

AN ORDINANCE OF THE CITY OF LIVE OAK, TEXAS REPEALING CHAPTER 22.5- TELECOMMUNICATIONS IN ITS ENTIRETY, AMENDING CHAPTER 20, STREETS, SIDEWALKS AND PUBLIC PLACES WITH THE ADDITION OF ARTICLE IV, MANAGEMENT OF THE-RIGHT-OF-WAY, TO THE LIVE OAK CODE OF ORDINANCES, PROVIDING DEFINITIONS, REGULATING THE INSTALLATION, REPAIR AND MAINTENANCE OF UTILITY FACILITIES WITHIN THE RIGHT-OF-WAY IN THE CITY OF LIVE OAK, TEXAS; FOR A NEW RIGHT-OF-WAY MANAGEMENT REGULATIONS TO MANAGE CONSTRUCTION, EXCAVATION, PLACEMENT OF UTILITIES AND MAINTENANCE OF THE RIGHT-OF-WAY; PROVIDING A PENALTY FOR EACH OFFENSE; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Excavations in City Streets may significantly interfere with public use of the Streets and result in negative impact in air quality, a loss of parking, and in a loss of business to merchants; and

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

WHEREAS, It is desirable to adopt regulations that will provide the City greater control over Excavations in City Streets; and

WHEREAS, Substantial public funds have been invested to build, maintain and repair the City Streets and the City holds these Streets as an asset in trust for its citizens. It is desirable to adopt regulations to protect the structural integrity of City Streets and safeguard the value of the public investment for the benefit of City residents, by providing incentives to reduce the number of Excavations in City Streets. Such incentives will encourage coordination among Utilities and minimize the number of Excavations where feasible, so as to ensure Excavations are performed, to the extent possible, in Streets scheduled for resurfacing within the same or succeeding fiscal year as the Excavation; and

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

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

WHEREAS, Regulation of Excavations in City Streets helps reduce disruption of and interference with public use of the Streets, helps prevent pavement damage, helps maintain the safe condition of the Streets, protects the public health, safety and welfare, is a valid and appropriate exercise of the City's police power, and is a municipal responsibility; and

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

WHEREAS, Chapter 283 of the Texas Local Government Code (the "Act"), sets forth certain regulations governing municipalities and Certificated Telecommunications Providers ("CTPs") and Chapter 66 of the Texas Utilities Code contains similar regulations concerning holders of State Issued Certificate of Franchise Authority (SICFA Holder). It is the City's intent to comply with these regulations as applicable; and

WHEREAS, in accordance with applicable state and federal law, , the City seeks to repeal its current regulations related to rights of way, exercise its historical rights to control and manage its rights-of-way; and amend its existing police power regulations for the use of those rights-of-way and

WHEREAS, the City Council of the City of Live Oak, Texas deems it necessary to repeal its existing right of way regulations and adopt this ordinance amending the regulations governing the placement and maintenance of utility facilities within the right-of-way to promote public safety and convenience and to assure the efficient and orderly use of the right-of-way by the many gas, electric, cable, telecommunications, water, wastewater, and other utility providers so that the best interests of the public are served.

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

SECTION 1: Chapter 20 of the City of Live Oak Code of Ordinances is hereby amended with the addition of Article IV, Management of the Right-Of-Way as follows:

ARTICLE IV

MANAGEMENT OF THE RIGHT-OF-WAY

DIVISION 1. GENERAL PROVISIONS

Section 20-78 PURPOSE.

The purpose of this article is to:

- (1) Assist in the management of facilities placed in, on, under or over 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;
- (2) Govern the use and occupancy of the public rights-of-way;
- (3) Assist the City in its efforts to protect the public health, safety and welfare;
- (4) Conserve the limited physical capacity of the public rights-of-way held in public trust by the city;
- (5) Preserve the physical integrity of the streets and highways;
- (6) Control the orderly flow of vehicles and pedestrians;
- (7) Keep track of the different entities using the public rights-of-way to prevent interference between them;
- (8) Assist in scheduling common trenching and street cuts;
- (9) Protect the safety, security, appearance and condition of the public rights-of-way, and
- (10) Prolong the life of surfaces and maintain the safe condition of city streets.

Section 20-79 AUTHORITY AND SCOPE

This article applies to all utility companies that place facilities in, on, under or over public rights-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 5241 et seq., Texas Utilities Code Chapter 66 and Texas Local Government Code Chapter 283 for certificated telecommunication providers, Texas Tax Code §182.025 and Texas Utilities Code §33.008 for distributors of natural gas and electricity or as otherwise applicable; and in accordance with Vernon's Ann. Civ. St. art. 1175(1), all as applicable.

Section. 20-80 ADMINISTRATION

The Director is the principal City official responsible for the administration of the City Rights of Way, Right of Way Permits, the regulation of same and ordinances related thereto. The Director may delegate any or all of the duties hereunder.

- (a) The Director of the Public Works Department shall have the same duties, responsibilities and authority as specified for the Director stated herein.
- (b) The Director shall supervise Utility construction projects and Utility inspections.

Section 20-81 DEFINITIONS

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

- (a) **ABANDONED FACILITIES** means Facilities no longer in service or physically disconnected from the operating Facilities, or from any other Facilities that are in use or that still carry Service.
- (b) **ADMINISTRATIVE FEE** means the fee charged by the City to recover its costs incurred for Right of Way management; including, but not limited to, costs associated with registering Applicants; issuing, processing, and verifying Right of Way Permit applications; inspecting job sites and restoration improvements; determining the adequacy of Right-of-Way restoration; revoking Right of Way Permits and other costs the City may incur in implementing the provisions of this Ordinance.
- (c) **APPLICANT** means an owner or authorized agent of an owner, who submits an application for a Permit under these provisions of the City Code.
- (d) **AREA OF INFLUENCE** means that area around a Utility Excavation where the pavement and subgrade is impacted by the Excavation and is subject to more rapid deterioration due to the trench Excavation.
- (e) **CERTIFICATED TELECOMMUNICATIONS PROVIDER** or "CTP" means a Person who has been issued a certificate of convenience and necessity, certificate of operating authority, or Service provider certificate of operating authority by the Texas Public Utility Commission or to offer local exchange telephone service as defined by Chapter 283 of the Texas Local Government Code.
- (f) **CITY** means the City of Live Oak.
- (g) **CONTRACTOR** means any public or private Person or organization, other than the City of Live Oak.
- (h) **DAY** means business day unless otherwise specified.
- (i) **DEPARTMENT** means the Department of Public Works or a successor department that is responsible for management of the Right of Way and roadway infrastructure.
- (j) **DIRECTOR** means the Director of the City Department of Public Works, or his or her designee.
- (k) **EMERGENCY OPERATIONS** are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public

or any Person and the work necessary to address a service interruption. Upgrading of Facilities, new service installation and neighborhood improvement projects are not emergency operations.

