

ORDINANCE NO. 759-2016-05

AN ORDINANCE OF THE CITY OF WEATHERFORD, TEXAS, AMENDING TITLE IX (PUBLIC WAYS AND PROPERTY) OF THE CITY CODE OF WEATHERFORD BY ADDING CHAPTER 14 GOVERNING THE USE OF AND CONSTRUCTION WITHIN CITY PUBLIC RIGHTS OF WAY; ESTABLISHING APPLICATION AND PERMIT REQUIREMENTS; ESTABLISHING AN APPEAL PROCESS; PROVIDING AN OFFENSE; AND PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2000) FOR EACH OFFENSE.

WHEREAS, as home-rule municipality the City of Weatherford ("City") has the right and obligation to control and manage the use of its Public Rights of Way throughout Weatherford so as to protect the health, safety, and welfare of the public; and,

WHEREAS, the Rights of Way are a valuable public resource that have required and will continue to require substantial investment by the City; and,

WHEREAS, it is the policy of the City to minimize to the extent possible the duplication of the installation and placement of utility poles and other transmission facilities in the City's Public Rights of Ways; and,

WHEREAS, the City desires to establish and implement a fair and orderly process for the authorization to occupy and use the City's Public Rights of Way to protect the public interest consistent with applicable law; and,

WHEREAS, establishing a permitting process to improve coordination of work in Public Rights-of-Way under City jurisdiction will ease traffic congestion and limit inconvenience to citizens of and visitors to the City; and,

WHEREAS, the permitting process is necessary to enhance the public's access to information about construction in Public Rights-of-Way, and to protect and preserve the valuable investment of the City's taxpayers in the construction and maintenance of the Public Rights-of-Way; and,

WHEREAS, the permitting process is necessary to minimize the impact of construction on neighborhood residents and businesses by enforcing cleanliness and safety standards for construction sites, imposing strict timelines for construction, and requiring Owners to comply with City standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensure the best possible restoration of the paved surface over and adjacent to the trench; and,

WHEREAS, the permitting process is necessary to allow the City to properly enforce violations of this Ordinance by the imposition of civil, criminal, or administrative penalties; and,

WHEREAS, the permitting process is necessary to conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City; and,

WHEREAS, regulation of excavations in City streets helps reduce disruption of an interference with the 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, it is the City's objective, to the extent reasonable to minimize inconvenience and disruption to the public provide for the orderly and efficient use of the Rights of Way now and in the future and preserve adequate capacity of existing and future uses of the Public Rights of Way; and ,

WHEREAS, the permitting process will assist in keeping track of the different entities using the Rights-of-Way to prevent interference between them; and,

WHEREAS, the permitting process will protect the safety, security, appearance, and condition of the Public Right-of-Way; and,

WHEREAS, in accordance with applicable federal law, including, but not limited to, 47 U.S.C. § 253 (c) and state laws, including, but not limited to, Tex. Util. Code §§ 14.008, 54.205, 66.010 and 66.011 Tex. Rev. Civ. Stat., art. 1175; and the Tex. Local Gov't Code § 283.056, the City seeks to exercise to the fullest extent permitted its historical rights to control and manage its Public Rights of Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations regarding the use of those Public Rights of Way;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEATHERFORD, TEXAS

Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life in the City.

Amendments to Title 9 of the City Code of Weatherford, Texas. The City Council hereby amends Title IX of the City Code of Weatherford by adding new Chapter 14 as specifically set forth herein below:

SECTION 1 PURPOSE, SCOPE, and DEFINITIONS

1.1 **General Purpose.** The purpose of this Ordinance is to:

- A. Assist in the management of Facilities placed in, on, over, under, or above the Public Rights of Way in order to minimize the congestion, inconvenience, deterioration, visual impact and other adverse effects, and the costs to the Citizens resulting from the placement of Facilities within the Public Rights of Way;

- B. Govern the use and occupancy of the Public Rights of Way;
- C. Assist the City in its efforts to protect the public health, safety, and welfare;
- D. Conserve the limited physical capacity of the Public Rights of Way held in public trust by the City;
- E. Preserve the physical integrity of the streets and highways;
- F. Control the orderly flow of vehicles and pedestrians;
- G. Keep track of the different entities using the Public Rights of Way to prevent interference between them;
- H. Assist in scheduling common trenching and street cuts; and
- I. Protect the safety, security, appearance, and condition of the Public Rights of Way.

1.2 **Scope and Authority.**

This ordinance applies to all Persons that place Facilities in any manner, in, on, over, under, or above a Public Right-of-Way. Compensation for use of the Public Rights of Way shall be paid in accordance with all applicable law, including, but not limited to, cable providers, in accordance with the Federal Cable Act, 47 USC § 541, *et seq.*; certificated telecommunication providers, in accordance with Chapter 283 of the Texas Local Government Code; distributors of natural gas in accordance with Texas Tax Code § 182.025, or applicable franchise ordinance or agreement; investor-owned electric utilities in accordance with Utilities Code § 33.008, or applicable franchise ordinance or agreement; and/or in accordance with Tex. Civil Statue Ann., Art. 1175(1), all as applicable to any Person using in any manner the City’s Public Rights of Way. Provided, however, that if a Person is subject to a valid franchise agreement or ordinance approved or adopted by the City, the terms of that franchise agreement or ordinance, if in conflict with the provisions hereof, shall govern the franchisee’s rights and obligations with regard to use and placement of Facilities in, on, over, under, or above the City’s Public Rights of Way.

1.3 **Conformance with All Laws.** This ordinance is passed subject to applicable provisions of the Constitution and Laws of the United States and the State of Texas and the Charter and the Code of Ordinances of the City of Weatherford. This Ordinance shall in no way affect or impair the City’s rights, obligations, or remedies under the Public Utility Regulatory Act of Texas.

1.4 **Use of City’s Rights of Ways Only.** This ordinance addresses only the use of the City’s Public Rights of Ways. This Ordinance does not authorize any Person, including any Permittee to install or maintain attachments in or on other City property and facilities, including without limitation conduits, buildings, poles, and towers. Further, this Ordinance does not authorize the use of the City’s Public Rights of Ways for the provision of wireless services or installation of wireless facilities without the express consent of the City.☐☐

1.5 **Reservation of Right.** The City reserves the right to lay, and permit to be laid, sewer, water, and other pipe lines, wires, cables, and conduits, and to do and permit to be done any underground or aboveground work that may be necessary or proper in, across, along, over, under, or above a street, alley, highway, public place, or other Public Right of Way. The City also reserves the right to change any curb, sidewalk, or grade of a street. In permitting this work to be done, the City shall not be liable to a Permittee, or any Person using the City's Public Rights of Way, for any resulting damage, but nothing herein shall relieve any other person or entity from responsibility for damages to Permittee's or such Person's Facilities.

1.6 **Private Easements.** Nothing in this Ordinance and no action by City shall be construed to offer, grant or approve any right or license to use a private easement in any manner, or to affix any Facility within such easement without the consent of the owner of the property to which the easement is appurtenant, unless otherwise allowed by law. City has no obligation to expand or obtain rights in such easement on Permittee's behalf. It is the sole obligation of Permittee to obtain the necessary consent or additional easement rights, if any, at Permittee's own expense; provided, however poles may not be erected in areas prohibited by City design standards or in areas where other Person's Facilities are underground.

