

HEWITT TEXAS

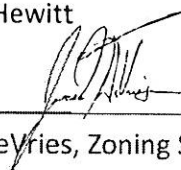
NOTICE OF MEETING OF THE PLANNING AND ZONING COMMISSION

Notice is given that a **PUBLIC** hearing will be held before the Planning and Zoning Commission of the City of Hewitt, on **Tuesday, April 3rd, 2017, at 6:00PM** in the **City Council Room at Hewitt City Hall, 200 Patriot Court, Hewitt, Texas** at which time the following subjects will be discussed:

1. Call Planning and Zoning Commission Meeting to order.
2. Consider Approval of Minutes for the March 6, 2018 Planning and Zoning Commission regular meeting.
3. PUBLIC HEARING: Discussion and possible action: Change the Zoning from MH manufactured home district to BP business park district on property located in the Hewitt Mobile Home district, Block A, lot 16 +/- 1.6774 Acres, otherwise known as 639 Sun Valley Boulevard.
4. Briefing and discussion on a new ordinance that establishes definitions to barbers and beauty shops.
5. Briefing and discussion on a new ordinance that ensures compliance with Texas Commission on Environmental Quality stormwater recommendations.
6. Briefing and discussion on the implementation of Right-of-Way ordinances that supplement Tex S.B. 1004, 85th Leg., R.S. (2017), the new Texas Local Government Code Chapter 284 which mandates that wireless infrastructure providers and wireless service providers have access to public rights of way to locate their facilities.
7. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the above named City of Hewitt, Texas was posted on the Public Notice Board located in front of the City Hall before 5pm on March 16th, 2018.

City of Hewitt



Jared DeVries, Zoning Secretary

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Zoning Secretary at (254) 666-6173 at least 24 hours prior to the meeting, so that appropriate arrangements can be made.

HEWITT TEXAS

PLANNING AND ZONING COMMISSION

Charlie Turner – Chairman

Bobby Wolske

John J. Baker

Kurt Krakowian

Michael Lee Hix

Walter H. Peterson

Jonathan Denton Dulus

CITY STAFF

Adam Miles, City Manager

Miles Whitney, City Engineer

Tracy Lankford, Community Development Director

Jared DeVries, Zoning Secretary

HEWITT TEXAS

MINUTES OF THE PLANNING AND ZONING COMMISSION JANUARY 2, 2018 – 6:00PM

Members Present: Charlie Turner, Bobby Wolske, John Baker, Kurt Krakowian, Walter Peterson,
Members Absent: Michael Lee Hix, Jonathan Dulus
Staff Present: Miles Whitney, City Engineer, Jared DeVries, Zoning Secretary

1. **Call Planning and Zoning Commission to order.** *Charlie Turner called the meeting to order at 6:00PM.*
2. **Consider Approval of Minutes for the November 7, 2017 and January 2, 2018, Planning and Zoning Commission regular meetings.** *A motion was made by John Baker and seconded by Walter Peterson to approve the minutes as submitted but allow for corrections; all five in favor, motion passed.*
3. **Consider a request of Central Park Holdings LLC for a Final Plat of Stoneridge II Addition Phase 11, to the City of Hewitt.** *Miles Whitney, City Engineer, spoke on behalf of the City. A motion was made by Walter Peterson to approve and seconded by John Baker. All five in favor, motion passed.*
4. **Adjourn.** *A motion was made by John Baker and seconded by Bobby Wolske to adjourn the meeting at 6:02PM. Bobby Wolske, Walter Peterson and John Baker vote in favor, while Kurt Krakowian and Charlie Turner vote against. Motion passed, 3-2.*

Chairman

Date Approved



Jared DeVries, Zoning Secretary

HEWITT

TEXAS

PLANNING AND ZONING ADMENDMENT OF THE ZONING ORDINANCE

Legal Description of Property: Hewitt Mobile Home Block A, lot 16,
1.6774 acres,

Describe the location of the property as submitted by this application. This may be in the form of a street address, general description, or nearest intersection.

639 Sun Valley Blvd Hewitt, TX 76643

Zoning Change From residential to Commercial

Please describe the interest in property:

Existing Building(s) on Property: mobile home

Total square feet of all Buildings on Property: 840 sq. ft.

Please provide the following recording information and a copy of the document(s) listed below with this application:

Ownership (deed): Doc. #/MCC No.: 2013 002070

Please provide the proposed meeting date for this application to be considered (See Meeting Schedule): April 2018

The rezoning application must be completed along with the following information:

1. A notarized letter from the property owner authorizing applicant to present the request, if the property owner will not be presenting the request and stating reasons for request.
2. Submit one (1) PDF file, one (1) hardcopy, one (1) CAD file of plat for review purposes – Must be in State Plane Coordinates using the Texas Central Zone NAD 83.
3. Submit one (1) copy of building plans, if existing building(s) exist.
4. Non-refundable application fee (see Fee Schedule)
5. Application, fee, documents, etc., in completed form must be submitted to the Planning Department before or no later than 12:00 noon on the deadline date (see schedule).

I attest that the above information is true and correct to the best of my knowledge and I am now or will be fully prepared to present the above proposal at the Planning and Zoning Commission hearing. I understand that if any of the above information is found to be wrong or inaccurate that my application may be removed from consideration prior to the time the application is voted upon by the governing body of the City.

I, understand that in the event the undersigned is not present or represented at the public hearing, the Planning and Zoning Commission shall have the power to dismiss this proposal either at the call of the case or after hearing and such dismissal shall constitute a denial by both the Planning and Zoning Commission and the City Council.

I reserve the right to withdraw this proposal. However, written withdrawals filed at any time after the giving of notice to the Planning and Zoning Commission shall constitute a denial by the Commission and City Council. I understand that the filing fee is not refundable upon withdrawal of proposal.

Name of Property Owner:

Maria Concepcion Feregrino

Telephone Number:

254-649-5772

Mailing Address:

3621 N. 27th St. Waco, TX 76708

Email Address:

Rodferegrino@gmail.com

Signature of Property Owner:

Maria Concepcion Feregrino

Date:

3-2-14

Name of Applicant/Representative:

AA

Telephone Number:

Mailing Address:

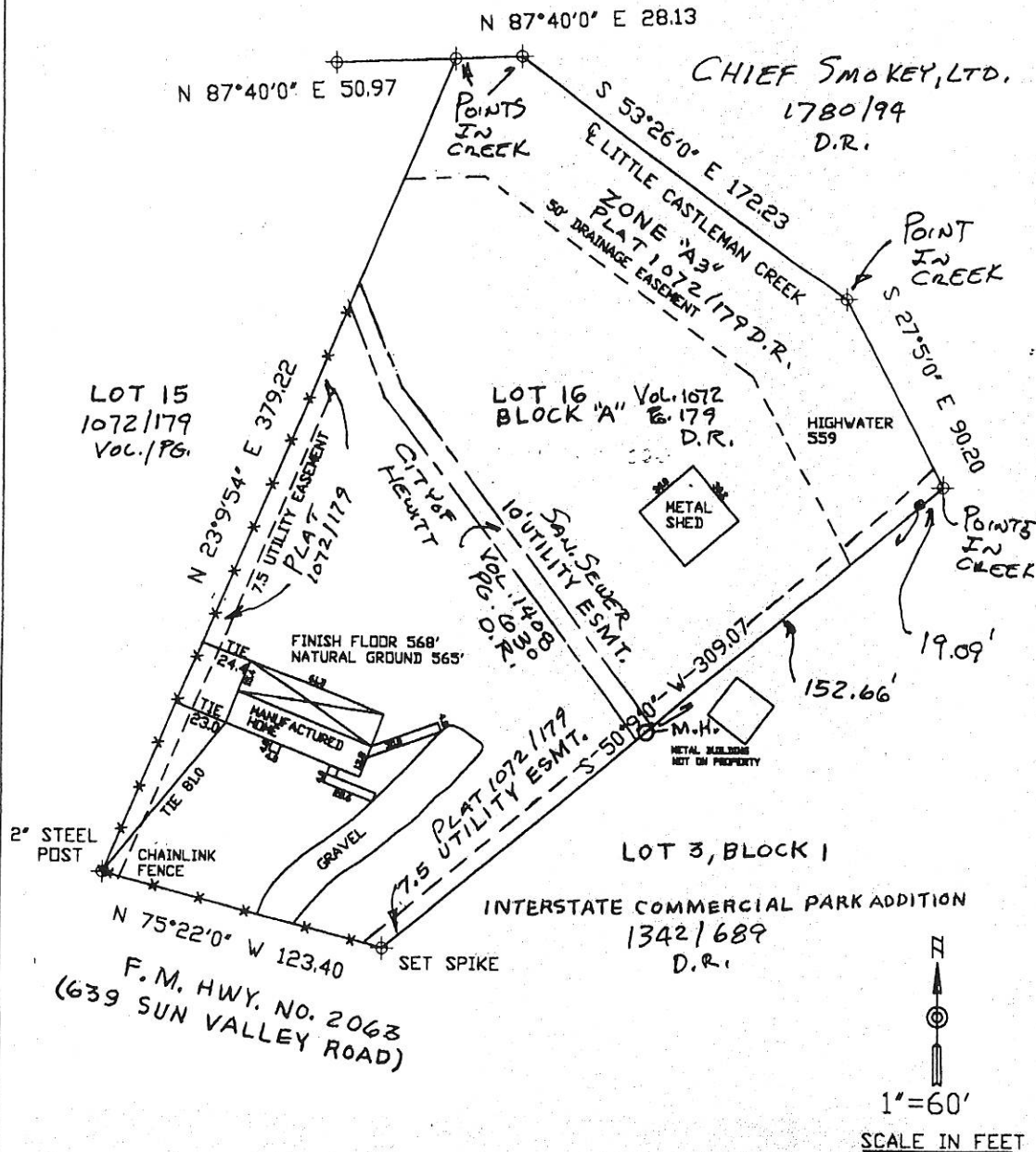
Email Address:

