

ORDINANCE NO. 2012-06-02

AN ORDINANCE REGULATING THE INSTALLATION, REPAIR AND MAINTENANCE OF UTILITY AND TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF WESTON, TEXAS; REQUIRING REGISTRATION AND A CONSTRUCTION PERMIT; PROVIDING FOR REVOCATION AND APPEAL PROCEDURES; PROVIDING CONSTRUCTION REQUIREMENTS; PROVIDING FOR THE FILING OF RECORD DRAWINGS; PROVIDING FOR RESTORATION OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING A PENALTY; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Weston, Texas is a Type A general-law municipality located in Collin County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City of Weston has the control and jurisdiction of the public streets and other rights-of-way of the City, with the right to regulate or prohibit the location of pipes, cables, lines, wires, or other facilities in the rights-of-way; and

WHEREAS, without proper regulation, the placement of such facilities within the rights-of-way will conflict with the primary uses of the rights-of-way and will reduce the efficient use of limited space for facilities; 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 and §54.205, Article 1175(2), V.T.C.S., and Local Government Code §283.056, the City seeks to exercise its historical rights to control and manage its rights-of-way, and implement certain police power regulations in the use of those rights-of-way, in a competitively neutral and non-discriminatory basis; and

WHEREAS, the City Council of the City of Weston deems it necessary to adopt this ordinance regulating the placement and maintenance of utility facilities within the public rights-of-way to promote public safety and convenience and to assure the efficient and orderly use of the rights-of-way by the many gas, electric, cable, and telecommunications providers so that the best interests of the public are served;

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

SECTION 1.

All of the above premises are hereby found to be true and correct and are hereby approved and incorporated herein.

SECTION 2.

RIGHTS-OF-WAY MANAGEMENT

DIVISION 1. GENERALLY

The purpose of this Ordinance is to:

- (a) Assist in the management of facilities placed in, on or over the Public Rights-of-Way in order to minimize the congestion, inconvenience, 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) To preserve the physical integrity of the streets and highways;
- (f) To control the orderly flow of vehicles and pedestrians;
- (g) Keep track of the different entities using the 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.

Authority and Scope.

No person shall commence or continue with the construction, installation, or maintenance of facilities within the Public Rights-of-Way except as provided by the ordinances of the City and the directives of the Infrastructure Services Department. All construction activity in the Public Rights-of-Way will be in accordance with this chapter. Public Rights-of-Way shall be as defined in the Texas Local Government Code Section 283.002(6), as amended, to include the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. It includes Texas Department of Transportation Rights-of-Way. For the purposes of this Article, a person who constructs, installs, operates, or maintains facilities within the Public Rights-of-Way as provided by this Article is a "User" of the Public Rights-of-Way.

Unauthorized Use of Public Rights-of-Way.

- (a) The City may institute all appropriate legal action to prohibit any person from knowingly using the Public Rights-of-Way unless the person has complied with the terms of this ordinance.
- (b) A person commits a Class C misdemeanor offense who commences or continues with the construction or installation of facilities within the Public Rights-of-

Way, except as permitted by this Article or by state law. Each day the person continues with the construction or installation, of facilities or engages in maintenance that requires excavation or blocks the Public Rights-of-Way in violation of this subsection constitutes a separate offense.

Conflict with Franchise.

To the extent the provisions of this Article conflict with the specific provisions of a Franchise granted by the City and accepted by the franchisee, the provisions of the Franchise shall prevail during the term of the Franchise. To the extent that the provisions can be reconciled, both the Franchise and this Article shall be given effect.

Definition of Terms.

