

**AMENDED
AGENDA
City of Hobbs Planning Board – Regular Meeting
December 13, 2017 at 10:00 AM**

**W. M. “Tres” Hicks, Chairman
Bill Ramirez
Brett Drennan
Larry Sanderson**

**Guy Kesner, Vice Chairman
Bobby Shaw
Dwayne Penick**

Tentative Agenda for the Planning Board Regular Session Meeting to be held on Wednesday, December 13, 2017 at 10:00 AM at the City of Hobbs Annex Building, First Floor Commission Chambers located at 200 E. Broadway, Hobbs, NM 88240.

AGENDA

- 1) Call To Order.**
- 2) Review and Consider Approval of Agenda.**
- 3) Review and Consider Approval of Minutes.**

October 17, 2017 – Regular Meeting

- 4) Communications from Citizens.**
- 5) Review and Consider a proposed Development Agreement with TDS Telcom extending and utilizing municipal infrastructures for a proposed development located northeast of the intersection of E. Marland and 14th.**
- 6) Review and Consider fence height variance request for proposed development located northwest of the intersection of Marland and Dal Paso as submitted by property owner. The City of Hobbs Major Thoroughfare Plan requires a maximum of 2’ height for a fence located at the front property line; the property owners are requesting to modify and retain the current non-complaint fence at the front property line adjacent to Dal Paso.**
- 7) Review and Consider Planning Board Calendar for Calendar Year 2018.**
- 8) DISCUSSION ITEM – Review & discuss proposed Right – of – way management Ordinance.**
- 9) Adjournment.**

The City will make every effort to provide reasonable accommodations for people with disabilities who wish to attend a public meeting. Please notify the City at least 24 hours before the meeting. Telephone 397-9351.

“Notice is hereby given that a quorum of the Hobbs City Commission may be in attendance at this meeting.”

**PLANNING BOARD MEETING
MINUTES
October 17, 2017**

The Hobbs Planning Board met on October 17, 2017 at 10:00 a.m. at City of Hobbs Annex Building, First Floor Commission Chambers, located at 200 E. Broadway, Hobbs, NM 88240 with Mr. W.M. "Tres" Hicks Chairman presiding.

Members Present:

Tres Hicks, Chairman
Guy Kesner, Vice Chairman
Brett Drennan
Larry Sanderson

Members Absent:

Bobby Shaw
Bill Ramirez
Dwayne Penick

Also present were members of the public and City staff as follows:

Kevin Robinson, Development Director
Todd Randall, City Engineer
Julie Nymeyer, Staff Secretary
Steve Lambert, Zia Park
Ricardo Carrillo, A&E Mobile Park

Ben Manes, Building Official
Bruce Reid, County Planner
Patty Collins
Michael Baxley, Zia Park
Mark Baraibar, A&E Mobile Park

1) Call To Order.

Chairman Hicks called the meeting to order at 10:04 am.

2) Review and Consider Approval of Agenda.

The first item of business was to review and approve the Agenda for the October 17, 2017 meeting. Mr. Hicks asked if there were any changes or additions to the Agenda? Mr. Robinson said there were none. Mr. Drennan made a motion, seconded by Mr. Kesner to approve the agenda as presented. The vote on the motion was 4-0 and the motion carried.

3) Review and Consider Approval of Minutes.

September 19, 2017 – Regular Meeting

Mr. Hicks asked if everyone has had a chance to read the Regular Meeting Minutes from September 19, 2017? Mr. Drennan made a motion, seconded by Mr. Sanderson to approve the minutes as presented. The vote on the motion was 4-0 and the motion carried.

4) Communications from Citizens.

There were no communications from citizens.

- 5) **Review and Consider variance from MC 15.32 (Sign Code), as submitted by property owner representative Up-Lift Services.**

Mr. Robinson said this is a variance request for sign code that will be on Zia Casino's property. He said the new sign will be as large as the original sign. He said they are taking the current electronic portion of the sign will become larger but the solid structures will be smaller. Mr. Kesner asked if it will be single sided or on both sides? Mr. Carl Baxley said it will be only single sided. Mr. Kesner made a motion, seconded by Mr. Drennan to approve the variance for the sign. The vote on the motion was 4-0 and the motion carried.

- 6) **Review and Consider variance from MC 18.04 (Manufactured Homes) as submitted by property owner Ricardo Carrillo.**

Mr. Robinson said this is an existing non-compliance mobile home park that has been before this board in the past for non-compliance issues. He said the owners have not been allowed to move anymore units until it becomes compliant. He said the property has been sold and Mr. Ricardo Carrillo is the new owner and he is aware of all the issues to make the park compliant. He said since Mr. Carrillo purchased the property three units have been removed. He said Mr. Carrillo would like to replace the three units with one additional until the park comes into compliance.

Mr. Mark Baraibar passed out a presentation of the mobile home park. He said the biggest issue of the park is the middle row that is unpaved. He said they would like to make this park very classy, clean and safe. He said they are going to put a new base course over the top and then they will chip seal the rest. He said they are also going to install a 6 foot tall metal fence. He said they want tenants only in the park. He said for first responders they have an emergency access in the back. Mr. Kesner asked if there was currently a gate there? Mr. Baraibar said no they are installing one. He said Houston Street is narrow so Mr. Carrillo is willing to give the city an easement for 8 feet of property to widen Houston. Mr. Robinson said additional dedication would be extremely appreciated.

Mr. Hicks asked if the new owner knew there were existing issues with the park and there was a letter of non-compliance from the city? Mr. Carrillo said he knew there were problems because it looks terrible but he never saw a letter. Mr. Hicks said he would be in favor of allowing one more home to be moved in.

Mr. Hicks asked if they had a timeline to bring the park in to compliance? Mr. Carrillo said the projects have already started. He said the fence is going up now and if they get a variance they will move forward with the street paving. Mr. Hicks said he would propose a 20 foot from the proposed curb line after they dedicate the 8 feet.

Mr. Kesner made a motion, seconded by Mr. Sanderson to approve the variances to allow one home move in and chip seal for the road less 20 foot entrance of hot mix or concrete. The vote on the motion was 4-0 and the motion carried.

- 7) **Review and Consider requested street name change, as submitted by developer Del Norte Heights, Inc. The Developer is requesting to change Camino Chiquito, a stub street within Del Norte Heights Addition Unit 8, to Poco.**

Mr. Robinson said there is one person who lives on the street now has contacted Del Norte and they have requested a street name change. Mr. Drennan made a motion, seconded by Mr. Sanderson to approve the street name change. The vote on the motion was 4-0 and the motion carried.

- 8) Review and Consider requested street name change, as submitted by City of Hobbs. The City of Hobbs is requesting to change Dalmont, located between Clearfork and Glorietta, to Gantt.

Mr. Robinson said there are no houses address on this short block at this time so now would be a good time to change the address so the street name will line up with the street to the north. Mr. Hicks said the street name should stay the same. Mr. Kesner made a motion seconded by Mr. Drennan to approve the name change of Dalmont to Gantt. The vote on the motion was 4-0 and the motion carried.

- 9) Review and Consider naming of public access streets located fully within public parks, as submitted by City of Hobbs.

Mr. Robinson said this was brought before the board before and staff is bringing this item back with the same issue. He said there is Del Norte Parkway which is 100% located within Del Norte Park. Mr. Hicks asked if Del Norte Heights has a Master Plan for going west. Mr. Randall said yes they do. He said Del Norte Parkway because it is entirely inside the park will be easy to change the name if they need to in the future. He said the half mile at Lovington Hwy is Magnolia. He said this half mile roadway has not been named. He said this is an interim solution for naming this roadway through Del Norte Park.

Mr. Kesner asked why the city was trying to name the street. Mr. Randall said some of it is because of 911 addressing response. He said the ability to write citations on the site instead of city park area. He said Del Norte Park is addressed off Grimes. Mr. Hicks said he is in favor of the Del Norte Parkway name.

Mr. Hicks suggested they discuss City Park in case we need a separate motion. Mr. Randall said the north/south street in front of Murray School is Murray Parkway. He said you can see on the intersection is offset but that is Park Street going to the east so that would be an extension of Park Street. Mr. Hicks said it is an extension but you are going to call it City Parkway? Mr. Randall said if it is an extension it will be Park Street. Mr. Hicks asked if he was proposing north/south will be Murray Parkway and the east street will be City Parkway? Mr. Randall said either City Parkway or Park Street which would be an extension of Park Street. Mr. Hicks said he would entertain a motion to name the three streets Del Norte Parkway, Murray Parkway and Park Street.

Mr. Sanderson made a motion, seconded by Mr. Drennan to name the three streets Del Norte Parkway, Murray Parkway and Park Street. The vote on the motion was 4-0 and the motion carried.

- 10) Review and Consider Subdivision Preliminary & Final Plan of Gage Subdivision #2 located northwest of the intersection of Campbell Lane and Denver City Highway.

Mr. Robinson said this was reviewed by the Board previously and as the Board pointed out tract 2 that was being created was an undevelopable lot because of the constraints in the parent parcel. He said the property owner has chosen to increase the size of tract 2 giving him more of a developable area. He said the area north of the floodway is about 1.1 acres.

Mr. Robinson said this property owner can develop but with huge constraints within the floodway. Mr. Kesner said he would make the recommendation to approve this as long as there are deed notes that there is a floodway across the parcels so any purchaser is aware there is a floodway and they will have to adhere to FEMA guidelines. Mr. Randall says the plat does show the floodway and he is not familiar with the County guidelines as far as disclosure. Mr. Reid said that is one of the items the county is waiting for is the disclosure statement for the Gage subdivision. He said that it will be stated on the plat.

Mr. Kesner made a motion, seconded by Mr. Sanderson to approve the Preliminary and Final Plats of the Gage Subdivision. The vote on the motion was 4-0 and the motion carried.

11) Report of Subdivisions approved via MC 16.12 – Alternate Summary Procedure since July, 2016.

Mr. Robinson said these are the summary subdivision and some of the issues are that even though the summary subdivisions may be approved they do not exist until they go to the courthouse and get them recorded. He said that staff has a copy of these plats readily accessible in our flat files. Mr. Hicks said it looks like they re-divided Grimes/Caprock more than once? Mr. Robinson said there was a re-division prior to Cotton Patch and then there was a division with Cotton Patch.

12) DISCUSSION ITEM – Review & discuss proposed Right – of – way management Ordinance.

Mr. Robinson said staff has noticed an increase of parties wanting to occupy public right-of-ways. He said the municipality receives right-of-ways through dedications. He said the dedications are primarily for traffic, utilities and municipal franchisee. He said there are usages outside of franchise agreements that are being requested for right-of-ways. He said there are disks on electric poles that are small cell internet providers. He said the city does not have a problem with the pole part which is Xcel's. He said the problem becomes when they connect the sites they are generally done with a hard wire. He said staff has researched through other communities to see how they handle these issues. He said staff has presented an ordinance which is a right-of-way management ordinance. He said Mr. Randall suggested that maybe this Board would like to create a sub-committee to help create the ordinance.