Signature of Applicant/Representative:

Date:

TO ALL PARTIES INTERESTED IN PREMISES SURVEYED: THIS IS TO CERTIFY THAT I HAVE, THIS DATE MADE A CAREFUL AND ACCURATE SURVEY ON THE GROUND OF PROPERTY LOCATED AT No. 639 SUN VALLEY BLVD. BEING LOT 16 BLOCK "A" OF THE HEWITT MOBILE HOME PARK PART II, TO THE VILLAGE OF HEWITT, McLENNAN COUNTY, TEXAS RECORDED IN VOLUME 1072, PAGE 179, OF THE DEED RECORDS OF McLENNAN COUNTY, TEXAS.

THIS TRACT IS IN THE AREA OF THE 100 YEAR FLOOD PLAIN F.I.R.M. COMMUNITY PANEL NO. 480458 0001B MAY 1, 1978 ZONE 'A3'



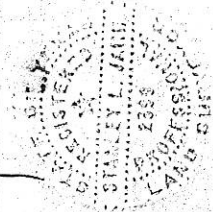
I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED BY PERSONS WORKING UNDER MY SUPERVISION AND THE PLAT HEREON IS A TRUE, CORRECT, AND ACCURATE REPRESENTATION OF THE PROPERTY AS DETERMINED BY SURVEY, THE LINES AND DIMENSIONS OF SAID PROPERTY BEING AS INDICATED BY THE PLAT: THE SIZE, LOCATION, AND TYPE OF BUILDINGS AND IMPROVEMENTS BEING WITHIN THE BOUNDARIES OF THE PROPERTY, SET BACK FROM THE PROPERTY LINES THE DISTANCE INDICATED AND THAT THE DISTANCE FROM THE NEAREST INTERSECTION OF STREET OR ROAD IS AS SHOWN ON SAID PLAT. (THERE ARE NO ENCROACHMENTS OR PROTRUSIONS.)

JAHN COMPANY, INC.

5201 SANGER AVENUE
WACO, TEXAS 76710
(254) 772-6880

SCALE: 1"=60' DATE: 10/23/02
JOB: TC 02-1179
DRAWN BY: J22599

STANLEY L. JAHN
PROFESSIONAL LAND
SURVEYOR NO. 2399



APPLICATION REVIEW

Z-2018-2

CASE #: Z-2018-2

NOTICES: 3 mailed; returned,

HEARING DATE: April 3, 2018

PROPERTY ADDRESS: 639 Sun Valley

LEGAL DESCRIPTION: Lot 16 Block A Hewitt Mobile Home Park Part Two

APPLICANT: Maria Concepcion Feregrino

MAILING ADDRESS: 3621 N. 27th St. Waco, Texas 76708

Comprehensive Plan Future Land Use Plan Staff Review

The City of Hewitt adopted “Comprehensive Plan 2022” A Comprehensive Plan for the City of Hewitt, Texas, under Ordinance No. 2003-04-21 on April 21, 2003. When a zoning change is received, the City evaluates it to determine whether it is consistent with the Comprehensive Plan. This evaluation will be based on the goals and objectives and policies of the plan, as well as the land use categories depicted on the Future Land Use Map. A zoning change proposal has been submitted by the applicant that is not consistent with the Comprehensive Plan. The City may consider to uphold the current land use category or a change in the plan’s Future Land Use Map.

LAND USE DESIGNATION REQUEST: GENERAL COMMERCIAL and INDUSTRIAL to RESIDENTIAL

The applicant is not requesting a land use designation change.

ZONING:

The applicant requests a zone change from **MH Manufactured Home District to BP Business Park District.**

SUMMARY DESCRIPTION OF USES IN BP: The purpose of the BP Business Park District is to provide a unique zone incorporating commercial and industrial uses into one district with quality architectural and landscape design development standards. The BP Business Park District differs from other districts by allowing a mixture of compatible commercial and industrial land uses with limitation of associated outside uses.

PLANNING & COMMUNITY DEVELOPMENT REVIEW

NEIGHBORHOOD CHARACTER:

The neighborhood is generally characterized as an area of commercial mixed with residential uses. The majority of the surrounding properties are residential and commercial based. This property borders on residential use to the west and commercial uses to the north and east.

STAFF RECOMMENDATION

ZONING:

Planning Services recommends **approval** of this request to change the zoning from **MH to BP** based on the following findings:

- 1) The proposed zoning is in keeping with the land use component of the Comprehensive Plan.
- 2) The public infrastructure is adequate to provide for uses allowed in BP zoning district.
- 3) The property meets all the size and width requirements for BP zoning.
- 4) The property is located along Sun Valley Boulevard.

TRAFFIC DATA

1. Description of the adjacent street system:

Road	Classification	# of Lanes	Avg. Daily Traffic
Sun Valley	Arterial	5	data not available

Estimated increase in traffic on adjacent streets at full build out:

Immediate: none

Future: none

3. Will the development's impact be of sufficient magnitude to require mitigation for:
 - a) Access problems: no
 - b) Increased traffic congestion: no
 - c) Pedestrian traffic: no
 - d) Visibility problems: no
4. Traffic Department comments and recommendations:

No significant traffic impact anticipated.

PUBLIC WORKS DATA

1. Street condition: Good X Acceptable Needs Reconstruction
2. Street width: Existing: ROW 100' Pavement 65'
Required: ROW 100' Pavement 65'
3. Curb and Gutter:
Does not apply Needs to be installed Exists X Needs Reconstruction
4. Offsite Drainage facilities are adequate to meet additional runoff resulting from the rezoning.
5. Water is available to the property, and it will serve the heaviest uses allowed under the requested zoning.
6. Sewer is available to the property.
7. Public Works comments and recommendations:
The property is served with public water and there has been no damage reported.

INSPECTION DEPARTMENT REVIEW

Comments

None

FIRE DEPARTMENT REVIEW:

Anticipated Fire Response Time:

Is the Fire Response Time Adequate?: (Y) Yes (N) No

Fire Department Comments and Recommendations:

MCLENNAN COUNTY HEALTH DISTRICT REVIEW

Inspection/Permit Required N (Y) Yes (N) No

Date of Inspection: None

Community Development

Comments

POLICE DEPARTMENT REVIEW

Comments None

PROPERTY OWNERS LIST

Applicant: Maria Concepcion Feregrino

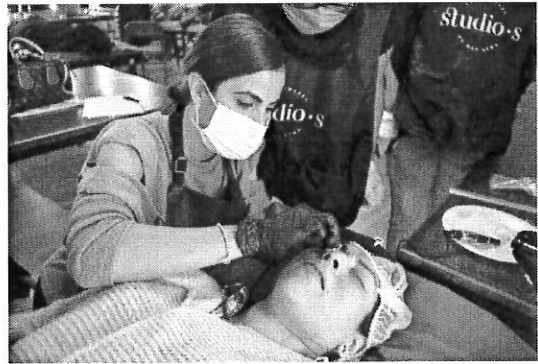
Owner: Maria Concepcion Feregrino

Item #4

Barbers and Beauty Shops

MICROBLADING

SEMI-PERMANENT COSMETIC MAKE-UP SHOP. An establishment where licensed personnel apply micro-injections of pigment to the dermal layer of skin such that facial cosmetics are applied on a semi-permanent basis. This does not include a tattoo parlor.



Microblading is a semi-permanent cosmetic procedure that enhances the depth and vitality of eyebrows. During the microblading procedure, a thin layer of pigment is sliced into the surface layers of the skin. It is semi-permanent, usually lasting between 1-3 years. Microblading is becoming very popular and reflects a growing trend in cosmetic beautification. Microblading is not tattooing because the transmission of pigment is different by way of a specialized pen/pigment and customers are restricted to the enhancement/modification of eyebrows and features exclusive to the face.

Our Code of Ordinances do not currently account for "Semi-Permanent Cosmetic Make-Up Shop", which would cover Microblading and microblading procedures. Our Code of Ordinances currently covers "barber and beauty shops" but does not explicate the meaning of either. Community Development has received inquiries for the implementation of new language to accommodate the growing microblading market. I propose a change to the Code of Ordinances that would accommodate the "Beauty shop," as an establishment that provides non-permanent and semi-permanent cosmetic services. The included definition would provide the definition of "beauty shop", is intended to specify the scope of semi-permanent cosmetics and differentiates from tattooing, which would require a separate amendment to the ordinance.