For the purposes of this ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- (a) Affiliate means an entity which owns or controls, is owned or controlled by, or is under common ownership with Permittee.
- (b) Certificated Telecommunications Provider means the same as in Local Government Code Section 283.002 (2), as amended. Any entity that has been granted a certificate from the Texas Public Utility Commission under Chapter 54 of the Texas Utility Code authorizing that entity to provide local exchange telephone service.
- (c) City means the City of Weston, Texas or an agent of the City.
- (d) Director of Infrastructure Services means City Engineer.
- (e) Facilities means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, pipes, underground and overhead passageways and other equipment, structures, plant, and appurtenances and all associated physical equipment placed in, on or under the Public Right-of-Way.
- (f) Franchise shall mean the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, ordinance, permit, license, resolution, contract, certificate, or agreement.
- (g) Franchising authority means the City of Weston, Texas, or the lawful successor, transferee or assignee thereof.
- (h) Permittee means a person with a permit from the City Infrastructure Services Department authorizing the person to construct, or install facilities within the Public Rights-of-Way or engages in maintenance that requires excavation or blocks the Public Rights-of-Way.
- (i) Person means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

- (j) Public Right-of-Way means the same as this term is defined in Section 283.002(6) of the Texas Local Government Code, as amended. The term includes any Texas Department of Transportation Right-of-Way.
- (k) User means a person who owns, constructs, installs, or maintains facilities within the Public Rights-of-Way. A user may be an employee of a franchise holder or a certificated telecommunications provider, or may be a contractor or sub-contractor under contract with a franchise holder or certificated telecommunications provider.

DIVISION 2. REGISTRATION AND PERMIT

Registration.

(a) In order to protect the public health, safety, and welfare, all Users of the Public Rights-of-Way shall register with the City Infrastructure Services Department. Registration and permits shall be issued in the name of the person who will own, construct, install, or maintain the facilities within the Public Rights-of-Way. Registration must be renewed every two (2) years. For entities with a current franchise or license, the franchise or license shall be evidence of renewal registration. If a registration is not renewed, and after a sixty (60) day written notification to the owner, the facilities of the User shall not be issued permits until renewal of registration. When any information provided for the registration changes, the User shall inform the City of the change no more than thirty (30) days after the date of the change. Registration shall include the following information:

- (1) The name of the User of the Public Rights-of-Way;
- (2) The name, address, and telephone number of the contact person or persons for the User;
- (3) The type of facilities the User will construct, install, or maintain within the Public Rights-of-Way, if known. The name, address, and telephone number of any contractor or subcontractor, if known, who will be working in the Public Rights-of-Way on behalf of the User. Users may provide a master list of the required information for contractors performing work on their behalf within the Public Rights-of-Way;
- (4) The name and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
- (5) Certificate of Insurance or evidence of self-insurance consistent with the provisions of Sections 13-941 and 13-942;

The fee for registration and renewal of registration shall be \$200.00. Entities with a current franchise agreement with the City and/or certificated telecommunications providers are considered registered and will have no registration fee. However, all contractors and subcontractors must register. Contractors and subcontractors that register in conjunction with activities to be performed on behalf of a current franchise holder or certificated telecommunications provider will have no registration fee.

- (b) The City may deny or revoke the registration of a User for violating the provisions of this ordinance.

Construction Permits.

- (a) No person shall perform any construction, installation or maintenance of facilities in the Public Rights-of-Way without first obtaining a Construction Permit from the Infrastructure Services Department. A construction permit shall not be required for the installation of individual customer service connections, repairs or maintenance that does not require boring or excavation within Public Rights-of-Way. Emergency responses related to existing facilities, in order to prevent service interruptions or the imminent threat of harm to persons and property, may be undertaken without first obtaining a permit; however, the Infrastructure Services Department shall be notified immediately after cessation of the emergency regarding work performed, or being performed, in the Public Rights-of-Way and provided an updated map of any relocated facilities. Permits shall be issued only to persons who have a correct registration or franchise with the City. Permits shall be issued only to persons who will be doing the work within the Public Rights-of-Way.

- (1) Construction projects are classified into two categories. Projects are classified at the Director of Infrastructure Services discretion into Major and Minor Construction Projects. Permits are required for all Major Construction Projects of new, replacement or upgrades of the facilities in the Public Rights-of-Way, whether aerial or underground.

(A) Major Construction Projects

- Projects greater than 500 lineal feet,
- Projects involving street closures,
- Projects requiring the cutting or breaking of pavement or curb,
- Projects within a roadway that is scheduled to be widened, or
- Projects that will take more than five (5) consecutive days to complete.

