

CITY OF HASLET

ORDINANCE NO. 037-2016

AN ORDINANCE OF THE CITY OF HASLET, TEXAS, AMENDING CHAPTER 13 "UTILITIES" OF THE CODE OF ORDINANCES BY ADDING A NEW ARTICLE 13.15 "RIGHT-OF-WAY MANAGEMENT" REGULATING THE INSTALLATION, REPAIR AND MAINTENANCE OF UTILITY AND TELECOMMUNICATIONS FACILITIES WITHIN THE RIGHT-OF-WAY IN THE CITY; REPEALING ARTICLE 3.03 "EXCAVATIONS" OF THE HASLET CODE OF ORDINANCES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Haslet, Texas is a Type A general-law municipality located in Tarrant and Denton Counties, Texas, 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 has control of and jurisdiction over the public streets and other rights-of-way of the City, with the right to regulate or prohibit the location of pipes, cable, lines, wires or other facilities in the right- of-way; and

WHEREAS, without proper regulation, the placement of such facilities within the right-of-way will conflict with the primary uses of the right-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 applicable state laws, including but not limited to Tex. Util. Code §§ 14.008 and 54.205 and Tex. Rev. Civ. Stats. Ann. art. 1175, subd. 2, the City wishes to exercise its historical rights to control and manage its rights-of-way, all in accordance with Tex. Loc. Gov't Code §§ 283.052and 283.056; and Texas Utility Code §54.203; and

WHEREAS, the City Council deems that it is necessary to adopt this ordinance adding a new Article 13.15 "Right-of-Way Management" to the Code of Ordinances regulating 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 its rights-of-way by the many gas, electric, cable, telecommunication and other utility providers so that the best interests and general welfare of the public are served;

WHEREAS, the Council desires to repeal the existing provisions of Article 3.03 "Excavations" of the Code of Ordinances as such provisions are incorporated into the new Article 13.15 governing right-of-way management.

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

SECTION 1

That Chapter 13 “Utilities” of the Haslet Code of Ordinances is hereby amended by adding a new Article 13.15 “Right-of-Way Management” to read as follows:

“RIGHT-OF-WAY MANAGEMENT”

Sec. 13.15.001 Purpose and administration

(a) Responsibility. It shall be the duty and responsibility of the City Engineer or the Engineer's designee to administer, implement and enforce the provisions of this Article.

(b) Scope of Article.

(1) This Article governs the location, placement, installation, repair, maintenance and removal of all Utility Facilities within all rights-of-way of the City.

(2) A Utility Provider with a valid unexpired franchise agreement or other authorization from the City to use the rights-of-way of the City may continue to operate under and comply with that agreement until the agreement expires or is terminated.

(3) To the extent the provisions of this Article conflict with a unexpired franchise agreement or other authorization from the City to use the right-of-way, the provisions of the franchise shall prevail during the term of the franchise. To the extent that the provisions of this Article can be reconciled, both the franchise and this Article shall be given effect.

(c) Findings and Purpose.

The purpose of this Article is to:

(1) Assist in the management of facilities placed in, on, or over the rights-of-way of the City in order to provide for the orderly maintenance of such rights-of-way, avoid costly interruption of utility service to the citizens, minimize congestion, inconvenience, unsightly visual impact and other adverse effects of utility service, and minimize the costs to the citizens resulting from the placement of facilities within the rights-of-way; and

(2) Govern the use and occupancy of the rights-of-way; and

(3) Assist the City in its efforts to protect the public health, safety and welfare; and

- (4) Conserve the limited physical capacity of the rights-of-way held in public trust by the City; and
 - (5) Preserve the physical integrity of the streets and highways; and
 - (6) Control the orderly flow of vehicles and pedestrians; and
 - (7) Prevent interference between the different entities using the rights-of-way; and
 - (8) Protect the safety, security, appearance and condition of the rights-of-way; and
 - (9) Comply with the requirements of applicable federal and state laws.
- (d) Right-of-Way Occupancy.
 Except as otherwise exempted by law, prior to constructing facilities in, on or over the public rights-of-way, a person must obtain a separate franchise or license agreement from the City in addition to the registration required by this Article. A registration obtained pursuant to this Article does not constitute such a franchise or license agreement.

Sec. 13.15.002 Definitions

As used in this Article, the following terms shall have the meaning subscribed herein:

Certificated telecommunications provider. Certified telecommunications provider has the same meaning as that provided by Texas Local Government Code, Section 283.002, as amended.

City. The City of Haslet or the designated agent of the City.

City Council. The City Council of the City of Haslet.

Construction. Any work above the surface, on the surface or beneath the surface of a public right-of-way, including, but not limited to, installing, servicing, repairing or modifying any facility(s) in, above or under the surface of the public right-of-way, and restoring the surface and subsurface of the public right-of-way.