- (l) **EXCAVATION** means an activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the Right-of-Way including Micro-trenching and does not include landscaping activity unless the activity removes or disturbs the paved portion of the Right of Way.
- (m) **FACILITIES** means the plant, equipment, and property, including but not limited to lines, poles, mains, pipes, conduits, ducts, cables, and wires located under, on, or above the surface of the ground within the Right of Way and valves, and related Facilities and equipment used or useful for the provision of Utility Services.
- (n) **GOVERNING BODY** means the Mayor and the City Council of the City of Live Oak, Texas.
- (o) **GOVERNMENTAL ENTITY** means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Texas or of any other state of the United States and any agency or instrumentality of the State of Texas or of any other state of the United States or of the United States.
- (p) **PERMIT** means a Permit issued under this Chapter authorizing excavation in the Right of Way.
- (q) **PERMITTEE** means any Person or Right of Way User to whom a Permit is issued to excavate a Right of Way.
- (r) **PERSON** means any person, company, partnership, agency or other public or private entity, excepting the City.
- (s) **REGISTRATION** means the application process of a ROW User to use any portion of the Right of Way.
- (t) **REPAIR** means the temporary or permanent construction work necessary to make the Right of Way useable.
- (u) **REPAIR AREA** means that area around an Excavation where the pavement and subgrade is impacted by an Excavation.
- (v) **RESTORATION** means the process by which an excavated Right of Way and surrounding area, including pavement and foundation, is returned to

the same condition, or better, than existed before the commencement of the work.

- (w) **RIGHT OF WAY or PUBLIC RIGHT OF WAY** means the surface of, and the space above and below, any Street, road, highway, freeway, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, or roadway easement now or hereafter held by the City or over which the City exercises any rights of management or control and shall include but not be limited to all roadway easements now held, or hereafter held, by the City but shall specifically exclude private property.
- (x) **RIGHT OF WAY- (ROW) USER** means a Person, its successors and assigns, that uses the Right of Way for purposes of work, Excavation, provision of Services, or to install, construct, maintain, repair Facilities thereon, including, but not limited to, landowners and Service providers.
- (y) **ROUTINE SERVICE OPERATION** means a work activity that makes no material change to the Facilities and does not disrupt traffic.
- (z) **SERVICE** means a commodity provided to a Person by means of a delivery system that is comprised of Facilities located or to be located in the Right of Way, including, but not limited to, gas, telephone, telecommunications, cable television, video services, Internet services, Open Video Systems, alarm systems, steam, electricity, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.
- (aa) **SICFA HOLDER** means a Person that has received a state issued certificate of franchise authority from the Texas Public Utility Commission to provide cable or video service pursuant to the authority of Chapter 66 of the Texas Utilities Code.
- (bb) **STREET** means the pavement and sub-grade of a City residential, collector or arterial roadway.
- (cc) **SUPPLEMENTARY APPLICATION** means an application made to excavate or obstruct more of the Right-of-Way than allowed in, or to extend a Permit that has already been issued.
- (dd) **TMUTCD** shall mean Texas Manual on Uniform Traffic Control Devices, latest edition.
- (ee) **UTILITY** shall mean any privately or publicly owned entity which uses public Rights of Way to furnish to the public any general public Service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, telecommunications, Internet access, cable service, video service, data services, petroleum products, telegraph, heat, steam, or chilled water, together with the equipment,

structures, and appurtenances belonging to such entity and located within and near the Right-of-Way. Poles are regulated herein only as specifically set forth in this Chapter.

- (ff) **UECM** means Utility Excavation Criteria Manual, current edition.
- (gg) **WHITE LINING** means marking the Excavation site with white washable marking paint or flags prior to requesting a Utility locate in order to further identify the site.

Section 20-82 RESERVED

Section 20-83 FIELD UTILITY COORDINATION

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

The ROW User shall make a request for a Utility locate not more than 14 days and not less than 48 hours prior to the commencement of the proposed Excavation. Such request shall be made to the State One-Call Center and to the City of Live Oak Public Works Department. Such requests shall be made by telephone or facsimile and shall include the date, location, extent and reason for such proposed Excavation.

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

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

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

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

All barricades, plates, cones, traffic directional equipment, and all other traffic control devices owned by the ROW User and used on or near any Excavation shall be clearly and visibly marked with the name of the Permittee and/or ROW User, as

applicable, at all times such equipment is used on or near the Right of Way. An exception to the marking requirement may be made in the event the traffic control equipment is not owned by the Permittee or ROW User.

Section 20-84 MAPS AND RECORDS OF REGISTRANTS

Each ROW User must maintain accurate maps and records of its Facilities. The information shall be made available to the Department within five (5) days of request by the Department. The maps and records must depict horizontal and vertical locations, all Facilities in and near the Right of Way. The information shall be provided in electronic format compatible with City software or shall be subject to a conversion fee. Maps and records shall indicate horizontal location and a description of the Facility for the area involved in the Permit application and two (2) block radius. The Department may have Facilities located if the ROW User does not provide the requested information. In such event the ROW User shall reimburse the cost to the City to locate the Facilities.

Section 20-85 NOTICE

Notice for purposes of this ordinance shall be made to City via Electronic Message (E-Mail), overnight courier (generally used carrier with tracing available), or hand delivery with signed receipt, facsimile to the Department, or United States mail return receipt required.

Section 20-86 REGISTRATION

All ROW Users must register with the City within thirty (30) days of the effective date of this Ordinance. Any Person who is not an existing ROW User prior to the effective date of this Ordinance and who wishes to become a ROW User must first register with the City. All ROW Users shall report all changes in its registration information within thirty (30) days of such change. No ROW User shall be authorized to utilize the Right of Way in any capacity or manner without registering and obtaining the necessary Right of Way Permit from the City.