(B) Minor Construction Projects

- Projects less than 500 lineal feet,
- Projects that contain 2 or less street or creeks crossings,
- Projects that will take 5 consecutive days or less to complete,
- Projects that include only local repairs,
- Projects not involving street closures, and
- Projects not requiring the cutting or breaking of pavement or curb.

- (2) A permit is not required under this Section if the activity in the Public Rights-of-Way consists exclusively of:

(A) Minor Construction Projects as defined in (1)(B);

(B) A service connection of real property on either side of the Public Rights-of-Way;

- (C) Routine maintenance or repair of facilities that does not include the cutting or breaking of pavement or curb, or boring; or
 - (D) The replacement of a single damaged pole or the installation of aerial lines on existing poles or the installation of aerial lines on 5 new poles or less.
- (3) The submittal of an approved permit from the Texas Department of Transportation shall serve as the construction permit for work within Texas Department of Transportation rights-of-way.

Notwithstanding anything else in this Section, a Permittee shall submit a written letter, email, or fax notice of work to the Director of Infrastructure Services prior to the commencement of any work activity in all instances where the owner or its contractor will be engaging in any activity in a City right-of-way that involves the cutting or breaking of pavement or curb or boring.

- (b) The construction permit application shall include the following:
- (1) The name of the User to be working within the Public Rights-of-Way;
 - (2) The name, address, and telephone number of the contact person or persons for the User;
 - (3) The name of the owner of the facilities;
 - (4) The signature of an authorized representative of the User;
 - (5) The date of commencement and the estimated completion time for the work;
 - (6) Three sets of construction plans, that include the following:
 - (A) The proposed location and route of all facilities within Public Rights-of-Way to be constructed, installed, expanded, replaced, removed, or maintained.
 - (B) The location of all Public Rights-of-Way boundaries at the proposed facilities.
 - (C) A description of all existing City utilities that could potentially conflict with applicant's proposed route, including City profiles, if available, when crossing any City utility.
 - (D) A description of the type and size of facilities the applicant proposes to install.
 - (E) A description of any bores or trenches the applicant proposes to dig, and any handholes, manholes, switchgear, transformers, pedestals, etc. the applicant proposes to install, showing the approximate depth of such construction and installations along with any variance from standard City trenching details.

- (F) A description of plans to remove and replace pavement if such plans differ from the City construction requirements.
 - (G) A typical section of all equipment (pedestals, transformers, etc.) to be set, including pad sizes if required.
 - (H) A traffic control plan, unless demonstrated not applicable, as approved by the Infrastructure Services Department.
 - (I) The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the Public Rights-of-Way, and the dates and times work will occur.
 - (J) A complete legend of drawings submitted by applicant.
 - (K) An erosion control plan, to the extent required by the City's Engineering Design Criteria and Construction Standards.
- (7) Certificate of Insurance showing compliance with Section 13-941 of this Article unless a current certificate is on file with the City.
- (c) A request for a permit must be submitted at least five (5) working days prior to the commencement of construction if the construction will disturb less than 2000 lineal feet of Public Rights-of-Way or ten (10) working days prior to the commencement of the construction if the construction will disturb greater than 2000 lineal feet of Public Rights-of-Way, unless waived by the Infrastructure Services Department. The time frame may be reduced if necessary to alleviate a condition threatening public safety.
 - (d) The Infrastructure Services Department or designee or Permittee may request a pre-construction meeting.
 - (e) All details of the construction plans are subject to the approval of the Infrastructure Services Department or designee.

Revocation or Denial of Permit.

If any of the provisions of this ordinance are not followed, a permit may be revoked by the Director of Infrastructure Services or his designee. If a person has not followed the terms and conditions of this ordinance in work done pursuant to a prior permit, new permits may be denied or additional terms required until correction of the deficiencies associated with the prior permit.

Appeal from Denial or Revocation of Permit or Registration.