1.7 **Definitions:** For purposes of this Ordinance, capitalized terms are defined as follows:

A. **Applicant.** means a Person seeking a construction permit to place facilities in, on, under, or above the City's Public Rights of Way.

B. **Application.** means the City prescribed application, together with all required prints, maps, proposed routes, project descriptions, and proposed schedules that Permittee must submit, in full, to City in order to request and be granted a permit to install or place Facilities in City's Public Rights of Way.

C. **Above Ground Utility Structure.** Means a utility structure such as pedestals, switchboxes, electrical transformers, and similar facilities and excludes a service pole or a transmission-line pole.

D. **Certificated Telecommunications Provider.** means the same as defined in Tex. Local Gov't § 283.002(2).

E. **City Property.** means all City buildings, infrastructure, bridges, parks, golf courses, parking lots, and other real property that is not dedicated for utility or street transportation purposes.

F. **Contractor.** A Person utilized by a Permittee to perform any work in, on, under, or above the City's Public Right-of-Way and includes subcontractors that is not a direct employee of the Permittee.

- G. Construction** means any work performed above the surface, on the surface, or beneath the surface of a Public Right-of-Way, including, but not limited to, installing, servicing, repairing, upgrading, or modifying any Facility(-ies) in, above or under the surface of the Public Right-of-Way, and restoring the surface and subsurface of the Public Right-of-Way, subject to the provisions of Section 13-24(a). The phrase “construction” does not include the installation of Facilities necessary to initiate service to a customer’s property, or the repair or maintenance of existing Facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring.
- H. Construction Permit** means the permit which, pursuant to this Ordinance, must be obtained before an Owner may construct facilities in a Right-of-Way. A Construction Permit allows the holder to construct Facilities in that part of the Right-of-Way described in such permit.
- I. Design Documents**. means all specifications, drawings, schematics, blueprints, engineering documents, engineering drawings, installation details and written requirements for materials, equipment, design, construction, and workmanship that are approved by the City with respect to make-ready and installation work in the City’s Right of Ways.
- J. Director**. means the City’s Director of Transportation and Public Works or such Director’s designee.
- K. Effective Date**. means the date City enacts this Ordinance.
- L. Electrical Code**. means the National Electrical Safety Code (NESC), the National Electrical Code (NEC), and Chapter 752 of the Texas Health and Safety Code.
- M. Facilities**. means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated physical equipment placed in, on, over, under, or above the Public Rights of Way and excludes equipment used for installation or placement of Facilities in the City’s Public Rights of Ways.
- N. Permittee**. means Applicant granted a construction permit to place Facilities in, on, over, under, or above the City’s Public Rights of Way, such Permittee agents and contractors or any Person subject to this ordinance.
- O. Person**. means an individual, corporation, company, association, partnership, firm, Limited Liability Company, joint venture, Joint Stock Company, association, trust or other entity.

P. **Public Rights of Way.** means the same as defined in Tex. Local Gov't Code § 283.002 (6). The term does not include the airwaves above a Public Right-of-Way with regard to wireless telecommunications. The term does not include City buildings.

Q. **Service Pole.** means any above ground structure or apparatus to which any equipment is attached.

SECTION 2 GENERAL PROVISIONS

2.1 **Prohibition.** No Person shall construct any Facilities in City's Public Rights of Ways except as authorized by this Ordinance.

2.2 **Use of Existing and Future Poles.** To the extent utility poles owned by any utility are present in the particular section of a Public Right of Way, and regardless of the side of the street the same are on, a Permittee that intends to place its Facilities in the Public Rights of Way shall use such existing poles unless it establishes that use of existing poles, creates a safety hazard and it obtains written approval from the City to install new poles, such approval not to be unreasonably withheld. Applicant shall obtain all requisite permits and enter all necessary pole use agreements for use of such existing utility poles whether owned by City or a third party. All excavations and other construction in the Public Rights of Way shall be conducted so as to minimize interference with the use of public and private property. Any Facilities placed within the Public Rights of Way that are suspended in any manner above ground shall either be placed on existing poles or equipment or be suspended in a manner that meets the standards in the National Electric Safety Code unless otherwise approved by the Director, but in no event less than fifteen and one half (15.5) feet at any point, except to the extent state law controls. Above ground utilities shall be placed as far away from the edge of the pavement or the back of curb as possible but shall not be closer than 36" unless otherwise approved by Director.

2.3 **Location of above-ground utility structures**

A. Above-ground utility structures such as pedestals, switchboxes, electrical transformers and similar facilities not exceeding 25 cubic feet are allowed in the right-of-way or utility easements within residential zoning areas, subject to available room and located as approved by the Director. The placement of utility structures within residential zoning areas larger than 25 cubic feet, but not exceeding 35 cubic feet will be reviewed on a case-by-case basis by the Director. Such structures shall not encroach within a sidewalk area, including a vertical clearance of 7.5 feet above the sidewalk or within the sight visibility area.

B. Above-ground utility structures larger than 35 cubic feet shall be located as far away from public walkways, commercial driveways, heavy pedestrian sites, downtown

historic sites or other important public sites as determined by the Director, so that they do not create an unreasonable visual or aesthetic impairment to the property. Locations will be reviewed on a case-by-case basis by the Director.

- C. Above-ground utility structures shall be located as close as practical to the back of a public right-of-way or private utility easement and subject to available room and located as approved by the Director.
- D. Above-ground utility structures shall be located no less than three (3) feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway, sidewalks, or alleys.
- E. To prevent unreasonable visual or aesthetic impairment for the property owner, not more than two above-ground utility structures shall be placed in one location. There shall be a minimum clearance of 60 feet to the nearest above-ground utility structure in front of residential lots or as approved by Director.
- F. The Owner's identity and telephone number shall be placed on all above-ground utility structures placed in the Right-of-Way.

2.4 **Use of Above Ground Facilities and Poles by Third Party.** In the event a third party or City desires to install above-ground Facilities in the same Public Right of Way in which Facilities are installed or placed, the owner of the same shall allow such third party or City to use such Facilities, and shall offer a reasonable agreement for the use of the same and provided such third party or City enters into said use agreement. This Ordinance does not convey any right to any Person to attach any Facilities to any utility pole owned or controlled by the City without a separate pole use agreement.

2.5 **Service Pole requirements.**

- A. Public safety and adherence to all applicable engineering standards shall be considered paramount in the design and installation of all poles, guys, and other overhead conductors, cables, light guides, and equipment placed with Public Rights of Way.
- B. The Director shall be final arbiter of adequate design and installation, and any Person seeking to attach Facilities to the City's utility poles shall provide the City upon demand all necessary engineering documentation and calculations to demonstrate the adequacy of those designs.
- C. No poles, guys, equipment, conductors, cables, light guides or other above ground equipment shall be allowed to deteriorate to a point where it no longer meets design strength, lacks structural integrity, lacks clearance under current surrounding land-use conditions, or presents a likelihood of failure.