Beauty shop: An establishment in which hairdressing, makeup, and similar non-permanent and semi-permanent cosmetic services are carried out professionally

Barber: An establishment that cuts, dresses, grooms, styles and shaves hair on the face and head

2.109. C-1 restricted commercial district.

The regulations set forth in this section, or as set forth elsewhere in this ordinance when referred to in this section, are the regulations of the "C-1 restricted commercial district."

Purpose and intent. The purpose and intent of the "C-1 restricted commercial district" is to provide for compatible land, building and structure uses primarily oriented to select retail convenience goods and services which supply the daily needs of residential neighborhoods, including neighborhood shopping centers; select low intensity office uses; and select community facility uses. The locational characteristics of this district are generally confined to limited intersection locations of collector streets and thoroughfare streets; within residential "planned unit development" projects; and as a transition district between residential districts and higher intensity commercial and industrial districts. In the C-1 districts:

A. Uses.

1. Banks and other financial institutions.

2. Barber and beauty shops.

3. Business or professional offices.

4. Churches, convents, parish houses.

5. Commercial or private schools.

6. Convalescent or rest homes.

7. Dressmaking, millinery, tailor shops, shoe repair shops and similar shops.

8. Existing residential dwelling units used as such on the effective date of this ordinance.

9. Hospitals other than veterinary.

10. Nursery, kindergarten and other special schools.

11. Public office buildings used by schools, city, county, state or federal governments.

12. Public and private schools

13. Religious, educational and philanthropic institutions, but not animal care.

14. Retail bakery shop.

15. Retail candy shop.

16. Retail sales, excluding automobiles, trucks, motorcycles, farm machinery, construction machinery and equipment, building materials and agricultural and farm supplies, and subject to the following conditions:

(a) That all uses or activities be conducted wholly within an enclosed building.

(b) That yards be not used for display, sale, or storage of merchandise, for service to customers, or for the storage of vehicles, equipment, containers or waste materials.

(c) That all merchandise be firsthand and be sold at retail on the premises except merchandise considered to be antiques.

(d) That such use be not objectionable because of odor, excessive light, vapor, dust, steam or other airborne material, pollutants, presence of vermin or rodents, or similar nuisances.

17. Studios [studios] of artists and photographers.

18. Telephone exchange.

B. [C-1 district regulations.]

1. All structures, except accessory buildings, shall face a major street.

2. Where a nonresidential use abuts a residential lot, use or district, the side and rear property lines abutting said residential lot, use, or district shall be suitably screened by the nonresidential use so as to obscure the view from the residential lot, use or district to the nonresidential use to a height not less than six feet. All required screening elements shall be permanently and adequately maintained by the nonresidential property owner.

3. No structure or part of a structure shall have in excess of 20 percent of the floor area of the structure used for storage or warehousing; all articles, merchandise, or commodities stored upon a premises shall be sold at retail or fabricated upon the premises.

4. For any newly constructed building or any remodeling or structural changes on an existing building exceeding 75 percent of its fair market value, in addition to paved parking and driving areas, at least ten percent of the lot in front of the building line shall be maintained in landscaped open areas. If all of a portion of the parkway is maintained in landscaped open area, such landscaped portion will reduce the amount of landscaped area on the lot at the rate of two square feet of landscaped parkway area for each required one square foot of landscaping on the lot.

5. All metal buildings shall meet the following minimum requirements:

(a) The exterior shall be of baked enamel;

(b) For any newly constructed building or any remodeling or structural changes on an existing building exceeding 50 percent of its fair market value, 75 percent, excluding doors and windows, of each exterior wall shall be covered with a material other than metal; and

(c) The building shall comply with all zoning and construction codes of the city.

Section 12.102. - Definitions.

The following definitions shall apply to the textual provisions of this ordinance:

1. *Accessory building*: A separate building devoted to an accessory use.

2. *Accessory use*: A use the same as or subordinate to the primary use of the main building or to the primary use of the premises.

3. *Administrative official*: The officer or other designated authority charged with the administration and enforcement of this ordinance, or his duly authorized representative.

4. *Alley*: Land dedicated to public use and devoted to secondary access to lots.

4A. *Assisted living facility*: A facility for people needing assistance with activities of daily living. This includes facilities that bridge the gap between independent living and nursing homes, as well as nursing homes.

5. *Automobile sales area*: An open area or lot used for the display or sale of automobiles, where no repair work is done except minor reconditioning of the cars to be displayed and sold on the premises, and no dismantling of cars for sale or keeping of used car parts or junk on the premises.

6. *Automobile wrecker service area*: An open area used for the temporary storage of vehicles transported by a business licensed as a wrecker service by the State of Texas. Such areas shall be permanently screened from public view by a solid fence which shall be maintained by the property owner.

7. *Automobile wrecking yard*: A place for the dismantling, storage, trading or buying and selling of disabled, dismantled and damaged vehicles. Damaged vehicles shall include any vehicle which has been involved in a collision in which reinspection is required by state law.

8. *Barber*: An establishment that cuts, dresses, grooms, styles and shaves hair on the face and head

9. *Basement/cellar*: The part of a building from one floor to the next floor above which as part of but less than one-half its height below grade. If a basement/cellar is subdivided and used for dwelling purposes, it is counted as a story.

10. *Beauty shop*: An establishment in which hairdressing, makeup, and similar non-permanent and semi-permanent cosmetic services are carried out professionally

11. *Board*: The board of adjustment established by the Hewitt City Charter.

12. *Build*: To erect, convert, enlarge, reconstruct, or structurally alter a building or structure.

13. *Buildable width*: The width of lot left to be built upon after the side yards are provided.

14. *Building*: Any structure designed for the use of persons, property or animals.

15. *Building line*: A line parallel or approximately parallel to the street line at a specific distance therefrom marking the minimum distance from the street line that a building may be erected.

15A. *Carport*: Carport shall mean a structure that is open on a minimum of two sides and designed or used to shelter not more than three vehicles and not to exceed 24 feet on its longest dimension.

16. *City:* City of Hewitt, Texas.

16-68.

Item #5

TCEQ Stormwater Regulations

The City of Hewitt has established regulations concerning management of stormwater runoff. These regulations are in place and serve several purposes. Rules are designed specifically to minimize erosion, protect adjacent property, and reduce pollution from stormwater runoff. Hewitt's regulations mirror existing State (Texas Commission on Environmental Quality) and Federal (Environmental Protection Agency) laws. From time to time, our City rules and regulations are reviewed to ensure the policies are in compliance with current laws as well as current best management practices.

Common elements of regulations include rules related to silt fencing for project sites, establishment of pollution control measures, regulations concerning dust control, and even provisions for inspections and enforcement. Our regulations are required to meet standards of the National Pollution and Discharge Elimination System (NPDES) specifically, the Stormwater Discharges from Municipal Sources (also known as Municipal Separate Storm Sewer or MS4). City staff has worked to re-evaluate City Ordinances for compliance. Furthermore, City Staff is reviewing Waco's regulations to ensure local policies are similar or at least somewhat coordinated from jurisdiction to jurisdiction. It is anticipated that an item will be placed on a City Council agenda in the near future concerning adoption of revised and updated rules and regulations.

CHAPTER 30. Environment

Article 11. STORMWATER REGULATIONS

Sec. 30-270. - Definitions.

BMP means best management practice.

Construction site notice means the statewide form that must be completed and displayed on small construction sites (i.e., where the area being disturbed is more than one acre and less than five acres).

Disturbing means clearing, grading, excavation, or other construction-related activities including the open storage of raw materials, transport and parking of vehicles, etc., on an unpaved area.

Environmentally sensitive area means:

- (1) Receiving waters that are on the state list of impaired water bodies.
- (2) Stream segment, bay or estuary classified as having an exceptional aquatic life use by TCEQ under 30 TAC 307.7(b)(3) and 307.10.
- (3) Areas identified as providing critical habitat for an endangered, threatened, or protected species. The U.S. Fish and Wildlife Service or Texas Department of Parks and Recreation should be consulted, if necessary.
- (4) Wetlands as defined by 33 CFR 328.3(b).
- (5) State owned submerged land.
- (6) Critical dune areas, as determined by the land commissioner under Texas Natural Resources Code § 63.121
- (7) Velocity zones, as determined by the Federal Emergency Management Agency

EPA means the United States Environmental Protection Agency.

Erosion control plan means measures to be used to prevent erosion from construction sites where less than one acre is disturbed, which is not part of a larger development of one acre or more.

FEMA means Federal Emergency Management Agency.

Final stabilization means that all unpaved areas of the site, not covered by permanent structures, which were disturbed by construction activities, have a uniform perennial vegetative cover with a density of 70 percent or equivalent final stabilization has been used, such as coverage with geotextiles and mulch.

Harmful liquid means a liquid that will adversely affect the environment, such as oil, chemicals, and hazardous substances.

Lot means a parcel of land of at least sufficient size, and containing sufficient area after applicable setbacks to meet the minimum zoning requirements for use, coverage and area and to provide such yards and other open spaces as are required for its intended use by the Hewitt Zoning Ordinance as amended. The word "lot" includes the words "plot" and "parcel".

NPDES means a national pollution discharge elimination system.