Any appeal from the denial or revocation of a permit or registration or from the decision of the Director of Infrastructure Services or his designee shall be to the Mayor. Such appeal shall be filed with the Mayor's Office within fifteen (15) days from the date of the decision being appealed. The Mayor shall render a decision within ten (10) business days from the date the appeal was filed. He may make inquiries of individuals with knowledge of facts and/or may schedule a hearing with relevant personnel to discuss the appeal. All such appeal hearings are informal in nature and the rules of evidence do not apply to such hearings. The Mayor may

sustain, reverse, modify, or amend the decision of the Director of Infrastructure Services or his designee.

Penalty for Working Without a Permit.

It shall be unlawful and an offense for any person, except a certificated telecommunications provider or City franchise holder, to construct or install facilities or excavate within the Public Rights-of-Way without a permit issued pursuant to this Article. Contractors and subcontractors of either certificated telecommunications providers or City franchise holders are not exempt from the permit requirements contained in Division 2 of this Article. Only a single permit is required for any one project. Such permit may be obtained by either the City franchise holder, the certificated telecommunications provider, or their contractor or subcontractor.

Any violation of this Section shall be punished by a fine of not more than five hundred dollars (\$500.00) per violation per day. Each day that a violation exists shall constitute a separate offense.

DIVISION 3. Construction Requirements

Compliance with Permit.

- (a) All construction and installation in the Public Rights-of-Way shall be in accordance with the permit for the facilities. The City's Infrastructure Services Department shall be provided access to the work and to such further information as may be reasonably required to ensure compliance with the permit.
- (b) A copy of the construction permit and engineering plans that have been reviewed and released for construction by the Infrastructure Services Department shall be maintained at the construction site and made available for inspection by the Infrastructure Services Department or designee at all times when construction or installation work is occurring.

Time for Completion.

All construction or installation 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 Permittee may request an extension from the Infrastructure Services Department. The Infrastructure Services Department or designee will review a request for permit extension as soon as possible. Until the Infrastructure Services Department or designee completes the review for permit extension the Permittee may continue with the work specified in the construction permit.

Federal or State Permits.

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 shall be maintained at the construction site and made available for inspection by the Infrastructure Services Department or designee at all times when construction or installation work is occurring.

Notification of Construction Start.

The Infrastructure Services Department or designee shall be notified at least forty-eight (48) hours in advance that construction is ready to proceed with this notification, the Permittee shall provide the "One-Call" ticket number assigned when complying with the Underground Facility Damage Prevention and Safety Act. The Permittee shall also provide notification to property owners adjacent to the construction site by letter or door hangers at least forty-eight (48) hours in advance of the start of the construction. The notification shall include contact information. In the event the construction is an emergency response as described in Section 13-912(a), notification of construction shall be made as soon as possible via a facsimile transmission to the Infrastructure Services Department.

Compliance with Codes and Laws.

All construction shall be in conformance with all City codes and applicable local, state, and federal laws.

Erosion Control.

The 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 backed silt fencing. Upon request, the Permittee may be required to furnish documentation submitted or received from the federal or state government. Erosion control facilities shall be in place prior to commencement of construction.

Notification of Damage.

The Permittee shall notify the Infrastructure Services Department or designee immediately of any damage to other utilities, whether owned by the City, another public entity, or a private Utility.

Performance Standards.

- (a) It is the City's policy to avoid cutting streets or sidewalks unless it is demonstrated to be necessary due to underground obstacles or other circumstances that make boring impractical. However, when a street or sidewalk cut is necessary, the street or sidewalk cut, and the proposed repair, must be fully described in the construction plans submitted with the permit application. Repair of all streets and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and in accordance with City standards.
- (b) Installation of facilities must not interfere with City utilities, in particular gravity dependent facilities.
- (c) New facilities in established Rights-of-Way where aerial facilities do not exist shall be installed underground using directional boring unless demonstrated to not be economically or practically feasible as approved by the Infrastructure Services Department. The cost of installing these utilities underground shall be borne by the party requesting such non-standard utility service. Furthermore,

Transmission lines, those lines operated at voltages of 60,000 volts or higher that bring power from a generating plant to an electrical substation and Feeder lines, those lines that emanate from an electrical substation or hub to distribute power throughout an area shall be constructed overhead. Open trenching shall be allowed in new developments prior to the completion of the subgrade preparation for the development's roadway infrastructure. Owners of new developments shall provide notice of the development to all utilities registered with the City prior to the City approving zoning amendments, plats or site plans. When performing directional boring, the contractor shall have a locator place bore marks and depths while the bore is in progress, and shall place a mark at each stem with a paint dot and indicate the depth of the bore at no less than every other stem.