Construction Performance Bond. Any of the following forms of security provided at the City's option:

1. Individual project bond;
2. Cash deposit;
3. Security of a form listed or approved under the statutes of the State of Texas; or
4. Letter of credit, in a form acceptable to the City.

Department. The Engineering Department of the City.

Engineer. The City Engineer of the City of Haslet or the Engineer's designee.

Emergency. A condition that the City, Engineer, or Department determines; (1) poses a clear and immediate danger to life or health, or an immediate and significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Excavation. Any digging, hollowing, directional drilling or boring more than six (6) inches below the surface of the ground.

Facility or facilities The plant, equipment and property, including but not limited to lines, poles, mains, pipes, pipelines, conduits, ducts, cables, wires, splice boxes, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things located, or are proposed to be located, under, on or above the surface of the ground within the rights- of-way of the City.

Municipal Authorization. An individual grant or agreement permitting a Utility Provider to use one or more rights-of-way of the City, issued by the City and accepted by such Utility Provider.

Permit or Permit to Construct. A permit to perform construction granted in accordance with the City's ordinances.

Person. A natural person, corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, public or private agency, sole proprietorship, a utility or any other legal entity; including a successor or assign of any of the foregoing. The term shall also mean a political subdivision, other than the City.

Registration. The document confirming the City's approval only of a particular proposed location within specific right(s)-of-way of specifically identified proposed utility facilities. Registration does not constitute consent by the City for utility facilities to be placed in the right-of-way, which consent must also be obtained unless otherwise provided by law or other agreement.

Right-of-Way. 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. The term does not include the airwaves above the Right-of-Way with regard to wireless telecommunications, or a public right-of-way owned, regulated and maintained by a political subdivision other than the City.

Restore or Restoration. The process by which a right-of-way is returned following completion of construction to a condition that is equal to or better than the condition that existed prior to commencement of construction.

SWPPP. The Storm Water Pollution Prevention Plan prepared by a licensed Professional Engineer in the State of Texas according to the Texas Commission on Environmental Quality (TCEQ) regulations.

Utility Construction Permit. That document giving consent to construct, install, repair, relocate or remove facilities within the right-of-way. A Utility Construction Permit only allows the holder to construct those specific facilities described in such permit, and in that part of the right-of-way described in such permit.

Utility Owner. Any person who owns any facility or facilities that are or are proposed to be installed or maintained in the rights-of-way. Included within this definition is the owner's contractor, subcontractor, agent or authorized representative.

Utility Provider. A business that offers a public utility service including, but not limited to, gas, electricity, cable or telecommunications services, and that owns, rents, or has an agreement which authorizes it to utilize Facilities within the right-of-way. Utility Provider includes the Utility Provider's contractor, subcontractor, agent or authorized representative.

Sec. 13.15.003 Registration required

- (a) In order to protect the public health, safety and welfare, all Utility Owners shall register with the City on a form provided by the Engineer, and comply with the requirements therefore.
- (b) The Utility Owner applying for registration shall furnish the City the following information, which shall be subscribed and sworn to before a notary public:
 - (1) The name, address, and telephone number of the Utility Owner;
 - (2) Any trade names under which the Utility Owner does or proposes to do business;
 - (3) The name, address, telephone number, fax number, and email address of the person(s) who will be the contact person(s) for the Utility Owner;
 - (4) The names, addresses and telephone numbers of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the Utility Owner;
 - (5) The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day to respond to emergencies; and
 - (6) Proof of insurance and bonds, as follows:
 - (A) Except as otherwise specified, the Utility Owner and a contractor of any tier will be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage's with limits not less than those

set forth below with insurers and under forms of policies satisfactory to the City. It shall be the responsibility of the Utility Owner to insure Utility Owner and a contractor of any tier are adequately insured at all times. The existence of such insurance shall not relieve the Utility Owner or a contractor of any tier of any legal responsibility or obligation, whether in contract or tort.

(B) The Utility Owner shall submit to the Engineer certificates of insurance for each policy, required by this subsection, prior to the commencement of any work and during each year of the registration term, as evidence that Utility Owner and a contractor of any tier have the policies providing the required coverages and limits of insurance which are in full force and effect. The certificates of insurance or insurance policies shall provide that any company issuing an insurance policy required by this subsection shall provide not less than thirty (30) days advance written notice of any cancellation. Additionally, the Utility Owner shall immediately provide written notice to the Engineer upon receipt of any notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy required by this subsection.

(C) All policies, other than those for Worker's Compensation, shall be written on an occurrence basis and not on a claims made basis, and shall name the City, its officers and employees as additional insureds.

(D) All insurance policies required by this subsection shall contain an endorsement requiring the insurer to provide the Engineer with at least thirty (30) days prior written notice of any intention not to renew or to cancel such policy, such notice to be given by certified or registered mail.

(E) All insurance shall be provided through valid and enforceable policies, insured by insurers licensed to do business in the State of Texas. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company. Insurance policies must provide that the issuing company waives all right to recovery by way of subrogation against the City in connection with damage covered by the policy.