- D. No poles, guys, messenger strands, conductors, cables, light guides or equipment shall remain in place when no longer in use, except where plans demonstrate to the City that such equipment will be used within twelve (12) months from the date on which such equipment is no longer being used. Where such use does not materialize within such time frame, the unused Facilities shall be removed within 30 days from the end of the twelve-month period.
- E. No longer than at ten-year intervals, at the expense of the Permittee all wooden poles owned by Permittee shall be examined by an independent third party specializing in the long-term maintenance of utility poles and where design strength is determined to no longer be adequate, replaced within 90 days. Proof of same shall be provided to Director.
- F. Poles that are replaced by the City due to lack of maintenance, shall become the property of the City.
- G. All poles, except those explicitly marked as being owned and maintained by another Person shall be the property of the City.
- H. No Person shall attach messenger strands, guys, conductors, or other equipment to any pole owned by the City that creates a net unbalanced force on the pole.
- I. Persons with poles, conductors, cables, light guides, guys, or other Facilities in the City's Public Rights of Way shall respond within 24 hours after notification of damaged or downed facilities.
- J. Persons with poles, conductors, cables, light guides, guys, or other Facilities in the City's Rights of Way shall be responsible for costs incurred by the City in taking corrective measures with regard to damaged or downed Facilities.
- K. Persons with poles, conductors, cables, light guides, guys, or other Facilities in the City's Rights of Way or attached to poles owned by the City shall be responsible to transfer, relocate, or modify such Facilities due to pole maintenance, relocation, repairs, or replacement within 30 days from notice by the City of the need to maintain, relocate, repair, or replace the Person's Facilities.
- L. Multiple parallel pole lines on one side of a Public Right of Way are prohibited, even in circumstances where the original pole line is installed off the Public Right of Way in an adjacent easement.
- M. The installation of new poles, or the use of poles abandoned by the City within pole lines owned by the City is prohibited.
- N. No self-standing poles will be allowed in a public right of way that are not part of an existing facility unless approved by the City.

- O. In no case shall poles be placed in the Public Rights-of-Way that exceed a height of 60 feet unless approved by the Director in writing.
- P. No new pole facilities shall be placed within the City's area zoned as the central business district (CBD) unless for the purpose of maintenance or as approved in writing by the Director.

2.6 **Underground Facilities.** The City may withhold its permission to install new poles and require underground placement in any area in which it's Facilities, or those of other providers are placed or are to be placed underground, unless the Applicant makes a compelling demonstration that, in any specific instance, such requirement is not reasonable or feasible. The cost of underground installation or the time required to negotiate a joint use agreement shall not be considered a compelling reason.

- A. Facilities shall be installed underground where other entities' existing Facilities are already underground. A Person seeking to install Facilities in the Public Right of Way shall make a reasonable determination as to whether space is available to accommodate the Person's new Facilities. A negative determination shall not relieve the Person of the responsibility to underground its Facilities in underground utility areas to the degree reasonably feasible. Previously installed aerial Facilities shall be placed underground in concert, and on a cost-sharing basis, with other entities utilizing the Public Right of Way when such other entities convert from aerial to underground construction.
- B. Underground conduits and ducts shall be installed in the Public Rights of Way between the adjacent property line and the curb line unless otherwise directed by the City.
- C. Conduits and ducts shall be installed parallel with the curb line and shall cross the Public Rights of Way perpendicular to the Public Rights of Way centerline unless otherwise directed by the City.
- D. Conduits and ducts shall be installed by trenchless excavation or directional boring when placing these facilities under paved Public Rights of Way or driveway crossings to avoid motor vehicle interruptions, unless otherwise directed by the Director.

2.7 **Relocation.** After the installation of a Person's Facilities the City may require relocation of the Person's Facilities, without cost to the City, to other poles or may require underground placement by the Person upon reasonable notice to the Person in areas where above-ground Facilities will be replaced with underground Facilities.

2.8 **Street Widening, Straightening, or Changes in Grade.** Whenever, by reason of street widening, straightening, or changes in the grade or contours of a street, alley, or other public way, it is deemed that Permittee's Facilities located in the City's Public Rights of Ways, or the Facilities of any Person using the City's Public Rights of Way, are in conflict

with such activity, and for such reason it is deemed necessary to remove, alter, change, adapt, or conform the Facilities to accommodate such activity, Permittee, or any Person using the City's Public Rights of Way, shall make the alterations or changes as soon as practical but no later than 90 days following the request from the City, unless the Director extends such period. Permittee, or any Person using the City's Public Rights of Way, shall undertake such action without claim for reimbursement from or damages against the City.

- A. An Owner may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its Facilities. Should the Owner, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed. Upon receipt of a bill from the City, the Owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days from the Owner's receipt of the City's bill.
- B. An Owner shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures. The Owner shall temporarily remove, raise or lower its aerial Facilities within fifteen (15) working days of receiving a copy of a permit issued by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

2.9 **Excavations.** A Person excavating in the City's Public Rights of the Way shall perform excavations and other construction in the Public Rights of Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-of-Way. The City may waive the requirement of trenchless technology if it determines that, based upon information provided to the City by the Person seeking to excavate, the particular field conditions warrant a waiver. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

2.10 **Time to Close Excavations.** All holes, trenches, and excavations for repairs shall be covered at least with asphalt as soon as possible, not to exceed an opening and closing period of 24 hours in high traffic areas. Temporary repairs are acceptable within 48 hours, and then the permanent repairs, including repairs for non-high traffic areas shall be performed within 14 days. High traffic areas shall be defined as any state highway, farm to market road, ranch road, or any collector or arterial road as designated on the City's Transportation Thoroughfare Plan. City may designate additional areas as high-traffic from time to time. Permittee, or any Person using the City's Public Rights of Way, shall promptly restore to its previous condition and to the reasonable satisfaction of the City, a street, alley, or public right-of-way excavated by it.

- 2.11 **Coordination of Trenching and Excavation.** A Person shall use its best efforts to coordinate joint trenching with any other Persons whose Facilities are in and along the same Public Rights of Way where construction may be performed in a time frame reasonably similar to the other Person's construction timetable. The Director may mandate such coordination to the fullest extent allowed by law.
- 2.12 **Removable of Dangerous Facilities.** The City may repair Permittee, or any Person using the City's Public Rights of Way, to repair, remove, or abate any Facilities or other structure or equipment that are no longer being used, or for which Permittee, or any Person using the City's Public Rights of Way, has no reasonable plans for future uses, or are unnecessarily dangerous to life or property, and in case Permittee, or any Person using the City's Public Rights of Way, after notice, fails or refuses to act within a reasonable time, the City may remove or abate the same at the expense of Permittee or such Person, without compensation or liability for damages to Permittee or such Person.
- 2.13 **Plans for Ongoing Work.** To the extent made, plans for ongoing repair, maintenance, and improvements which involve cutting into paved City roads or streets shall be submitted to the Director on an annual basis, no later than September 1st of each year, and updated based upon any changes. This does not require the public disclosure of proprietary information, such as equipment or customer specific information. Such information may be designated confidential, and to the extent allowed by law, will be kept confidential by the City. Alternatively, a Person may meet with the appropriate representative of Public Works each calendar quarter to provide such plans to the extent made.
- 2.14 **Notice that Permittee is Ready to Proceed.** Once a permit is issued, Permittee shall notify the Director at least 24 hours in advance that construction in the Public Rights of Way is ready to proceed by a person or its representative.
- 2.15 **Erosion control measures and Warning Signs.** Erosion control measures and advance warning signs, markers, cones, and barricades must be in place before work begins.
- 2.16 **Closure of Lanes in Major Thoroughfares.** Lane closures on major thoroughfares will be limited to between 9:00 a.m. and 6:00 p.m. unless the Director grants prior approval. Arrow boards may be required on lane closures with all barricades, advance warning signs, reflector cones placed according to Texas Manual on Uniform Traffic Control Devices and the specifications of the City. Working hours in the Public Rights of Way are limited to the hours between 7:00 a.m. to 7:00 p.m. Monday through Friday. Work to be performed at other times or on Saturday must be approved by the Director in advance. Such requests must be submitted to the director at least 24 hours prior to the period for which the request is made. Directional boring is permitted only Monday through Friday 7:00 a.m. to 7:00 p.m. No work in the Public Rights of Way shall be performed except for emergencies, on Sunday's or on holidays. The Director may condition his or her approval or work times other than stated upon payment by Permittee of the City's overtime costs if any.