Mr. Robinson said one of the things every franchise agreements have now is a stratification of the right-of-way. He said the public portion is paramount because if the city has to widen a roadway and that requires us to lower a sewer line and run into a Gas line then it is that franchise responsibility to relocate their facilities. He said so public utilities are not interrupted. Mr. Hicks said he thought a subcommittee would be a good ideal. Mr. Robinson discussed several different variations of ordinances staff has looked at. Mr. Hicks asked if staff could go through and note which sections correlate to current sections in the code. Mr. Randall said now days there are small cell sites where you can run fiber to small

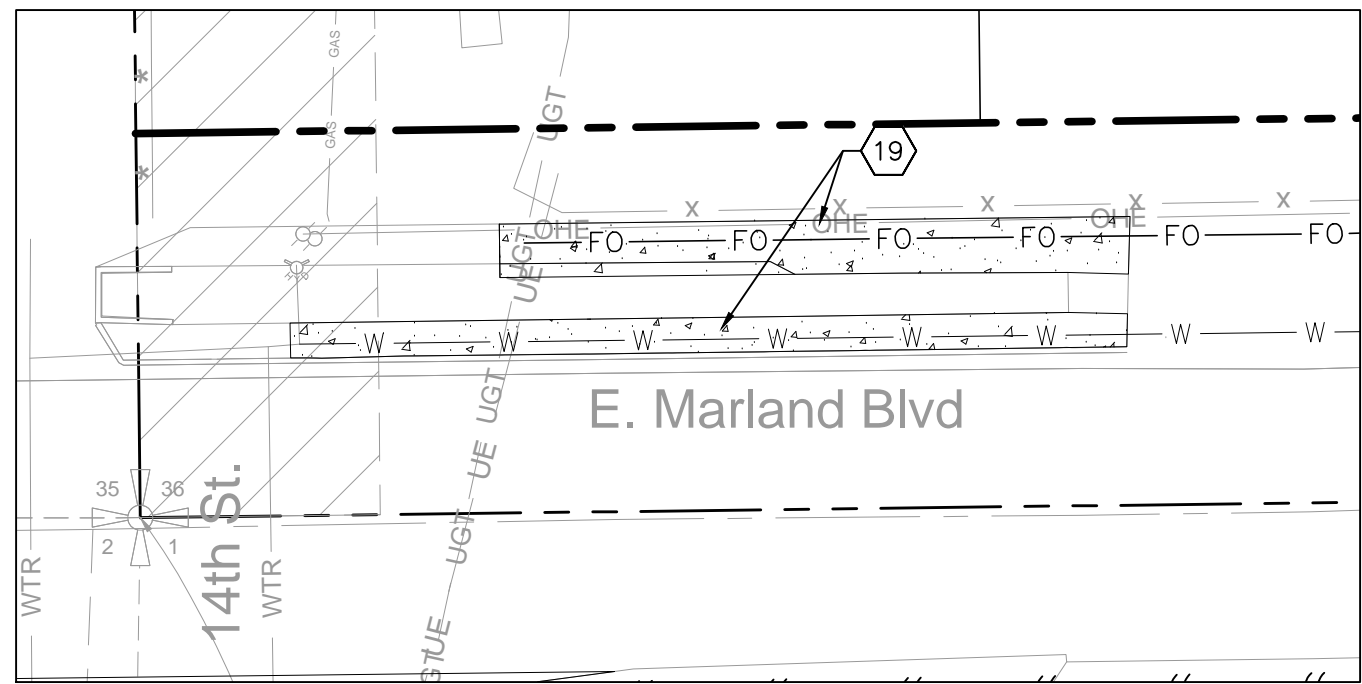
cell sites to broadband out to carriers. He said communities throughout the nation are getting hit on their right-of-ways. He said staff is trying to get in advance as far how to control this and what the fees will be. He said staff would like a small group of the Board to sit with legal since this is a new ordinance. Mr. Hicks asked staff to go back through it and make the connection points between existing and new and resend it to the Board and then see if they will act on it as a Board or create a subcommittee.

13) Adjournment.

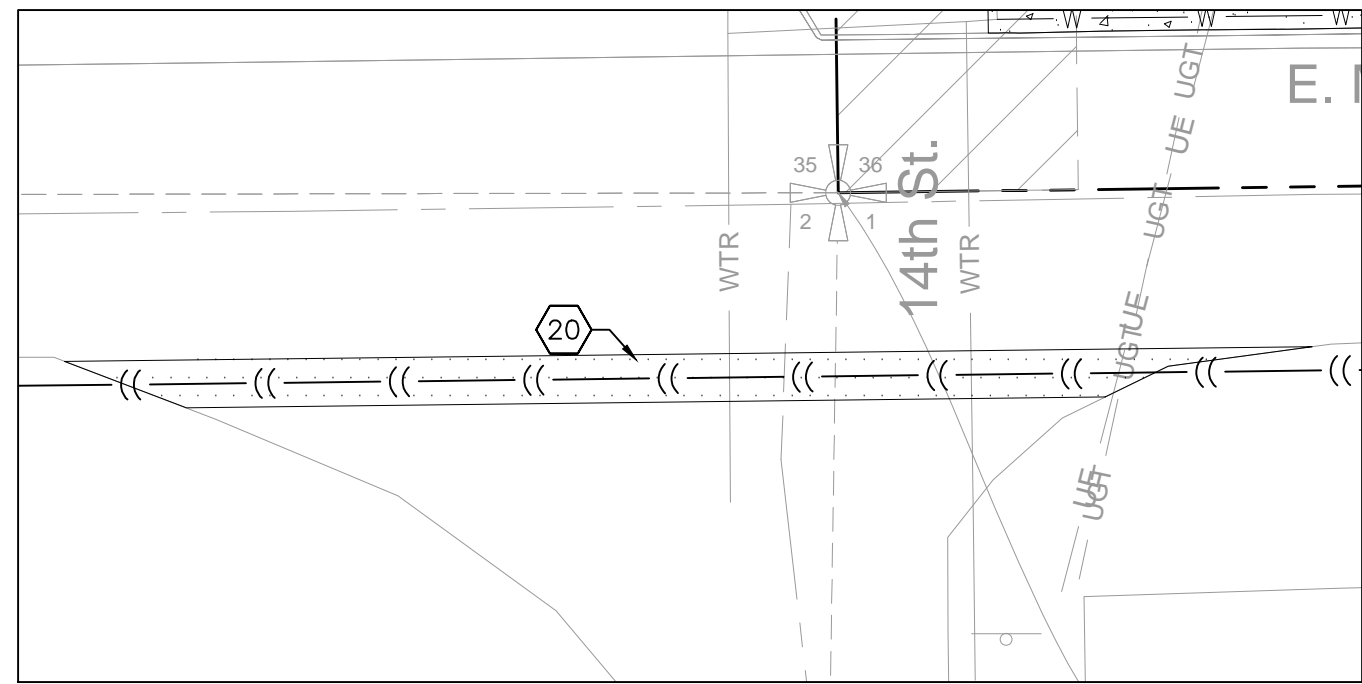
With nothing further to discuss the meeting adjourned at 11:30 am.

December 13, 2017
Planning Board Regular Meeting

- 5) **Review and Consider a proposed Development Agreement with TDS Telcom extending and utilizing municipal infrastructures for a proposed development located northeast of the intersection of E. Marland and 14th.**

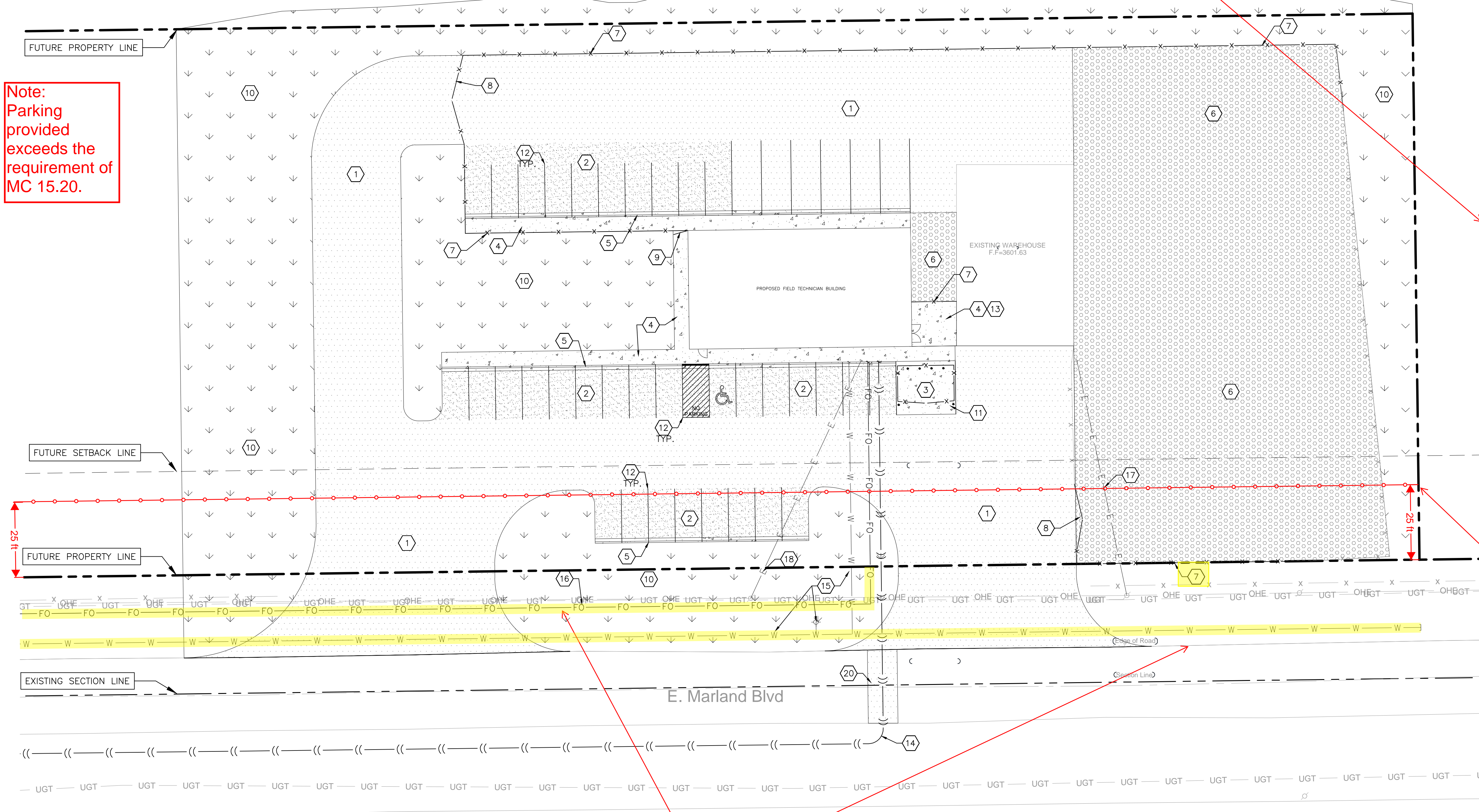


1 WATER CONNECTION SITE PLAN
1"=20'



2 FORCE MAIN SITE PLAN
1"=20'

COH Major Thoroughfare Plan requires a 6' fence to be located 25' from the front yard property line.

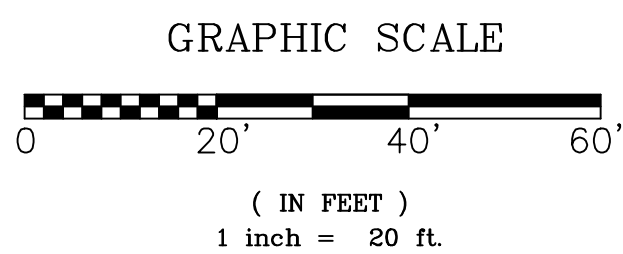
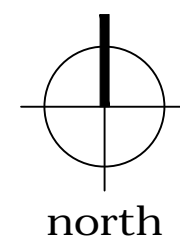


Note: Parking provided exceeds the requirement of MC 15.20.