(F) The Utility Owner, and thereafter, for renewal purposes, the registration holder, shall pay all insurance premiums and assessments required to maintain such insurance. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment.

(G) The City will accept certificates of self-insurance issued by the State of Texas or letters written by the Utility Owner, in those instances where the State does not issue such letters, provided that the Utility Owner demonstrates by written information to the City that it has adequate financial resources to be a self-insured entity satisfying the requirements of this section for insurance and bonds. Certificates of self-insurance and letters written by the Utility Owner shall provide the same coverage as required herein.

(H) The Utility Owner and a contractor of any tier shall maintain workers' compensation and employers' liability insurance in accordance with the laws of the state of Texas or, in those instances where the state does not issue such letters, and provided that the Utility Owner demonstrates by written information to the City that it has adequate financial resources to be a self-insured entity after the date of passage of this ordinance, satisfies the requirements of this subsection for insurance and bonds, letters written by the Utility Owner which provide the same coverage as required herein.

(I) The Utility Owner and a contractor of any tier shall also maintain commercial general liability insurance with minimum limit of Five Million Dollars (\$5,000,000) as the combined single limit for each occurrence of bodily injury, sickness, disease or death of any person, other than the policy holder's employees, or damage to property of the City or any other person arising out of an act or omission of the policy holder, policy holder's subcontractor, agents or employees. This policy shall also include protection against claims insured by usual personal injury liability coverage as well as coverage for completed operations, products liability, contractual liability premises/operations, and independent contractors, as well as coverage that does not contain an XCU coverage exclusion.

(J) The Utility Owner and the Utility Owner's contractor shall also maintain automobile liability insurance covering the policy holder, its employees and agents, subcontractors and the additional insured's against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on-site and off-site of all motor vehicles whether they are owned, non-owned or hired. The liability shall not be less than Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

(K) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies, so long as in combination the limits equal or exceed those stated.

(L) The Utility Owner, and thereafter, the registration holder, without cost to the City, shall file performance and maintenance surety bonds for any construction to occur in the right of way. The surety bonds shall be issued by a surety company authorized to do business in the State of Texas. The maintenance bond shall be for a period not less than two (2) full years after the completion of the construction, and both bonds shall be in the amount of the estimated amount of the cost to restore the right-of-way given the work to be done, to protect the City in the event the registration holder leaves a job site in the right-of-way unfinished, incomplete or unsafe.

(M) A Utility Provider with a franchise in effect on the date of this Article satisfies the requirements of this subsection if the City determines that the

provider's franchise adequately provides for insurance and bonds; otherwise the utility provider shall comply with the requirements of this subsection.

(N) Failure of the City to verify compliance with the requirements of this section shall not waive any such requirements.

(7) Such other information as the Engineer may determine is reasonably necessary for proper consideration of the application.

Sec. 13.15.004 Registration issuance

(a) The Engineer shall issue a registration to the Utility Owner if after review of the application the Engineer determines that the Utility Owner:

- (1) Has complied with all requirements for issuance of the registration;
- (2) Has not made a false or inaccurate statement as to a material matter on the application for registration; and
- (3) Has not failed to pay any fees owed the City as a result of work performed in the right-of-way.

(b) A person who has in effect an existing franchise or license agreement with the City to use the right-of-way at the time of this Article shall still comply with the provisions of this Article, except to the extent the terms of the franchise or license agreement conflict with this Article, after which the Engineer shall issue a registration.

Sec. 13.15.005 Term of registration and fee

(a) A registration shall be valid for a period of five (5) years. A person may renew a registration by making application as provided by section 13.15.003. A registration is not transferrable.

(b) Each registration holder shall pay to the City a fee for the use of the right- of-way in an amount established by the City Council, except to the extent an existing franchise or license agreement or applicable state or federal law provides otherwise.

Sec. 13.15.006 Revocation of registration

The Engineer shall revoke a registration if the Engineer determines that the registration holder has:

- (1) given false or inaccurate information on the application for registration or in a hearing concerning the registration;
- (2) violated any provision of this Article; or

- (3) violated the terms of its franchise, if the registration holder has a franchise with the City.

Sec. 13.15.007 Appeal from denial or revocation of registration

If the Engineer denies or revokes a right-of-way registration, the City shall give written notice to the Utility Owner or registration holder by one of the following methods: (1) personal service; (2) certified mail, return receipt requested; or (3) electronic mail with delivery and receipt confirmed by return e-mail. The Utility Owner or registration holder may appeal the decision to deny or revoke a right-of-way registration by filing written notice of such appeal with the City Secretary within five (5) business days after receipt of the notice. The City Secretary shall give written notice of the time and place of the appeal hearing to the person appealing by one of the following methods: (1) personal service; (2) certified mail, return receipt requested; or (3) electronic mail with delivery and receipt confirmed by return e-mail. The City Administrator shall conduct a meeting and shall make a decision based on a preponderance of the evidence at the hearing. The burden of proof shall be on the Utility Owner or registration holder. Compliance with formal rules of evidence shall not be required. The decision of the City Administrator may be appealed to the City Council. The decision of the City Council shall be final.