- A. Within 24 hours of completion of excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of Facilities, or other work in the Public Rights of Way, a Permittee shall temporarily restore and repair the Public Rights of Way in accordance with the City's standards and specifications.
- B. Within fourteen (14) calendar days after completion of work in the Public Rights of Way, the Permittee shall permanently restore, replace, relay and/or repair surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City Facilities and infrastructure located on, in, over, under, or above any Public Rights of Way that has been excavated, altered or damaged by reason of the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Permittee's Facilities in accordance with existing standards of the City in effect at the time of the work.
- C. Whenever a Permittee disturbs or destroys any right-of-way markers or monuments, it shall restore the same within thirty-days (30) after construction has ceased. A Permittee shall furnish three sets of drawings, blue line or black line, detailing the restored monumentation. State Plane Coordinates shall be shown for all monumentation (existing or restored). The drawings shall be signed (original signature), sealed and certified, by a Registered Professional Land Surveyor, and delivered to the Director for approval no later than 30 days after construction has ceased.
- D. Upon a showing of good cause, the City may at its sole discretion extend the time for restoration and repair of the Public Rights of Way under this subsection.
- E. Unless the Permittee provides a recently dated photograph or a video of the Public Rights of Way before the construction, the condition of the Public Rights of Way before construction is presumed in good condition, and shall be restored to good condition or better.

2.17 **Failure to Repair.** Upon failure of a Permittee to perform any such repair or replacement work after five (5) days written notice has been given by the City to the Permittee, and in the event repairs have not been initiated during such five-day period, the City may repair such portion of the Public Rights of Way as may have been disturbed by the Person, its contractors or agents. Upon receipt of an invoice from the City, the Permittee shall reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.

2.18 **Repairs after 12 Months.** Should the director reasonably determine, within one year from the date of the completion of the repair work, that the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City Facilities and

infrastructure located on, in, over, under, or above any Public Rights of Way requires additional restoration, replacement or repair work to meet existing standards of the City, a Permittee shall perform such additional restoration, replacement or repair work to the satisfaction of the City, subject to all City remedies as provided herein.

- 2.19 **Repairs by City.** Notwithstanding the foregoing, if the Director determines that the failure of a Permittee to properly repair or restore the Public Rights of Way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts to Permittee's Facilities, after emergency notice has been provided, to an extent reasonable under the circumstances, and the Permittee has failed to respond within a reasonable time specified by the City. Upon receipt of an invoice from the City, a Permittee shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.
- 2.20 **Emergency Repairs.** If the Director declares an emergency with the regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Permittee shall remove or abate the Permittee's Facilities by the deadline provided in the Director's request. The Permittee and the City shall cooperate to the extent possible to assure continuity of service. If the Permittee, after notice, fails or refuses to act, the City may remove or abate the Facility, at the sole cost and expense of the Permittee, without paying Compensation to the Permittee and without the City incurring liability for damages to Permittee's Facilities or due to Losses by Permittee or its customers.
- 2.21 **Emergency Conditions.** Except in the case of the customer service interruptions and imminent harm to property or Persons ("Emergency Conditions"), a Person may not excavate the pavement of a street or Public Rights of Way without first complying with City requirements. The Director shall be notified as promptly as possible regarding work performed under such Emergency Conditions, and the Permittee shall comply with the requirements of City standards and of this Ordinance for the restoration, replacement, or repair of the Public Rights of Way, and shall supply all information required by an initial application within 14 days following the emergency work.
- 2.22 **Termination of Use.** If Permittee, or any other Person using the City's Public Rights of Way, ceases providing services over its Facilities, Permittee shall promptly begin the process of removing all Facilities from the City's Public Rights of Ways. All such Facilities shall be removed within 60 days after the date of cessation of services over the Facilities, or within such time as City may approve in writing.

SECTION 3 PERMITS

- 3.1 **Registration Required.** In order to protect public health, safety and welfare, all Owners of Facilities in the Right-of-Way will register with the City of Weatherford. Registration and Permits will be issued in name of the Person who will own the Facilities. Registration must be renewed on or before January 31 of each year. The City shall provide written notification of this renewal requirement. If a registration is not

renewed, and subject to 60-calendar days notification to the Owner, the Facilities of the user will be deemed to have been abandoned. When any information provided in the registration changes, the Owner will inform the City of the change no more than thirty (30) days after the date the change is made. An Owner of Facilities that is installing or having installed Facilities in the City's Public Rights of Way under a sidewalk immediately adjacent to the Owner's residential private property to perform work or undertake construction solely for the benefit of that Owner's residential private property need not register with the City. Registration shall include:

- A. The name, address(-es) and telephone number(s) of the Owner;
- B. The names, address(-es) and telephone number(s) of the contact person(s) for the Owner;
- C. The name(s), address(-es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the Right-of-Way on behalf of the Owner. If the names of contractors and subcontractors are not available at the time of permit application, they must be submitted to the City prior to permit issuance;
- D. The name(s) and telephone number(s) of an emergency contact who shall be available twenty-four (24) hours a day;
- E. The source of the Owner's Municipal Authorization (e.g., franchise, state law, etc.). If the Owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission;
- F. The Owner shall submit two year projections of their plans for the construction of facilities in the City at the time of Registration Renewal; and
- G. Registration shall be prerequisite to issuance of a construction permit. Each Owner shall update and keep current its registration with the City at all times.

3.2 **Construction Permit Required.** Before any Person undertakes any construction, excavation, boring of holes or other work related to the installation of any Facilities in City's Public Rights of Ways and planned Public Right-of-Way, it shall file an Application and await City's approval of the Design Documents and issuance of a permit for such installation or placement of Permittee's Facilities.

A. General:

- 1. No Owner shall perform any Construction or installation of Facilities in the Right-of-Way without first obtaining a Construction Permit, except as provided in this ordinance. Permit applications are required for Construction of new, replacement or upgrades of the company's facilities in the Right-of-Way whether aerial or underground.
- 2. Emergency responses related to existing Facilities may be undertaken without first obtaining a Permit; however, the Department shall be notified in writing within two (2) business days of any Construction related to an emergency response, including a reasonably detailed description of the work

performed in the Right-of-Way. An updated map of any Facilities that were relocated, if applicable, shall be provided within 90 days.