Fence location compliant with COH Major Thoroughfare Plan. A variance from this requirement would require approval by the City of Hobbs Planning Board.

Providing Developer enters into a DA with the Municipality concerning the usage/installation of municipal infrastructures. A certificate of occupancy shall not be issued until such time as the Developers Engineer of Record certifies that all municipal infrastructures are in place as per approved plan set.

2 SITE PLAN
1"=20'



LEGEND:

- HEAVY DUTY ASPHALT PAVEMENT
- LIGHT DUTY ASPHALT PAVEMENT
- CONCRETE PAVEMENT
- GRAVEL PAVEMENT
- LANDSCAPE

NEW WORK GENERAL NOTES:

- 24 TOTAL PERSONAL PARKING SPACES
1 VAN ADA SPACES
- 6 SERVICE BUCKET TRUCK PARKING SPACES
- 10 SERVICE VEHICLE PARKING SPACES

KEY NOTES - NEW WORK

- CONSTRUCT (3,017 SY) NEW HEAVY DUTY ASPHALT PAVEMENT, PER DETAIL #1/C-501.
- CONSTRUCT (650 SY) NEW LIGHT DUTY ASPHALT PAVEMENT, PER DETAIL #2/C-501.
- CONSTRUCT (40 SY) NEW CONCRETE PAVEMENT FOR DUMPSTER ENCLOSURE, PER DETAIL #3/C-501.
- CONSTRUCT (227 SY) NEW CONCRETE SIDEWALK, PER DETAIL #4/C-501.
- CONSTRUCT (375 LF) NEW CONCRETE CURB AND GUTTER, PER DETAIL #5/C-501.
- CONSTRUCT (1,934 SY) NEW GRAVEL PAVEMENT, PER DETAIL #6/C-501.
- CONSTRUCT (574 LF) NEW CHAINLINK SECURITY FENCE, PER DETAIL #7/C-501.
- CONSTRUCT NEW VEHICLE SWING GATE, PER DETAIL #1/C-502.
- CONSTRUCT NEW MAN SWING GATE, PER DETAIL #8/C-501.
- TOPSOIL AND SEED WITH NMDOT APPROVED SEED MIX TO MATCH SURROUNDING EXISTING LANDSCAPING.
- CONSTRUCT NEW DUMPSTER ENCLOSURE, PER DETAIL #3/C-502.
- NEW PAVEMENT STRIPING PER NMDOT SIGNING AND STRIPING MANUAL AND NMAC CHAPTER 11.
- CANOPY COVERED WALKWAY. SEE ARCHITECTURAL AND STRUCTURAL PLANS.
- NEW SANITARY SEWER FORCE MAIN, SEE SHEET C-203.
- NEW WATER MAIN, WATER SERVICE, AND HYDRANT, SEE SHEET C-203.
- NEW FIBER OPTIC LINE AND SERVICE, SEE ELECTRICAL PLANS AND SHEET C-203.
- EXISTING ELECTRIC LINE TO BE BURIED, SEE ELECTRICAL PLANS.
- NEW ELECTRIC LINE, SEE ELECTRICAL PLANS.
- CONSTRUCT CONCRETE TO MATCH EXISTING CONCRETE PAVEMENT. JOINTS TO MATCH EXISTING CONCRETE JOINTING.
- CONSTRUCT ASPHALT PAVEMENT TO MATCH EXISTING ASPHALT PAVEMENT IN E MARLAND BOULEVARD.

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NO.	DATE	DESCRIPTION	BY
	10/31/17	50% REVIEW SET	KJC
	11/15/17	OWNER REVIEW	AM
	11/24/17	CONSTRUCTION SET	AM

REVISIONS
DATE
DRAWN CO
CHECKED RK
APPROVED JH
PROJECT NO. RUS-00237741-A1

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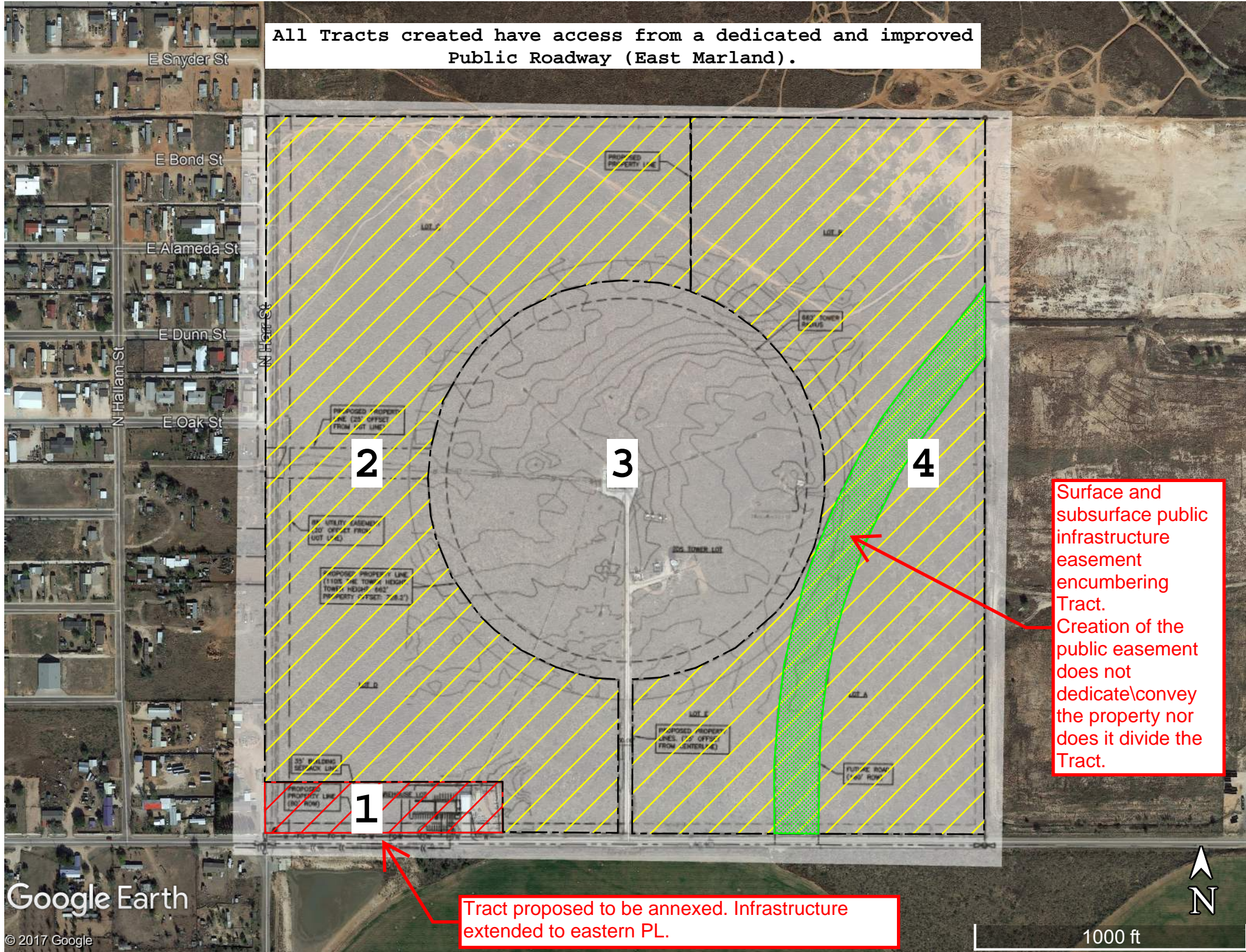
TECHNICIAN BUILDING
2800 MARLAND BLVD.
HOBBS, NEW MEXICO 88240

SITE PLAN
CIVIL

C-201



All Tracts created have access from a dedicated and improved Public Roadway (East Marland).



Surface and subsurface public infrastructure easement encumbering Tract. Creation of the public easement does not dedicate/convey the property nor does it divide the Tract.

Tract proposed to be annexed. Infrastructure extended to eastern PL.

INFRASTRUCTURE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____ 2017, between the City of Hobbs, New Mexico, a New Mexico Municipal Corporation, (hereafter called the "City"); and TDS Telecom, 2800 Marland Blvd., Hobbs, NM 88240 (hereafter called "Developer").

RECITALS:

WHEREAS, "Developer" desires to subdivide an undivided parent parcel located Northwest of the intersection of Marland Boulevard and 14th Street, adjacent to the Municipal Boundaries of the City of Hobbs; and

WHEREAS, "Developer" desires to service the property being created located in the southwest corner of the undivided parent parcel with municipal services' i.e.; water and sewer; and

WHEREAS, the subdivision of property, per MC Title 16, requires that all public infrastructure either be in place or surety given to the City that the cost for the same will be borne by the Subdivider prior to acceptance of the subdivision or by the Developer prior to issuance of a Certificate of Occupancy; and

WHEREAS, infrastructure improvements would be required to serve all parcels created, without creating a gap, at the time of subdivision of the undivided parent, therefore, it has been determined by City and agreed by Developer that in lieu of Developer installing the required infrastructure serving all parcels created at the time of subdivision, Developer shall extend Municipal water service only, at Developer's sole cost, to the eastern boundary of the parcel created in the southwest corner of the undivided parent parcel. Additionally, said parcel so created shall be allowed access to Municipal waste water facilities via a sewer manhole located within the public right of way located southwest of the intersection of Marland Boulevard and 14th Street utilizing a private force main; and

WHEREAS, certain portions of the Developer's parent parcel will dedicated to the public fee simple, that being the required right – of – way within and adjacent to Marland Boulevard, and certain portions will be encumbered with a surface and sub-surface municipal infrastructure easement to the benefit of the public, the cost of extending municipal sewer service adjacent to the newly created parcel will be borne solely by the Municipality.

NOW, THEREFORE, in consideration of the above premises, the parties hereby agree as follows, and said agreement to run with the land as legally described below:

Legal Description:

(Legal description of the Lot\Parcel containing the proposed facilities of TDS)

1. The Developer shall produce, or cause to be produced, a subdivision plat creating a lot\tract to contain the proposed structure, compliant with Title 16 of the Hobbs Municipal Code, dedicating 40' of public right of way adjacent to the southern property line of the parent parcel. The plat shall also convey to the public a surface and subsurface municipal infrastructure easement securing the location of the Southeast Bypass.

2. The Developer shall design or cause to be designed a civil plan set for the extension of municipal water service within the E. Marland Boulevard right of way, as dedicated above, to the western boundary of the lot\tract created to contain the proposed structure, plan set shall be submitted to the City of Hobbs Engineer for approval. Upon approval, City of Hobbs Engineer shall issue a notice to proceed to the Developer to construct or cause to be constructed the municipal water line. Upon completion the Developer shall submit an Engineer of Record

Certification prior to municipal acceptance of the public water main so constructed by Developer.

3. The Developer may construct or cause to be constructed, a private force main waste water lateral serving the proposed structure contained in the lot\tract created above. The private force main waste water lateral shall be allowed to occupy public property until such time as public sewer mains are extended at depth that could serve the lot\tract so created. The Developer shall supply the municipality with an as built location survey showing the location and depth of the private force main within the public right of way as dedicated. The municipality will perform line locates on behalf of the Developer until such time as the private force main waste water lateral is removed from service by the Developer. Any and all maintenance, repair or replacement of the private force main waste water lateral will be the responsibility of the Developer.