Section 20-87 REGISTRATION INFORMATION

The information required for registration includes the following:

- A) Identity and legal status of ROW User and names of all operators of any Facilities on the Right of Way.
- B) Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration information.

- C) Name, address, telephone number, fax number and email address of the local representative of the ROW User who shall be available at all times to act on behalf of the ROW User in the event of an emergency.
- D) If applicable, certification number issued by Public Utilities Commission.
- E) General description of Services to be provided.
- F) Insurance and bonding information.
- G) Employee Safety Certification information.

Section 20-88 EMPLOYEE SAFETY CERTIFICATION

The ROW User operating Facilities or constructing Facilities in any Public Right of Way is responsible for the safe movement of pedestrian and vehicular traffic through the construction area. The ROW User shall obtain certification through a City approved training organization for a sufficient number of employees working within the Right of Way such that a certified employee is present at the job site during construction activities. The ROW User shall meet all requirements for barricading and traffic control as specified in the TMUTCD. Alternative training programs may be submitted to the Director for City certification. Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, as evidenced by certification, shall place and maintain the traffic control devices in the construction area. Employee certificates shall be maintained current by ROW User at all times. An employee shall produce, upon request of an inspector or certified police officer, proof of a valid training certificate. ROW users engaged in aerial construction obstructing vehicular or pedestrian traffic on the Right of Way shall comply with applicable TMUTCD regulations.

Section 20-89 THIS SECTION RESERVED FOR UTILITY COORDINATION

Section 20-90 REPORTING OBLIGATIONS

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

federal, state and local laws. ROW Users shall provide all such other information as may be reasonably required by the City to complete the registration statement.

Section 20-91 PERMIT REQUIRED

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

- A) Before issuing a Permit, the Director shall have been provided a written application on a form furnished by the Director, setting forth the name and residence or business address of the Applicant; the location and approximate area of the Excavation, including its approximate length and width, and, if the Excavation is in a Street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the Excavation. The application form shall include plans prepared in accordance with City specifications.
- B) At the time the Permit is issued, the Applicant shall pay a nonrefundable Application Fee in an amount as provided for in this Chapter. CTP's, SICFA Holders, entities with exemptions as stated in a franchise agreement with the City, and municipally owned utilities are exempt from paying permitting fee. The exemptions are not applicable to any work done after hours or from any penalties incurred for violations of this ordinance and Users are required to pay the City permitting fees for work done after hours.
- C) The proposed location, depth and other characteristics of any Facilities for which the Permit is issued shall be subject to approval of the Director, and all backfilling, compaction and pavement restoration performed for any Excavation shall comply with the requirements of this chapter.
- D) No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private Utilities with Facilities installed in any Right of Way to relocate the Facilities at no cost to the City, subject to state law, if applicable, in the event that relocation is required by the City to accommodate a proper governmental use of the Right of Way.
- E) Combinations of Permits shall be permitted at the discretion of the Director. Fees shall be assessed based on the Excavations permitted.

- F) Subdivision monuments, historical markers, and any other signs or structures with foundations in the Right of Way, excluding billboards, are subject to this chapter.

Section 20-92 EXCAVATION PERMIT APPLICATION

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

- A) **JOINT APPLICATIONS** – Applicants may apply jointly for Permits to excavate the Right of Way at the same time and place. Applicants who apply jointly for a Right of Way Permit may share in the payment of the Permit fee. Applicants must agree among themselves as to the portion each shall pay. The City will recognize only one point of contact.
- B) **SUPPLEMENTARY APPLICATIONS** – A Permit shall only be valid for the area of the Right of Way specified within the Permit. No Permittee may cause any work to be done outside the area specified in the Permit, except as provided herein. Any Permittee who determines that an area greater than that which is specified in the Permit must be excavated must: (a) make application for a Permit extension and pay any additional fees required thereby; and (b) receive a new Right of Way Permit or Permit extension.

Permits will be issued or denied within ten (10) days of application. Unless granted for a longer period, an Excavation Permit shall be valid for thirty (30) days and for the dates specified in the Permit. The Applicant may request the Permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. City may approve or deny the application for such extended Permit period. No Permittee may commence work before the Permit start date or, except as provided herein, may continue working after the end date. If a Permittee does not complete the work by the Permit end date, the Permittee must apply for and may receive a new Right of Way Permit or a Permit extension for additional time. This Supplementary Application must be submitted to the City prior to the Permit end date.

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

Section 20-93 ISSUANCE OF PERMIT

Every person making application for a Permit in accordance with the provisions of this chapter and having complied with such provisions shall be entitled thereto, and, upon filing such application with the Director, it shall be his duty to issue the Permit, when the provisions of this Chapter shall have been complied with.

- A) Upon receiving a written application for an Excavation Permit and a plan prepared in accordance with City specifications, the Director's designee shall set forth all requirements, approve or disapprove the application, sign and return it to the applicant. Excepting only Emergency Excavations, at least one (1) working day prior to the start of work, the Applicant shall telephone the City Department of Public Works and request a Permit number, informing the City the date the work will commence. A Permit number shall then be assigned to the job and a Permit shall be sent to the Applicant.
- B) No Permit shall be transferable. A Permit shall be void unless the Excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- C) Each Permit shall state a time period for completion of all the work to be done thereunder. The Director may grant extensions of time.
- D) No Person in violation of any requirement of this chapter shall be issued an Excavation Permit, nor shall any Contractor or agent apply for or be issued an Excavation Permit on the Person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the Director. The foregoing Requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.
- E) No work shall be done under any Permit issued under this chapter except as stated in the Permit. If the Permit is allowed to expire, the ROW User shall procure a new Permit, paying the applicable fee therefor as before, before proceeding with any such work.

Section 20-94 EXCAVATION TO BE UNDER SUPERVISION OF THE DIRECTOR

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

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

encountered in his work. The ROW User shall determine the boundary of the Right of Way.

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

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

The City reserves the right to lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and Facilities, as well as drainage pipes and channels and Streets and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City, in, across, along, over or under any Right of Way or public place occupied by a ROW User and to change any curb or sidewalk or the grade of any street and to maintain all of the City's Facilities. In allowing such work to be performed by others, the City shall not be liable to a ROW User for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW User by such third party.

If the City requires a ROW User to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the City, to use, or to use with greater convenience, any Right of Way or public place, the ROW User shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a ROW User for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a ROW User's Facilities; provided, however, that the City shall never be liable for such reimbursement.