Notice of intent (NOI) means a written submission to the executive director of the TCEQ (Texas Commission of Environmental Quality) from an applicant requesting coverage under the general construction stormwater permit.

Notice of termination (NOT) means a written submission to the executive director of the TCEQ (Texas Commission of Environmental Quality) from a discharger authorized under a general permit requesting termination of coverage.

Pollutants mean items that include but are not limited to oils, grease, sediment, fertilizers, pesticides, herbicides, bacteria, debris, litter, etc. in which stormwater runoff can wash through the storm drain system and into local streams and drainage basins.

Responsible party means the owner, occupant, developer, builder, or general contractor who has operational control over the site (including the ability to make modifications in specifications), or who has operational control over day to day activities at the site and is able to ensure compliance with plan requirements and permit conditions (e.g., a person who is authorized to direct the conduct of workers at the site). Any person who has filed a notice of intent (NOI) with EPA or TCEQ or completed a construction site notice is presumed to be a responsible party under this article. In instances where only construction site notices are required, the city engineer or building official should be notified of construction termination as appropriate.

Significant redevelopment means a change in the use of a tract of land that increases the proportion of impervious surface, a change in the use of a tract of land that will result in an increase of pollutants that may be carried off the property by storm waters, or the alteration or repair of a facility, which requires the facility to be brought into compliance with any portion of the Code, that includes site disturbances.

Single-lot, single-family residential construction means the construction of a single-family residential structure (zoned R-1, R-1-G, or R-5) and accessory buildings upon a single lot, regardless of size. The construction of each individual residential structure is considered a single-lot, single-family residential construction, even if the responsible party is, simultaneously constructing another residential structure on an adjoining lot. For the purposes of this article, a lot may include one or more adjoining platted lots that are treated as a single tract of land.

Seventy percent density of vegetative cover means an area that has been disturbed by construction activities has been completely re-vegetated and that the density of said re-vegetation is 70 percent of the pre-construction state.

Stormwater means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

Stormwater pollution prevention plan means a plan that addresses potential sources of pollution that are reasonably expected to affect the quality of discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, etc., used solely by the permitted project.

TCEQ means the Texas Commission on Environmental Quality.

TPDES means a Texas Pollution Discharge Elimination System.

Sec. 30-271. - Planning requirements for site construction.

- (a) The stormwater pollution prevention plan (SWPPP) shall describe and ensure the implementation of practices that will be used to reduce the pollutants in stormwater discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of a TCEQ or EPA stormwater permit.
- (b) Except as provided in subsection (2), a site specific storm water pollution prevention plan is required for all residential, commercial, and industrial developments that disturb one acre or more, and on sites that disturb less than 1.0 acre when the site is part of a larger development.
 - (1) For the purpose of this section, the area of the development must include all land of a common plan of development, regardless of the amount of land that will be affected by the specific development activity.
 - (2) A stormwater pollution prevention plan is not required when a portion of a previously developed tract of land is redeveloped, unless the redevelopment will result in the conversion of more than one acre from a porous surface to an impervious surface.
- (c) The stormwater pollution prevention plan must be prepared at the time of submission of the NOI or construction site notice.
- (d) The stormwater pollution prevention plan must identify the location of the outfall from the city's municipal separate storm sewer system into the receiving water and any environmentally sensitive areas that will receive pollutants carried by stormwater pollution from the site.
- (e) The stormwater pollution prevention plan must state whether the plan or an erosion control plan will be submitted to the City of Hewitt under this section.
- (f) Development of sites one acre or more.
 - (1) An NPDES or TPDES stormwater pollution prevention plan is currently required by EPA or TCEQ for all construction projects where one or more acres will be disturbed during development. Developments of sites that disturb one acre or more within the city's jurisdiction must prepare an NPDES or TPDES stormwater pollution prevention plan that satisfies EPA or TCEQ regulations and the NPDES or TPDES construction general permit.
 - a. A copy of the NPDES or TPDES stormwater pollution prevention plan must be provided to the City of Hewitt, building official, or the appropriate city designee upon request.
 - b. A copy of the notice of intent (NOI) (sites > five acres) and/or construction site notice (sites one to five acres) provided to EPA or TCEQ must be provided to the city engineer or the building official, as applicable. Approval of the elements of the NPDES or TPDES stormwater pollution prevention plan is not required. However, the city engineer or building official or other designated city representative may require correction of any observed deficiencies in the NPDES or TPDES stormwater pollution prevention plan. Additional measures may be required to meet the requirements of section 30-272, pollution control measures.
 - c. If the current measures are insufficient (sites > five acres), a copy of the notice of termination (NOT) submitted to EPA or TCEQ must be provided to the city engineer or building official, as applicable.

- (2) Minimum requirement of a stormwater pollution prevention plan (SWPPP) can be found in the the most recent version of the TPDES General Stormwater Requirements for Construction Activities

(g) Development of sites less than one acre, if part of a larger development.

- (1) All projects under this category must meet the requirements in section 30-272(a).
- (2) The area of the development will be based upon any or all of the following: platted lot(s), site plan of the development, phased-in name of the development and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person. Disturbance of a partial area of a tract is not a condition that will cause a change of the category in development size.

(h) Development of sites less than one acre, if not part of a larger development.

- (1) An erosion control plan, as defined in section 30-270, is required for commercial construction, industrial construction, multi-family residential construction, and development of a residential subdivision within the city's jurisdictional area where less than one acre will be disturbed, and the site is not part of a larger development of one acre or more. The area of the development will be based upon platted lot(s), site plan of the development, phased-in name of the development, and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person.
- (2) Contractors are required to implement an erosion control plan that establishes erosion control measures.
- (3) The erosion control plan shall include any pollution control measures specified in section 30-272.

(i) Development of sites general requirements.

- (1) Implementation of the pollution control measures detailed in the plan is required. Inspection of the pollution control measures will be performed by city personnel during normal construction inspections, and at other times when construction activities may be conducted.
- (2) A certificate of occupancy may not be issued until the temporary and permanent measures specified by the plan are complete.
- (3) The City of Hewitt will not accept any improvements required by the city's platting ordinance until the City of Hewitt is satisfied that all temporary and permanent measures specified by the plan are complete.
- (4) A pollution control plan is not required when a portion of a previously developed tract of land is redeveloped, unless the redevelopment will result in the disturbance of more than one acre of land.

Sec. 30-272. - Pollution control measures.

- (a) The responsible party of any construction site within the city shall implement measures necessary to control erosion, sedimentation, debris, and stormwater pollution. The responsible party shall ensure proper maintenance and performance of temporary pollution control measures until permanent measures are in place.
- (b) Temporary pollution control measures (during construction). This subsection provides examples of temporary pollution control measures that may be used to control erosion and sedimentation.
 - (1) Structural control of soil erosion.
 - a. Silt fences may be utilized, where necessary, to retain the sediments from disturbed areas within the site and decrease the velocity of sheet flows.
 - b. Straw bales may be utilized, where necessary, to retain sediments from disturbed areas within the site and decrease the velocity of sheet flows. Straw bales are particularly useful in paved areas where silt fences cannot be erected.
 - c. Stabilized construction entrances shall be designed to reduce the amount of soil tracked off the construction site by vehicles. A stabilized construction entrance should be utilized, if necessary, to control tracking. The responsible party shall ensure that vehicles entering and leaving the construction site use the stabilized construction entrance. The owner or operator of a vehicle entering or leaving a construction site may not track soil off the construction site.
 - d. Vegetative buffer strips of appropriate size should be maintained where necessary to aid in:
 - 1. reducing the velocity of stormwater and
 - 2. trapping escaping sediments in the stormwater.A vegetative buffer may suffice as a structural control until final stabilization is accomplished.
 - e. Inlet protection barriers must be installed around all inlets until surrounding area is paved or stabilized.
 - (2) Waste controls. Waste must be disposed of in an appropriate manner. This includes, but is not limited to: solid wastes, including building materials, hazardous substances, oil, or packaging except for disposal at an appropriate and approved solid waste management facility, may be allowed to enter the city's municipal separate storm sewer system, the city's streets, or the navigable waters of the United States. The responsible party, who is issued the building permit, shall ensure responsible and appropriate disposal measures for all waste activities at the site.
 - (3) Dust control. Reasonable measures shall be taken to control dust, particulate matter, and windblown debris.
 - (4) Hazardous material storage. Chemicals, paints, solvents, fertilizers, and other toxic materials must be stored in waterproof containers. Except during applications, the contents must be kept in trucks or in storage facilities. Runoff containing such materials shall be collected, removed from the site, and disposed of at an approved solid waste or chemical disposal facility.