4. Responsibilities of the parties hereto are as follows:

A. The Developer shall:

- 1) Pay for all costs for development pursuant to City policies, including costs associated with the extension of the municipal water line as per this agreement.
- 2) Comply with all City policies for building, landscaping, fire code, etc. for the remainder of the construction.
- 3) Submit an Engineer of Record Certification prior to municipal acceptance for any portion of public infrastructure constructed by Developer.

B. The City shall:

- 1) Review Subdivision Plat and Site and Civil Construction Plan Sets as submitted in an expeditious manner approving the same if so compliant with all adopted municipal codes, rules and regulations and this agreement.
- 2) Provide municipal utility service to the structure proposed to be constructed contained in the lot\parcel to be created per this agreement.
- 3) Allow a force main waste water lateral to installed in and occupy public property until such time as public sewer mains are extended at depth that could serve the lot\tract so created.
- 4) Perform line locates on behalf of the Developer until such time as the private force main waste water lateral is removed from service by the Developer.
- 5) Be solely responsible for the extension of municipal waste water service adjacent to the lot\parcel created to contain the proposed structure when such service is developed east of the lot\parcel so created.

5. All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: Planning Department, 200 E. Broadway, Hobbs, NM

88240; to Developer – TDS Telecom, 2800 Marland Blvd., Hobbs, NM 88240, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

6. This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties.

7. This Agreement shall be subject to the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

8. Representations of City.

A. City is a duly organized and validly existing municipal corporation under the laws of the State of New Mexico with full municipal power to enter into this Agreement and to carry out the terms, conditions and provisions hereof.

B. City will continue review and processing of the development plans, and forthcoming building permit application in a forthright manner and with due diligence.

9. Representations of Developer.

To the best knowledge of Developer, there is no litigation, proceeding or governmental investigation either pending or threatened in any court, arbitration board or administrative agency against or relating to Developer to prevent or impede the consummation of this Agreement by Developer.

10. BREACH

A. The following events constitute a breach of this Agreement by Developer:

Developer's failure to perform or comply with any of the terms, conditions or provisions of this Agreement.

B. The following events constitute a breach of this Agreement by City:

City's failure to perform or comply with any of the terms, conditions or provisions of this Agreement.

11. REMEDIES UPON BREACH.

A. Any party may sue to collect any and all damages that may accrue by virtue of the breach of this Agreement.

B. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement.

12. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

13. TERMINATION. This Agreement shall be terminated upon the completion of all installation and construction defined herein or December 30, 2018.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among and between City and Developer and there are no other agreements or understandings, oral or otherwise, between the parties on the issues defined herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF HOBBS

DEVELOPER – TDS Telecom

Sam D. Cobb - Mayor

BY: _____

Its: _____

ATTEST:

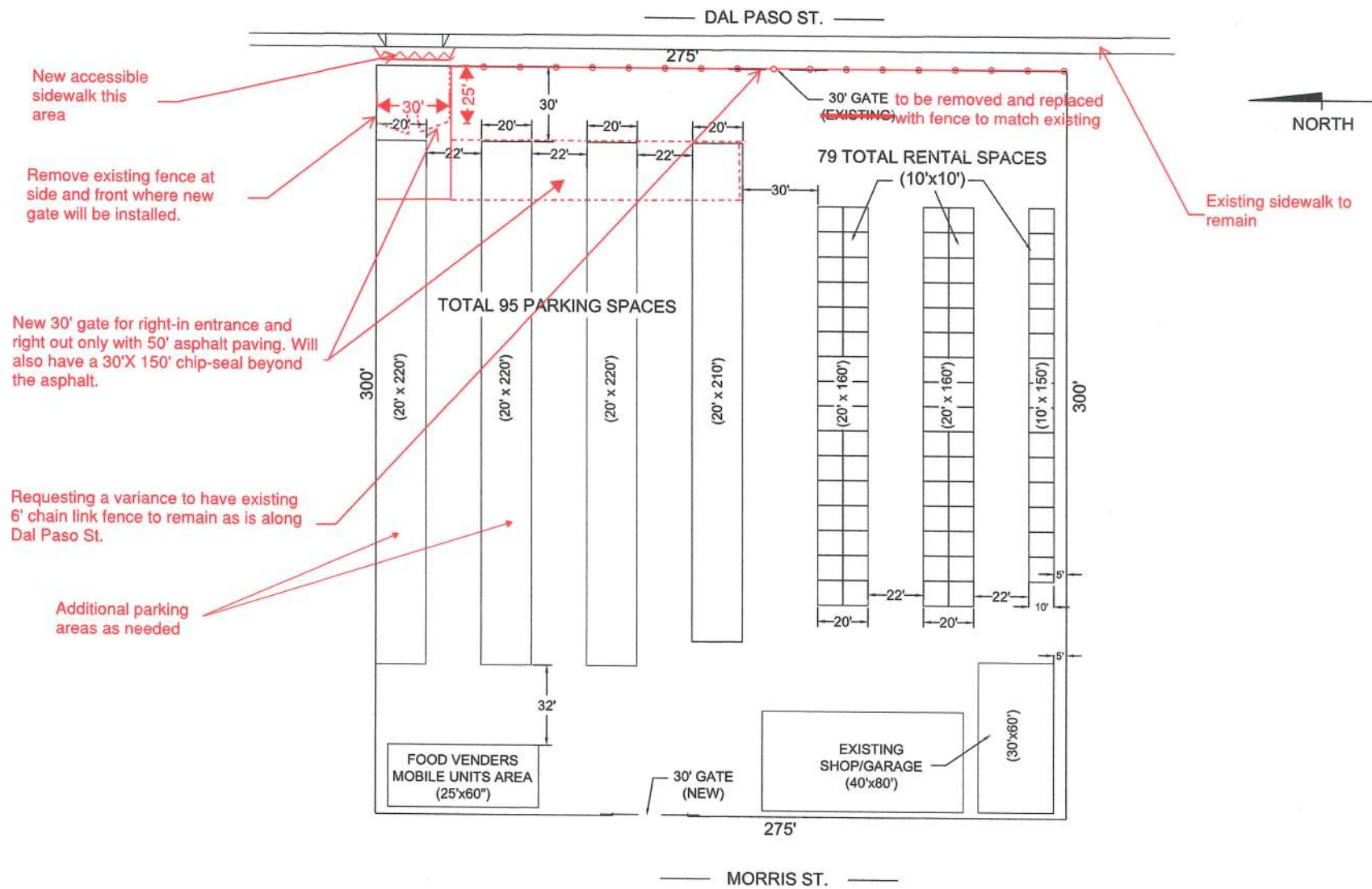
Jan Fletcher, City Clerk

APPROVED AS TO FORM:

Michael Stone, City Attorney

December 13, 2017
Planning Board Regular Meeting

- 6) **Review and Consider fence height variance request for proposed development located northwest of the intersection of Marland and Dal Paso as submitted by property owner. The City of Hobbs Major Thoroughfare Plan requires a maximum of 2' height for a fence located at the front property line; the property owners are requesting to modify and retain the current non-complaint fence at the front property line adjacent to Dal Paso.**



December 13, 2017
Planning Board Regular Meeting

- 7) **Review and Consider Planning Board Calendar for Calendar Year 2018.**

**Planning Board Calendar
2018 Calendar Year**

Month	Date for Planning Board Meeting	Date for Submittals of Planning Board Material	Date for Plan/Plat Submittals to City
January	Jan. 16	Jan. 09	Jan. 02
February	Feb. 20	Feb.13	Feb. 06
March	Mar. 20	Mar. 13	Mar. 06
April	Apr. 17	Apr. 10	Apr. 03
May	May 15	May 08	May 01
June	June 19	June 12	June 05
July	July 17	July 10	July 03
August	Aug. 21	Aug. 14	Aug. 07
September	Sept. 18	Sept. 11	Sep. 04
October	Oct. 16	Oct. 09	Oct. 02
November	Nov. 13	Nov. 06	Oct. 30
December	Dec. 18	Dec. 11	Dec. 04

December 13, 2017
Planning Board Regular Meeting

- 8) **DISCUSSION ITEM – Review & discuss proposed Right – of – way management Ordinance.**

Note - Performing a word search within the entirety of the Municipal Code has the following results:

right of way = 2 hits

right-of-way = 89 hits

street = 542 hits

roadway = 26 hits

alley = 130 hits

public property = 32 hits

The above terminology used throughout the Municipal Code defines locations of “right of ways” and somewhat restricts utilization\occupancies of the same. However what staff is envisioning is a more comprehensive “Right of way” management Ordinance that 1) disallows *any* usage\occupation, without 2) an approved permit or franchise agreement granted under adopted policies and procedures. The following excerpt from the Municipal Code does attempt to regulate private infrastructures placed within public property.

Title 12 - STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.04 - STREET IMPROVEMENTS

12.04.010 - Approval of City Commission required.

No improvement or paving will be done on any streets or alleys without prior approval of the City Commission.

(Prior code § 24-6)

12.04.020 - Plans and specifications—Registered engineer to draw and submit—Approval of City Commission required.

Plans and specifications for any paving work must be drawn and submitted by an engineer registered in the State. Plans and specifications must be submitted to the City Engineer thirty (30) days before any construction work may begin. The City Commission must give approval of plans and specifications before any work may begin.

(Prior code § 24-7)

12.04.030 - Plans and specifications—Contents.

The plans and specifications required by this chapter shall include a general layout sheet showing the surrounding area, existing streets and pavement; the paving plans shall show a plan and profile for all work to be done. The plans shall also include all pertinent elevations, general grade elevations at fifty-foot intervals, slope of

proposed paving and existing ground line for the proposed paving. The area draining onto the proposed paving area shall be indicated; this may be done on the general layout sheet. The proposed method of disposition of storm water from the proposed paving shall be indicated, with all data that may be required.

(Prior code § 24-8)

12.04.040 - Plans and specifications—Conformance with standard specifications.

All specifications required by this chapter must be in conformance with the standard specifications filed in the City Engineer's office.

(Prior code § 24-9)

12.04.050 - Halting of construction for noncompliance.

If the City Engineer shall determine that construction is not being performed in accordance with the approved plans and specifications, he or she is empowered to halt construction forthwith, after notifying the contractor or supervising engineer. All work on such construction shall cease, until the contractor shall comply with the plans and specifications so filed.

(Prior code § 24-10)

12.04.060 - Testing of materials.

All tests required in the specifications submitted pursuant to this chapter must be made on samples of materials taken by the supervising engineer. All tests other than field tests must be made by a certified testing laboratory, and the City Engineer must be notified of the result of the tests by the laboratory. When samples of materials are to be taken or when field tests are to be made, the City Engineer must be notified. At the discretion of the City Engineer, sampling or testing may be observed by a representative of the City Engineer. The method of sampling must be a method approved by the American Society of Testing Materials or other approved testing method.

(Prior code § 24-11)

12.04.070 - Utility lines, manholes, valves, valve boxes and storm sewers.

The cost for adjusting any City owned utility lines, manholes, valves, valve boxes or storm sewers will be assumed by the permittee. All lines, manholes, valve boxes and storm sewer inlets that would in any way interfere with the proper construction of the proposed work, and any lines, manholes, valves, valve boxes or storm sewers that would not have the required minimum depth for their adequate protection must be adjusted to City specifications.

(Prior code § 24-12)

12.04.080 - Conformance of construction methods with City specifications.

The methods of construction used must conform to the methods outlined in the City specifications for construction of street improvements. Any alternate method must be approved by the City Engineer before the method is used.

(Prior code § 24-13)

12.04.090 - Completion of utility lines, prerequisite to performance of certain other work.