3. A permit is not required under Subsection 3.2 if the activity in the public Right-of-Way consists exclusively of:
 - a. A residential service connection on the same side of the public right-of-way, if the connection does not require a pavement, curb, or sidewalk cut, and a minimum of 36" from back of curb; or
 - b. The maintenance of a utility meter or manhole that does not require a pavement, curb, or sidewalk cut; or
 - c. The replacement of a single damaged pole; or
 - d. As otherwise determined by Director.
4. All Construction and installation in the Right-of-Way shall be in accordance with the Permit for the Facilities. The Director shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the Permit.
5. A copy of the Construction Permit and approved engineering plans shall be maintained at the Construction site and made available for inspection by the Director at all times when Construction work is occurring.
6. All Construction work authorized by Permit must be completed in the time specified in the Construction Permit. If the work cannot be completed in the specified time periods, the Owner shall contact Director as soon as possible and inform of new specified time with explanation. The permit shall be amended with new time extension.
7. Construction, Excavation, or Work Area. No Owner or contractor shall perform construction, excavation, or work in an area larger or at a location different than that specified in the permit or permit application. If, after construction, excavation, or work is commenced under an approved permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application, the Owner or Contractor shall notify the Director immediately and, within 24 hours, shall file a supplementary application for the additional construction, excavation, or work.
8. A copy of any Permit or approval issued by federal or state authorities for work in federal or state Right-of-Way located in the City of Weatherford shall be provided, if requested by the Director.
9. All construction pertaining to street improvements, driveways or access within public right of way shall be in accordance with City's Traffic Engineering Design Standards and Specifications manual and North Central Texas Council of Government for Public Works Construction and/or other standards and specifications as determined by Director.

B. Public Notification of work to be performed.

- (1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting nine (9) days or less, the permittee shall conspicuously mark its vehicles with the permittee's name and telephone number.
- (2) For projects scheduled to last more than ten (10) calendar days a three feet by three feet (3' x 3') informational sign stating the identity of the person doing the work, a local telephone number and Owner's identity shall be placed at the location where Construction is to occur forty-eight (48) hours prior to the beginning of the work in the Right-of-Way and shall continue to be posted at the location during the entire time the work is occurring. The informational sign will be posted on Public Right-of-Way a minimum of 50 feet before the Construction location commences, unless other posting arrangements are approved or required by the Director. The minimum lettering size shall be two and half inches (2-1/2") height with a white colored background.
- (3) When projects last more than ten (10) calendar days, the Owner shall also provide written notification to all adjacent property occupants forty-eight (48) hours prior to the beginning of construction. Informational fliers shall include the person doing the work, a local telephone number, Owner's identity, proposed schedule.

C. Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.

D. Without affecting the legal relationship between the Owner and their contractor, Owners are responsible for the workmanship of, and any damages by, their contractors or subcontractors. A responsible representative of the Owner will be available to the Department at all times during construction.

E. Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not limited to, construction 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. Upon request Owner may be required to furnish documentation submitted or received from federal or state

F. Installation of Facilities must not interfere with City utilities, in particular gravity dependent facilities. Facilities shall not be located over, or within three (3) feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the Director of Utilities.

G. New Facilities must be installed to a minimum depth of 36 inches from top surface unless required by state and federal codes and standards. This minimum requirement

does not supersede other City requirements (i.e. water/ waste water, storm drain, electrical, etc.)

H. All directional boring shall have a locator place bore marks and depths while the bore is in progress. Locator shall place a mark at each stem or section with a paint dot and depth at least every other stem.

I. No directional boring zones. In the City, the public infrastructure must be maintained and protected by all Owners and Contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no Person, Agency, or Contractor will be allowed to directionally bore longitudinally or vertically with water and sewer mains that are 12" or larger, unless this requirement is waived in writing by the Director of Utilities. The installation of Facilities in the Public Rights-of-Way or easements will be installed by open excavation to assure the protection of the City's water and sewer system. The City has available mapping that identifies such mains. The Owner is responsible for obtaining and using this information in the design of new Facilities.

J. The working hours in the Rights-of-Way are 7:00 a.m. to 7:00 p.m., Monday through Friday, unless otherwise approved by Director. Any work performed on Saturday must be approved by the Director by 9:00 a.m. on the Thursday prior to the proposed Saturday. No work will be done, except for emergencies, on Sundays or City holidays.

K. Work that obstructs the flow of vehicular traffic on a street, alley, or sidewalk for more than two hours must submit a traffic control plan in accordance with the Texas Manual on Uniform Traffic Control Devices. The traffic control plan must be approved by the Director prior to issuance of construction permit. Unless the work is performed under emergency conditions, the permittee shall submit traffic control plans as soon as practical to the Director. All traffic control plans shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD).

L. Persons working in the Right-of-Way are responsible for obtaining line locates from all affected utilities or others with Facilities in the Right-of-Way prior to any excavation. Use of Geographic Information System or the plans of the records does not satisfy this requirement.

M. Permittee or contractor will be responsible for verifying the location, both horizontal and vertical, of all Facilities. When required by the Director, Owner shall verify locations by pot holing, hand digging or other method approved by the department prior to any excavation or boring.

N. Locate flags shall not be removed from a location while Facilities are being constructed.

O. When Construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the Department.

P. A Person shall perform operations, excavations and other Construction in the Public Rights-of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-of-Way. The City shall waive the requirements of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the City by the Person. All excavations and other Construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

Q. All construction shall conform to the City of Weatherford Tree Preservation Ordinance. Any exceptions will need to be approved by the Director prior to construction.

R. Excavation Safety. On construction projects in which excavation will exceed a depth of five (5) feet, the Agency must be in conformance with State Law and Occupational Safety and Health Administration (OSHA) standards and regulations.

S. The Department or the Owner can request a pre-construction meeting with the construction contractor.

T. If a Permittee performs or has performed on the Permittee's behalf, a pavement cut on a road, street, or other paved surface in the City's Public Rights-of-Way, where that paved surface was last resurfaced three (3) years or less from the date of the pavement cut undertaken by the Permittee, then the Permittee shall repair the stretch of paved surface from the edge of the two nearest intersections between which the Permittee performed its pavement cut.

U. No pavement cuts in newly constructed, reconstructed or resurfaced streets shall be made for 60 months after the completion of the street work. The Permittee may submit written documentation and the Director may grant an exception based on finding that the following criteria have been met:

- i. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts; and
- ii. Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable; and
- iii. The proposed excavation cannot reasonably be delayed until five year

deferment period has lapsed; or

- iv. Emergency service restoration is required and no other timely alternatives are available; or
- v. New technology that sufficiently minimizes damage to the pavement structure is available; or
- vi. A utility line required to be located is located under the pavement.

- 3.3 **Application Fee.** Any Applicant seeking to place Facilities on, in, over, under, or above the Public Rights of Way, shall pay a \$35.00 construction permit application fee (except Certificated Telecommunications Providers and their contractors to the extent exempted by Tex. Loc. Gov't Code, Chapter 283) and shall file an application for such construction permit with the Director and shall abide by the terms and provisions of this Ordinance pertaining to use of the Public Rights of Way. If there are additional direct costs to the City in processing the applications, the City may recover those from the Applicant prior to the issuance of the permit.
- 3.4 **Compliance with Design Documents.** Applicant's proposed work with respect to use of the City's Public Rights of Way shall comply with the approved Design Documents. Nothing in this Ordinance shall be construed to obligate City to grant Applicant a permit to construct any Facilities in, on, under, over, or above the City's Public Rights of Way where Applicant has failed to fulfill the requirements of this Ordinance, or if the application to do so is denied based on the criteria described in this Ordinance.
- 3.5 **No Property Rights.** All City's Public Rights of Way shall remain the property of City and no consideration provided by Applicant shall create or vest in Applicant or Permittee any ownership right, title, or interest in any of the City's Public Rights of Ways and Permittee's interest shall remain a bare license. The existence of any permit granted under this Ordinance shall not in any way alter or affect City's right to use, change, operate, maintain, or abandon its Public Rights of Way. The City shall not be liable to any Person for alterations to or abandonment of any Right of Way nor shall it be responsible for providing alternate placement for any Facilities.
- 3.6 **Permit Not Exclusive.** The City has allowed, and may allow in the future, similar or other uses of City's Public Rights of Ways by third parties, including Permittee's competitors. Nothing in this Ordinance shall be construed to limit or in any way affect City's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any of City's Public Rights of Way, irrespective of the character or degree of economic competition or loss caused to Permittee.
- 3.7 **Discretion of City Final.** City reserves the right to deny any Application pursuant to the terms and conditions of this Ordinance, or pursuant to other City ordinances, or for legal, safety, mechanical, structural, engineering, environmental, reliability, quality-of-

service reasons, or to protect the public's general welfare. Determination of these issues shall at all times remain within the reasonable discretion of City, subject in all respects to the terms and conditions of this Ordinance.

