true line or grade, or other defects which might impair the permanence or usefulness of the work or construction activity or surrounding facilities, streets or right-of-ways; however, such cracks as may appear in expansion joints, or cuts between blocks, shall not be deemed to be defects unless in the opinion of the Building Inspector such cracks are excessive in opening or deflecting of surface.
- 2) Each such bond issued pursuant to this ordinance shall continue in effect for and during the maintenance period of one (1) year following the completion of the work, construction activity or repair.
- 3) Each bond issuer shall promptly adjust, pay and settle all legitimate claims for damages or injuries that may result by reason of carelessness or negligence in the manner of performing the work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof.

- 4) Each permittee and bond issuer shall hold the City free and harmless from liability on all claims for damages that are based upon, that arise from, or that are related to, the work or construction, or the condition thereof during the maintenance period, or that arise by reason of carelessness or negligence of the permittee, Owner, or Contractor, in the manner of performing such work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof, or otherwise by reason of the work or construction.

C. Withdrawal of Surety on Bond. On written notice to the Building Inspector and the Contractor, any surety on a bond issued pursuant to this ordinance may withdraw from all liability thereon on account of any and all future work undertaken by the Contractor and for which excavation or construction activity was not begun before the delivery of the notice. After receipt of the such, the Contractor shall not begin any new work unless and until the Contractor shall provide and procure the approval of a new bond in the same manner as required for the first bond. No bond or surety may be withdrawn after the permitted work is commenced.

D. Emergency Conditions. In the event emergency conditions warrant immediate response by an affected person, the Building Inspector may waive and/or modify normal standard procedures outlined herein to promulgate standards or requirements to expeditiously address the resolution of the emergency conditions; provided that, in any such event, the Contractor shall obtain a permit for such work on the first business day of the City following performance of the work.

E. Decision Binding on Contractor and Sureties. The decision of the Building Inspector shall be binding and conclusive on the Contractor and the sureties on all such bonds as to when any work or construction was actually commenced.

F. Liability of the Contractor and Sureties for Defective Work. A Contractor whose work, construction activities or excavations are completed, or caused to be completed, by the City shall, on completion of such work and receipt of a certified bill of the cost thereof approved by the City Administrator, pay to the City, on its order, the cost of the work. The sureties on the Contractor's bond shall be liable for all items and amounts listed in the certified bill of costs submitted to the Contractor by the City. In the event the Contractor, or the surety on any bond, shall fail and refuse to timely pay any such certified bill to the City, the Contractor and such surety shall be and become liable to the City for its attorney fees and costs of collection.

G. Liability of Contractor and Sureties for Maintenance and Repair Work. If any defect in the work or construction develops during the one (1) year guaranty period established by this ordinance, which, in the opinion of the Building Inspector, is due in any measure to defects of workmanship or material, the Contractor shall remedy, repair and reconstruct such work, and/or any part thereof, as may be required by the Building Inspector, and such work shall be known as

maintenance and repair work, and the surety on the Contractor's bond shall be fully liable for any default of such Contractor under this section.

**Section 6. City Facilities and Lands.** City facilities and lands shall not be altered, obstructed or occupied without the express written permission of the City. Facilities not owned by the City shall not be located closer than ten feet (10') laterally, and shall not be located above or below any City owned facility located underground, without express written permission from the City. Additionally, no facilities may be located in, over, under, through, along or across any parks, recreational land or other similar City owned property, which is not a street or street right-of-way, without the express written permission of the City.

**Section 7. Duties and Responsibilities.** The Contractor and the Owner, and any other person to whom a permit is issued, shall, during the period for which the permit is issued, and as provided in Section 5, have all of the duties and responsibilities identified in this ordinance, other applicable ordinances of the City, and as provided for in State and Federal law. The Owner, its agents, assigns, Contractors and subcontractors installing the facilities, shall continually have the duties identified in this ordinance for so long as facilities or property, under the control of any such Owners, and any subsequent Owners thereof, are located in the right-of-ways or streets, to perform pursuant to the terms of this ordinance.