If the construction of utility lines or accessory structures has not been completed in the area to be improved, the contractor may install any curb and gutter and complete grading, excavation, subgrade work and base course before all installations are completed. No further work may be done at specified points until the installation of utility lines has been completed.

(Prior code § 24-14)

Chapter 12.08 - SIDEWALK CONSTRUCTION

12.08.010 - Permit—Required.

It is unlawful for any person to construct, improve, repair or alter any sidewalk adjacent to any street or alley without having first secured a permit, issued by the City to and in the name of the owner of the adjacent property on application by such owner.

(Prior code § 24-15)

12.08.020 - Permit—Fees.

All persons securing permits under the provisions of this chapter shall pay to the City the following fees:

- A. Construction cost to \$1,000.00\$10.00
- B. Construction cost over \$1,000.00\$15.00

(Ord. 870 (part), 2001: prior code § 24-16)

12.08.030 - Specifications generally.

All sidewalks constructed, improved, repaired or altered must conform with the grade, width, location and construction methods and materials as established by the Engineering Department of the City, and such construction shall be approved by the Engineering Department. Sidewalks so constructed must extend the total length and width of any lot or area that abuts the street. Where a permit has been issued to construct, improve, repair, alter or remove a commercial building, sidewalks shall be constructed in accordance with such specifications established by the Engineering Department; provided, that if existing sidewalks conform with such specifications, no additional construction will be required; provided, further, that sidewalk construction will only be required in areas where curbs and gutters have been constructed. Authority to commence construction shall be evidenced by the issuance of a permit, as set forth in Section 12.08.010.

(Prior code § 24-17)

12.08.040 - Sidewalk required for new construction.

Any person erecting a new building shall be required to install a sidewalk adjacent to the street, in accordance with the requirements established by the Engineering Department; provided, that on corner lots sidewalks shall be constructed along both intersecting streets to the next adjacent property.

(Prior code § 24-18)

12.08.050 - Abatement of sidewalk constructed in violation of chapter as nuisance—Lien.

Any sidewalk constructed in violation of this chapter shall be deemed a nuisance and shall be abated by the City against the owner of the property upon which such sidewalk abuts and adjacent to the construction of such sidewalk. The City may proceed to reconstruct such sidewalk in conformity with the grade, width, location and construction requirements established by the Engineering Department, and the costs thereof shall be chargeable to the owner of such property. In such event, the City shall have a lien upon the property affected for the expense of such reconstruction, and such lien may be enforced and foreclosed as are other liens of like nature. For sidewalks with tripping hazards, the City may address this under a policy to remediate these hazards.

(Ord. 870 (part), 2001: prior code § 24-19)

Chapter 12.12 - SIDEWALK OBSTRUCTIONS

12.12.010 - Obstructing sidewalks—Generally.

It is unlawful for any person to obstruct any sidewalk within the City, by the displaying thereon of goods, signs, merchandise, parking vehicles, or in any other manner.

(Ord. 870 (part), 2001: prior code § 24-1)

12.12.020 - Permanent obstructions.

No steps, landings or porches, handrails or any other obstruction may be placed or constructed on a sidewalk or sidewalk area, except in conformance with the building code.

(Prior code § 24-2)

12.12.030 - Obstructions existing when sidewalk constructed or repaired declared nuisances.

Whenever a sidewalk in the City is constructed or repaired, all existing signs, steps, landings or other obstructions are declared to be unlawful and a nuisance and shall be removed by the owner of such property forthwith or abated in the manner provided by Section 12.12.040.

(Prior code § 24-3)

12.12.040 - Abatement of nuisances—Lien.

Any obstruction of sidewalks as set forth in Sections 12.12.010 to 12.12.030 shall be deemed a violation of this chapter and a nuisance and shall be abated by the City against the owner of the property upon which such sidewalk abuts and adjacent to construction of such sidewalk. The City may proceed to reconstruct such sidewalk in conformity with the grade, width, location and construction requirements established by the Engineering Department, and the costs thereof shall be chargeable to the owner of such property. In such event, the City shall have a lien upon the property affected for the expense of such reconstruction, and such lien may be enforced and foreclosed as are other liens of like nature.

(Prior code § 24-4)

Chapter 12.16 - CURBS, GUTTERS AND DRIVEWAYS

12.16.010 - Conformance with construction plans and specifications generally.

All curbs, gutters and driveways constructed in the City must conform with the standard details and specifications for construction of driveways, curbs and gutters as approved by the City Commission and on file in the office of the City Engineer.

(Prior code § 24-29)

12.16.020 - Driveways and gutter sections made by removal of curbs.

All driveways and gutter sections made by the removal of any curb must conform with the standard details and specifications for construction of driveways, curbs and gutters on file in the office of the City Engineer.

(Prior code § 24-30)

12.16.030 - Permit for removal or alteration.

Before any curb may be removed or any gutter or driveway altered, approval of such removal or alteration must be secured from the City Engineer, and such approval must be evidenced by a permit issued by the City Engineer.

(Prior code § 24-31)

12.16.040 - Abatement as nuisance of curb, driveway or gutter constructed or removed in violation of chapter—Lien.

Any curb, driveway or gutter constructed or removed in violation of this chapter shall be deemed a nuisance and shall be abated by the City against the owner of the property upon which such curbs, gutters or driveways abut and adjacent to the construction of such curbs, gutters or driveways in conformity with the grade, width, location and construction requirements established by the Engineering Department, and the costs thereof shall be chargeable to the owner of such property. In such event, the City shall have a lien upon the property affected for the expense of such reconstruction, and such lien may be enforced and foreclosed as are other liens of like nature.

(Prior code § 24-32)

Chapter 12.20 - DITCHES AND PIPELINES

12.20.010 - Maintenance of ditches and drains.

All ditches, gutters and drains used for conducting water within the City limits shall be so used and controlled as to prevent any overflow or flood upon any of the public highways, streets or alleys. Such ditches, drains and gutters used for water shall be kept in good order by the party using the same, and such ditches shall be kept clean and with a public outlet for the water running through the same; provided, that this section shall not apply to water or ditches used for City purposes or in which the City has any use, it being the duty of the City to keep such ditch in good and proper condition.

(Prior code § 24.20)

12.20.020 - Excavations—Permit required.

It is unlawful for any person to lay, construct, repair or alter any pipeline or engage in the digging, excavation or construction of any ditch or trench across any street or alley in the City, without having first obtained a permit from the City Manager to so lay, construct, repair or alter any such pipeline or dig, excavate or construct any such ditch or trench.

(Prior code § 24-21)

12.20.030 - Excavations—Assessment of costs—Refund of money paid in excess of actual construction costs—Exemptions.

Whenever any person shall apply to the City Engineer or his or her authorized agent for a permit to lay, construct, repair or alter any pipeline or to dig, excavate or construct any ditch or trench across or under any street or alley in the City, he or she shall pay in advance to the City a sum of money equivalent to the actual cost of the digging, excavating, repairing and restoring of such street or alley and the improvements thereon. The City Engineer or his or her authorized agent shall estimate the actual cost of such excavation and repair, and in the event the estimate determined by the City Engineer or his or her authorized agent is more than the actual cost of such excavation and restoration, the City will refund to the applicant all money paid in excess of the actual cost of excavation, restoration and repair; provided, that the excavation, restoration and repair of such street or alley shall be under the supervision of the City Engineer; provided, further, that the holder of a duly adopted and valid franchise authorizing the holder to use or occupy public streets, highways or alleys or to install, lay and maintain his or her lines, pipelines and equipment shall be exempt from the provisions of this chapter, if he or she files with the City Engineer or his or her authorized agent a daily report designating the location of any excavations or constructions made in any public streets, highways or alleys; and provided, further, that such franchise holder shall restore or have restored as nearly as possible to its original condition, at his or her own expense, such thoroughfare or other surface which may have been disturbed, within a reasonable time after the completion of such construction or excavation, subject to approval by the City Engineer or his or her authorized agent as to the adequacy and completeness of such restoration; and provided, further, that in the event any franchise holder shall intend to perform any further excavation involving a paved street, highway or alley, he or she shall notify the City Engineer or his or her authorized agent of such intent, and the excavation and restoration thereof shall be performed by or under the supervision of the City at the expense of such franchise holder.

(Prior code § 24-22)

12.20.040 - Appeals.

Any person aggrieved by a decision of the City Manager or the City Engineer arising by virtue of the provisions of this chapter shall have the right to appeal such decision to the City Commission. The decision by the City Commission shall be final. Any appeal from the decision of the City Manager or the City Engineer shall be filed with the City Clerk within ten (10) days after rendition of such decision of the City Manager or the City Engineer.

(Prior code § 24-23)

12.20.050 - Violations—Penalties.

Any person violating the provisions of Sections 12.20.020 through 12.20.040 shall be deemed guilty of a misdemeanor and shall be assessed the actual cost to the City for the repair or replacement of any street or alley damaged by reason of the violation of any provision of this chapter.

(Prior code § 24-24)

12.20.060 - Removal and relocation of lines or mains—Approval of construction plans and specifications.

No oil, gas, water, sewer or other lines or mains may be constructed within the confines of the right-of-way limits of any streets or alleys within the City limits, unless the plans and specifications for such lines or mains have been submitted to the City Engineer for review and recommendation for approval by the City Commission.

(Prior code § 24-25)

12.20.070 - Authority to require removal or relocation of lines or mains.

Whenever, in the opinion of the City Commission, expressed by a resolution duly adopted, any oil, gas, water or sewer or other lines or mains within the right-of-way limits of the streets and alleys of the City shall be or become an interference, obstruction or jeopardy to paving construction or other improvements of the streets or alleys of the City, the City Commission may require the removal, raising, lowering or relocation of such lines or mains.

(Prior code § 24-26)

12.20.080 - Removal and relocation of lines or mains—Notice to owner—Time for compliance with notice or request for hearing—Performance of work by City—Lien.

Whenever a resolution shall have been adopted by the City Commission as provided in Section 12.20.070, it shall be the duty of the City Manager to notify the owner or agent in charge of such oil, gas, water, sewer or other lines or mains of the adoption of such resolution by serving a copy thereof upon him or her. In the event that such owner or agent in charge cannot be found or served within the City as provided in this section, such notice may be completed by publication of such resolution one (1) time in a newspaper of general circulation within the City. Such owner or agent in charge shall thereafter, within a reasonable time, not less than ten (10) days, remove, raise, lower or relocate such lines or mains. If such removal, raising, lowering or relocation is not commenced by such owner or a written objection filed with the City Clerk asking a hearing within ten (10) days after the service of such notice or publication of such resolution, the City shall have the power to remove, raise, lower or relocate such oil, gas, water, sewer or other lines or mains at the cost and expense of such owner, and the reasonable cost thereof shall constitute a lien against such property for such removal, raising, lowering or relocation and shall be foreclosed in the same manner provided for the foreclosures of municipal liens as provided by Chapter 14, Article 35, New Mexico Statutes, 1953 Compilation.

(Prior code § 24-27)

12.20.090 - Removal and relocation of lines or mains—Hearing—Appeal to district court.

In the event that any owner or agent in charge of any oil, gas, water, sewer or other lines or mains within the right-of-way limits of the streets and alleys files a protest and asks for a hearing within ten (10) days of the service of the notice as provided for in Section 12.20.100, the City Commission shall fix a day for hearing and shall consider the evidence submitted for and against such removal, raising, lowering or relocation order and determine whether or not its previous action shall be enforced or rescinded. If it is determined that such order shall be enforced and the owner or agent in charge shall fail, for a period of five (5) days, to comply with such order, the City may proceed in the same manner as provided in Section 12.20.080 for such removal, raising, lowering or relocation of such lines or mains; provided, that any person aggrieved by the order of the City Commission shall have the right to appeal to the district court by giving notice of appeal to the City Commission within five (5) days after such order and filing his or her petition in the district court within thirty (30) days thereafter.