Section 20-95 ADDITIONAL EXCAVATION PERMIT

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

Section 20-96 APPEAL

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

- A. Appellant shall provide, within five (5) days of denial, a written notice of appeal filed with the Director of the Department. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The Right of Way Manager shall provide a written decision within five (5) days of receipt of the appeal. Failure to render a decision within five (5) business days shall constitute a denial.
- B. If a further denial is given, the appellant may thereafter file a written Notice of Appeal with the Director within five (5) days. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The Director shall provide a written decision within the ten (10) business days. Failure to render a decision within ten (10) days shall constitute a denial.
- C. If a further denial is given, the appellant may thereafter file a written Notice of Appeal to the City Council with the City Secretary within five (5) business days of receipt of the Directors written decision. The City Secretary shall notify the Director and the appellant of the placement of the appeal on the first available City Council agenda in compliance with the Texas Open Meetings law.

Section 20-97 DENIAL OF PERMIT

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

- A) Failure to provide proof of a surety bond or liability insurance acceptable to the City.
- B) Failure to secure a Contractor's license or other required license.
- C) Failure to perform in accordance with the requirements of the UECM or in accordance with these provisions.
- D) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the Director.
- E) The proposed activity would violate a City ordinance or State or federal statute.

- F) The Permit application contains false or misleading information.
- G) The activity would cause a public health or safety hazard.
- H) The ROW User is not authorized within the City.
- I) The ROW User is in violation of this Ordinance relative to work in progress.

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

DIVISION 2. TECHNICAL SPECIFICATIONS

Section 20-98 ENERGY, ELECTRIC AND GAS STANDARDS

Technical standards for energy, electric and gas are defined in the UECM.

Section 20-99 WATER AND SEWER REGULATIONS AND STANDARDS

Water and sanitary sewer providers shall work to provide a connection service point beyond the pavement to all commercial and residential tracts in their service area as Streets are constructed either by connection or conduit, for existing development. Technical standards for water and sanitary sewer are defined in the UECM.

Section 20-100 STORM SEWER STANDARDS

Technical standards for storm sewer are defined in the UECM.

Section 20-101 RESERVED

Section 20-102 COMPLIANCE WITH SAFETY REGULATIONS

The Permittee and ROW User shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the Occupational Safety and Health Standards for the construction industry.

Section 20-103 COMMENCEMENT AND COMPLETION

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

Section 20-104 SAFE CONDUCT OF WORK

Every Permittee and ROW User shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public using the

Street or Right of Way where the work is being performed from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings, and Excavations. All material, implements and tools stored upon the premises and used in connection with the Excavation shall be stored in a safe and non-hazardous manner. All work must be performed only within the hours and days as set forth in the UECM and in accordance with the requirements of the Permit. Work in residential areas may only occur during daylight hours. Certain commercial areas and hospital districts are subject to noise controls and other limitations. Details are available in the UECM and from the Department.

Section 20-105 EMERGENCY EXCAVATIONS

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

Section 20-106 TRAFFIC CONTROL SAFETY

In the event of non-compliance with the TMUTCD, the ROW User shall be notified in writing of the violation. In the event of continued non-compliance, the Director may revoke the Permit, in addition to any other remedies available to the City.

Section 20-107 EXCAVATION IN STREETS IN GOOD CONDITION

The Permittee shall complete pavement restoration of the excavated area within thirty (30) days on major arterial, minor arterial and collector Streets and within thirty (30) days on residential and alley streets after final backfill is completed and accepted by the director. The Permittee shall conduct the work with a minimum disturbance to existing Utilities and shall coordinate all work in or near the existing Utilities with the Utility Owners.

A) **EXCAVATION IN PORTLAND CEMENT CONCRETE (PCC) PAVEMENT SURFACE**

If the existing pavement is PCC, the concrete shall be cut first with a saw to a minimum depth of half the thickness of the concrete which shall also cut the reinforcing steel. The concrete can then be broken out with an air chisel or pavement breaker. No more than 6" of PCC shall be broken back beneath the saw cut. Further criteria is set forth in the UECM. The guidelines for Jacking and Boring are set forth in the UECM.

B) **RESPONSIBILITY OF EXCAVATED AREA MAINTENANCE**

A Permittee or ROW User shall maintain their repairs in the Right of Way for the Life of the Street as defined in this Ordinance.

Section 20-108 LAWFUL USE OF RIGHT OF WAY

- A) The use of the Right of Way in any manner which violates federal, state, or local laws, or City codes and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All Permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the City.
- B) Permittee shall dispose of all material removed from the Right of Way and any waste created by Permittee in compliance with all state, federal and local laws and requirements.
- C) If a Permittee discovers any contaminated, regulated, or hazardous materials in the Right of Way, Permittee shall be responsible for environmental assessment, Excavation, testing, transportation, and disposal of any such contaminated or regulated material in accordance with applicable law, or the Permittee may elect to abandon the contaminated area of the Right of Way and reroute around the contaminated area. The Permittee shall promptly notify the City in writing of the condition.

Section 20-109 TREE TRIMMING AND GRAFFITI ABATEMENT

Permission is granted to a ROW User, subject to the requirements of the City's Landscaping and Tree Preservation Requirement Ordinance, which may be amended from time to time, to trim trees upon and overhanging the Public Right of Way, so as to prevent the branches of such trees from coming in contact with a ROW User's Facilities. When so directed by the City, the tree trimming shall be done under the supervision and direction of the City. The City shall report damage or vandalism to the ROW User's Facilities as soon as practicable after City discovers or learns of such event. The ROW User shall make the necessary repairs or restoration, including cleaning of graffiti, within forty-eight (48) hours after the ROW User discovers or learns of any misuse, destruction, damage, or vandalism to its Facilities.

Section 20-110 CONFORMANCE WITH MAJOR THOROUGHFARE PLAN

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

for the value of or loss by a ROW user of any improvements constructed in the area shown in the MTP subsequent to the effective date of this Ordinance.

Section 20-111 RIGHTS IN THE EVENT OF ABANDONMENT

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

Section 20-112 SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUITS

All poles in the Rights of Way shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with neither vehicular nor pedestrian travel. The location and route of all conduits, fiber, cables, and Utilities, and Facilities placed and constructed by a ROW User in the construction and maintenance of its system in the City shall be subject to the reasonable and proper control, direction and approval of the City. Any "non-standard" placement of poles, stubs, guys and anchors is subject to all provisions of this Chapter. Any "standard" placement of poles, stubs, guys, and anchors is exempt from this Chapter. "Standard" is defined by the provisions of the UECM. These regulations do not apply to the installation of any type of structure intended to support wireless facilities authorized under the City's zoning regulations.