- (5) Concrete trucks. The responsible party may not allow the owner or operator of a concrete truck to wash out or discharge surplus concrete or drum wash water at a construction site, unless the surplus concrete or drum wash water in concrete trucks is discharged at a facility on the construction site that will retain all concrete wash waters or leachates, including any wash waters or leachates mixed with storm water. Concrete wash waters and leachates shall not be allowed to enter the municipal separate storm sewer system, city streets or ground waters.
- (6) The responsible party may adopt alternative procedures, such as regularly scheduled street cleaning in the immediate vicinity of the construction site, instead of adopting temporary structural controls for erosion under subsection 30-272(b)(1). If alternative procedures are used, the responsible party shall include those provisions in its NPDES or TPDES stormwater pollution prevention plan, pollution control plan, or the plans submitted for a building permit if an NPDES or TPDES stormwater pollution prevention plan or pollution control plan is not required.
- (c) Final pollution control measures (post construction). These measures stabilize construction sites where either of the following conditions are met:

 - (1) All soil disturbing activities at the site shall be completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
 - (2) For individual lots in a residential construction site by either:

 - a. The homebuilder completing final stabilization as specified in condition (c)(1) above; or
 - b. The homebuilder of single-family homes (zoned R-1, R-1-G, or R-5) establishing final stabilization for an individual lot by sodding the front yard with a vegetative cover with a minimum of 70 percent density (no bare spots), and installing a perimeter of sod for the remaining portions of the yard to prevent soil erosion,
 - (3) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water, and areas which are not being returned to their pre-construction agricultural use must meet the final stabilization of condition (c)(1) above.
 - (4) If the developer agrees to maintain the stabilization until coverage is achieved and all other permanent measures are complete (i.e. performance bond), acceptance of improvement by the city may occur before the final stabilization coverage requirement is met,
 - (5) Once final stabilization has been achieved, the responsible party shall notify the city engineer, building official or designated representative that final stabilization has been achieved.
 - (6) Erosion control structures must be provided where necessary to control erosive velocities in unlined channels or swales leaving the site.
 - (7) Sediment traps must be provided on the site, as necessary, to control sedimentation from concentrated storm water discharges into an environmentally sensitive area. Individual assessments must be made on a site-specific basis. However, a rock rubble low berm must be installed around an outfall that discharges directly into an environmentally sensitive area,

unless this requirement is waived by the city engineer because the responsible party has installed another type of sediment trap providing equal or better protection.

(d) Scheduling of control measures. Measures must be implemented in a sequence that will provide maximum stormwater pollution control based on the following principles:

- (1) Down slope and side slopes perimeter controls must be installed before land disturbing activity occurs.
- (2) The responsible party shall not disturb the site until construction is ready to proceed.
- (3) Efforts to provide cover or stabilize disturbed areas must occur as soon as possible.
- (4) Temporary perimeter controls shall not be removed until all upstream areas are permanently stabilized.(4)

(e) Inspection of pollution control measures. The responsible party shall inspect all pollution control measures

1. Every 14 days and within 24 hours following a rainfall of 0.5 inches or greater at the site, or
2. Every seven days regardless of rain events and maintain a record of each inspection.

The inspection reports shall be considered part of the contractor's stormwater pollution plan (SWPPP), and as such, are subject to the same record retention schedule and availability requirements of the SWPPP. The inspection reports and the entire SWPPP shall be made available for inspection by a representative of the city during normal business hours.

(f) Maintenance of pollution control measures.

- (1) The responsible party shall maintain and ensure adequate performance of the temporary pollution control measures until permanent pollution control measures are in place.
- (2) Whenever the temporary or permanent pollution control measures do not keep soil, sediment, and debris on the construction site, such as excessive tracking of dirt offsite by vehicles and runoff of sediments from the site over sidewalks and into the streets and gutters, etc., the responsible party shall remove the soil, sediment, and debris from streets, sidewalks, and inlets, as necessary and return the soil and sediment to the areas to be stabilized, and properly dispose of the debris.
- (3) The responsible party shall ensure proper maintenance of all permanent pollution control measures located on the site

Sec. 30-273. - Appeals to city manager.

A person adversely affected by a decision of the city engineer or the building official under this article may appeal the decision to the city manager, or the city manager's designee, within 15 days from the date the city engineer or the building official notifies the person of the decision in writing. An appeal must be submitted in writing and must be addressed to the city manager. The appeal must specify why the decision of the city engineer or the building official should be considered for relief.

Sec. 30-274. - Additional requirements.

It is the intent of this article to outline the stormwater regulations that must be followed by contractors, builders, and property owners who wish to conduct construction activities within the city.

There may be portions of the state stormwater regulations that are not specifically mentioned in this article. In such cases, these regulations are to be considered a part of this article, and as such, violators of said segments are subject to the same penalties listed.

Sec. 30-275. - Prosecution for violations of this article.

A violation of any provision of this article is a class C misdemeanor. A conviction is punishable by a fine as provided in section 1-12. Each day a violation continues constitutes a separate offense. Each violation of a separate provision in this article constitutes a separate offense. A culpable mental state is not required to prove an offense under this article.

Failure to appear in response to a citation issued for violation of this article is a separate violation of this article.

Secs. 30-276. -Separability

If the above provisions and sections of this Ordinance contradict any portion of any other ordinance, the stricter of the two shall apply.

Secs. 30-277—30-300. - Reserved.

Item #6

Implementing Texas Local Government Code Chapter 284 and the Review of Article VII of Chapter 78 "Use and Occupancy of City's Rights-of-Way for Provision of Utility, Telecommunications and Cable Services"

The City of Hewitt has an important public interest in: protecting municipal rights-of-way for their paramount public purposes; managing the rights-of-way to protect its own utilities; protection of public health, safety and welfare; and maintaining the image and aesthetics of the city for the benefit of its citizens. At the same time, network providers are seeking to implement new technologies that will create significant gains in the coverage and speed of wireless data and voice services. The hope is that the City and network providers can cooperate to serve both important interests.

These changes to Article VII of Chapter 78 "Use and Occupancy of City's Rights-of-Way for Provision of Utility, Telecommunications and Cable Services" serve to implement Tex. S.B. 1004, 85th Leg., R.S. (2017), the new Texas Local Government Code Chapter 284 which mandates that wireless infrastructure providers and wireless service providers have access to public right of way to locate their facilities.

From time to time, our City rules and regulations are reviewed to ensure the policies follow current state and federal laws as well as current best management practices.

ARTICLE VII. USE AND OCCUPANCY OF CITY'S RIGHTS-OF-WAY FOR PROVISION OF UTILITY, TELECOMMUNICATIONS AND CABLE SERVICES

Sec. 78-351. - Definitions.

Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a right-of-way on or adjacent to a pole.

Department means the ~~Parks and Streets~~ department of the city.

Director means the director of the public works department of the city, or ~~his/her~~ designee by the City Manager.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(a) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(b) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

Network provider means:

(a) a wireless service provider; or

(b) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

(i) network nodes; or

(ii) node support poles or any other structure that supports or is capable of supporting a network node.

~~Registered user means a person who has complied with the registration provisions of this article.~~

User means a person who commences, facilitates, or performs construction upon a facility above, upon, or beneath the right-of-way in a manner governed by this chapter and includes user's representatives, designated agents, contractors and subcontractors, if applicable, unless otherwise indicated.

(Ord. No. 04-17-2000, § 1, 4-17-00)

~~Sec. 78-352. General provisions.~~

~~(a) No person shall use or occupy the rights-of-way in the city for the provision of utility, telecommunications, cable television, and similar services except in compliance with the provisions of this article.~~

~~(b) The provisions of this article shall apply to the use and/or occupancy of the rights-of-way by a person under the authority granted by a franchise agreement or ordinance as if fully set forth in the franchise agreement or ordinance. The express terms of this article will prevail over conflicting or inconsistent provisions in a franchise agreement unless such franchise agreement expresses an explicit intent to waive a requirement of this article.~~

~~(c) The provisions of this article shall be liberally construed in favor of the city in order to effectuate the purposes and objectives of this article and to promote the public interest.~~

(Ord. No. 04-17-2000, § 2, 4-17-00)

Sec. 78-352. Purpose. The purposes of this Chapter include, but are not limited to:

- a) management and keeping track of facilities placed in, on, over, or under the rights-of-way of the city to provide for the orderly maintenance of such rights-of-way, avoid interruptions of utility services, minimize congestion of facilities in the rights-of-way, minimize unsightly visual impacts or other adverse effects, and assure that the rights-of-way are available to serve their paramount public purpose;
- b) govern use and occupancy of the rights-of-way;
- c) serve the interests of public health, safety, and welfare;
- d) conserve the limited physical capacity of the rights-of-way held in public trust by the city;
- e) preserve the integrity of sidewalks, municipal streets and other public thoroughfares;
- f) assist in preventing uses of the rights-of-way that interfere with the city's paramount right to use of the rights-of-way;
- g) comply with the requirements of federal and state law; and
- h) attempt to avoid the unconstitutional grant of public rights and resources to private entities to the extent possible under state law

Sec. 78-353. - Registration of users and occupants of rights-of-way.

- (1) A description of the type of facilities in the rights-of-way, for example, electric conduit, telecommunications cables, natural gas pipelines and the like. This description shall include a statement of whether the applicant is a certificated telecommunications provider as defined in V.T.C.A., Local Government Code § 283.002(2), and, if so, whether the applicant is providing access lines as defined in V.T.C.A., Local Government Code § 283.002(1).

(Ord. No. 04-17-2000, § 3, 4-17-00)

Sec. 78-354. - Use and occupancy of rights-of-way—Regulation by city.