A. **Duty to Barricade and Protect.** The Owner and the Contractor, and every person to whom a permit is issued under this ordinance, shall have a duty to ensure that each contractor, subcontractor, employee, agent or assignee:

- (1) prosecutes such work diligently and in a good and workmanlike manner; and
- (2) safeguards and protects the public upon or using the street, right-of-way, or other place where the work is being performed, from accidents, injury or damage

by placing barriers, lights and other sufficient safeguards, including a watchman, if necessary, around all cuts, openings, excavations, installation sight and materials, implements and tools used in connection with the construction activity, and shall conform to the provisions of this ordinance and all requirements of the Building Inspector during the prosecution and completion of such work. All barricades and barriers shall be erected and maintained in compliance with accepted industry practices and applicable safety standards. The Owner and the Contractor shall be responsible for the costs and expenses of all such barricades, barriers and watchmen.

B. **Supervision of Work.** It shall be the duty of the Owner, the Contractor, and the supervisor of the work site, who shall cause to be made any hole, cut, trench, excavation, mound,

embankment, installation or other obstruction in any street or right-of-way, to carefully guard or cause to be guarded such hole, trench, excavation, mound, embankment, installation or other obstruction while the same may exist and not to suffer the same to remain beyond a time reasonably sufficient for the completion of the construction or removal of the obstruction, and to repair the portion of such street or right-of-way or any facility or property affected thereby so as to restore the same to as good or better condition than existed just previous to such activity.

C. Duty to Promptly Repair. It shall be the duty of the Owner, the Contractor and the supervisor of the work site, on whose behalf the hole, trench, mound, excavation, construction activity, installation or other obstruction or intrusion shall be made, or has been made, in the streets or right-of-ways of the City, to protect the same while such condition exists and to promptly repair the same so as to leave the street or right-of-way in as good or better condition than as before the work. All facilities, streets, sidewalks or other structures or property damaged, altered or injured, in any fashion, shall be restored with similar material and workmanship to that existing before the same was damaged, altered or injured through any actions of the Owner, Contractor or person employed in any fashion thereby. All work shall be done to the satisfaction of the Building Inspector whose duty it shall be to inspect the same after it has been done.

D. Removal and Reconstruction Where Work Defective. All construction activities undertaken in the streets and right-of-ways of the City are declared to be wholly subject to the exclusive control of the City, and whenever, in the opinion of the Building Inspector, 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 material or because not true to lines or grades or specifications required therefor, then upon written demand or notice from the Building Inspector, such Contractor or the Owner shall promptly remedy, complete or remove and reconstruct such incomplete or defective construction all as the Building Inspector may require, and these provisions shall also comprehend and apply to all repairs, installations and maintenance activities. If the Contractor or Owner shall fail or refuse so to do within a reasonable time as specified in writing by the Building Inspector, then, if the Building Inspector shall so order, such work may, at the expense of the Owner and Contractor, be completed, corrected or removed and wholly or partially reconstructed by the City, or its instance, in such manner as in the opinion of the Building Inspector may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the provision of this ordinance and the direction of the Building Inspector.

E. Excavation. All excavations in the streets and right-of-ways are declared to be wholly subject to the rules, regulations, directions and control of the City, and whenever, in the opinion of the Building Inspector, any such work shall not be in compliance herewith, the permit, and Exhibit "A", then upon written demand or notice from the Building Inspector, such Owner and Contractor shall promptly remedy, complete or fill the excavation all as the Building Inspector may require. All excavations made into any street or right-of-way shall be repaired to as good or better condition

than such street, right-of-way or other property was in prior to such excavation. Any excavation located in or over the right-of-ways or streets within the City shall and does constitute a nuisance when maintained or permitted to exist by any person in an unwholesome or nauseous condition, or in a manner by which stagnant water accumulates, or in a manner in which water collects where it is possible and probable stagnant water accumulates, or in a manner in which water collects where it is possible and probable mosquitoes will breed, or in a condition where rats could harbor, or in a manner and condition constituting a breeding place for flies, or in a manner and condition where filth, garbage, trash, debris or other discarded material accumulates and is deposited, or is maintained or permitted to exist in an unfenced, open condition, accessible to children or other members of the public, or is maintained and worked in such a manner as to disturb, effect or destroy the lateral support of or block or otherwise impede traffic on any street, alley, road or right-of-ways, or that is maintained or permitted to exist in any condition which constitutes a possible and probable medium of transmission of disease to or between human beings, or to be maintained or permitted to exist any one or more of the above-enumerated conditions.