Section 20-113 ATTACHMENTS TO POLES

- A) Nothing shall obligate or restrict a ROW User from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or Facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the City.
- B) A ROW User shall utilize existing poles, conduits, and other Facilities whenever reasonably and/or economically possible. Prior to the utilization of any Right of Way for the placement of any of its Facilities, the ROW User shall make available to the Director any utility pole usage agreement with each Utility within the City currently owning poles, conduits, and other Facilities, whose poles, conduits and Facilities are to be used.

Section 20-114 TEMPORARY REARRANGEMENT OF AERIAL WIRES

The ROW User shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The ROW User may require payment in advance. The ROW User shall be given not less than five (5) days advance notice to arrange for such temporary rearrangements. The ROW User shall remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the

City. The ROW User may invoice third parties for the cost of this work where applicable.

Section 20-115 UTILITY EXCAVATION CRITERIA MANUAL ADOPTED

The Director is authorized to develop the Utility Excavation Criteria Manual (UECM), First Edition which shall be approved and adopted as the City of Live Oak, Departments of Public Works' official technical and policy manual no later than the effective date of this Ordinance. Three copies of the UECM shall be placed on file and available for inspection in the offices of the City Secretary.

Section 20-116 BACKFILL OF EXCAVATED AREA

Open trenches may be temporarily backfilled for the convenience of the Permittee or the public safety. At least one (1) hour prior to beginning permanent backfill operations, the Permittee shall notify the Director of the time the backfill will begin.

All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. The new roadway base material shall be a minimum depth of six inches (6") asphalt treated base or other approved roadway base material, as detailed in the UECM.

Section 20-117 RESTORATION OF PAVEMENT

Unless otherwise specified in the Permit, restoration of the asphalt pavement of any Street, alley Right of Way or other public place shall be performed by the Permittee or by the City, upon request by the Permittee. Nothing in this section shall relieve the ROW User from the responsibility to maintain the Excavation or installation in a safe condition until it is repaved by City or otherwise restored. In addition to all other applicable fees or charges, if the ROW User or Permittee making the Excavation requests repaving by the City, the ROW User shall pay for repaving at a rate to be established by the City.

- A) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than four hundred (400) feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the Director.
- B) All Excavations shall comply with the standards and requirements established from time to time by the Director for compaction, backfill and pavement restoration.
- C) Any excavated pavement, debris and other rubble shall be removed, together with any surplus material, within one (1) working day from the time such material is placed upon the street. After backfilling is completed,

and prior to repaving the cut, the ROW User shall remove all loose paving material and trim the edges of the Excavation at the street surface to the satisfaction of the Director.

- D) Whenever any caving occurs in the sidewalls of any Excavation, the pavements above such caving shall be cut away, trench backfilled and pavement restored in accordance with the UECM. In no case shall any side or lateral tamping fill any void under a pavement.

Section 20-118 EXCAVATION SPECIFICATIONS

All Excavations shall be made in accordance with plans submitted with the Permit Application and in accordance with specifications set forth in the UECM. All plans shall be prepared in accordance with all City specifications and the UECM. All Excavations shall be repaired in such a way so as not to become depressed, cracked, broken, or in any way fail during the remaining "Life of the Street." The remaining "Life of the Street" for this purpose shall be until the PCI Index drops to below 50 or until the subject area is repaved by the City or other entity. Additional specifications may be contained in the UECM.

Section 20-119 CLEANUP OF RIGHT OF WAY

In every case and at all times, the work of removing from the Right of Way all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from the Excavation shall be the responsibility of the ROW User. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. The ROW User shall clean the surrounding area, as outlined above, within one (1) day upon completion and approval of all trench work and pavement restoration unless the Director, sufficient reason therefore having been given to his satisfaction, grants an extension of time.

Section 20-120 SUBSTANDARD REPAIR OF PAVEMENT OR RIGHT OF WAY

In case the pavement or the surface of the Street, alley, or Right of Way in, over or near any Excavation should become depressed, cracked, or broken any time or fails in any way at any time after the Excavation has been made and during the remaining Life of the Street, the ROW User shall comply with any applicable obligations of this Ordinance, including, without limitation, reimbursement to City of the cost to restore the Street or Right of Way as set forth in this Ordinance.

Section 20-121 FAILURE TO COMPLETE WORK WITHIN SPECIFIED TIME

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

Section 20-122 PERMANENT PAVEMENT REPAIRS

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

- A) **PERMANENT PAVEMENT REPAIRS BY CITY** - If the City is to make the permanent pavement repairs, the ROW User shall maintain the excavated area for a period of two (2) weeks after acceptance by the Director. After the two-week period, the City will be responsible for maintaining the excavated area until final restoration is made. Backfill failures shall remain the responsibility of the ROW User. The ROW User shall reimburse the City for all costs of any backfill failure before and/or after permanent pavement repair.
- B) **PERMANENT PAVEMENT REPAIRS BY ROW USER** - If the ROW User is authorized to make permanent pavement repairs, the ROW User will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW User shall make final repairs within thirty (30) days on arterial and collector streets and within thirty (30) days on residential, local and alley streets after the Director makes final inspection. Backfill failures shall remain the responsibility of the ROW User.

Section 20-123 RESPONSIBILITY FOR SIGNS, BARRICADES AND WARNING DEVICES

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

- A) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, may place and maintain the traffic control devices in a construction area.
- B) The ROW User must either (i) subcontract the barricading to a firm specializing in traffic control, or (ii) submit the qualifications and name(s) of employees to the Director for approval prior to the work commencing. They must also submit a traffic control plan for review. All signs and barricades must conform to the requirements of the TMUTCD.
- C) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and approved by the Director if not provided by a traffic control firm.

- D) All barricades, plates, and other traffic control equipment must display accurate and sufficient information including the name of the ROW User.
- E) Non-Compliance with the TMUTCD shall be cited in writing. In the event of non-compliance after citation, the Director may place the necessary devices as required and the ROW USER shall pay the charges therefor. The ROW User shall reimburse the City for all such expenses as well as \$500.00 for non-compliance. Failure to comply with this provision may result in denial of application for future Permits.
- F) All traffic control devices must be removed immediately upon completion of work.