- (a) *Temporary rearrangement or removal of aerial facilities.* At the request of any person holding a valid building moving permit and upon not less than five business days advance notice, the registered user shall temporarily raise, lower, or remove its facilities as necessary to permit the moving of a building. The expense of such temporary changes, including standby time, shall be paid by the moving permit holder, and the registered user may require payment according to master fee schedule in advance.
- (b) *Right to trim trees.* The registered user, its contractors and agents have the right, permission and license to trim trees upon and overhanging the *rights-of-way* to prevent trees from coming in contact with the registered user's facilities. All trimming shall be done in consideration of the health of the trees. When directed by the city, tree trimming shall be ~~done~~performed in late fall or winter months, or as directed by a certified arborist, under the supervision and direction of the city or under the supervision of the city's delegated representative. Any tree trimmings generated by the registered user, its contractors or agents, shall be removed within 24 hours. Should the registered user, its contractors or agents, fail to timely remove such trimmings, the city may remove same or have them removed, and shall bill registered user for all costs incurred, which costs shall be promptly paid by the registered user. Nothing herein shall be construed to grant to a registered user the right of access to private property.
- (d) *Removal of facilities.*
 - (1) Whenever it shall be necessary to require a registered user to relocate its facilities to permit the widening or straightening of a street, the city shall give the registered user 30 calendar days notice of such requirement, and such relocation shall be made by the registered user promptly, with consideration given to the magnitude of such alterations or changes, without claim for reimbursement or damages against the city. If any such requirements impose a financial hardship upon the registered user, the registered user shall have the right to promptly present alternative proposals to the city, and the city shall give due consideration to any such alternative proposals. If the city determines that the preservation and protection of the public health and safety require removal of facilities from the rights-of-way that are being abandoned, the city shall require registered user to remove its facilities entirely from the abandoned rights-of-way at no cost to the city. If the city requests the registered user to adapt or conform its facilities to enable any other entity or person, except the city, to use, or to use with greater convenience, any rights-of-way, registered user shall not be required to make any such changes until such other entity or person shall reimburse or make arrangements satisfactory to registered user to reimburse the registered user for

any loss and expense caused by or arising out of such change; provided, however, that the city shall never be liable for such reimbursement.

(2) For public improvement projects where, after notification that facility relocation is required, the registered user has not, prior to the beginning of construction by the city, relocated its affected facilities within the rights-of-way, the following procedure will be followed:

- a. The city shall provide the registered user with reasonable notice of failure to act and request relocation.
 - b. If the registered user continues to delay, the city manager and the registered user will jointly review the relocation request in an expeditious manner to establish a mutually acceptable completion date for the relocation.
 - c. If the registered user continues to delay or does not meet the revised completion date, the city manager shall provide not less than five calendar days written notice to registered user advising of the city's intent to perform the public improvement project without relocating the affected facilities.
 - d. If after expiration of the written notice required by the preceding sentence, the registered user continues to delay, the city shall have the right to perform the public improvements without relocating or removing registered user's facilities. The city shall not be liable to the registered user for any damage to such facilities, and shall not be liable in any event for any consequential damages relating to service interruptions. If the public improvements performed by the city involve the construction or improvement of base or pavement of rights-of-way, registered user shall not thereafter disturb such improved roadways and/or rights-of-way for a period of ~~three~~ five years after completion of such improvements, except when necessary in the event of an emergency.
- (e) *Public safety.* The city retains the right to move any facilities within the rights-of-way to cure or otherwise address a public health or safety emergency. The city shall cooperate to the extent possible with the registered user in such instances to assure continuity of service and to afford to the registered user the opportunity to make such relocation itself.
- (f) *Third party convenience.* If the city requires a registered user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other person, except the city, to use, or to use with greater

convenience, any right-of-way, a registered user shall not be required to make any such changes until such other person shall have undertaken with solvent bond, to reimburse the registered user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of the registered user's facilities; provided, however, that the city shall never be liable for such reimbursement.

- (g) *Abandonment of facilities.* Whenever a registered user intends to abandon any of its facilities within the rights-of-way, it shall submit to the director or appointed representative an application requesting permission to abandon the facility, describing the facility to be abandoned, and the date of the proposed abandonment. City may require the registered user, at the registered user's expense:

- (1) To remove the facility from the rights-of-way; or
- (2) To modify the facility in order to protect the public health and safety or otherwise serve the public interest.

Unless such permission is granted or unless otherwise provided in this article, a registered user shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the city and shall restore any affected rights-of-way to their former state at the time such facilities and equipment were installed, so as not to impair their usefulness. In removing its plant, structures, and equipment, a registered user shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any other facilities or city-owned utility facilities. The city shall have the right to inspect and approve the condition of the rights-of-way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article shall continue in full force and effect during the period of removal and until full compliance by a registered user with the terms and conditions of this section. Upon abandonment of any facilities in place, a registered user, if required by the city, shall submit to the city a written instrument, satisfactory in form to the city, transferring to the city the ownership of the abandoned facilities. Notwithstanding anything to the contrary set forth in this article, a registered user may abandon any underground facilities in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other registered users.

- (h) *Public nuisance abatement.* The city may require the removal or abatement of any facility determined by the city to cause a public nuisance. The city shall give registered user written notice of the required removal or abatement. No later than 30 calendar days after the registered user receives such written notice, the

registered user shall remove such facility or abate the public nuisance to the satisfaction of the city. If the registered user notifies the city manager in writing within such 30-day period requesting additional time for such removal or abatement, or that the registered user is unable to remove or abate such facility for specified reasons, the city manager may, but is not required to, grant additional time to the registered user or negotiate alternate arrangements with the registered user. If the registered user does not so notify the city and fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the registered user, all without compensation or liability for damages to the registered user.

- (i) Network nodes. Adoption of Design Manual. The city council hereby adopts the Design Manual for the Installation of Network Nodes, Transport Facilities and Node Support Poles pursuant to V.T.C.A., Local Government Code Chapter 284 ("Design Manual") which is attached to this ordinance as Appendix A and hereby incorporated into this Code. The installation and construction of network nodes, transport facilities, and new node support poles in the rights-of-way is subject to this chapter and the Design Manual.

~~(Ord. No. 04-17-2000, § 4, 4-17-00)~~

Sec. 78-355. - Construction permits.

- (a) *Permit required.* No person shall perform any construction, repairs, maintenance, or installation of facilities in the rights-of-way without obtaining a construction permit from the city hereunder. The permit will be in the name of the person who will own the facilities to be constructed. The permit application must be completed and signed by a representative of the owner of the facilities to be constructed. During the term of the permit, the permittee shall be liable for the acts or omissions of any entity used by the permittee, when such entity is involved directly or indirectly in the construction and installation of the permittee's facilities to the same extent as if the acts or omissions of such entity were the acts or omissions of the permittee.
- (b) *Emergency exception.* Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, ~~the department~~ the City shall be notified within two business days of any construction related to an emergency response, including the provision of a reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities that were relocated, if applicable.
- (c) *Other exceptions.* The phrase "construction or installation of facilities" does not include repair or maintenance of existing facilities or the installation of facilities

necessary to initiate service to a customer's property, unless such installation, repair or maintenance requires the breaking of pavement, the closure of a nonresidential traffic lane, excavation, or boring.

- (f) Permit fee. To be acceptable for filing, an application shall be accompanied by a permit fee in the amount established in the most recently approved Master Fee Schedule following amount, as appropriate:
- ~~(1) For certificated telecommunications providers providing access lines (as defined in V.T.C.A., Local Government Code ch. 283): No fee.~~
 - ~~(2) For persons occupying the rights-of-way of the city under a franchise ordinance or agreement: No fee.~~
 - ~~(3) For all other applicants: \$200.00.~~

~~{Ord. No. 04-17-2000, § 5, 4-17-00}~~

Sec. 78-356. - Construction work—Regulation by city.

- (a) *Existing facilities.* It is the policy of the city to encourage the joint use of facilities to avoid proliferation of poles and other overhead facilities. Permittees are strongly encouraged to co-locate facilities where economically and technically feasible. Toward that end, permittees shall investigate the availability of space on existing poles and shall demonstrate to the city that such investigation has been completed prior to the issuance of city approval for construction of new facilities. Nothing contained in this article shall be construed to require or permit the attachment on or placement in a permittee's facilities of any electric light or power wires or facilities or other systems not owned by the permittee. If the city desires to attach or place electric light or power wires, communications facilities or other similar systems or facilities in or on the permittee's facilities, then a further separate, noncontingent agreement with the permittee shall be required. Nothing contained in this article shall obligate the permittee to exercise, or restrict the permittee from exercising, its right to enter voluntarily into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with any person authorized to operate in the rights-of-way of the city.
- (b) *Traffic disruptions.* The permittee shall endeavor to minimize disruptions to the efficient use of the rights-of-way by pedestrian and vehicular traffic, and rights-of-way shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. The permittee shall also provide the City with a traffic control plan per the Texas Manual on Uniform Traffic Control Devices (TMUTCD).
- (c) *Pole placement.* All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter, channel, pipe, or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles,

stubs, guys, anchors, conduits, fiber, and cables placed and constructed by the permittee in the construction and maintenance of its facilities in the city shall be subject to the lawful, reasonable and proper control, direction and/or approval of the city.