3.8 **Compliance with Existing Franchise Ordinance or Agreement.** Any Person, prior to placing, reconstructing, or altering Facilities in, on, or over the Public Rights of Way, including facilities or equipment for the provision of wireless communications, must obtain separate municipal authorization from the City, such as a license agreement or franchise, as may be applicable. For use of the Public Rights of Way, all users of the Public Rights of Way shall compensate the City on the value of the Rights of Way used, being typically either on a gross receipts basis or on a linear foot basis, to the fullest extent allowed by law. This ordinance does not authorize the placement of any facilities on the City's electric utility's poles or other structures.

3.9 **Compensation.** Permittee, or any Person using the City's Public Rights of Way, shall compensate City for use of City's Public Rights of Way to the extent allowed by law. Failure by the City to demand compensation shall not constitute a waiver of its right to pursue compensation if it determines it may be due.

3.10 **Application Process.** Applicant must submit an Application with its Design Documents on the then-approved City form or format to the Director. The content of the Application form, and all required supporting documentation and other procedures, are within the reasonable discretion of City and may change from time to time without prior notice as determined by the Director or his or her designee, provided such changes are not inconsistent with the terms and conditions of this Ordinance. Applications shall identify with sufficient specificity the location at which Applicant seeks to install or place its Facilities, and shall include all engineering drawings and installation details. City may reject entirely an incomplete Application, or it may request additional information to support the Application, in which event the requested information shall be promptly furnished and the Application shall not be deemed filed until it is complete.

3.11 **Storm Water and Erosion Control** A Person using or intending to use the City's Public Rights of Way may be required to show proof of engineered plans relating to storm water management and erosion control when applicable or a letter stating a person is not required to obtain such plans. A Person shall be responsible for storm water management erosion control that complies with city, state and federal guidelines, as applicable.

3.12 **Warranties and Proof of Compliance.** As part of Applicant's Application, Applicant shall represent and warrant that:

A. Applicant is providing no services for which it owes the City compensation under the provisions of Chapter 283 of the Local Government Code;

- B. In its Application. Applicant shall provide to the City a complete report on the nature of the services provided with its Facilities; and
- C. To the extent services to be provided over the Facilities for which a construction permit is sought are not being provided to end-use customers, Applicant shall provide adequate proof that the provider of services to whom Applicant's proposed Facilities connect and provides services to the end-use customer within the City will remit the requisite fees for use of the City's Public Right-of-Way pursuant to Local Government Code 283.055(1) and (k).

3.13 **Notices.** Application hereunder shall contain the name, address, telephone numbers, facsimile numbers, and email addresses of the point of contact for all notices required or to be provided to Applicant under this Ordinance. Such point of contact shall be an individual with authority to bind the Applicant and/or the owner of the Facilities for which a construction permit is sought to conform the use of the Public Right of Way to the requirements of this Ordinance. Permittee, or any Person using the City's Public Rights of Way, shall supply and maintain a 24-hour emergency telephone number for contact to report damage to Facilities or other situations requiring immediate communications.

3.14 **Construction Permit Acceptance.** Each Construction Permit Application for activity in, on, over, under, or above the Public Rights of Way shall contain, or have attached, the following:

"By this application for a construction permit to use the Public Rights of Way, I affirm that I am an authorized representative of Applicant and of Permittee and as the lawful representative, I hereby agree to use the City's Rights of Way under the terms and conditions approved by the City of Weatherford by City Public Rights of Way Management Ordinance (Ordinance No. _____).

Name

Title

Date

3.15 **Engineering.** Two sets of engineering plans, on a scale of one inch equals 50 feet or on such scale as approved by the Director. When required by the Texas Engineering Practice Act, as amended, or as determined by the Director, the plans must be sealed by a professional engineer licensed to practice in the State of Texas. All plans must include the horizontal alignment of all proposed facilities in relation to all existing public and private facilities in plan view. If the project is a major project, crosses street intersections, or involves crossing proposed facilities over or under existing major facilities, the plans must also include a representation of the vertical alignment of the facilities in profile view. Engineering plans must have a general note instructing the

contractor to verify the location of underground utilities at least 100 feet in advance of all proposed utility crossing, and also at location where the proposed facilities are shown to be running parallel to existing facilities within five feet.

3.16 **Approval/Denial.** City retains sole and complete discretion to deny or modify any Application or Design Documents so as to preserve the safety, reliability, integrity, and to otherwise protect the health, safety, and welfare of the public. City will approve, modify, or deny an Application within 10 calendar days of submission. Applicant may request City to reconsider a denial or modification of an Application. City may approve an Application as submitted, approve it on a modified or conditional basis, or may deny the Application in accordance with the policies adopted by City. The Director may deny an application if:

- A. the Applicant fails to submit a complete Application including Design Documents;
- B. the Applicant fails to supplement its Application with additional information or otherwise cooperate with the City as requested in the evaluation of the application;
- C. installation or placement of Applicant's proposed Facilities are of excessive size or would otherwise be incompatible with the City's ordinances, policies, or practices with regard to use of its Public Rights of Ways;
- D. approval would jeopardize the reliability or integrity of the City's electric system or of individual units of the City's utility infrastructure, including its water and wastewater system;
- E. approval would present a safety hazard to a City employee, the public or utility services provided to those in the City Limits by third parties or Franchisees of the City;
- F. approval would impair the City's ability to operate or maintain its utility infrastructure, including its water and wastewater system;
- G. approval would require an unacceptable change, upgrade, or addition to the City's utility infrastructure, including its water and wastewater system; or
- H. approval would expose the City, its utilities, its ratepayers, or other users to increased liability or financial risk.
- I. approval would cause interference with any other entity, including a utility that has a franchise agreement with the City or any other utility providing services to the residents and businesses within the City.

J. The applicant:

- a. Knowingly or intentionally furnishes false or incorrect information to the Director;
- b. Fails to furnish all the information required by this ordinance;
- c. Is an independent contractor of a public service provider who has been convicted of a violation of this ordinance in the year preceding the application;
- d. Has failed to reimburse the City for any costs owed pursuant to this ordinance.