(Prior code § 24-28)

Below is the Proposed Replacement to the Above

Proposed Ordinance

City of Hobbs Municipal Code entitled “Right of Way Management Regulations”

Chapter 12.20 RIGHT OF WAY MANAGEMENT REGULATIONS

12.20.010 Title.

12.20.020 Legislative findings.

12.20.030 Purposes.

12.20.040 Rules of Construction.

12.20.050 Definitions.

12.20.060 Authority.

12.20.070 Reservation of rights; police power.

12.20.080 Authorization required.

12.20.090 Construction standards.

12.20.100 Placement of facilities.

12.20.110 Relocation of facilities.

12.20.120 Restoration.

12.20.130 Work permits.

12.20.140 Business license.

12.20.150 Reimbursement of costs.

12.20.160 Administration and permitting to use space within the right of way.

12.20.170 Reserved.

12.20.180 Reports and records.

12.20.190 Bond of letter of credit.

12.20.200 Insurance.

12.20.210 Enforcement.

12.20.220 Indemnification.

12.20.230 Severability.

12.20.010 Title.

This chapter is known and may be cited as the CITY OF HOBBS RIGHT OF WAY MANAGEMENT ORDINANCE.

12.20.020 Legislative findings.

The City Commission hereby finds and declares:

A. That the public rights of way within the city can be partially occupied by public utilities and other service entities for facilities used in the delivery, conveyance, and transmission of services rendered by private or for profit entities, to the enhancement of the health, welfare, and general economic well-being of the city and its citizens;

B. That the public rights of way within the city are physically limited so that proper management by the city is necessary to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses, to prevent foreclosure of future uses through premature exhaustion of available right of way capacity, and to minimize the inconvenience to the public from such facilities' construction, emplacement, relocation, and maintenance in the rights of way;

C. That the use of the public rights of way by multiple users renders more pressing the city's right of way management responsibilities;

D. That the public rights of way within the city are valuable public property acquired and maintained by the City at great expense to the taxpayers;

E. That the right to occupy portions of such public rights of way for limited times for the business of providing utility and information services is a valuable economic asset; and

F. The city's street and alley rights-of-way are owned or held by the city primarily for the purpose of pedestrian and vehicular passage and for the city's provision of essential public safety services, including police and fire services; the city's provision of public health services, including solid waste removal, sanitary sewer and storm drainage services; and other municipal operations and the means to support and provide those services — these interests are paramount.

12.20.030 Purposes.

The city commission adopts this chapter to better:

- A. Manage a limited resource to the long term benefit of the public;
- B. Recover and allocate the costs of managing the public rights of way;
- C. Minimize inconvenience to the public occasioned by the emplacement and maintenance of facilities in the public rights of way;
- D. Prevent premature exhaustion of capacity in the public rights of way to accommodate communications and other services; and
- E. Promote competition in the provision of communications service in the city and ensure that citizens have a wide variety of services available to them by establishing clear and consistent rules by which providers may occupy the public rights of way.

12.20.040 Rules of construction.

A. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender.

B. The words "shall" and "will" are mandatory, and "may" is permissive.

C. Unless otherwise specified, references to laws, ordinances or regulations shall be

interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

D. Any conflict between this chapter and a city franchise agreement in favor of the terms of the city franchise agreement.

E. Nothing in this chapter shall be construed to create a special duty by the city to any owner or operator of a facility within the right of way.

F. Nothing in this chapter shall be construed to create any property interest or right to occupy space within the right of way whatsoever.

G. In the case of conflict, the rights granted to an owner or operator by federal or state law shall not be impaired.

12.20.050 Definitions.

For the purposes of this chapter the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meanings set forth in title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

AFFILIATE: When used in relation to any person, means another person who de facto or de jure owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

CITY: City of Hobbs, New Mexico, and any agency, department, or agent thereof.

CITY MANAGER: The person appointed pursuant to section 6.2 of this code or his/her designee.

CITY ENGINEER: The city engineer or the city engineer's designee.

COMMUNICATIONS FACILITY OR COMMUNICATIONS SYSTEM: Facilities for the provision of "communications services", as that term is defined herein.

COMMUNICATIONS SERVICES: Telecommunications services, interactive computer services, and any other services involving the transmission of information by electronic or optical signals, except that it shall not include cable service as that term is used in the cable communications policy act of 1984, as amended.

COMMISSION: The principal governmental body of the city of Hobbs, New Mexico, its officers, or a representative person or entity as may be designated to act on its behalf.

FACILITY OR FACILITIES: Any tangible asset in the public right of way used to provide drainage, sanitary or storm sewer, gas, electric, water or communication/information services.

FEDERAL COMMUNICATIONS COMMISSION OR FCC: The federal communications commission or any successor.

FRANCHISE: An authorization granted by the city to a person to construct, maintain, or emplace facilities generally upon, across, beneath, and over the public rights of way in the city, subject to the terms and conditions specified in a franchise agreement. The term also includes an authorization by the New Mexico PRC or other appropriate authority or as otherwise authorized by law.

FRANCHISE AGREEMENT: The contract entered into between the city and a grantee that sets forth the terms and conditions under which the franchise may be exercised.

GRANTEE: A person that has been granted a franchise by the city or right to operate within Hobbs or such other parties that wish to locate facilities in the right of way.

OWNER OR OPERATOR OF A FACILITY: Any person which has a possessory interest in such facility or which controls or is responsible for, through any arrangement, the management and operation of such facility.

PERMITTEE: A person who has received a permit to locate a facility or facilities within the right of way.

PERSON: Any individual, corporation, partnership, association, joint stock company, trust, governmental entity, or any other legal entity, but not the city

PUBLIC RIGHTS OF WAY: The surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, public easement, or right of way within the city in which the city now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a facility.

TELECOMMUNICATIONS: This term has the meaning ascribed to it in 47 USC section 153(43). TELECOMMUNICATIONS SERVICE: This term has the meaning ascribed to it in 47 USC section 153(46).

EXCAVATION PERMIT: An authorization issued by the city to enter upon the public rights of way at specified times and places to erect, construct, emplace, or otherwise work on facilities.

OCCUPANCY EASEMENT: An easement granted to a person, outside of a franchise agreement, specifying the location and terms allowing an emplacement of facilities within public right of ways.

12.20.060 Authority.

The City Commission, pursuant to the general powers; body politic and corporate powers, Section 3-18-1 NMSA 1978, specifically, to protect generally the property of its municipality and its inhabitants and to preserve peace and order within the municipality, enacts the ordinance codified in this chapter.

12.20.070 Reservation of rights; police power

All rights and privileges granted in a franchise agreement are subject to the police powers of the city and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate a grantee and the construction, operation and maintenance of the grantee's system, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the city shall find necessary in the exercise of its police powers, the right to

adopt and enforce applicable building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right of way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

Further, nothing in this chapter shall prevent the City from constructing, repairing or replacing sewers; grading, paving, repairing, or replacing any right of way; or constructing, repairing, or replacing any other public work or facility, or from performing work pursuant to weather related activities or response to natural disasters. Nothing shall prevent the City from altering the layout or design of a right of way for public safety reasons.

12.20.080 Authorization required.

- A. No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property without first obtaining from the city the necessary authorization required under local, state or federal law.
- B. An owner or operator of facilities may be required to hold different authorizations for its use of the public rights of way to provide different services. For example, and without limitation, the owner or operator of facilities that provides both cable service and wireless internet service must obtain both a franchise agreement and any authorization needed to provide wireless internet service.

12.20.090 Construction standards.

- A. Compliance with Regulations; Safety Practices: Construction, operation, maintenance, and repair of facilities shall be in accordance with all applicable law and regulation, and with sound industry practice. All safety practices required by law shall be used during construction, maintenance, and repair of facilities.
- B. Excavations: No holder of any work permit for any facility shall dig, trench, or otherwise excavate in the public rights of way without complying with the provisions of the New Mexico one call system.
- C. Prevention Of Failures And Accidents: An owner or operator shall at all times employ at least ordinary care and shall install and maintain using commonly accepted methods and

devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

- D. Most Stringent Standards Apply: In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards).
- E. Construction Schedule: Every owner or operator shall, at least forty five (45) days prior to commencing significant construction activity (including a significant rebuild, upgrade, or repair to existing facilities) — emergencies excepted - upon, across, beneath, or over any public right of way in the city or other city property, strive to provide to the city in writing the date on which the owner or operator anticipates it will begin construction and the approximate length of time required for such construction. This timeframe represents a preference only.
- F. Coordination Of Construction With City: Prior to the erection, construction, upgrade, or rebuild of any facilities in the public right of way, the owner or operator of such facilities shall first submit to the city for written approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required by the city, together with maps and plans indicating the proposed location of all such facilities. The owner or operator shall provide the best information it has in such reasonable format as may be specified by the city engineer for the city's planning function. No such erection or construction shall be commenced by any person until approval therefor has been received from the city. At the time of such approval, the city shall inform the grantee whether the reports and other information described by subsection 12.20.180(C)(1) of this chapter shall be required with respect to the approved construction.
- G. Coordination of Construction With Third Parties: Developers or other parties planning the construction or opening of streets in the city shall provide reasonable notice to the city and to the owners or operators of facilities subject to this chapter so that joint trenching and joint emplacement of facilities may be conducted wherever practicable. Such owners and operators shall similarly provide notice to each other and to any relevant developers, for the same purpose. The city shall maintain a list of owners and operators of facilities subject to this chapter for reference by other parties.
- H. City Engineer Stakeholder Meetings: The city engineer may establish recurring meetings of businesses who make use of the right of way for their facilities and contractors who perform such work to discuss ongoing and upcoming projects to further the efforts of

coordinating projects within the right of way.

- I. **Contractors and Subcontractors:** Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of facilities in the public rights of way must be properly licensed and insured under laws of the state and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as an owner or operator of the facility would have if the work were performed by the owner operator. An owner or operator shall be responsible for all activities carried out by its contractors, subcontractors and employees at the owner's or operator's request.
- J. **Publicizing Proposed Construction Work:** The owner or operator of facilities in the public rights of way shall notify the public prior to commencing any construction, other than emergency repair or overhead work that, in its determination, will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. Written notice of such construction work shall be delivered to the city at least one week prior to commencement of that work. Notice shall be provided to those persons most likely to be affected by the work in at least one (1) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, by clearly legible signage at the location of the proposed work, or in any other manner reasonably calculated to provide adequate notice.

12.20.100 Placement of facilities.

- A. All facilities shall be installed and located to minimize interference with the rights and convenience of other property owners.
- B. An owner or operator of a facility shall not place facilities, equipment, or fixtures where they will interfere with any other facilities, or obstruct or hinder in any manner the various utilities serving the residents of the city or their use of any public rights of way.
- C. The city may reasonably direct the specific placement of facilities to ensure that users of the public rights of way do not interfere with each other and that the public rights of way are used safely and efficiently. For example, in the case of an owner or operator of a fiber optic network that is not a franchisee, the city engineer may order extra ducts for fiber optic cable be installed for use by the city or other grantees or permittees when, in the opinion of the city engineer, the subject right of way is too congested due to existing facilities and space limitations or will likely be used by at least four other entities including the city for running fiber optic cable. Such company shall then certify to the

city engineer the additional cost of said installation per linear foot which the city shall pay. Other future users of the surplus duct will be charged an upfront, one-time fee to locate in said duct to recover a proportional share of the city's upfront and carrying costs as calculated by the city engineer. This fee will be in addition to, and not in lieu of, any recurring, or one-time fee charged by city for location within the right of way.