Sec. 13.15.008 As-Built plans

(a) A utility provider which has facilities in the right-of-way existing as of the effective date of adoption of this Article and has not provided the City "As-Built Plans" shall provide such information to the Engineer not later than one (1) year after the effective date of this Article in the format specified by the Engineer and with sufficient detail to convey the type, size and location (within two feet (2') horizontally and vertically), including depth, of its facilities. The Utility Owner shall submit "As-Built Plans" in digital PDF format as required by the Engineer. If the Utility Owner does not submit "As-Built Plans" as required by this section, it waives all claims against the City for any damage caused to such Utility Owner's facilities by any future construction or utility installation activities, regardless of who performs such work.

(b) For facilities constructed after the effective date of this Article, a Utility Owner shall provide the Engineer with "As-Built Plans" within ninety (90) days of completion of facilities in the right-of-way. The plans shall be provided in digital PDF format as required by the Engineer in accordance with the provisions of subsection (a) above.

(c) The Engineer, for good cause, may waive all, or portions, of the requirements of subsections (a) and (b) above. Determination of good cause shall include an assessment of the following: (i) the Utility Owner's ability to feasibly and economically remove customer specific, proprietary or confidential information from its plans, and (ii) the Utility Owner's standard business practice relative to the preparation of construction and "As-Built" plans. The Engineer may impose conditions on any waiver granted under this subsection. The Engineer may reassess a waiver granted under this subsection, from time to time, to determine whether the Utility Owner's ability to provide "As-Built Plans" has changed.

(d) Nothing contained in this Article shall create, expand or enlarge the liability of the City for damage to any utility facilities of any Utility Owner, or create any duty of the City to any Utility Owner or other third party, except as expressly provided in this Article.

Sec. 13.15.009 Tree trimming or removal; temporary removal of facilities

(a) A Utility Owner 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 National Arborist Association and the International Society of Arboriculture. If tree removal become necessary the Utility Owner is required to obtain a Tree Removal Permit pursuant to Chapter 3, Article 3.10 Tree Protection of the Code or Ordinances of the City of Haslet. Should the Utility Owner, its contractor or agent, fail to remove trimmed materials or remove trees within forty-eight (48) hours during the performance of scheduled maintenance activities and fourteen (14) days after all service restoration activities have been completed due to emergency conditions, the City may remove the trimmings or trees or have them removed, and upon receipt of a bill from the City, the Utility Owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days.

(b) A Utility Owner shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures as requested by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Utility Owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

Sec. 13.15.010 Utility construction permit required; exceptions

(a) A Utility Owner shall obtain a Utility Construction Permit prior to performing any excavation, construction, relocation, removal, installation, repair or maintenance of facilities within the right-of-way, except as expressly provided otherwise herein. A Utility Construction Permit is required for new construction and replacement or upgrading of a Utility Provider's network in the right-of-way, whether located above the surface, on the surface, or underground. A Utility Construction Permit Application shall be signed by an authorized representative.

(b) The following work undertaken by a Utility Owner does not require a Utility Construction Permit:

(1) Work to existing facilities required by emergency conditions, provided that the Utility Owner complies with subsection (c) below;

(2) Work that does not require any excavation or construction, and which obstructs vehicular or pedestrian traffic on a street, alley or sidewalk for less than two (2) hours and which does not occur between the hours of 7:00 a.m. to 9:00 a.m. and 4:30 p.m. to 6:30 p.m. on weekdays, provided the Utility Owner has complied with the following requirements:

- (A) The Utility Owner has submitted a traffic control plan prepared in accordance with the Manual on Uniform Traffic Control Devices and in a form approved by the Engineer; and
- (B) The Engineer has approved the traffic control plan; and
- (C) The work is performed in compliance with the traffic control plan; and
- (D) Unless the work is performed under emergency conditions, the person has given the Engineer four (4) hours written notice of the proposed work.

(c) When performing work required by emergency conditions, the Utility Owner shall notify the Engineer as soon as practical, but in no event more than seventy-two (72) hours after commencing such work, and shall submit to the City Engineer within seventy-two (72) hours after commencing such work a reasonably detailed description of the work performed in the right-of-way. An updated "As-Built Plans" of facilities relocated during emergency work shall be provided to the Engineer within ninety (90) days of completion of the work.

(d) A Utility Owner applying for a Utility Construction Permit shall pay to the City a Utility Construction Permit fee in an amount established by the City Council except to the extent an existing franchise or license agreement or applicable state or federal law provides otherwise.

Sec. 13.15.011 Utility construction permit application

(a) An applicant shall submit an application for a Utility Construction Permit at least ten (10) working days before the commencement of work proposed in the application. Such application shall be signed by the applicant or the applicant's authorized agent or representative. Upon request of the Utility Owner, the Engineer may approve a shorter time period for submittal of an application.