F. Relocation of Facilities. All persons placing facilities in the right-of-way or streets or owning, operating or maintaining facilities in, over, under, through, along and across the right-of-ways or streets of the City shall be responsible for the relocation and costs of relocation of such facilities when the public health, safety or a public purpose requires relocation, or when such facilities are located therein without a permanent occupation permit, license or franchise as appropriate for the occupation.

(1) Permanent Relocation. Upon thirty (30) days written notice by the City, the Owner of a facility shall, at the Owner's expense, begin relocation of its facilities that are within a right-of-way or street, when deemed necessary by the City for the public health or safety, or for any public purpose, or to permit the widening, straightening or improvement of a street, drainage, water or sewer project, or any other public works project. The notice by the City may specify the new location for the owner's facilities along the right-of-ways or streets. The City shall have the right to move any facilities within the right-of-ways or streets to cure or otherwise address a public health or safety concern, to accomplish a public purpose, or to widen, straighten or improve a street, water or sewer projects or other public works projects, or when no permit for occupation has been granted and the owner refuses to move the facilities. The Owner shall pay the costs and expenses of moving the facilities.

(2) Temporary Relocation. Upon thirty (30) days written notice by the City, the owner of a facility shall temporarily relocate any portion of its facilities within the right-of-ways or streets at the owner's own expense when deemed essential by the City for the public's health and safety or to permit construction activities of the City, or water or sewer projects or any other public works project. The notice by the City shall specify the affected areas where the facilities are located and the area for temporary relocation of the owner's facilities along the right-of-ways or streets. The City shall have the right to move any facilities within

the right-of-ways or streets to cure or otherwise address a public health or safety concern, to widen or straighten streets, water or sewer projects or other public works projects or construction activities where the owner refuses to move the facilities. The City shall assess the reasonable costs and expenses of moving the facilities against the owner.

3) Temporary Removal of Aerial Wires. The owner of aerial wires, on the request of any person, shall remove or raise or lower aerial wires within the City temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the owner of the wires may require such payment in advance. The owner shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.

H. Traffic Interference. The Owner and Contractor shall endeavor to minimize disruptions to the efficient use of the right-of-ways and streets by pedestrians and vehicular traffic, and the right-of-ways and streets shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. Prior to blocking any street or right-of-way the owner and/or contractor shall obtain a permit as required herein.

I. Maintenance of Facilities. The Owner of any facility and person holding a certificate of occupancy, license or franchise shall be responsible for ensuring the continued maintenance, repair, removal of any nuisances and other such upgrades or repairs to maintain such facility in a safe and good workman like condition. Any vegetative growth interfering with such facilities that is determined by the Building Inspector to be a nuisance shall be removed, cut or cleared at the sole cost and expense of the Owner of the facility or holder of the certificate of occupancy, license or franchise. Circumstances and conditions that impose an threat to the public health, safety or welfare shall be promptly remedied by the Owner, and a known emergency condition that exists and is determined to require immediate attention so as not to reasonably allow for notice under this section may be immediately abated by the City, and notice of the abatement and costs for the expenses incurred will be forwarded to the Owner or holder of the certificate of occupation, franchise or license for reimbursement to the City as required in Section 9.

J. Tree Trimming. The owner of facilities located within the right-of-ways or streets shall not trim any trees upon or overhanging the right-of-ways without first obtaining a permit as provided herein. All activities and costs necessary to protect and preserve the facilities from damage due to trees shall be the responsibility of the owner of such facilities.

K. Violations; Notice; Failure To Abate.

(1) In the event the Building Inspector shall determine that a situation exists which is an immediate threat to the health, safety and well-being of the general public and that immediate action is necessary, said Building Inspector may take such action as shall be

necessary, including issuing citations for violations of the terms and provisions hereof to the Owner or Contractor committing such violation.

(2) In the event the Building Inspector determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or Contractor is absent or fails to immediately remedy the situation, the City Administrator may, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare, including ordering repair or abatement of the nuisance. In such event, the City may also prosecute an action in any court of competent jurisdiction to recover its costs.