Prior to commencement of any Excavation, or any work relative to a Permit, the ROW User shall install at the work site informational sign in conformance with the Requirements of the UECM.

Section 20-124 DUTY TO BARRICADE

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

Section 20-125 INSPECTION

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

Section 20-126 MATERIALS TESTING

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

Section 20-127 DUTIES OF PERSONS MAKING EXCAVATIONS OR CREATING OBSTRUCTIONS

Any Person who shall cause to be made any Excavation or obstruction in any Street or Right of Way may not suffer the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such Street, or Right of Way so as to restore the same

to its condition previous to the making of such cut or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or Right of Way in as good condition as before the Excavation.

Section 20-128 CEASE WORK

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

Section 20-129 REQUIREMENTS

The Director may issue a written notice to the Permittee indicating work that does not conform to the terms of the Permit, applicable Standards, conditions, or codes, or other applicable regulation. Within ten (10) days after issuance of written notice, the Permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the Permit.

Section 20-130 REPORTING

When the work under any Permit hereunder is completed, the Permittee shall furnish the Director a Completion Certificate.

Section 20-131 REVOCATION OF PERMIT

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

- (A) The violation of any provision of the Permit;
- (B) An evasion or attempt to evade any provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (C) Any material misrepresentation of any fact in the Permit Application;
- (D) The failure to meet insurance, surety bond, or indemnification requirements;
- (E) The failure to complete the work in a timely manner;
- (F) The failure to correct a condition indicated on an order issued pursuant to this Ordinance;

- (G) Repeated traffic control violations;
- (H) Failure to repair Facilities damaged in the Right of Way; or
- (I) Violation of any part of this Ordinance.

If the Director determines that the Permittee has committed a breach of any law or condition of the Right of Way Permit, the Director shall make a written demand upon the Permittee to remedy such violation. Continued violation may be cause for revocation of the Permit, or legal action, or both. The Director may revoke the Permit, provide specifications to cure the breach, or both. Within five (5) calendar days of receiving notification of the breach, Permittee shall contact the Director with a plan, acceptable to the Director, for correction of the breach. Permittee's failure to do so or Permittee's failure to timely implement the approved plan shall be cause for revocation of the Permit.

Section 20-132 WORK DONE WITHOUT A PERMIT

No cut, Excavation, grading or disturbing of the Right of Way in any way shall be made other than Excavations necessary for Emergency work without first securing a Permit. No Person or ROW User shall at any time open or encumber more of the Right of Way than shall be reasonably necessary to complete a project in the most expeditious manner.

Section 20-133 RIGHT OF WAY RESTORATION REQUIREMENTS

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

All earth, materials, sidewalks, paving, crossing, or improvements of any kind which are owned or possessed by City and damaged, disturbed, or removed by a ROW User shall be fully repaired promptly by the ROW User at its sole expense, to the reasonable satisfaction of the Director.

After any Excavation, the ROW User shall, at its expense, restore the Right of Way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the Excavation. The restoration shall be made in accordance with specifications set forth in the UECM and the repair shall endure without failure for the remaining Life of the Street, as such period is described in this Ordinance.

In the event the ROW User fails to restore the Right of Way in the manner and to the condition required herein, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the ROW User that,

unless within five (5) days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the Right of Way by the ROW User, the City may take over the work and prosecute same to completion, by contract or otherwise, at the expense of the ROW User, and the ROW User and its surety shall be liable to the City for any and all cost incurred by the City by reason of such prosecution and completion, including, without limitation, the applicable Public Inconvenience Penalty. Nothing contained herein shall limit any other remedies available to the City.

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

In all Right of Way restoration, the ROW User guarantees its work and shall maintain it for the remaining "Life of the Street" following completion of the restoration. During the period following completion, the ROW User shall, in the event of any failure of the restoration, upon notification from the Director, reimburse City for pavement restoration costs. Additionally, the ROW User in the event of such failure, shall within forty eight (48) hours of notice from City, repair the subject trench envelope.

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

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

Section 20-134 EXCAVATIONS NOT IN ACCORDANCE WITH PERMIT DECLARED UNLAWFUL

- A) It shall be unlawful for any Person to make, cause or allow to be made, any Excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, Utility pole or other Utility or appliance in or under the surface of any Street, alley, sidewalk, Right of Way or other public place, at any location, other than that described in the application for the Permit and as shown on the plans filed with the Director, and in accordance with the requirements of the Permit. If the circumstances appearing after the Excavation is commenced make it impossible to comply with the Permit, the Director may grant a waiver to take the circumstances into account.
- B) Failure to comply with requirements set forth in the chapter on any Permit shall be cause for revocation of the subject Permit and of any other

Permits held by the same Permittee until the violations have been corrected or the Director has approved alternative requirements.

Section 20-135 REMOVAL AND RECONSTRUCTION WHERE WORK DEFECTIVE

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

Section 20-136 LOCATION AND RELOCATION OF FACILITIES

Subject to applicable Federal, State, and local law, the ROW User shall, upon the request of the City, locate and/or relocate its Facilities situated within any Right of Way, at no expense to the City, where reasonable and necessary to accommodate street construction, widening, or public improvement projects of the City. When relocation is necessitated by federal government requirements, and includes reimbursements, the City will reimburse Applicant for its proportionate share from funds provided the City in such reimbursements.

Section 20-137 PRE-EXCAVATION FACILITIES LOCATION

The ROW User shall contact the One Call Center and the City of Live Oak Utilities, so long as that center is in existence and utilized by the City, or such other center at the time utilized by City, at least 48 hours prior to Excavation. The ROW User shall protect and support all Utility Facilities during construction.

Section 20-138 RELOCATION FACILITIES FOR CITY

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

Section 20-139 RIGHT OF WAY VACATION AND RESERVATION OF RIGHT

In the event of vacation of a Right of Way requiring the relocation of Facilities, the ROW User being relocated shall pay the costs of the relocation where the ROW User does not own an easement or other real property interest.