(b) Except as otherwise permitted by this Article, prior to the commencement of any work, the person requesting a Utility Construction Permit will provide the Engineer with three (3) sets of engineering plans in the format specified by the Engineer showing the following information:

- (1) The proposed location and route of all facilities to be constructed or installed and the Utility Owner's plan for right-of-way construction; and
- (2) Description of the proposed facilities on a scale of one inch (1") equals fifty feet (50'), unless otherwise approved by the Engineer; and
- (3) Description of the location of all right-of-way and utility easements that the Utility Owner plans to use for such construction or installation; and
- (4) Description of all existing City and, to the extent known, other utility facilities which intersect, are impacted by, or in close proximity (ten feet) to the Utility Owner's proposed facilities and/or work; and

- (5) Description of the facilities the Utility Owner proposes to install, including but not limited to: pipe size, number and size of ducts, number and size of valves, location and size of stub outs; and
 - (6) The typical details of manholes and/or handholes the Utility Owner plans to use or access; and
 - (7) A complete legend; and
 - (8) A storm water pollution prevention plan (SWPPP) in accordance with City ordinances and other applicable laws and regulations.
- (c) The applicant shall also submit documentation showing the following:
- (1) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of a representative of the contractor who may be reached twenty-four (24) hours a day during construction; and
 - (2) The methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Engineer, which approval will not be unreasonably withheld; and
 - (3) A statement that the proof of insurance, bond or other financial information, as required by this ordinance, are current and on file with the City; and
 - (4) A copy of any permit or approval issued by any federal or state authorities for work in federal or state right-of-way located in the City; and
 - (5) Verification that the applicant has a valid right-of-way registration from the City; and
 - (6) Evidence that all of the Utility Providers in the area have been given notice of the construction. (Notice to utilities subject to Chapter 251 of the Texas Utilities Code may be accomplished by providing the City with the reference number assigned by the notification center established pursuant to Chapter 251 of the Texas Utilities Code. If this reference number is not known at the time of application, the reference number shall be provided at least forty-eight (48) hours prior to commencement of construction); and
 - (7) A copy of the applicant's traffic control plan and policy for work performed in the right-of-way.
- (d) The Engineer may require a pre-construction meeting with the Utility Owner and its contractor.

(e) Permit Fee Required:

The fee, if applicable, for a utility construction permit shall be in accordance with the city fee schedule and other applicable law, including chapter 283 of the Local Government Code.

Sec. 13.15.012 Utility construction permit issuance

(a) The Engineer shall process and administratively complete the Utility Construction Permit Application and shall issue a Utility Construction Permit, provided that the Utility Owner is in compliance with the provisions of this Article.

(b) The Utility Construction Permit shall state to whom it is issued, location of work, identification of facilities to be installed, repaired or upgraded or maintained, dates and times of work that is to take place, and any other condition set out by the Engineer.

(c) The permit holder shall:

(1) Maintain a copy of the Utility Construction Permit and approved engineering plans at the construction site, which shall be made available for inspection by the Engineer at all times when construction or installation work is occurring; and

(2) Complete all construction work authorized by the Utility Construction Permit in the time specified, unless the permit holder has obtained an extension from the Engineer; and

(3) Provide the Engineer access to the work site, and such further information that may reasonably be required by the Engineer to ensure compliance with the Utility Construction Permit; and

(4) Immediately notify the Engineer of any conflicts discovered with existing facilities, damage to any existing facilities, or other circumstances that reasonably require the City to take corrective action.

(d) The Utility Construction Permit shall expire if the work authorized by the permit does not commence within one hundred twenty (120) days from the date of issuance of the permit or work is suspended or abandoned for a period of 90 days at any time after work is commenced. The Engineer may authorize renewal of the permit for two additional sixty (60) day periods without resubmission of an application, provided that the scope of work set forth in the original application is not changed.

Sec. 13.15.013 Revocation of utility construction permit

The Engineer shall revoke a Utility Construction Permit if the Engineer determines that the permit holder has:

1. Given false or inaccurate information on the application for a Utility Construction Permit or in a hearing concerning the Utility Construction Permit; or
2. Has violated any provisions of this ordinance.

Sec. 13.15.014 Appeal from denial or revocation of utility construction permit

If the Engineer denies or revokes a Utility Construction Permit, the Engineer shall give notice to the Utility Owner or registration holder by one of the following methods: (1) personal service; (2) certified mail, return receipt requested; or (3) electronic mail with delivery confirmed by return e-mail. The Utility Owner or registration holder may appeal the decision to deny or revoke the Utility Construction Permit by filing written notice with the City Secretary within five (5) business days after receipt of notice. The City Secretary shall give written notice of the time and place of the hearing to the person appealing by one of the following methods: (1) personal service; (2) certified mail, return receipt requested; or (3) electronic mail with delivery confirmed by return e-mail. The City Administrator shall conduct a hearing and shall make a decision based on a preponderance of the evidence presented at the hearing. The burden of proof shall be on the Utility Owner or registration holder. Compliance with formal rules of evidence shall not be required. The decision of the City Administrator may be appealed to the City Council. The decision of the City Council shall be final.