3.17 **Appeals.**

- A. **Applicability.** Appeals may be filed pursuant to this Section for decisions of the Director related to the denial, suspension, or revocation of a permit. However, the appeal process provided by this Section shall not be available for criminal violations of the Ordinance.
- B. **Appeal to City Manager.** A permittee may appeal decisions referred to in this Section by filing a written appeal with the City Manager within seven (7) days of receipt of denial, suspension, or revocation of the permit. An appeal filed pursuant to this Section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this Ordinance.
- C. **Issuance of Decision by City Manager.** Decisions of the City Manager shall be issued within (10) working days of receipt of the written appeal. Decisions of the City Manager shall be final.

3.18 **Construction Record Drawings.** Within 10 days following completion of installation of any Facilities or any relocation or enlargement of the same, Permittee, or any Person using in any way the City's Public Rights of Way, shall provide "as built" drawings and specifications to the City of the Facilities placed in, on, over, under, or above the City's Public Rights of Way.

3.19 **Modification of City's Utility Infrastructure.** In the event that City intends to deny an Application and the City's utility infrastructure may be modified to resolve the basis for denial of the Application, City shall approve the Application provided that (i) with Utility Director's approval (ii) Applicant agrees to pay City's costs to so modify or replace its utility infrastructure; and (iii) the Application is otherwise acceptable and grantable pursuant to the terms and conditions of this Ordinance and applicable law.

3.20 **Insurance.**

- A. **General Requirements**

- a. An owner must provide acceptable proof of insurance in the total amount required by this section for permits for construction within Public Rights-of-Way, or make other provision acceptable to the Director.
 - b. Permittee, or any Person using the City's Public Rights of Way, shall at all times carry insurance issued by companies duly licensed and authorized to provide insurance in the State of Texas rated at least A VIII under the A. M. Best rating system, and approved by City (which approval shall not be unreasonably withheld) to protect Permittee or such Person, and the City of Weatherford from and against any and all claims, demands, actions, judgments, costs, expenses, or liabilities of every kind that may arise, directly or indirectly, from or by reason of losses, injuries, or damages described in this Ordinance. The provisions of this ordinance requiring that a Permittee to provide proof of insurance do not apply to an Owner of Facilities that is installing or having installed Facilities in the City's Public Rights of Way under a sidewalk immediately adjacent to the Owner's residential private property to perform work or undertake construction solely for the benefit of that Owner's residential private property.
 - 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.
 - d. The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the Risk manager for the City.
 - e. An insurer has no right of recovery against the City. The required insurance policies shall protect the Agency or Public Infrastructure Contractor and include the City as an additional insured. The insurance shall be primary coverage for losses covered by the policies.
 - f. Each policy must include a provision that requires the insurance company to notify the City in writing at least 30 days before canceling or failing to renew the policy or before reducing policy limits or coverages.
 - g. The Director may exempt a Permittee from the requirements of this Section 3.20 in circumstances where the Permittee provides adequate proof of self-insurance.
- B. **Minimum Coverage's.** Permittee, or any Person using the City's Public Rights of Way, shall carry and maintain insurance policies and shall furnish the Director Certificates of Insurance on the most current State of Texas Department of Insurance-approved certificate form as evidence thereof in amounts established from time to time by the City's City Manager or the City Manager's designee.

- 1) Owners. Each owner applying for a permit shall obtain, maintain, and provide proof of the each of the following types of insurance and coverage limits:
 - a. Comprehensive General Liability: Insurance in the amount of \$1,000,000.00 which includes the following:
 - i. Premises – Operations (including X-C-U)
 - ii. Owner’s and Contractor’s Protection
 - iii. Products and Completed Operations
 - iv. Contractual – including specified provisions for the Subcontractor’s obligations
 - v. Owner, non-owned and hired motor vehicles
 - b. Automotive Liability:
 - i. Combined Single Limits of at least \$1,000,000.00
 - c. Workmen’s Compensation: Statutory Employer’s Liability - \$1,000,000.00 and shall include:
 - i. Public Liability and Bodily Injury \$1,000,000.00 per person and \$1,000,000.00 per occurrence.
 - ii. Property Damage \$1,000,000.00 per occurrence.
 - d. Include an endorsement of blanket waiver of subrogation in favor of the City of Weatherford.

C. **City as Additional Insured.** All policies, except for Workers' Compensation policies, shall list the City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereafter created, and their respective officers, boards, commissions, councils, employees, volunteers, agents, attorneys and contractors, as their respective interests may appear, as Additional Insured's (City and such other persons and entities being collectively referred to herein as "Additional Insured's") and shall include cross-liability coverage. Policies shall not be non-renewed, canceled, terminated or reduced in limits of liability without 30 days' written notice having been given to the Director. The "other insurance" clause shall not apply to the City; it being the intention of the parties that the above policies covering Permittee and the Additional Insured's shall be considered primary coverage. Each policy shall contain a waiver of all rights of recovery or subrogation against City, its officers, agents, employees, volunteers and elected officials.

3.21 **Assignments.**

A. **Permissible Assignments.** Permittee may not assign or otherwise transfer its rights and obligations under any permit granted under this Ordinance without City's prior written consent. Permittee's rights and obligations hereunder shall pass to such successor only upon receipt by City of written notice of such transfer or assignment, together with true copies of the documents specified in B. below.

- B. **Information to City.** In the event of a transfer or assignment Permittee shall provide City with true and complete copies of the transfer or assignment documents; documents showing the ownership of the assignee and its relationship to Permittee, if any; and such other information as City may reasonably request.
- C. **Other Assignments Void.** A purported assignment or transfer made in violation of the provisions of this Section shall not be binding upon City and shall be deemed to be a material violation of this Ordinance.

SECTION 4 OTHER ORDINANCES AND REQUIREMENTS

- 4.1 **Laws.** To the extent that a Permittee must have a valid franchise before engaging in a particular act, Permittee must comply with such requirement before beginning construction or installing Facilities. Nothing in this Ordinance shall be construed as waiving other City requirements. Use of the City's Public Rights of Ways shall conform to local, state, or federal law. Permittee's use of any Public Rights of Ways shall at all times conform to the requirements of the City Ordinances, right-of-way usage and construction regulations, and the published policies promulgated by the City. City may reasonably change its ordinances, policies, and regulations in accordance with applicable laws.
- 4.2 **Work Site Safety.** In performing any work on or near the City's right-of-way or any other Person's utility poles supporting energized electric lines any Person or Permittee, and its Contractors, agents, and employees, shall comply with Chapter 752 of the Texas Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. .
- 4.3 **Electrical Code.** All Person, including Permittee, and their Contractors, agents and employees, and all work, Contacts, and Facilities in the City's Public Rights of Ways shall at all times comply with the-then current Electrical Code.
- 4.4 **City Oversight.** City shall have the right to conduct on-site field oversight and inspections of Facilities, work, and operations in the City's Public Rights of Ways. City shall at all times have unrestricted access to all field work sites within the City's Public Rights of Ways. Both City and City's representative at any site shall have complete and final authority to order the immediate suspension of construction or installation activities if City or City's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, electrical service reliability, property owner complaint or due to non-compliance with a permit. In the event of an oral

suspension order, City shall send written notice to Permittee, or to the Person that owns or controls the Facilities or to the Person performing the work in the Public Right of Way, within three days after such suspension, identifying the alleged violation. Such suspension shall be in effect until such time as the violation is cured, at the Permittee's and/or Person's sole cost. In no event shall City be responsible for any damages, losses, or costs incurred by Permittee as a result of such work stoppage. Permittee's failure to obey a suspension order issued in accordance with this Ordinance shall constitute a violation of this Ordinance.