Section 20-140 ABANDONED FACILITIES

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

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

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

Section 20-140 ROUTING AND SPATIAL ASSIGNMENT

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

DIVISION 3. COSTS, FEES AND ENFORCEMENT

Section 20-141 FEES

- A) **PERMIT APPLICATION FEE** - There is a Permit application fee of twenty-five dollars (\$25.00). Permits shall be issued or denied within ten (10) days. There is an Expedited Application Fee of Two-Hundred Fifty dollars (\$250.00) for Permits which shall be issued or denied within two days. The fees are paid by an Applicant when a Permit is issued. The fees are charged for administration and input of Permit data. An expedited permit may be requested upon a showing of good cause, including but not limited to a pending order for service that cannot be met by means of existing Facilities of the ROW User, an expedited

Permit may be requested and shall be issued or denied within two days of application.

- B) **INSPECTION FEE** - The work allowed by each Permit shall be subject to inspection as determined by the Director. There is an Inspection fee of two hundred dollars (\$200.00) per inspection. The Department shall collect the fee from an Applicant for each inspection by the Department for any Excavation. The fee shall be paid at the time of application for a Permit. Inspections may be performed on any and all Excavations, at the discretion of the Director, based on previous performance of the Utility Owner, location of Excavation, type of work and/or construction methodology. Overtime inspection fees are incurred at a rate of \$40.00 per hour and \$70.00 per hour on Sundays and holidays.
- C) **PERMIT EXPIRATION FEE** - A fee of thirty dollars (\$30.00) will be charged for any Permit that has not been extended before its expiration date and for any Permit wherein work has not been completed by the expiration date provided for in the Permit. The thirty (30) day period begins with the date of issuance of the Permit.
- D) **ELECTRONIC MAPS SUBMITTAL FEE** – A fee of forty dollars (\$40.00) per hour will be charged for each hour of labor necessitated by information submitted to City in hard copy format in lieu of submittals to City in electronic format. There is a minimum of two hours.
- E) **REGISTRATION FEE** – There is a fee of thirty-five (\$35.00) dollars per Right of Way User per year for processing registration information, which fee will be collected upon registration.

Section 20-142 PENALTY FOR VIOLATION OF THIS CHAPTER

This is not a traffic ordinance authorized under the Texas Motor Vehicle Statutes, and is not governed by the penal provisions there under. Any violation of the provisions of this division is hereby declared to be a health and safety related misdemeanor, and upon conviction is punishable by a fine of not more than five hundred dollars (\$500.00). Each day during which a violation continues shall be deemed a separate violation of this Chapter.

Section 20-143 CLEAN UP COSTS

The ROW User shall maintain the area on and around the Excavation and related work in a clean, safe and orderly fashion at all times during conduct of the Excavation and shall clean the same area upon completion of work.

DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING, AND LIABILITY

Section 20-144 LIABILITY OF RIGHT OF WAY USER

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

Section 20-145 INSURANCE

- A) Right of Way Users shall furnish an original completed Certificate of Insurance or the City's Standard Certificate of Insurance form to the City's Finance Department, City Secretary's Office, and Public Works Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Ordinance until such certificate shall have been delivered to the City's Finance Department, City Secretary's Office, and Public Works Department, and no officer or employee, other than the City Attorney, shall have authority to waive this requirement.
- B) The City reserves the right to review the insurance requirements of this section to modify insurance coverage and their limits when deemed necessary and prudent by the City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Ordinance, but in no instance will the City allow modification whereupon the City may incur increased risk.
- C) Subject to the Right of Way User's right to maintain reasonable deductibles in such amounts as are approved by the City, Right of Way Users shall obtain and maintain in full force and effect for the duration of the Permit, and any extension thereof, and/or duration of time it maintains Facilities in the public Right of Way, at the Right of Way User's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas

and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNT
Workers' Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
Commercial General (Public) Liability Insurance to include coverage for the following:	
a) Premises/Operations	Bodily Injury and
b) Independent Contractors	Property Damage of \$2,000,000 per occurrence
c) Products/completed operations	\$5,000,000 General
d) Contractual Liability	Aggregate or its equivalent in umbrella or excess liability coverage
e) Personal Injury	
f) Explosion, collapse, underground	
g) Broad form property damage to include fire legal liability	
Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent.
a) Owned/Leased Vehicles	
b) Non owned vehicles	
c) Hired vehicles	
Professional Liability (Claims made from)	\$1,000,000 per claim to pay on behalf of the Insured all sums which the insured shall become legally obligated to pay as damages by Reason of any act, malpractice, error or omission in professional services.
Contractor's Pollution Liability Coverage	\$1,000,000 written on a claims made form with a two year extended reporting period
Pollution Liability Motor Carrier & Trucker Coverage endorsing the upset, overturn and remediation of a load in transport	\$1,000,000 per occurrence written on an occurrence form, combined single limit for Bodily Injury and Property Damage.

If applicable

- D) The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon either of the parties hereto or the underwriter of an such policies). Upon such request by the City, the Rights-of-Way User shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- E) Right of Way Users shall ensure that all insurance contracts and Certificate(s) of Insurance contain the following required provisions.
- Name the City and its officers, employees, volunteers, agents, and elected representatives as additional insureds with respect to the operations and activities of, or on behalf, the named insured

performed in the Right of Way under provision of this Ordinance, with the exception of the professional liability, workers' compensation and liability policy; and

- Right of Way User's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City; and
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Live Oak where the City is an additional insured shown on the policy; and
 - Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the City.
- F) Right of Way User shall notify the city in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:
- City of Live Oak
City Secretary
8001 Shin Oak Dr.
Live Oak, Texas 78233
- G) Nothing herein contained shall be construed as limiting in any way the extent to which the Right of Way User may be held responsible for payments of damages to persons or property resulting from the Right of Way User's or its subcontractors' performance of the work performed in the Public Right of Way.
- H) The City owned Utilities shall not be required to provide the insurance specified herein.
- I) With respect to the Right of Way User's obligation to comply with the requirements for Commercial General (public) Liability Insurance coverage, the City acknowledges and shall allow a self-insured governmental entity with ability to maintain excess insurance coverage to satisfy its obligation to comply with the insurance requirements stipulated herein through self-insurance upon annual production of evidence in the form of a self-insured letter provided by the Right of Way User that is satisfactory to the City Attorney. For any other self-insured

entity, the City may allow the Right of Way User to self-insure upon annual production of evidence that is satisfactory to the City Attorney.