Sec. 13.15.015 Placement of facilities

(a) All facilities constructed within the right-of-way after the effective date of this Article shall:

- (1) Conform to the City's Design Standards (Standard Details of Construction), which provide design standards for use and occupancy of the right-of-way and all codes and ordinances in effect at the time of submittal of the application; and
- (2) Be installed in accordance with plans and at the specific location within the right-of-way approved by the City; and
- (3) Be installed or constructed so as not to unreasonably interfere with:
 - (A) Traffic over City streets; and
 - (B) The health, safety or welfare of the owners of property adjoining the right-of-way; or
 - (C) The operation of other facilities or equipment situated within the right-of-way, whether owned or maintained by the City or other utility providers; and
 - (D) Be located and situated so as to minimize the space used and maximize the space available for other utility facilities.

(b) To the extent permitted by law, including but not limited to the City's subdivision ordinance and/or Article 13.09 of the City Code, the Engineer may require the location of facilities underground.

(c) Any Utility Owner doing work in the right-of-way shall properly install, repair, and maintain its facilities so as to preserve the integrity of the right-of-way.

(d) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:

(1) The installation, repair, upgrade or maintenance endangers people or property; or

(2) The facilities do not meet the applicable City codes; or

(3) The facilities are not capable of being located using standard practices; or

(4) The facilities are not located in the proper place at the time of construction in accordance with the plans approved by the Engineer.

(e) Whenever by reasons of widening or straightening of streets, water or sewer line projects, or any other public works projects, (e.g., install or improve storm drains, water lines, sewer lines, etc.) it shall be deemed necessary by the City Council to remove, alter, change, adapt, or conform the underground or overhead facilities of a Utility Owner to another part of the right-of-way, such alterations shall be made by the Utility Owner of the facilities at their expense (unless provided otherwise by applicable state or federal law, or a valid franchise, a license or other municipal authorization) within the time limits set by the Engineer working in conjunction with the Utility Owner, or if no time frame can be agreed upon, within ninety (90) days from the day the notice was sent to make the alterations. Facilities not moved after ninety (90) days or within the approved schedule, if such exists, as same may be extended from time to time, shall be deemed abandoned, and, after thirty (30) days written notice, the City may remove the facilities itself or have the facilities removed by a qualified contractor and the Utility Owner shall be responsible for all costs incurred by the City to perform such work and shall submit payment for said costs within thirty (30) calendar days from the date of the City's invoice.

(f) The City shall have the right to, and may at any time, order and require a Utility Owner to remove and abate any facility that the Engineer determines is necessary to address a public health or safety emergency. If, after written notice, the Utility Owner or registration holder fails or refuses to act within the time limits set by the Engineer working in conjunction with the Utility Owner, or if no time frame can be agreed upon, within ninety (90) days from the day the notice was sent, the City may remove the facilities itself or have the facilities removed by a qualified contractor. The Utility Owner shall be responsible for all costs incurred by the City under this section and shall submit payment for said costs within thirty (30) calendar days from the date of the City's invoice

Sec. 13.15.016 Notification

- (a) An applicant for a Utility Construction Permit or its contractor shall notify a notification center established pursuant to Chapter 251 of the Texas Utility Code, prior to conducting any work in the right-of-way such as excavating, drilling, underground boring, jacking, or open cutting.
- (b) A permit holder shall provide the Engineer with the following information at least forty-eight (48) hours before beginning work under the Utility Construction Permit:
- (1) The reference number received from the notification center; and
 - (2) The exact dates and time work will be performed under the Utility Construction Permit; and
 - (3) The name, address and telephone number of the person or entity who will perform the work, including a representative who will be available at all times during construction, and who may be contacted twenty-four (24) hours a day.
- (c) The notice of work to the Engineer must be in writing and may be sent by personal service, facsimile transmission or certified mail, return receipt requested. If notice is by certified mail, it shall be sent no later than four (4) business days before work is to commence work.
- (d) The Utility Owner shall coordinate and communicate with private property owners whenever access to private property is restricted.

Sec. 13.15.017 Worksite regulations

- (a) The Utility Owner or the Utility Owner's contractor shall notify the Engineer at least twenty-four (24) hours in advance that construction is ready to commence.
- (b) All construction shall be in conformance with all City codes and applicable local, state and federal laws.
- (c) Three-by-three foot (3' x 3') informational signs stating the identity of the person doing the work, telephone number and Utility Owner's identity and telephone number shall be placed at the location where construction is to occur forty-eight (48) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign stating the construction work is underway shall be posted on public right-of-way one hundred (100) feet before the construction location commences unless other posting arrangements are approved or required by the Engineer.
- (d) Lane closures on major thoroughfares will be limited to between 9:00 a.m. and 4:30 p.m. unless the Engineer grants prior approval for more extensive closures. Arrow boards will be required for lane closures on all major thoroughfares and collectors as defined in the City Master

Thoroughfare Plan, and with all safety devices and procedures required by the Texas Manual on Uniform Traffic Control Devices.