(3) In the event any Owner or Contractor shall fail or refuse to remedy any of the conditions or violations indicated by the Building Inspector within ten (10) days after notice is sent, or immediately if determined by the City to be an emergency and the Owner or Contractor is absent or fails to immediately respond, the City may do such work or cause the same to be done, and pay therefore, and charge the expenses in doing or having such work done or improvements made, to the owners of the facility, or the Contractor performing construction activities, whereupon such charge shall be a personal liability of the Owner and/or the Contractor to the City.

(4) Notices served upon an Owner or Contractor may be verbal, or may be served on such Owner or Contractor by an officer or employee of the City delivering a written notice to an employee or officer of such Owner or Contractor at their respective place of business, or may be by letter addressed to such Owner or Contractor at their post office address, or if personal service may not be had, or the Owner and Contractor's address be not known, then notice may be given by publishing a brief summary of such order at least once in the official newspaper of the City, by posting a notice on or near the site or location of each facility or property upon which the violation relates, or by posting notice on a placard attached to a stake driven into the ground on the property or facility to which the violation relates and addressed "Facility Improvements" "To Whom It May Concern," and such publication shall be deemed sufficient notice.

(5) In the event any Owner or Contractor is mailed a notice in accordance with subsection (d) and the United States Postal Service returns the notice as "refused" or "unclaimed" the validity of the notice is not affected, and the notice is considered as delivered.

(6) Notices provided by mail or by posting as set forth above may provide for year round abatement of the nuisance and inform the Owner that should the Owner commit any other violation of the same kind that pose a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may abate the

violation at the owner's expense and assess the costs against the property.

(7) Appeals from a decision of the Building Inspector identifying a violation or nuisance shall be filed in writing with the City Secretary within five (5) days after the notice to abate a nuisance or notice of a violation of this ordinance is given. The procedures for appeal shall otherwise be the same as required in Section 4 G herein.

L. Emergencies. In the case of fire, disaster, or other emergency threatening life or property, as determined by the City, the City may remove or repair only the part of the facility required to be removed or repaired to remove such threat; provided, however, the City shall first use its reasonable efforts to immediately notify the owner of such threat and allow the owner to remove or repair the part of the facility required to be removed or repaired to remove such threat. In such event, neither the City, nor any agent, contractor or employee thereof shall be liable to the Owner or its customers or third parties for any damages caused them or the facility, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the facility.

**Section 8. Right to Inspect**. For the purposes of administering and enforcing this ordinance, the Building Inspector and authorized law enforcement entities (herein "inspecting official") shall have the right to enter into and upon any lands within the City limits, in or upon which excavation, installation, repairs or any other construction activities exist or on any lands on which operations are being conducted in creating an excavation, repair or installation, to examine and inspect such lands and excavations, repairs or installations, to determine whether such operations are in violation of this ordinance and to further determine whether all permits have been secured as required.

(1) Cessation of Operations/Stop Work Order. If the inspection provided for above reveals that the excavation, installation, repair or construction activity is being operated or maintained in violation of the permit issued, including a certificate of occupation, the inspecting official may immediately give notice in writing to the person in charge at the site, or the Owner thereof, to stop all work or construction activities, setting forth therein the reason for the issuance of the stop work order. If no such person is available, the leaving of such a written notice, on the equipment located at the site or upon a stake at the entry of the site where the excavation, installation, repair or construction activity is occurring, shall be deemed compliance with this Section.

(2) Time Limitation for Correction. After issuance of the notice as provided for above, there shall be no further operation of the excavation, installation, repair or any other construction activity until the violations complained of by the inspecting official have been remedied. Except that the violation shall constitute an immediate threat to the public health



or safety, the Owner and Contractor shall have three (3) days from the date of receipt of the complaint notice from the inspecting official to remedy the violations complained of and to request the inspection by the inspector to verify that the violations complained of have been remedied and that the construction activity is ready for additional inspection.

(3) Failure to Remedy Violation. In the event a Contractor or Owner fails to remedy the violation complained of, the Building Inspector shall notify the City Administrator of the violations discovered and request that the City Council hold a hearing to consider revocation of the Contractor's and Owner's permit as provided in this ordinance. A continuation of work or operation of the construction activity, other than to remedy the violation complained of, after written notice has been received by the Contractor or Owner to cease the construction activity shall constitute a violation of this ordinance.