- (d) *Work in accordance with permit.* All construction and installation in the rights-of-way shall be in accordance with the permit for the facilities. The ~~director~~City shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the permit. A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the city at all times when construction or installation work is occurring. Permittee shall produce and maintain a copy of "Record Drawings" for all projects with the City's R.O.W. or Public Utility Easements, and they shall be made available to the City upon request.
- (e) *Time for completion.* All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the director.
- (f) *Prior notification.* ~~The department~~The City must be notified 24 hours in advance that construction is ready to proceed by either the permittee, its contractor, or other representative. All construction shall be in conformance with all city codes and applicable local, state, and federal laws.
- (g) *Signage.* Required information signs measuring a minimum of three feet by three feet, stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur at least 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 information sign will be posted 100 feet before the construction location commences and each 100) feet thereafter, unless other posting arrangements are approved or required by the director.
- (h) *Erosion and stormwater controls.* Erosion control measures (e.g., silt fence) and advance warning signs, markers, cones, and barricades must be in place before work begins. Permittee shall be responsible for storm water management erosion control that complies with city, state, and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and wire-backed silt fencing around high erosion areas. Upon request, permittee may be required to furnish documentation submitted or received from federal or state governments.

- (i) *Lane closures.* Lane closures on major thoroughfares will be limited to hours after 8:30 a.m. and before 4:00 p.m. unless the ~~department~~ City grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and 36 inch reflector cones placed according to the ~~specifications of the department.~~ Texas Manual on Uniform Traffic Control Devices (TMUTCD).
- (j) *Responsibility of permittee.* Permittees are responsible for the workmanship of, and any damages caused by, contractors or subcontractors. A responsible representative of the permittee shall be available to the ~~department~~ City at all times during construction.
- (k) *Damage to utilities.* Permittee, contractor, or subcontractor shall notify the ~~department~~ City immediately of any damage to other utilities, either city or privately owned.
- (l) *Cuts.* When a street or sidewalk cut is required, prior approval must be obtained from the ~~department~~ City and all requirements of the ~~department~~ City shall be followed. Repair of all street and sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (m) *City utilities.* Installation of facilities must not interfere with city utilities, in particular gravity dependent facilities.
- (n) *Installed depth.* New non-municipal facilities must be installed to a depth approved by the ~~Department~~ City.
- (o) *Boring.* All directional boring shall have a locator place bore marks and depths while bore is in progress. The locator shall place a mark at each stem with a paint dot and shall mark the depth of at least every other stem. Existing utilities shall be potholed prior to work to avoid damage and confirm required depths.
- (p) *Working hours.* The working hours in the rights-of-way are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved in advance. Any work performed on Saturday or Sunday must be approved 24 hours in advance by the ~~department~~ City. Directional boring is permitted only Monday through Friday, 7:00 a.m. to 6:00 p.m., unless approved in advance. No work will be done, except for emergencies, on city holidays.
- (q) *Worksite Safety.* Permittee is responsible for following all applicable safety requirements and maintaining a safe worksite

- (r) *Line locations.* Permittees working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the rights-of-way prior to any excavation. Use of geographic information system or the plans or records does not satisfy this requirement. Permittee shall be responsible for verifying the location, both horizontal and vertical, of all affected facilities whether by pot-holing or hand-digging prior to any excavation or boring, with the exception of work involving lane closures, as set forth above. A permittee shall not place facilities where they will interfere with any gas, electric, telephone, water, cable television, or sewer facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All of permittee's facilities placed in the rights-of-way shall be placed as directed by the city in accordance with the established line-up of utility lines.
- (s) *Manholes.* Placement of all manholes and/or hand holes must be approved in advance by ~~the department~~City. Handholes or manholes will not be located in sidewalks, unless approved by the director.
- (t) *Pumping.* Construction that requires pumping of water or mud shall be contained in accordance with city ordinances and federal and state law and the directives of the City.
- (u) *Restoration.* Restoration of rights-of-way shall be to the reasonable satisfaction of the City and the property owner. Restoration shall be made in a timely manner as specified by approved department schedules and to the satisfaction of the director. Permittee shall warrant all pavement repairs for a period of three years after restoration has been complete. If restoration is not satisfactory or is not performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any permits not approved until all restoration as required herein is complete. The restoration shall include, but not be limited to:
- (1) Replacing all ground cover with the type of ground cover damaged during work, or better, either by sodding or seeding, as directed by the ~~department~~City;
 - (2) Installation of all manholes and handholes, as appropriate;
 - (3) All bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety procedures area approved by the ~~department~~City;
 - (4) Leveling of all trenches and backhoe lines; and
 - (5) Restoration of all landscaping, ground cover, and sprinkler systems.

~~(Ord. No. 04-17-2000, § 6, 4-17-00)~~

Sec. 78-357. - Indemnification and surety bond.

In accordance with Section 284.302 of the Texas Local Government Code, a network provider must further indemnify and hold the city harmless. Furthermore, in accordance with Section 283.057 of the Texas Local Government Code, a certified telecommunications provider must further indemnify and hold the city harmless.

- (a) ~~General provisions. The registered user shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the registered user, any agent, officer, director, representative, employee, affiliate, or subcontractor of the registered user, or its respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this section does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors, or subcontractors. If a registered user and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the city and the registered user and does not create or grant any rights, contractual or otherwise, to any other person or entity.~~
- (c) *Corporate surety bond.*
- (1) Registered user shall obtain and maintain, at its sole cost and expense, and file with the city clerk, a corporate surety bond with a surety company authorized to do business in the state and found acceptable by the city attorney, in the amount of \$100,000.00 to secure registered user's performance of its obligations and faithful adherence to all requirements of this article. Registered user shall provide this corporate surety bond within 30 days after issuance of the permit hereunder. In the alternative, registered user may provide an irrevocable letter of credit in the same amount in lieu of obtaining a bond.

- (2) The rights reserved to the city with respect to the bond are in addition to all other rights of the city, whether reserved by this article, or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the city may have.
- (3) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until 60 calendar days after receipt by the city, by registered mail, of written notice of such intent."
- (4) If a registered user fails to pay the city any fees or taxes due to the city, liquidated damages, damages or costs or expenses incurred by the city by reason of any act or default of the registered user, or if the registered user fails to comply with any provision of this article or of its franchise agreement that the city determines can be remedied by a demand upon the corporate surety bond, the city may, after 30 calendar days notice to the registered user, make a demand for payment upon the corporate surety bond, including any interest or penalties. Such notice shall be given by city council resolution. Within 15 calendar days of such city council resolution, the registered user may file a written request for a city council hearing on the matter. Such hearing shall be held within 30 calendar days of the city council resolution authorizing the demand upon the corporate surety bond, unless the city wishes to extend the time period.

~~Sec 284.302~~

~~Sec 283.057~~

~~(Ord. No. 04-17-2000, § 7, 4-17-00)~~

Sec. 78-358. - Insurance.

- (a) *Certificate of insurance.* In order to comply with the registration requirements of this article and prior to the issuance of a construction permit, the applicant shall furnish a completed certificate of insurance to the city attorney's office, 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. Neither the registration nor the construction permit shall be issued until such certification shall have been delivered to the city attorney, and no officer or employee shall have authority to waive this requirement.
- (b) *Coverage amounts.* A registered user and a permittee shall obtain and maintain in full force and effect for the duration of the use and occupancy of the rights-of-way, or of the work to be performed under the permit, respectively, at the registered user's or permittee's sole expense, insurance coverage written on an

occurrence basis, issued by companies authorized to conduct business in the state and rated "A" or better by A.M. Best Company and/or otherwise acceptable to the city, in the following types and minimum amounts:

Type		Amount
Worker's Compensation and Statutory Employers Liability		\$100,000/\$500,000/\$100,000
Commercial General Liability—To include coverage for the following where the exposure exists:		<u>\$2,000,000</u>
(I)	Premises operation	Combined single limit for bodily injury and property damage 5,000,000 per occurrence or its equivalent
(II)	Independent contractors	
(III)	Products/completed operations	
(IV)	Personal injury	
(V)	Contractual liability	
(VI)	Explosion, collapse and underground property damage	
Comprehensive automobile insurance coverage for:		<u>\$1,000,000</u>
(I)	Owned/leased automobiles	Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent
(II)	Non-owned automobiles	
(III)	Hired automobiles	

~~(Ord. No. 04-17-2000, § 8, 4-17-00)~~

Sec. 78-359. - Accounts, records, reports and investigations.

- (a) *Requests for information.* In addition to any requirements that may be contained in a franchise agreement, upon request the registered user shall provide the city information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, and repair of its facilities performed by registered user in the rights-of-way.
- (b) *Provision of plans.* The permittee shall cooperate with the city at all times by providing timely and complete information regarding the location of its facilities, along with such maps, plats, construction documents and drawings as may exist or as may be created from time to time. The permittee shall at all times keep on file with the city a current map, in a digital format compatible with the city's Geographic Information System (G.I.S.), of the permittee's facilities within the rights-of-way. As extensions or modifications of the facilities are made from time to time, the permittee shall periodically file with the city updated digital maps showing those extensions or modifications so that the city will have current and accurate information regarding the location of the facilities. The digital information shall include the location of the facilities, including the depth of any buried facilities, to the extent such information exists. If such information is not available in digital format, a hard copy shall be provided. A hard copy of the digital maps may be requested by the city and shall be provided by the permittee if requested. Permittee shall produce and maintain a copy of "Record Drawings" for all projects with the City's R.O.W. or Public Utility Easements, and they shall be made available to the City upon request.
- (c) Prior to disclosure of information clearly claimed in writing to be confidential or proprietary by registered user or permittee, the city shall give the registered user or permittee reasonable notice of any request for such information made to the city pursuant to the public information act, or other applicable law. The city will use the information provided by permittees and registered users pursuant to this section only for the purposes of protection and management of the public rights-of-way. The data base provided by permittees and registered users in its entirety will be treated as competitive information and will not be disclosed in whole or in part, except that portions of such data may be provided to third parties as necessary for efficient management of the public rights-of-way.