(e) Utility Owners are responsible for the workmanship of, and any damages caused by, the Utility Owner's contractors or subcontractors. An authorized representative of the Utility Owner shall be available to the Engineer at all times during construction.

(f) The Utility Owner or contractor or subcontractor will notify the Engineer immediately of any damage to any other utilities, including City utilities.

(g) It is the City's policy not to cut streets or sidewalks unless reasonably necessary; therefore, when a street or sidewalk cut is required, prior approval must be obtained from the Engineer and all requirements of the City shall be followed. Repair of all street and sidewalk removals must be made to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with all applicable City specifications and details for restoration within public rights-of-way.

(h) Installation of facilities must not interfere with City utilities, including gravity dependent facilities. Facilities shall not be located over, or within two feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved in advance by the Engineer in writing.

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

(j) The working hours in the rights-of-way are 9:00 a.m. to 4:30 p.m., Monday through Saturday. Work that needs to be performed after 4:30 p.m. or on Sunday must be approved in advance by the Engineer. No work will be done, except for emergencies, on official City holidays.

(k) Persons working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of a geographic information system or reference to the "As-Built Plans" does not satisfy this requirement.

(l) When required by the Engineer, the Utility Owner shall verify locations of existing facilities by potholing, hand-digging or other method approved by the Engineer prior to any mechanical excavation or boring.

(m) Placement of all manholes and/or handholes must be approved in advance by the Engineer. Handholes or manholes will not be located in sidewalks, unless approved by the Engineer.

(n) Locate flags shall not be removed from a location while facilities are being constructed.

(o) When construction requires pumping of water or mud, the water or mud shall be contained in accordance with the SWPPP.

(p) A Utility Owner shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable City requirements, including the obligation to use boring and other trenchless technology whenever feasible and commercially reasonable. The City shall waive the requirement for trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the City. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A Utility Owner shall follow all reasonable construction directions given by the City in order to minimize any such interference.

(q) Backfilling of all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the Engineer. Holes with only vertical walls shall be covered and secured to prevent entry. Bore pits, trenches or other holes shall be left open for continuation of work overnight only if approved by the Engineer, and shall be fenced and barricaded according to industry best practices.

Sec. 13.15.018 Traffic and streets

(a) Except in an emergency, all street closures or detours that will exceed twenty-four (24) hours shall be posted by a sign at least two (2) days prior to the closure or detour. If a cut or opening in a street is left open after 4:30 p.m., safety measures shall be taken by the Utility Construction Permit holder, including but not limited to: (i) covering the cut with steel plates (ii) a barricade or temporary fencing must be placed on both sides of the cut and (iii) flares or red or amber flashing lights shall be placed in front of each barricade.

(b) Any construction abutting a school must be coordinated with the Engineer so as to minimize traffic conflicts and street closures during school days.

Sec. 13.15.019 Restoration of the right-of-way and private property

(a) The Utility Owner shall be responsible for any damage caused by construction, whether to public or private property, and shall immediately repair or replace said property.

(b) The Utility Owner shall restore the property affected by construction to a condition that is equal to or better than existed prior to construction, and in accordance with applicable City specifications, unless otherwise approved by the Engineer. The restoration shall, at a minimum, include the following:

(1) Replacing all ground cover with the type of ground cover damaged during work to a condition equal to or better either by sodding or seeding, or as directed by the Engineer; and

(2) Installation of all manholes and handholes, as required; and

- (3) Backfilling of all bore pits, potholes, trenches or any other holes, unless other safety requirements are approved by the Engineer; and
- (4) Leveling of all trenches and backhoe lines; and
- (5) Restoration of excavation site; and
- (6) Restoration of all hardscape, paving and driveways; and
- (7) Restoration of all landscaping, ground cover and sprinkler systems; and
- (8) Removal of all locate-flags during the clean-up process.

(c) Restoration work must be commenced within five (5) working days of completion of construction, and completed no later than thirty (30) days after the completion of all construction, unless otherwise approved by the Engineer in writing. Access to private property shall be given priority during construction.

(d) If restoration work does not meet the quality approved by the Engineer or is not performed timely, the Engineer shall give written notice to the Utility Owner by one of the following methods: (1) personal service; (2) certified mail; or (3) electronic mail with delivery and receipt confirmation by return e-mail. If after notice the deficiencies are not remedied within ten (10) business days, the Engineer may issue a Stop Work order and place a hold on all future permits. Stop Work orders and holds placed on future permits shall remain in effect until restoration work is completed to the quality approved by the Engineer.