(4) Right to Repair or Correct. The City may immediately repair any site or location within the streets or right-of-ways at the Contractor's and Owner's expense where there exists: a known condition which constitutes a nuisance; a dangerous or hazardous condition; an eminent threat to the public health, safety or welfare; or when the Contractor or Owner is performing construction activities, excavations, installations or repairs without the appropriate permit; or when the Contractor or Owner is performing construction activities, excavations, installations or repairs contrary to the terms of this ordinance, other applicable ordinances, state or federal law and refuses to correct such situation immediately upon direction from the Building Inspector.

**Section 9. Costs.** The reasonable costs and expenses for repairing, re-constructing or correction of any construction activity, excavation, addition, removal or alteration of a facility or any other alteration thereof to any street, right-of-way, or facilities located thereon, within the City, without a permit or express written contract or written agreement with the City, shall be charged against the persons, the corporation, company, or entity actually responsible for the actions; the Owner(s) responsible for the work or for whose benefit such activity was undertaken which caused the damage to the street or right-of-way; and/or the permittee in whose name the permit to perform such activities was issued.

**Section 10. City Rights Reserved.** Nothing in this ordinance grants permission for the occupation, obstruction, excavation, repair or alteration of any street or right-of-way of the City, and any such use shall be subject to consent of the City at its sole discretion. Additionally, nothing in this ordinance shall be construed as an assumption by the City, its officers and employees, of any responsibility to supervise construction activities, ensure adequate safety precautions by Contractors or to protect any owners or customers of any facilities located in, over, under, through, along or across the right-of-ways or streets, or the owners of any property abutting, adjacent or within the

right-of-ways or streets from any damages caused to the facilities located therein or as the result of the construction activities thereto. Further the City reserves the right to vacate any street or right-of-way at its sole discretion. If the City vacates or otherwise abandons a right-of-way or street or any portion thereof, the City, with or without notice to any permittee, may cancel any permits for such portion of a right-of-way or street without compensation or reimbursement to the permittee for any expenses associated with moving any facilities located therein, unless otherwise agreed in writing. The Owner and, as applicable, the Contractor shall be solely liable and responsible for any and all injuries and/or damages arising or resulting from any excavation, boring, trench, work or occupation of any street or right-of-way by or on behalf of such Owner or Contractor.

**Section 11. Enforcement.** The civil and criminal provisions of this ordinance shall be enforced by those persons or agencies designated by municipal authority and may be enforced by any law enforcement agent of the City.

If applicable, default and revocation of any and all permits granted to allow construction activities in the streets or right-of-ways subject to the procedural guidelines herein and any agreement which applies to the right-of-way user, may be permanently enforced subject to any limitations imposed by federal or state law.

In imposing the penalties and the amount, the City may weigh all applicable factors, such as damages caused by the violation, reasons for the violation, the seriousness of the violation, and all other factors. The minimum fee and penalty that shall be payable by any Utility Service, Public Service Provider, Owner or Person that shall be found to have been occupying a street or right-of-way, in violation of this ordinance, shall be double the amount of \$1.00 per lineal foot of such occupancy for each year of such prior unauthorized occupancy.

Monetary civil penalties and injunctive relief may be imposed in the manner prescribed by either local or state law.

The City Council may order specific performance of any actions required by this Ordinance or required by a franchise, license or permit or any other agreement or authorization.

**Section 12. Penalty.** Any person who shall violate any provision of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

**Section 13. Court Proceedings.** Upon the request of the City Council, the City Attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this Ordinance, to obtain declaratory judgment, and to seek and recover court costs, attorney fees, and/or damages, including but not limited to, damages or costs incurred by the City to undertake any construction, repair, alteration or other activity necessary to bring about compliance with a requirement regarding the streets or rights-of-way and established pursuant to this Ordinance and other applicable ordinances of the City.

**Section 14. Indemnity.** Owners and Contractors shall indemnify, defend, and hold the City and its officers, employees and agents harmless from and against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused by the negligent act, error, or omission of any agent, officer, director, representative, employee, affiliate, or subcontractor of the Owner, Contractor or permittee installing, repairing, or maintaining facilities in the right-of-ways or streets.