- (d) A Permittee is responsible for obtaining line locates in accordance with the Underground Facility Damage Prevention and Safety Act the "One-Call" Statute". When required by the Infrastructure Services Department, the Permittee shall verify locations of City utilities by pot holing, hand digging, or other method approved by the Infrastructure Services Department or designee prior to any excavation or boring.
- (e) Handholes or manholes shall not be located in sidewalks, unless demonstrated that there is no reasonable alternative.
- (f) Utility location flags shall not be removed from a location while facilities are under construction. Flags must be removed by the Permittee upon completion of the project unless another Permittee is also working in the area and has not completed their work.
- (g) If the construction requires the pumping of water or mud, the Permittee shall contain all pumped water or mud in accordance with City ordinances, federal or state law, and the directives of the Infrastructure Services Department.
- (h) All work shall be protected after hours or other times when the contractor is not present as reasonably necessary to assure the safety of pedestrian and vehicular traffic.

Working Hours.

All construction activity in the Public Rights-of-Way shall take place between 7:00 a.m. and 7:00 p.m., Monday through Friday and 9:00 a.m. to 5:00 p.m. Saturday, unless the Director of Infrastructure Services, or designee, approves an exception twenty-four (24) hours in advance. No unauthorized work will be done, except for emergencies, on City holidays or Sundays.

Lane Closures.

Lane closures on arterials and collectors as shown on the City's Thoroughfare Plan will be limited to after 9:00 a.m. and before 4:00 p.m. except as approved by the Infrastructure Services Department. All traffic control devices shall be in place prior to the start of construction. All lane closures shall comply with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

Permittee Responsibility.

The Permittee is responsible for the workmanship of its contractor or subcontractors. A responsible representative of the Permittee shall be available to the Infrastructure Services Department at all times during construction. If the project will disturb more than 1,000 lineal feet of the Public Rights-of-Way, a representative of the Permittee must designate a representative with pager or cell phone communications capability to be available and on the construction site within two (2) hours of request by the City.

Information Signs.

For permitted projects greater than 1000 lineal feet, a minimum three by three (3x3) foot information sign with 4" letters stating the identity and the telephone number of the Permittee shall be placed at the location where construction is to occur prior to the beginning of the work in the Public Rights-of-Way and shall continue to be posted at the location during the entire time of construction.

Restoration of Public Rights-of-Way.

- (a) When a Permittee completes construction, expansion, reconstruction, removal, excavation, or other work, the Permittee shall promptly restore the Public Rights-of-Way to a condition at least as good as existed immediately prior to work commencing. The Permittee shall replace and properly relay and repair the surface, base, irrigation system, and landscape treatment of any Public Rights-of-Way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Permittee's facilities within thirty (30) calendar days after completion of the work. Upon failure of a Permittee to perform any such repair or replacement work, in five (5) working days of a receipt of a written notice given by the City to the Permittee, and the Permittee has not commenced the restoration, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Permittee, its contractors or agents. Upon receipt of an invoice from the City, the Permittee shall reimburse the City for the costs so incurred within sixty (60) calendar days from the receipt of the City's invoice by Permittee.
- (b) Should the City reasonably determine, within two (2) years from the date of completion of the repair work by the Permittee, that the surface, base, irrigation system, or landscape treatment requires additional restoration work to bring the work to a condition at least as good as existed immediately prior to the construction commencing, the Permittee shall perform such additional restoration work.
- (c) Notwithstanding the foregoing, if the City determines that the failure of the 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 subject to the indemnification requirements of Section 13-943. The Permittee shall promptly reimburse the City for all costs incurred by the City within sixty (60) calendar days from the receipt of the City's invoice.
- (d) If a person performs emergency construction or excavation in the Public Rights-of-Way pursuant to Section 13.912 of this Article, that person shall comply with the requirements of this Section for restoration of the Public Rights-of-Way.