- D. Every grantee or permittee that ceases operating or maintaining any facility shall, upon written request of the city within two (2) years of the cessation of maintenance of such facility, promptly remove it. Should the grantee or permittee neglect, refuse, or fail to remove such facility, the city may remove the facility at the expense of the grantee or permittee. The obligation to remove shall survive the termination of the franchise or permit for a period of two (2) years and shall be bonded. The city engineer may determine that it is in the best interests of the city to allow the facility to be wholly or partially abandoned in place.
- E. No owner or operator of a facility shall erect new aerial plant, other than to repair existing plant, in or on a public right of way in which both electric and telephone service providers have placed their lines underground, or in an area which the city has by ordinance forbidden new aerial plant to be constructed or existing aerial plant to be maintained.
- F. A grantee or permittee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A grantee or permittee may not erect poles, conduits, or other facilities in public rights of way without the express permission of the city. Copies of agreements for use of conduits or other facilities shall be filed with the city upon city request.
- G. To the extent practicable, aboveground equipment placed on private property shall be placed at the location requested by the property owner. An owner or operator shall provide affected homeowners with at least ten (10) days' advance written notice of its plans to install such equipment, and shall make reasonable efforts to confer with such homeowners before any work is done.
- H. Whenever aboveground equipment is placed on private property within a utility easement, the grantee or permittee shall provide landscaping camouflage reasonably acceptable to the city engineer, at the grantee's or permittee's expense. It shall be the grantee's or permittee's responsibility to negotiate the terms of the camouflage with the city engineer.
- I. The city engineer may develop and institute a standardized cross-section location protocol for new or reconstructed rights of way.

- J. Unless exigent circumstances exist, no new facilities may be installed that disturb the roadway hard surface or subsurface/subbase within three years of the construction or reconstruction of the roadway.

12.20.110 Relocation of facilities.

The owner or operator of a facility on or within the public rights of way shall, at its own expense, upon written notice from the city reasonably in advance, promptly relocate any facility located on or within the public rights of way as the city may deem necessary or appropriate to facilitate the realignment (for public safety reasons), reconstruction, improvement or repair of public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort; provided, however, that an operator may be permitted to abandon any property in place with the written consent of the city. This subsection does not apply to relocations covered by 12.20.100(F).

12.20.120 Restoration.

- A. Unless governed contractually between the owner or operator and its customer, if an owner or operator of a facility disturbs a pavement, sidewalk, driveway or other surfacing, or landscaping, or other structure, either on private property or in public rights of way, the owner or operator shall, in a manner approved by the city engineer, replace and restore all pavement, sidewalk, driveway or other surfacing, or landscaping disturbed, in substantially the same condition and in a good, workmanlike, timely manner, in accordance with any standards for such work set by the city. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred, weather permitting, and shall be completed as soon as reasonably possible thereafter. The owner or operator shall guarantee and maintain restoration of a public improvement for at least one year against defective materials or workmanship.
- B. In the event an owner or operator of a facility fails to complete any work required for the protection or restoration of the public rights of way, or any other work required by city law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done, and the owner or operator of a facility shall reimburse the city the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the city may recover such costs through the security fund provided by an owner or operator of a facility, pursuant to the procedures for recovery from the security fund specified in the owner's or operator's franchise agreement.

- C. Any and all public rights of way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of a system shall be promptly repaired by the owner or operator of a facility.

12.20.130 Excavation permits.

- A. Unless otherwise provided by law, franchise, city authorization or emergency circumstances, no person shall install, erect, hang, lay, excavate, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right of way in the city, or enter into the public rights of way to work on a facility, without first obtaining an excavation permit therefor from the city. Notwithstanding the foregoing, under no provision in this chapter shall any excavation permit or other approval from the city be required to install, construct, repair, maintain or replace any service drop.
- B. Denial. The city engineer may deny an excavation permit for failure to meet the requirements of this chapter, failure to meet monetary obligations to the city or it is necessary to protect the health, safety and welfare or the right of way and its current use. Failure to meet the requirements includes, but is not limited to, striking or damaging another facility within the right of way.
- C. Large Capital Programs. The city engineer may develop and institute a special streamlined permit and inspection process for large capital programs by mutual agreement with the applicant or applicants in the case of a joint project after receiving authorizing from the city manager.
- D. The city engineer may issue a stop work order to anyone failing to secure the proper permit or for not following the ordinances or city standards.

12.20.140 Business license.

A franchise under this chapter does not render unnecessary or take the place of any generally applicable business license that may be required by the city for the privilege of transacting and carrying on a business within the city generally.

12.20.150 Reimbursement of costs.

All grantees or permittees will reimburse the city for its internal and out of pocket costs, including, but not limited to, attorney and consultant fees actually and reasonably incurred by the city in connection with an application for an initial franchise or permit under this chapter as

determined by the city after it takes action on the application. Any application fee submitted with the application will be credited against this amount. The applicant will remit to the city payment for such costs within thirty (30) days of its receipt of the city's invoice.

12.20.160 Administration and permitting to use space within the right of way.

The city engineer shall oversee the following administrative functions:

- A. Collect any applicable fees from all owners or operators of facilities using public rights of way in the city;
- B. After approval by separate ordinance of the applicability, amount and formula for a right of way occupancy fee, publish from time to time a schedule of applicable fees hereunder;
- C. Be responsible for the continuing enforcement of all terms and conditions of city-granted franchises as such pertains to the occupation of public right of ways.

The city engineer shall oversee permitting as follows:

- A. No person shall occupy or use public right-of-way for private purposes or the purpose of providing utility, communication, information or data services to customers without first obtaining a franchise or excavation permit from the city.
- B. The city shall not grant, issue, or enter into any franchise or occupation easement that grants or allows exclusive use or occupancy of the right-of-way. Any person seeking a franchise or excavation permit for use of city right-of-way shall make application for a franchise or excavation permit as provided in this chapter.
- C. An application for a franchise or excavation permit for an occupancy easement or use of a right-of-way shall be filed with the city engineer on a form developed and provided by the city engineer.

Authority to issue permit; form of permit and term.

- A. Permits required by this chapter shall be issued by the city engineer. The city engineer shall review each application and shall issue each permit which he or she determines to be in compliance with the requirements of this chapter and any other applicable local, state, or federal requirements. In issuing a permit, the city engineer may require a change in the proposed location of the permittee's equipment where necessary to avoid interference with other equipment placed within the public right-of-way.
- B. Permits issued pursuant to this chapter shall be in writing and shall be executed by the permittee. The form of permits to be issued pursuant to this division shall be uniform, but shall be subject to periodic review and modification. When available, the city engineer may implement an electronic or digital permit system.
- C. Limit on term of franchises; limit on initial or renewal term of permits.
 - (1) No franchise for use of the public right-of-way shall be granted for a term in excess of 10 years.
 - (2) No permit issued for use of the public right-of-way granted by the city engineer shall be issued or renewed for a term in excess of 10 years.
- D. Existing Facilities. Any facilities existing on or before November 1, 2017 and mapped are exempt from the issuance of a permit.

E. Application for initial issuance of a permit; registration required.

A person desiring to obtain a permit allowing right of way occupancy as required in this code shall make application for a permit for such use and occupancy as provided in this chapter, and shall pay an application fee for initial issuance of the permit. The application fee for initial issuance of a permit and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the city commission by resolution such fee shall be based upon the administrative costs of processing the permit. The application for initial issuance of a permit shall be filed with the city engineer not less than 60 days prior to the proposed effective date of the permit and shall be filed upon a form provided by the city for that purpose. The application shall include, at a minimum, the following information:

- (1) The name, address and telephone number of the applicant.
- (2) The name, address and telephone number of a responsible person whom the city may notify or contact at any time or in case of emergency concerning the equipment or utility system.
- (3) A statement of the purpose for the equipment or system proposed for installation in

the public right-of-way, the type of service it will provide, and the intended customers\person which it will serve.

- (4) Any additional information which the city engineer in his or her discretion may require.

F. Issuance and renewal of permits; permit revocation and cancellation.

Prior to the initial issuance of a permit for use or occupancy of public right-of-way, the city engineer shall conduct a review of the permittee's background to determine the permittee's ability to meet the requirements as stated in this code. If on the basis of such review the city engineer determines that it would not be appropriate to issue the permit, the city engineer shall give notice of intent not to issue the permit as provided herein.

To obtain renewal of a permit, the permittee shall file a renewal application with the city engineer on the form provided by the city and pay an application fee for renewal of the permit. The renewal application fee and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the city commission by resolution. The renewal application shall be filed with the city engineer not less than 180 days prior to the expiration of the initial or any renewal term of the permit. Upon receipt of the renewal application, the city engineer shall conduct a review of the permittee and the permittee's prior use of the public right-of-way to determine the permittee's continued compliance with the requirements as stated herein. If on the basis of such review the city engineer determines that the permittee and the permittee's prior use of the public right-of-way complies with all requirements, the city engineer may renew the permit for an additional term of up to 10 years.

If on the basis of such review the city engineer determines that the permittee and the permittee's use of public right-of-way do not comply with one or more of the requirements as herein stated, the city engineer shall give notice of intent not to renew the permit. If a permittee holds multiple permits for use or occupancy of various rights-of-way within the city for the same or similar purpose, the permittee shall be required to renew all such permits under a single permit at such time as the earliest issued permit expires.

In determining the length of the term of an initial or a renewal permit, the city engineer shall take into consideration the likelihood that the city will require the use of the specific portion of

the subject right-of-way for municipal purposes or that such use of the subject right-of-way will unduly burden the city or the public in its use of the subject right-of-way during the proposed term of the permit and the life cycle of the facilities to be deployed. A permit shall not be issued or renewed if the city engineer determines that any of the following conditions exist in the right-of-way proposed for permitting:

- (1) There is insufficient space in the right-of-way to accommodate the proposed use, given the other existing uses thereof;
- (2) The proposed private utility service connection would interfere with or conflict with existing or planned city equipment or utility equipment located or to be located in the right-of-way;
- (3) Such use is incompatible with adjacent public or private uses of that right-of-way;
- (4) Such use would involve an unacceptably high frequency of repair or maintenance to the private utility service equipment thereby requiring excessive excavation in or obstruction of the right-of-way; or
- (5) The construction or installation of such private utility service equipment would interfere with a public improvement undertaken or to be undertaken by the city or with an economic development project in which the city has an interest or investment.

If during the term of any permit the city engineer determines that the permit should be revoked due to the permittee's failure to comply with any of the requirements herein stated, the city engineer shall give notice of intent to revoke such permit.

G. The following shall constitute grounds for refusal to issue or renew a permit, or for revocation of a permit for use or occupancy of public right-of-way:

- (1) The permittee's failure to observe or comply with any of the following:
- (2) The permittee's use or prior use of public right-of-way has been conducted in full

and timely compliance with all laws and regulations applicable thereto, and the permittee has complied fully and in a timely manner with the requirements of any previously issued permit, and with the orders or instructions of city officials issued pursuant to this chapter; or

(3) The permittee is current in the payment of permit fees, if applicable, and the permittee has made such payments fully and when due.

(4) The permittee's commission of any of the following acts:

(a) The permittee has made a misleading statement or a material misrepresentation in connection with an application for initial issuance or renewal of a permit, in connection with its registration of its use of the public right-of-way or in connection with its use of public right-of-way; or

(b) The permittee has transferred its equipment, its business, or its permit to another person or has made a change in use of its equipment, without giving the city notice thereof and obtaining city consent thereto; or

(c) Striking or damaging another facility within the right of way.