**Section 15. Governmental Immunity.** Nothing in this ordinance shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the City or its officers, employees and agents, nor to create any legal rights or claims on behalf of any third party. This ordinance is solely for the benefit of the City, and the City in its representative capacity of the general public, and does not create or grant rights, contractual or otherwise, to any other person, entity or member of the general public. Neither the City, nor its officers, employees and agents waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

**Section 16. Repeal of Conflicting Ordinances.** All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

**Section 17. Effective Date.** This Ordinance shall be in full force and effect from and after publication of the caption in the manner and for the time provided by the Local Government Code.

**Section 18. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, sentence, paragraph or section of this ordinance should be declared invalid by the final

judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

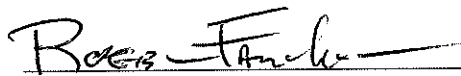
**Section 19. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 511, Tex. Gov't. Code.*

**PASSED AND ADOPTED** on this the 1st day of February, 2000.

**City of Kempner, Texas**

ATTEST:

  
\_\_\_\_\_  
Frances Spinney, City Secretary

  
\_\_\_\_\_  
Roger Fancher, Mayor

THIS ORDINANCE BECOMES EFFECTIVE FEBRUARY 21, 2000.  
SEE SECTION 17. EFFECTIVE DATE.

**PUBLISHER'S AFFIDAVIT**

I solemnly swear that the attached notice was published in the **Lampasas Dispatch Record**, a newspaper of general circulation which has been continuously and regularly published for a period of not less than one year preceding the dates of publication of the attached notice, that the said notice was published in the issue(s) of such newspaper on the day(s) of February 8th, 2000.

Fred Lowe

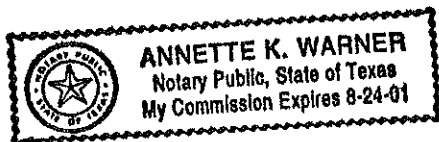
**Publisher, Fred E. Lowe  
or James F. Lowe**

**SWORN TO AND SUBSCRIBED BEFORE ME BY** Fred E. Lowe

this the 7th day of March, 2000, to certify which witness my hand and seal of office.

Annette K. Warner

Notary Public, State of Texas



**PUBLISHER'S AFFIDAVIT**

I solemnly swear that the attached notice was published in the **Lampasas Dispatch Record**, a newspaper of general circulation which has been continuously and regularly published for a period of not less than one year preceding the dates of publication of the attached notice, that the said notice was published in the issue(s) of such newspaper on the day(s) of February 11th, 2000.

*Fred Lowe*

**Publisher, Fred E. Lowe  
or James F. Lowe**

**SWORN TO AND SUBSCRIBED BEFORE ME BY** Fred E. Lowe

this the 7th day of March, 2000, to certify which witness my hand and seal of office.



*Annette K. Warner*

Notary Public, State of Texas

## Exhibit "A"

### SPECIAL PROVISIONS FOR CONSTRUCTION IN CITY STREETS AND RIGHT-OF-WAY

1. Permit - The person in charge of this installation shall have a copy of the permit and its attachments on the job at all times. Deviations to the approved permit must have prior approval of the City. Utilities having a franchise with the City shall not be required to obtain permits for street cuts but shall coordinate with the City as advisable based on the size of the utility project and work.
2. Existing Utilities - The exact location of any utilities or facilities that may conflict with the proposed installation should be field verified by the installer during construction. Contractor will be responsible for verifying the location both horizontal and vertical of all affected facilities whether by pot holing or hand digging prior to any excavation or boring.
3. Safety - Warning and protective devices including flagmen, and watchmen as necessary, shall be used to prevent creation of a traffic hazard and to ensure the safety of the public as advisable and prudent considering the scope of the work. When provided such devices and flagmen shall be in accordance with the Manual of Uniform Traffic Control Devices.

Parking of employee's cars and trucks on both sides of the pavement will be prohibited and all such vehicles shall be parked on one side of the road and in no instance closer than a minimum of eight feet from the edge of the pavement.

All construction equipment and materials stored on city right-of-way shall be limited to work in progress and stored in such a manner and at such locations (a minimum of 30 feet from nearest traffic lane) as not to interfere with the safe passage of traffic.