- 4.5 **Other Permits.** Permittee shall apply for and obtain all licenses, permits or other authorizations, including street cutting permits if needed, required to provide its service or to use, operate or maintain its Facilities.
- 4.6 **Maintenance.** All work performed in City's Public Rights of Ways by or on behalf of Permittee, or by or on behalf of any Person using the City's Public Rights of Way, shall be done in a good and workmanlike manner and in conformance with approved documents. Permittee shall be responsible for any failures caused by work performed in City's Public Rights of Way for up to one year from date of completion.

SECTION 5 ENFORCEMENT/LIABILITY/INDEMNIFICATION

- 5.1 **Unauthorized Use of City's Rights of Ways.** If one or more unauthorized Facilities are discovered, Permittee, or any Person using the City's Public Rights of Way, shall comply with the requirements hereof or City may, but shall not be required to, remove the unauthorized use at Permittee's or such Person's sole cost and without City incurring any liability to Permittee if an Application for each such unauthorized use is not received by City within 15 days of notice of the unauthorized use.
- 5.2 **Penalty for Violation.** Any person, firm, or corporation violating any of the provisions of this ordinance or of the Code of Ordinances, as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Weatherford, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.
- 5.3 **Remedies Cumulative.** The remedies afforded City under this Ordinance are in addition to any civil or criminal penalties otherwise provided or available to the City including, without limitation, the right to suspend or terminate Permittee's or such Person's permit or rights to install or operate its Facilities within the City's Public Rights of Ways and to seek specific performance, of this Ordinance.
- 5.4 **Ratification.** No act or failure to act by City with respect to an unauthorized use shall be considered to be ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

5.5 **Termination of Permit.** The permit granted Permittee under this Ordinance shall be suspended or shall terminate upon any of the following events or conditions:

- A. Permittee has not completed all necessary work and installation of its Facilities within 120 days of approval of Permittee's Application (or such longer period as the Director may approve in writing);
- B. Permittee removes its Facilities other than in the course of routine maintenance or replacement;
- C. Permittee ceases to offer services, or provides services unlawfully, through its Facilities;
- D. Permittee fails to comply with this Ordinance.

5.6 **Failure to Remove Attachments.** If Permittee, or any Person using the City's Public Rights of Way, has not removed all its Facilities within the period of time specified in the preceding paragraph, or such additional period of time granted by City in writing, then City may remove Permittee's or such Person's Facilities at Permittee's or such Person's sole cost and risk.

5.7 **Contractors and Subcontractors.** Without affecting the legal relationship between Permittee and its contractors, a Permittee is responsible for the workmanship and any damages by a contractor or subcontractor.

5.8 **Right of Suspension.** If Permittee, or any Person using the City's Public Rights of Way, fails to timely perform any material obligation under this Ordinance, and such default continues for 30 days after the date the performance is due, then, in addition to any other available right or remedy, City may, upon written notice to Permittee or such Person, immediately suspend Permittee's or such Person's rights under this Ordinance until such time as the default is cured.

5.9 **No Warranties by City.** Permittee, or any Person using the City's Public Rights of Way, is expected to inspect the City's Public Rights of Ways in which its Facilities will be placed and shall rely solely on such inspection to determine the suitability of the Public Rights of Ways for Permittee's or any Person's purposes. CITY DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY FACILITIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PERMITTEE ACCEPTS THE USE OF ALL RIGHTS OF WAY AS IS-WHERE IS, AND WITH ALL FAULTS, EXCEPT AS MAY BE OTHERWISE PROVIDED HEREIN.

5.10 **Indemnification.** EXCEPT AS MAY BE OTHERWISE PROVIDED BY CHAPTER 283 OF THE LOCAL GOVERNMENT CODE, PERMITTEE SHALL, AT ITS SOLE COST AND EXPENSE, FULLY

INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, ITS OFFICERS, BOARDS, COMMISSIONS, COUNCILS, EMPLOYEES, VOLUNTEERS, AGENTS, ATTORNEYS, CONTRACTORS, AND SUBCONTRACTORS, (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST:

- A. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF PERMITTEE, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS OR AFFILIATES, RESULTING IN ECONOMIC HARM, PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THE CONSTRUCTION, RECONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE OR CONDITION OF PERMITTEE'S FACILITIES OR OTHER PROPERTY OF PERMITTEE OR ITS AFFILIATES AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS ORDINANCE; OR THE FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, LAW, CODE, ORDINANCE OR REGULATION.
- B. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), WHICH ARE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO PERMITTEE, ITS CONTRACTORS OR SUBCONTRACTORS, FOR THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, OPERATION OR MAINTENANCE OF PERMITTEE 'S FACILITIES (AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS ORDINANCE) OR PROVISION OF COMMUNICATIONS SERVICES OR OTHER SERVICES AUTHORIZED BY OR PERMITTED UNDER THIS ORDINANCE, AND, UPON THE WRITTEN REQUEST OF CITY, PERMITTEE SHALL CAUSE SUCH CLAIM OR LIEN COVERING CITY'S PROPERTY TO BE DISCHARGED OR BONDED WITHIN THIRTY (30) DAYS FOLLOWING SUCH REQUEST.
- C. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED

UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY FINANCING OR SECURITIES OFFERING BY PERMITTEE OR ITS AFFILIATES FOR VIOLATIONS OF THE COMMON LAW OR ANY LAWS, STATUTES, OR REGULATIONS OF THE STATE OF TEXAS OR THE UNITED STATES, INCLUDING THOSE OF THE FEDERAL SECURITIES AND EXCHANGE COMMISSION, WHETHER BY PERMITTEE OR OTHERWISE.

- 5.11 **City Fault.** IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY CITY AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED LIABILITY.

Resolution of Conflicting Ordinances. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, save and except the provisions of the Comprehensive Zoning Ordinance, the provisions of this ordinance shall control. Nothing adopted herein is intended to, in any way, nor shall any such provision be deemed to supersede or control over the provisions of the Comprehensive Zoning Ordinance.

Savings Clause. All rights and remedies of the City of Weatherford are expressly saved as to any and all provisions of any ordinance affecting fees of the City and to any and all violations of the provisions of any prior ordinance pertaining to animal control and regulations within the City which have accrued as of the effective date of this ordinance; and as to such accrued fees, collection activity, violations and any pending litigation, both civil and criminal, whether pending in court or not, under such prior ordinances, same shall not be affected by this ordinance but may be prosecuted and pursued until final disposition by the courts.

Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accord with the provisions of the Texas Local Government Code.

Severability. It is the express intent 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 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 as 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 hereby declared to be severable.

Open Meetings. The City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required by law and that public notice of the time, place and purpose of said meeting was duly given as required by the Texas Open Meetings Act.

This Ordinance becomes effective immediately upon passage.

PASSED by the City Council of the City of Weatherford, Texas, and approved on this the 26th day of January, A.D., 2016. *Approved by vote 5 ayes, 0 no.*



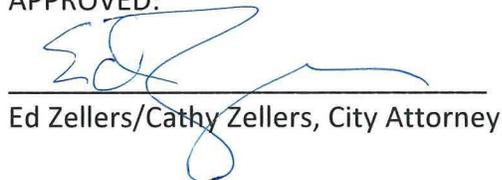
Dennis Hooks, Mayor
City of Weatherford, Texas

ATTEST:



Malinda Nowell, City Secretary

APPROVED:



Ed Zellers/Cathy Zellers, City Attorney