(e) Upon failure of a Utility Owner to perform such restoration, and after written notice has been given to the Utility Owner by the Engineer as provided above, the City may repair such portion of the public rights-of-way as may have been disturbed by the Utility Owner, its contractors or agents, and invoice the Utility Owner for all costs incurred. Upon receipt of an invoice from the City, the Utility Owner will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.

(f) Should the City reasonably determine, within one year (1) from the date of the completion of construction, that the restoration work, including, but not limited to, the surface, base, irrigation system and landscape treatment requires additional restoration work to meet existing City standards, the Utility Owner shall perform such additional restoration work to meet pre-construction conditions or existing standards of the City.

(g) This section is intended to provide the general minimum requirements for restoration following construction activities in the Right-of-Way, but other ordinances, laws and regulations may contain additional or more specific provisions. Therefore, nothing contained in this section shall relieve the Utility Owner from the requirements of any other City ordinance, or other applicable law or regulation.

Sec. 13.15.020 Failure to complete work

If the Utility Owner, the Utility Owner's contractor or the Utility Owner's subcontractor fails to diligently perform any construction permitted under a Utility Construction Permit, abandons the job or for other reasons does not complete the construction within a timely manner, or fails to restore the right-of-way or other property as required by this Article, the City, after written notice to the Utility Owner by one of following methods: (1) personal service; (2) certified mail; or (3) electronic mail with delivery and receipt confirmation by return e-mail shall have the authority to take any action necessary to restore right-of-way to a good and safe condition, in accordance with applicable City specifications. If the failure to complete construction causes a safety hazard, the City may commence restoration immediately and shall notify the Utility Owner. The Utility Owner shall be responsible for all costs incurred by the City under this section and shall submit payment for said costs within thirty (30) calendar days from the date of the City's invoice. If the Utility Owner fails to do so, the Engineer may issue a Stop Work order and place a hold on all future permits. Stop Work orders and holds placed on future permits shall remain in effect until all amounts owed are repaid.

Sec. 13.15.021 Indemnity

(a) Unless otherwise provided by law, each Utility Owner placing facilities in the public rights-of-way shall agree, and by requesting use of the rights-of-way does agree, to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the Utility Owner's acts or omissions, and from and against any and all claims, demands, suits, causes of action, and judgments for: (a) damage to or loss of the property of the Utility Owner, any other utility owners, owners of other property, their contractors and subcontractors, the City's agents, officers, and employees, and other third parties; and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Utility Owner, 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 resulting from 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 not intended to create or grant any rights, contractual or otherwise, to any other property or utility owner or other entity.

(d) A Utility Owner shall immediately advise the Engineer and the City of actual or potential litigation that may develop or may affect the Utility Owner's obligation to defend and indemnify the City.

Sec. 13.15.022 Enforcement and penalties

(a) A person commits an offense if the person attempts to place, places, attempts to cause to be placed or causes to be placed any facilities within the right-of-way in any manner other than the manner provided by this Article.

(b) A person commits an offense if the person owns or operates facilities within the right-of-way without first having obtained a registration from the City, except as expressly permitted otherwise in this Article.

(c) Whenever it appears that a Person has violated, or continues to violate, any provision of this Article that relates to: (a) the preservation of public safety relating to the methods or procedures for construction of any utility facility or improvement; or (b) the preservation of public health or safety; the City may petition the State district court or the county court at law of Tarrant County, through the City Attorney, for either the injunctive relief in this section, and may obtain against the Utility Owner, or the Utility Owner's contractor or subcontractor, or any other person regulated by this Article, a temporary or permanent injunction, as appropriate, that: (a) prohibits any conduct that violates any provision of this Article; or (b) compels the specific performance of any action that is necessary for compliance with any provision of this Article.

(d) Any Person who has violated any provision of this Article, or any order issued hereunder, shall be strictly liable for such violation, and shall, upon conviction, be subject to a fine in accordance with Section 1.01.009, the general penalty provision of the City Code.”

SECTION 2.

That Article 3.03 “Excavation” of the Haslet Code of Ordinances is hereby deleted in its entirety.

SECTION 3.

This ordinance shall be cumulative of all provisions of the subdivision ordinance and of the Code of Ordinances of the City of Haslet, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code 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 Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety, or public health and sanitation, including dumping or refuse, and shall be fined Five Hundred Dollars (\$500.00) for all other violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 6.

All rights and remedies of the City of Haslet are expressly saved as to any and all violations of the provisions of the Code of Ordinance of the City of Haslet, Texas, as amended, relating to right-of-way management or excavation permits which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts..

SECTION 7.

The city secretary of the City of Haslet is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance one time in the official newspaper of the City, as authorized by Section 52.011 of the Local Government Code.

SECTION 8.

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 17th DAY OF OCTOBER, 2016.



Bob Golden
BOB GOLDEN, MAYOR

Dianna Buchanan
DIANNA BUCHANAN, CITY SECRETARY