4. Method of Construction - Trench width shall be held to a minimum and back-filled to a density approximating that of the adjacent soil in a manner satisfactory to the City. The fill material shall be installed in six-inch (6") layers, each compacted to 95% density. A six-inch concrete slab shall be placed over the trench to extend 12 inches on each side of the trench. The top of the slab shall be two inches below the top of paving. Alternatively, a six-inch layer of asphalt may be substituted and compacted to the finished grade of adjacent pavement.
5. Concrete Slab Design - The slab shall be reinforced with six inch by six inch No. 6 wire mesh. The wire mesh shall be supported properly throughout the placement to maintain its position approximately equidistant from the top and bottom surface of the slab. (High Early) Type III Portland Cement, making 2500 P.S.I. Concrete at three days or as directed by the City shall be used. The slab shall be cured and closed to traffic as per state specifications. [This section shall not apply if 6 inches of asphalt is substituted for the concrete.]

6. Asphalt - If asphalt is not substituted, the concrete shall be thoroughly cleaned and a tack coat of asphalt shall be applied. Then Hot Mix Asphaltic Concrete (Type D) as specified in Item 340 of the Texas Highway Department Manual, shall be applied and compacted. If 6 inches of asphalt is substituted, the asphalt shall meet the foregoing specifications.

7. Access - Ingress and egress at all private and public streets and drives will be provided at all times.

8. Right-of-Way and Street Restorations - All excess excavation, materials, supplies, etc. shall be removed from the right-of-way after installation is complete and the right-of-way reshaped to its original section including fertilizing, seeding and/or sodding as may be required when existing grass has been disturbed.

9. Right-of-Way and Street Damage - The Owner, Contractor and Permittee will be responsible for any damage to the right-of-way or streets, including but not limited to the pavement structure, caused by settlement due to pavement cuts. Contractors are responsible for obtaining exact facility locations from all utilities prior to excavation. Such liability shall extend for a period of one (1) year from the date the repair of such pavement cut is completed.

10. Excavation - Prior to beginning any excavation, trenching or digging which may damage a pipeline, cable, wire or any other such apparatus or facilities located in, over or under the streets or right-of-ways of the City, the Owner or Contractor shall first obtain a permit before excavation and contact all of the owners of the such pipeline, cable, wire or other facility and determine if the proposed excavation will cause damage thereto.

If physical contact is made with, or damage or injury is suspected to, any pipeline, cable, wire or other such apparatus or facilities during any excavation, trenching, digging or other construction activities, the person or Contractor making the physical contact with, or suspecting the damage or injury to, the pipeline, cable, wire or other apparatus or facilities shall immediately contact the Building Inspector and the owner of the pipeline, cable, wire or other apparatus or facilities for any necessary inspections and repairs.

If during any excavation, trenching or digging, the person or Contractor so excavating, trenching or digging notices or suspects damage or injury to any lateral supports to streets or other facilities in the right-of-ways, streets or adjacent properties such person shall immediately contact the City and, if applicable, owner of the property for any necessary inspections and repairs.

All persons to whom permits may be granted to excavate the streets or right-of-ways shall, at their own cost and expense, deliver at such place as may be designated by the Building Inspector for such purpose all such surplus earth, dirt, stone, gravel or other material coming out of such excavation as shall be necessary for the purpose of refilling the same.



11. Erosion - Erosion control measures (i.e. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. Permittee shall be responsible for storm water management erosion control that complies with City, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing.

12. Weekend/Holidays - Construction work to be accomplished on weekends, nights or holidays will proceed at the discretion of the Building Inspector; provided that emergency work required to be undertaken on weekends, nights, holidays and outside of normal business hours shall be undertaken and completed in compliance with the attached ordinance and this exhibit, and the Contractor shall obtain a permit therefor on the first business day following the date of such work.

13. Notice. The Permittee, Contractor or Subcontractor shall notify the Building Inspector not more than twenty-four (24) hours after any damage to other utilities, facilities, or other appurtenances or property, whether public or private. Once a permit has been issued, the Permittee must notify the Building Inspector at least forty-eight (48) hours prior to commencing any work or construction activity permit in such permit.

14. Liabilities - The City assumes no responsibility for conflict with existing utility lines, pipelines, highway appurtenances or natural obstacles. Permittees, Contractors and Owners shall be responsible for the workmanship and any damages by a contractor or subcontractor.