Section 20-146 PERFORMANCE/ASSURANCE BOND

Before a Permit shall be issued, the Applicant therefore shall execute and deliver to the City, to be kept on file in the City Secretary's office, a good and sufficient bond of or assurance, in the sum of ten thousand dollars (\$10,000.00) to be approved by the Public Works Director and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the City free and harmless from liability on all such claims for damages to the performance or assurance bond shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or Excavation having been made. The bond shall be maintained until the work is accepted by the City.

Section 20-146 OPTIONAL CONTINUING BOND AND DEPOSIT

In lieu of a bond of performance or assurance required for each Permit issued under the Performance/Assurance Bond Section of this Ordinance, the Applicant may maintain a one-time bond of performance or assurance with the Director the sum of one hundred thousand dollars (\$100,000.00) for the purposes specified in **Section 20-145**, and shall have on file, in the City Secretary's office, an approved bond of performance or assurance in like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than one hundred thousand dollars (\$100,000.00); provided, further, that **Section 20-146** shall not apply to applications for Permits to make cuts, openings or Excavations in any street, plaza or other public place paved under contract with the City, unless the contract of maintenance and the maintenance bond therefor shall have expired. The bond shall be maintained until the Applicant is no longer working in or on City Streets.

Section 20-147 LIABILITY OF CONTRACTOR AND SURETIES FOR MAINTENANCE AND REPAIR WORK

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

written notice to the ROW User. In such event, the ROW User shall reimburse the City for its direct costs associated with the repair of the failure of the restoration work.

Section 20-148 WHEN ADDITIONAL SECURITY REQUIRED

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

Section 20-149 DECISION OF DIRECTOR BINDING ON CONTRACTOR, ROW USER, AND SURETIES

In any question as to when any work was actually begun or other specific dates, the decision of the Director shall be conclusive on the Contractor, ROW User, and the sureties on all such bonds.

DIVISION 5 VARIANCES AND EXEMPTIONS

Section 20-150 VARIANCES/EXEMPTIONS

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

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

Section 20-151 EXCEPTION FOR IRRIGATION, SPRINKLER AND RESIDENTIAL PURPOSES

This Ordinance shall not be applicable to Excavations which are not in Pavement and are solely for the purpose of creating a sprinkler system for one or more residential units located in Bexar County.

DIVISION 6 CERTIFICATED TELECOMMUNICATION PROVIDERS AND SICFA HOLDERS

Section 20-152 CERTIFICATED TELECOMMUNICATIONS PROVIDER AND SICFA HOLDER AUTHORITY REQUIRED/NON-EXCLUSIVE USE

A CTP or SICFA Holder must provide evidence that the CTP or SICFA Holder has acquired authorization from the Texas Public Utility Commission pursuant to state law, prior to obtaining a permit to use Public Rights of Way. The CTP's right to use and occupy the Public Rights of Way shall not be exclusive and CTP or SICFA Holder recognizes the City's right to exercise its police powers and manage its Public Rights of Way, based on applicable Local, State and Federal laws.

Section 20-153- RESERVED.

Section 20-154 TRANSFER AND NOTICE

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

Section 20-155 EXEMPTION FROM FEES

Municipally owned utilities, CTP's and SICFA Holders are exempted from the following fees provided for in this Ordinance:

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

Section 20-156 WAIVER OF BONDS

Unless determined otherwise by the Director a CTP will be exempt from the bonding requirements of this Ordinance, however, in the event that the Director determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, or the health and safety of the public, then the Director may require that a CTP post a reasonable bond not to exceed one-hundred thousand dollars and zero cents (\$100,000.00). The Director shall consult with the City's Risk Manager prior to imposing a bond on a CTP. Factors to be considered in determining reasonable grounds may include, but not limited to, a conviction for violation of this Ordinance, a general pattern of sub-standard adherence to the provisions of this Ordinance or the failure to comply with this Ordinance. If three (3) years pass from the date that the Director requires a bond of a CTP and it has not been necessary for the City to seek performance under the bond, then a bond will no longer be required pursuant to this section.

Section 20-157 CTP INDEMNITY AND SIFCA HOLDER

A CTP and SIFCA Holder shall indemnify the City as specified by Section 283.057 of the Texas Local Government Code and Section 66.012 of the Texas Utilities Code, as may be amended. A CTP or SICFA Holder shall be exempt from all indemnity requirements of this Ordinance that are inconsistent with Section 283.057 and Section 66.012.

DIVISION 7 SIDEWALK CONSTRUCTION

Section 20-158 EXEMPTION FOR WALK DONE UNDER CONTRACT WITH CITY

The provisions of this article shall not apply to any sidewalk or curbing construction or repairs done under contract with the City, except to the extent which may be specified in such contract or ordinance passed pursuant thereto, or as further described herein.

SECTION 2: Section 22.5, TELECOMMUNICATIONS of the Live Oak Code of Ordinances is hereby repealed in its entirety and that section shall be Reserved for future provisions as necessary.

SECTION 3: This Ordinance shall be cumulative of all provisions of ordinances of the City of Live Oak, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

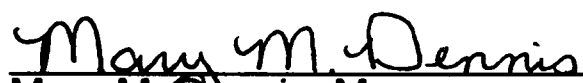
SECTION 4: This Ordinance has a penalty associated with a violation and shall take effect immediately upon its publication as provided by law. Notice of the enactment of this

Ordinance will be given by publishing the Ordinance or its descriptive caption and penalty in the City's official newspaper one time within 30 days of passage.

SECTION 5: If any section, provision, subdivision, clause or part of this ordinance shall be adjudged or held unconstitutional or invalid, it shall not affect the validity of this ordinance as whole or any other part or provision contained herein.

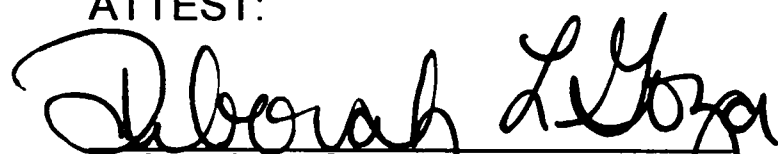
SECTION 6. The publishers of the City Code are authorized to amend said Codes to reflect the changes adopted herein.

PASSED AND APPROVED THIS 8th DAY OF November 2016.




Mary M. Dennis, Mayor
City of Live Oak

ATTEST:



Deborah L. Goza, City Secretary

APPROVED AS TO FORM:



Clarissa M. Rodriguez, City Attorney