- (e) Although no work will be permitted on private property adjacent to Public Rights-of-Way, these restoration provisions shall apply to any damages to the adjacent private property as a result of construction within the Public Rights-of-Way.

Record Drawings.

Permittees shall provide the Infrastructure Services Department or designee with "Record Drawings" within ninety (90) days of completion of construction. The "Record Drawings" shall be in a format used by the Permittees in their ordinary course of business, but shall exclude customer specific, proprietary or confidential information. If the release of the location of any utility, including water and sewer or of the "Record Drawings" submitted under this Section would jeopardize public safety, the information shall be considered confidential. In addition, if "Record Drawings" submitted under this Section include information expressly designated by the User as a trade secret or other confidential information protected from disclosure by state law, the City may not disclose the information to the public without the consent of the User, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law.

Emergency Conditions.

If the City Administrator declares an emergency with 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 City Administrator'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. The Permittee shall reimburse the City for all costs incurred by the City within sixty (60) calendar days from the date of the City's invoice.

Improperly Installed Facilities.

- (a) Any person doing work in the Public Rights-of-Way shall properly install, repair, upgrade, and maintain facilities.
- (b) New facilities or modifications to existing facilities shall be considered to be improperly installed, repaired, upgraded, or maintained if:
 - (1) The installation, repairs, upgrade, or maintenance endangers people;
 - (2) The facilities do not meet the applicable City codes;
 - (3) The facilities are not capable of being located using standard industry practices;
 - (4) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the Infrastructure Services Department.

Upon notification by the Infrastructure Services Department or designee, the Permittee shall submit a Construction Permit application for correction of facilities

within ninety (90) days after the date of notification. Correction of the facilities shall be completed within ninety (90) days after the date of approval, or within an alternate schedule approved by the Infrastructure Services Department.

Conditions for Occupancy of Public Rights-of-Way.

- (a) In the exercise of governmental functions, as lawfully authorized by State and Federal law, the City has first priority over all other users of the Public Rights-of-Way. The City reserves the right to construct sewer, gas, water, and other pipe lines or cables and conduits, to do underground and overhead work and or change aerial facilities, in across, along, over or under a public street, alley, or Public Rights-of-Way occupied by a User, and to change the curb, sidewalks or the grade of the streets in accordance with State and Federal law. Other projects, such as beautification facilities, will not have higher priority over other users.
- (b) The City shall assign the location in or over the Public Rights-of-Way among known Users of the Public Rights-of-Way with due consideration to the public health and safety considerations of each type of User and to the extent the City can demonstrate that there is limited space available for additional Users, may limit new Users, as allowed under state or federal law.
- (c) If the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the authorized User of the Public Rights-of-Way. If the City closes or abandons a Public Rights-of-Way that contains a portion of a User's facilities, the City shall close or abandon such Public Rights-of-Way subject to the rights of the User.
- (d) Subject to applicable state law, whenever the City has determined that removal, relocation, change, or alteration of a User's facilities in the Public Rights-of-Way is reasonably necessary for the widening or straightening of a street, upon written notice by the City, the User shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of the User's facilities that are in the Public Rights-of-Way within one hundred twenty (120) days, except in circumstances that require additional time as reasonably determined by the City based upon information provided by the User. Prior to relocation, the City shall provide a suitable location within a Public Rights-of-Way, property or place for relocated facilities sufficient to maintain service. For projects expected to take longer than one hundred twenty (120) days to remove, change, or relocate, the City will confer with the User before determining the removal, relocation, change, or alteration is deemed by the User to impose a significant financial hardship, the User shall have the right to present alternative proposals to the City and the City shall give due consideration to any such alternative proposals. This Section shall not be construed to prevent Permittee's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal. If the Permittee fails to relocate facilities in the time allowed by the City in this Section, the Permittee may be subject to legal action by the City or to a liability to the City for such delay, as may be set forth in the Code of Ordinances, now or hereinafter enacted. Notwithstanding anything in this Subsection (d), the Infrastructure Services Department or designee and Permittee may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change. Such circumstances may include, but are not limited to, weather conditions, emergency conditions,

accuracy and completeness of engineering plans or changes in design, relocation, coordination and other criteria which may delay projects.