(d) The subject right of way is highly congested and a reasonable likelihood exists in the city engineer's opinion that the space is needed in the future for a different service to a broader segment of the population.

The city engineer shall give notice of intent to cancel such permit if during the term of any permit the city engineer determines that:

(1) The permittee's continued use of the public right-of-way will unduly burden the city or the public in its use of that property;

(2) The public right-of-way for which the permit was issued will be required for municipal purposes during the term of the permit;

(3) The permittee's equipment at a particular location will interfere with:

(a) A present or future city use of the right-of-way;

(b) A public improvement undertaken or to be undertaken by the city;

(c) An economic development project in which the city has an interest or investment;
or

(d) The public's safety or convenience in using the right-of-way for ordinary travel; or

(e) The public health, safety and welfare requires it.

Notice of intent not to renew a permit for use of the public right-of-way shall be given to the permittee, either by certified mail, return receipt requested, or by actual service or delivery thereof, which notice shall be given not more than 90 days after submission of the renewal application. Notice of intent to revoke or cancel a permit shall also be given to the permittee in the manner provided above. The notice shall set forth the grounds for refusal to issue or renew or for revocation or cancellation and shall inform the applicant or permittee of the right to an appeal hearing upon request. Such request for hearing shall be filed in writing with the Planning Department, and the hearing shall be scheduled and held by the Planning Board at their next regularly scheduled public meeting. At the hearing, the applicant or permittee shall have the burden of establishing that the grounds asserted in the notice do not exist. Upon the effective date of revocation or cancellation as provided in the city engineer's notice thereof, or upon the effective date specified in the city engineer's written decision upon the permittee's appeal, the permittee shall be required to cease its use and occupancy of the right-of-way or to remove or relocate its equipment therefrom, as provided in the notice or decision. Equipment not removed or relocated from the right-of-way as required in such notice or order shall be considered a nuisance and may be removed, relocated, or taken possession of by the city, at the permittee's expense. Except in emergency circumstances, the requirement to relocate, remove, or cease use of equipment shall be suspended during the pendency of any appeal taken by a permittee.

If a permit is refused or cancelled upon the basis that the subject city property is or will be required for municipal purposes, the applicant or permittee shall not be entitled to an appeal.

However, in that event, the permittee shall be entitled to a partial refund of the annual fee already paid, such refund to be computed on the basis of 1/12 of the required annual fee multiplied by the number of unexpired whole months of the year remaining in the permit term. In all other cases where a permit is not issued or renewed or is revoked, no refund of any portion of the required annual fee shall be paid to the permittee.

Notwithstanding the notice and hearing requirements above, the city engineer may, in emergency circumstances, order the immediate relocation or removal of equipment from the right-of-way.

Regardless of any other provision, a refusal, cancellation or revocation may be appealed under the applicable processes specified in state or federal law.

Failure to secure, renew or comply. Any person who fails to secure or renew a franchise or permit required under this chapter or any franchisee or permittee who fails to comply with the requirements of the respective franchise or permit, or this chapter, or with any other applicable legal requirements shall, upon notification of such violation by the city engineer, immediately act either to abate the violation or to cease its use and occupancy of the right-of-way and remove its equipment or system from the right-of-way.

- H. Transfer of franchise, permit, lease, business, or equipment without city's consent; change in use of equipment without city's consent.

A permit issued pursuant to this chapter shall not be transferred to any other person without the prior written notice to the city engineer. A permittee shall not transfer the permit, the business, or the equipment in the right-of-way to another person without giving the city engineer 90 days' prior written notice of such proposed transfer. In such notice, the permittee shall clearly identify the proposed transferee, giving the name and address of a representative of the transferee who is authorized to discuss and provide information to the city regarding the transfer.

A franchisee or permittee shall not change the use of its equipment without giving the city 90 days' prior written notice of such proposed change in use. In such notice, the franchisee or permittee shall clearly and completely set forth the proposed change in use of equipment, how it would be accomplished, including any excavations required to accomplish such change, and projections as to the future maintenance implications of such change in use. Any proposed change

in use of a franchisee's or permittee's equipment shall require the prior approval of the city engineer. Such approval may be withheld if the city engineer determines that the proposed use of the equipment at that location would be incompatible with or would likely damage or endanger other uses of the right-of-way, would involve a higher level of maintenance activities than the present use, would involve more street excavation or greater traffic disruption than the present use, or would be otherwise inappropriate.

I. Amendment to permit.

If a permittee with a current permit issued pursuant to this division proposes to expand, reduce, relocate or modify any portion of its equipment or system within public right-of-way, the permittee shall file an application for an amendment to the current permit with the city engineer, shall pay the administrative application fee, and shall further comply with all other applicable requirements of this chapter. An application for an amendment to a current permit shall include relevant new information of the type required in connection with the initial application for a permit. If approved, the amended permit shall be issued by the city engineer in the same manner as the original permit. However, if the amendment involves only one or more new hook-on connections to the permitted utility system and if the new connections will be made entirely through the permittee's existing underground utility conduit or ducts so as not to require any excavation in the public right-of-way or by means of overhead wires or cables between existing utility poles, the permittee shall not be required to pay an additional administrative fee as part of the application for amendment.

J. Duties of permittee.

The permittee shall be responsible for repairing or reimbursing other permitted or franchised utilities or other persons or entities lawfully using the right-of-way for any damage to their property caused by negligence of the permittee or its agents, employees or contractors in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of the permittee's equipment or system.

12.20.170 Reserved.

12.20.180 Reports and records.

Upon request, the city shall have the right to inspect and analyze at any time during normal business hours at the nearest office of an owner or operator of facilities, or, if such office is not in

the city, then at such other location in the city as the city may reasonably designate, all books, receipts, maps, records, codes, programs, and disks or other storage media and other like material reasonably appropriate in order to monitor compliance with the terms of this chapter or applicable law. This includes not only the books and records directly relevant to enforcement of this chapter or the owner's or operator's franchise agreement that are held by the operator, but any books and records held by an affiliate, or any contractor, subcontractor or any person holding any form of management contract for the facilities in the public rights of way to the extent such books or records relate to the facilities. An owner or operator is responsible for collecting the information and producing it at a location as specified above. The city shall provide the owner or operator with advance notice stating the types of records sought to be reviewed and the reason for such review.

Contacts and maps: Unless this requirement is waived in whole or in part in writing by the city each owner or operator of facilities in the public rights of way shall maintain and produce or allow access upon request the following items:

An organizational chart with contact information for the portion of the organization most relevant to its operations within the right of way.

Detailed, updated maps depicting the location of all facilities located in public rights of way in the city.

Construction Updates: Unless this requirement is waived in whole or in part by the city, the owner or operator of facilities in the public rights of way shall deliver or make available upon request the following updates to the city:

Monthly construction reports to the city for any major construction undertaken in the public rights of way until such construction is complete. The owner or operator must submit updated as built system design maps to the city, or make them available for inspection, with notice of their availability, within thirty (30) days of the completion of system construction in any geographic area. These maps shall be developed on the basis of post-construction inspection by the owner or operator and construction personnel. Any departures from design must be indicated on the as built maps.

Reserved.

Records Required: An owner or operator of facilities in the public rights of way shall at all times maintain:

A full and complete set of plans, records, and "as built" maps showing the exact location of all equipment installed or in use in the city, exclusive of customer service drops.

A file showing its plan and timetable for future major construction of the facilities.

Remote Site Visit: If any requested records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then an owner or operator of facilities in the public rights of way may request that the inspection take place at some other location; provided, that the owner or operator must pay reasonable travel expenses incurred by the city in inspecting those documents or having those documents inspected by its designee, as charges incidental to the enforcing of the owner's or operator's franchise or other authorization for use of the public rights of way.

12.20.190 Bond or letter of credit.

No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property until the owner or operator shall have filed with the city administrator a bond and/or letter of credit, in a form acceptable to the city, running in favor of the city, to guarantee the obligations of the owner or operator under this chapter and applicable law. The amount of the bond or letter of credit shall be no less than the reasonable cost of removal of the facilities and restoration of any affected public rights of way or other property pursuant to this chapter.

12.20.200 Insurance.

An owner or operator shall maintain insurance covering its facilities and operations in the public rights of way, as specified in a specific provision of this chapter or in its franchise agreement. Upon request, proof of such insurance shall be submitted to the city engineer prior to beginning any said work.

12.20.210 Enforcement.

Penalties: For violation of provisions of this chapter the city may seek fines in the amounts of \$100 for a first offense within a year, \$200 for a second offense within a year, and \$300 for a third or subsequent offense within a year. The penalties shall be assessable against an owner or operator and shall be chargeable to its performance bond and/or letter of credit, at the city's discretion.

Injunctive Relief: In addition to any other remedies hereunder, the city may seek an injunction to mitigate or terminate a violation, or employ any other remedy available at law or equity, including, but not limited to, imposition of penalties pursuant to subsection A of this section.

Timely Performance Or Compliance: Any failure of the city to insist on timely performance or compliance by any person shall not constitute a waiver of the city's right to later insist on timely performance or compliance by that person or any other person.

Termination On Account Of Certain Assignments Or Appointments:

To the extent not prohibited by the United States bankruptcy code, a franchise under this chapter shall terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee (including a debtor in possession in a reorganization) to take over the business of the owner or operator, whether in bankruptcy or under a state law proceeding; provided, however, that such franchise shall not so terminate if, within that one hundred twenty (120) day period:

Such assignment, receivership or trusteeship has been vacated; or

Such assignee, receiver, or trustee has cured any defaults and has fully complied with the terms and conditions of this chapter and any applicable agreement and has executed an agreement, approved by any court having jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this chapter and any applicable agreement.

In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of an owner or operator of facilities in the public rights of way, its franchise under this chapter shall automatically terminate thirty (30) calendar days after such foreclosure or sale, unless:

The city has approved a transfer to the successful bidder; and

The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions binding its predecessor. Any mortgage, pledge or lease of facilities in the public rights of way shall be subject and subordinate to the rights of the city under this chapter any applicable agreement, and other applicable law.

If a franchise under this chapter is terminated for any reason, the city may, at its discretion, require the grantee or permittee to remove its facilities from the public rights of way and to restore the public rights of way to their prior condition at the owner's or operator's expense, or that of their sureties. If an owner or operator whose franchise has been terminated fails, after reasonable notice from the city, to remove its facilities from the public rights of way, such facilities shall be deemed abandoned and ownership forfeited to the city.

Remedies Cumulative: All remedies specified in this chapter are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve an operator of its obligations to comply with this chapter. In exercising any remedy specified in this chapter, including articles A and 8, the city shall comply with any substantive and procedural requirements for exercising such remedies in an owner's or operator's franchise agreement or other authorization.

Reduce or Waive Penalties: The city engineer or attorney may reduce or waive any of the above listed penalties for good cause shown.

12.30.220 Indemnification.

Any indemnity provided shall include, but not be limited to, the city's reasonable attorney fees incurred in defending against any such claim, suit, or proceeding. Recovery by the city of any amounts under insurance, the performance bond or letter of credit, or otherwise shall not limit in any way a person's duty to indemnify the city, nor shall such recovery relieve a person of its obligations pursuant to a franchise or in any respect prevent the city from exercising any other right or remedy it may have.

12.20.230 Severability.

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the city and shall thereafter be binding on owners and operators.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.