(Ord. No. 04-17-2000, § 9, 4-17-00)

~~Sec. 78-364. - Reservation of rights.~~

~~(a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.~~

~~(b) Any additional regulations adopted by the city shall be incorporated into this article and complied with by all permittees within 30 calendar days of the date of adoption of such additional regulations.~~

~~{Ord. No. 04-17-2000, § 14, 4-17-00}~~

~~Secs. 78-365—78-400. Reserved.~~

Sec 78-361. -Certified Telecommunications Providers.

Certified Telecommunications Providers ("CTPs") must obtain a permit for installation or construction activities in the right-of-way just as other users. As part of the application a CTP must provide evidence of certification as a CTP with the right to use public right-of-way by the Texas Public Utilities Commission. CTP certification does not authorize the provision of wireless services using municipal rights-of-way. A CTP is subject to the city's police powers exercised to manage its rights-of-way, including the applicable provisions of this Chapter, except to the extent, if any, directly exempted therefrom by law. A permit to a CTP does not allow it to provide or allow anyone else to provide services beyond those of a CTP through its lines. Designation as a CTP does not except the user from compliance with Chapter 284 of the Texas Local Government Code if the CTP is in fact providing services covered by Chapter 284, unless otherwise directly and clearly provided by law.

Installations on Private Property. Installation of facilities on private property are governed by the city's zoning ordinance (for wireless facilities the 60 day deadline set by FCC regulations applies).

Compensation for Right-of-Way Use. Any compensation for the use of rights-of-way is generally set by franchise, license agreement, or by law. Chapter 283 of the Local Government Code addresses compensation for lines of Certified Telephone Providers, and does not apply to wireless services.

Sec 78-362. -Chapter 284 Facilities.

The construction and installation of facilities covered by Chapter 284 of the Texas Local Government code must comply with the Design Manual, this chapter, Chapter 284 of the Texas Local Government Code, and other law which is applicable and is not in conflict with Chapter 284 of the Texas Local Government Code. Under Chapter 284 of the Local Government Code, permittees operating or maintaining facilities in the City's rights-of-way must adhere to adjacent regulations and fees established by Chapter 284 of the Texas Local Government Code.

No collocation of a network node on a city service pole may occur unless the network provider enters into a pole attachment agreement with the city in the form approved by the city manager.

Sec. 78- 363. Prohibition of Installation or Construction of Facilities in Certain Areas.

Areas where certain types of facilities are prohibited from being installed or constructed are generally addressed by other Chapters of this Code, or the city's zoning and subdivision regulations. However, as to municipal rights-of-way and facilities covered by Chapter 284 of the Local Government Code, Chapter 284 specifically controls restrictions on the locations where network nodes, node support poles and transport facilities may be installed.

A. Restrictions on Facilities Covered by Chapter 284 of the Texas Local Government Code.

- 1) No network provider may install, construct, or operate a new node support pole on public right-of-way that is in a municipal park without obtaining the written consent of the city manager before a permit application is submitted. In addition, any approvals required under applicable deed restrictions must be obtained. Municipal park as used herein specifically includes: Warren Park, Glaze Park, and Hewitt Park and/or other if applicable.
- 2) No network provider may install, construct, or operate a new node support pole on public right-of-way adjacent to a street of less than 50 feet in width that is adjacent to single family residential lots or multi-family uses, or is zoned for residential use or is restricted to residential use by deed restrictions without obtaining the written consent of the city manager before a permit application is submitted. In addition, any approvals required under applicable deed restrictions must be obtained.
- 3) In the event that a historic district or design district is developed and designated in the future having decorative poles, no network provider may install, construct, or operate a new node or node support pole on public right-of-way in the district without a permit from the city specifically for said location(s), and compliance with concealment and design requirements of the city for the district to minimize the impact on aesthetics.
- 4) If by zoning designation or deed restrictions/restrictive covenants an area has undergrounding requirements, the network provider shall comply with those requirements, but may seek a zoning change as

provided for in the applicable regulations; approval of which is not guaranteed. In addition, any approvals required under applicable deed restrictions/restrictive covenants would have to be obtained.

Sec 78-364. -Damage to other Facilities

- A. Without intending to affect or determine the legal relationship between a user and any third party, a user shall be liable for any property damage or destruction caused by the user, or by any contractor or subcontractor of the user, as a result of the user or any contractor or subcontractor of the user constructing in the right-of-way. A designated agent or representative of a user shall be available to the city engineer for contact purposes in the event of damage or destruction.
- B. A user shall immediately notify the city engineer upon occurrence of any damage or destruction to any facility or other property owned or leased by a third party or by the city, in connection with construction occurring in the right-of-way, if such occurrence happens during a city business day. If the occurrence happens on a day other than a city business day, notification must be given by 9 a.m. on the first city business day following the occurrence---unless the damage is causing a leak or disruption of water or sewer service---in which case the user must immediately contact the city.

Sec. 78- 365. -Abandonment

User shall remove its facilities when such facilities are abandoned regardless of whether or not it receives notice from the city to do so. Unless the city sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the facilities being abandoned or within 90 days of receipt of written notice from the city. When user removes or abandons permanent structures in the right-of-way, the user shall notify the city engineer in writing of such removal or abandonment and shall file with the city engineer the location and description of each facility removed or abandoned. The city engineer may require the user to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.

Sec. 78-366. -Electrical Supply

Users are responsible for obtaining any required electrical power services to their facilities. The city shall not be liable for any stoppages or shortages of electrical power furnished to the facilities, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the facilities or the act or omission of any other tenant of the structure or user of the right-of-way, or for any other

cause beyond the control of the city. Generators and back-up generators are prohibited in the right-of-way.

Sec. 78-367. - Notices.

All notices required herein shall be in writing and shall be delivered in person to the respective parties or sent by certified mail at the addresses set forth in the registration or the permit application.

(Ord. No. 04-17-2000, § 11, 4-17-00)

Sec. 78-368. - Violations.

- (a) If the city has reason to believe that the registered user/permittee is in violation of this article, the city shall notify the registered user/permittee in writing of the violation setting forth the nature of such violation. ~~Within 30 calendar days of receipt of such notice, the registered user/permittee shall respond in writing to provide explanation or documentation to support that the violation did not occur.~~ Registered user/permittee shall be allowed 30 calendar days to cure violations after written notice is received from the city, by taking appropriate steps to comply with the terms of this article and any lawful regulations. If the nature of the violation is such that it cannot be fully cured within 30 calendar days, the period of time in which the registered user/permittee must cure the violation shall be extended for such additional time necessary to complete the cure, provided that:
 - (1) Registered user/permittee shall have promptly commenced to cure; and
 - (2) Registered user/permittee is diligently pursuing its efforts to cure.
- (b) Upon evidence being received by the city that violations of this article, any City Charter provisions or any ordinances lawfully regulating registered user/permittee in the construction and operation of its facilities have occurred, or continue to occur after the 30 calendar day cure period, and any additional time necessary to cure, the city may cause an investigation to be made. If the city finds that such a violation continues to exist or has occurred, then the city may take any action authorized by law, including making a demand upon the corporate surety bond as provided in section 78-357(c) of this article, termination of the permit, and a suit in court to compel compliance.
- (c) Failure by the city to enforce any rights under this article does not constitute a waiver of such rights.
- (d) If the city revokes a permit, if the permit expires because of the expiration of the permittee's franchise, or if for any other reason a permittee abandons its facilities in the rights-of-way, then to protect the public health and safety, and to the extent

authorized by law, the city may require the former permittee to remove its facilities and equipment at the former permittee's expense. If the former permittee fails to do so within a reasonable period of time, the city may have the removal done at the former permittee's expense.

~~{Ord. No. 04-17-2000, § 12, 4-17-00}~~

Sec. 78-369. - Miscellaneous.

- (a) The obligations and undertakings of both parties hereto shall be performed at Hewitt, McLennan County, Texas. Venue of any suits arising hereunder shall be McLennan County, Texas.
- (b) The city manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this article. The city manager shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this article that are reserved to the city council. The city manager may recommend that the council take certain actions with respect to the permit.
- (c) A registered user/permittee shall have the right to appeal to the city council or Board of Adjustments any decision of the city manager relating to such registration or permit. Such appeal must be made by written request within 15 calendar days of receipt of written notice of the city manager's decision that the registered user/permittee seeks to appeal.

~~{Ord. No. 04-17-2000, § 13, 4-17-00}~~