- (e) A Permittee may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the City including the prohibition of tree topping. A Permittee trimming trees within Public Rights-of-Way shall be either certified or initiated the process to obtain certification using the standards of Tree Line USA, a program sponsored by the National Arbor Day Foundation. Should the Permittee, its contractor or agent fail to remove such trimmings within twenty-four (24) hours under routine circumstances, or up to 10 business days, or until all service restoration activities have been completed because of emergency conditions, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Permittee shall promptly reimburse the City for all costs incurred within sixty (60) working days.

DIVISION 4. INSURANCE

Certificates of Insurance.

- (a) A User shall obtain and maintain insurance in the amounts reasonably prescribed by the City with an insurance company licensed to do business in the State of Texas and acceptable to the City throughout the term of occupancy of Public Rights-of-Way. At the time of registration, a Permittee shall furnish the City with proof of insurance. The City reserves the right to review the insurance requirements and to reasonably adjust insurance and limits when the City determines that changes in statutory law, court decisions, or the claims history of the industry or the Permittee require adjustment of the coverage. For purposes of this Section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the Permittee in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the City to accept such letters the Permittee must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished by the City.
- (b) The Permittee shall furnish to the Infrastructure Services Department or designee copies of certificates of insurance or proof of self insurance evidencing the coverage required by Section 13-942 to the City.
- (c) An insurance certificate shall contain the following required provisions:
 - (1) Name the City and its officers, employees, board members, and elected representatives as additional insured's for all applicable coverage.
 - (2) Provide for thirty (30) days notice to the City for cancellation, or non-renewal.
- (d) The Permittee shall immediately advise the City Attorney of actual or potential litigation that may develop and affect and existing carrier's obligation to defend and indemnify.

- (e) This Section creates no right of recovery of an insurer against the City. The required insurance policies shall protect the Permittee and the City. The insurance shall be primary coverage for losses covered by the policies.
- (f) The policy "Other Insurance" shall not apply to the City if the City is an insured under the policy.
- (g) The Permittee shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by the Permittee must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

Insurance Requirements.

(a)	<u>COMPREHENSIVE GENERAL LIABILITY</u>	
	PROPERTY DAMAGE	\$1,000,000
	PERSONAL INJURY	\$1,000,000
	PRODUCTS-COMP/OP AGG	\$2,000,000
	AGGREGATE	\$2,000,000
(b)	<u>COMPREHENSIVE AUTOMOBILE LIABILITY</u>	
	PERSONAL INJURY each person	\$ 500,000
	PROPERTY DAMAGE each occurrence	\$ 500,000
(c)	<u>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY</u>	
	EACH ACCIDENT	\$1,000,000
	DISEASE-POLICY LIMIT	\$1,000,000
	DISEASE-EACH EMPLOYEE	\$1,000,000
(d)	<u>UMBRELLA LIABILITY INSURANCE</u>	
	COMBINED SINGLE LIMIT	\$5,000,000

Indemnity.

- (a) Except as to Certificated Telecommunications Providers, each Permittee placing facilities in the Public Rights-of-Way shall agree to promptly defend, indemnify and hold the City harmless from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to the user, a Permittee, its agents, officers, employees, and subcontractors, City's agents, officers, and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income, or wages to any person (including, but not limited to the agents, officers, contractors, subcontractors, and employees of the user, a Permittee, or the City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Permittee, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this Article.
- (b) This indemnity provision shall not apply to any liability attributable to the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

- (c) The provisions of this indemnity are solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other Permittee or entity.”

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances of the City of Weston, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality 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 unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 6.

The City Secretary of the City of Weston is hereby directed to publish the caption, penalty clause, and the effective date of this ordinance, in one issue of the official City newspaper as required by Section 52.011 of the Local Government Code.

SECTION 7.

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 13th DAY OF June, 2012.

APPROVED BY:

Patti Harrington
Patti Harrington, Mayor

ATTESTED BY:

Michele Smith
Michele Smith, City Secretary

