

**CITY OF PRINCETON, TEXAS**

**ORDINANCE NO. 2016-09-26-01**

**AN ORDINANCE OF THE CITY OF PRINCETON, TEXAS, AMENDING THE PRINCETON MUNICIPAL CODE BY AMENDING CHAPTER 66, STREETS, SIDEWALKS AND OTHER PUBLIC PROPERTY, BY ADDING A NEW ARTICLE VI, MANAGEMENT OF PUBLIC RIGHTS-OF-WAY; AMENDING APPENDIX A, SEC. 1, ADDING A RIGHT-OF-WAY CONSTRUCTION PERMIT FEE AND PERMIT FEE FOR DRIVEWAYS AND OTHER PRIVATE IMPROVEMENTS IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR A PENALTY FOR ANY VIOLATION OF THIS ORDINANCE NOT TO EXCEED \$2,000; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALING CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

**WHEREAS**, the City of Princeton, Texas ("City") is charged with maintaining control of and access to the Right-of-Way in order to protect the health, safety and welfare of its citizens; and

**WHEREAS**, in accordance with applicable federal laws, including, but not limited to, 47 U.S.C., Section 253(c) and state laws, including, but not limited to, Texas Utility Code, Section 14.008 and Section 54.205, Texas Civil Statutes, Article 1175(2) and the Texas Local Government Code, Section 283.056, the City seeks to exercise its historical rights to control and manage its Public Rights-of-Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations in the use of those Public Rights-of-Way; and

**WHEREAS**, establishing a permitting process to improve coordination of work in Public Rights-of-Way under City jurisdiction will ease traffic congestion and limit inconvenience to citizens of and the general public; and

**WHEREAS**, the permitting process is necessary to enhance the public's access to information about Construction in City Public Rights-of-Way, and to protect and preserve the valuable public investment in the Construction and maintenance of the Public Rights-of-Way; and

**WHEREAS**, the permitting process is necessary to minimize the impact of Construction on neighborhood residents and businesses by enforcing cleanliness and safety standards for Construction sites, imposing strict timelines for Construction, and requiring Owners to comply with standards and requirements for compaction, backfill and pavement Restoration and resurfacing that ensure the best possible Restoration of the paved surface over and adjacent to the trench; and

**WHEREAS**, the permitting process is necessary to allow the City to properly enforce violations of this ordinance by the imposition of civil, criminal, or administrative penalties; and

**WHEREAS**, the permitting process is necessary to conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City; and

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

**WHEREAS**, the City of Princeton, Texas City Council ("City Council") finds there is increasing demand for use of the City Rights-of-Way; and

**WHEREAS**, the permitting process will assist in keeping track of the different entities using the Rights-of-Way to prevent interference between them; and

**WHEREAS**, the permitting process will protect the safety, security, appearance, and condition of the Public Rights-of-Way; and

**WHEREAS**, the City Council has investigated and determined that it would be advantageous and beneficial to the City and its citizens to amend Chapter 66 of the Code of Ordinances, City of Princeton, Texas ("Princeton Municipal Code") by adding Article VI, Management of Public Rights-of-Way, and to amend Appendix A, Sec. 1 of the Princeton Code by adding a Right-Of-Way Construction Permit Fee and a Permit Fee for Driveways and other Private Improvements in Public Rights-of-Way;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRINCETON, TEXAS, THAT:**

**Section 1. Recitals Incorporated.**

The above-referenced recitals are incorporated herein as if set forth in full for all purposes.

**Section 2. Amendments.**

In accordance with Chapter 1, Article I, Sec. 1-7 of the Princeton Municipal Code, that the provisions of this ordinance shall become and made part of the Code of Ordinances, City of Princeton, Texas, and the sections of this ordinance may be renumbered to accomplish that intention:

**2.01** Chapter 66 (Streets, Sidewalks, and Other Public Property) is hereby amended by adding a new article, to be numbered Article VI.- Management of Public Rights-of-Way, which reads as follows:

Sec. 66-115—66-120. – Reserved.

## ARTICLE VI MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

### Sec. 66-121.- Definitions

For the purpose of this article, the following words shall be defined herein below:

Antenna, Microwave Reflector & Antenna Support Structure. Antenna means the arrangement of wires or metal rods used in transmission, retransmission and reception of radio, television, electromagnetic or microwave signals, including without limitation Microwave Reflectors and Antennae. Microwave Reflector means an apparatus constructed of solid, open mesh, bar-configured, or perforated materials of any shape or configuration that is used to receive or transmit microwave signals from a terrestrial or orbitally located transmitter or transmitter relay. Microwave Reflectors are also commonly referred to as satellite receive only earth stations (T.V.R.O.S.), or satellite dishes. Antenna Support Structure means any tower, mast, pole, tripod, box frame, or other structure utilized for the purpose of supporting one or more Antennae or Microwave Reflectors, including without limitation structures that have a primary or secondary use in addition to supporting one or more Antennae or Microwave Reflectors.

City means the City of Princeton, Texas, or its designated agent of the City.

Construction means any work performed above the surface, on the surface or beneath the surface of a Public Right-Of-Way, including, but not limited to, installing, servicing, repairing, upgrading, or modifying any Facility(s) in, above or under the surface of the Public Right-Of-Way, and restoring the surface and subsurface of the Public Right-Of-Way, subject to the provisions of Sec. 66-131. The word "Construction" does not include the installation of Facilities necessary to initiate service to a customer's property, or the repair or maintenance of existing Facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring.

Construction Security means any of the following forms of security provided at the Owner's option:

- (1) Individual project or performance bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under State of Texas Statutes; or

(4) Letter of credit, in a form acceptable by the City.

Department means the public works Department of the City.

Director means the Director of the Public Works Department of the City or his or her designee, or another Person authorized by the City Manager to act as the Director.

Driveway means a vehicular access way designed and intended to serve as access from a public roadway to a lot or parcel of land adjacent to the public roadway.

Emergency means a condition that: (1) poses a clear and immediate danger to life or health, or an immediate and significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to Restore service to a customer.

Facility or Facilities shall include, but not be limited to, any and all cables, pipelines, poles, transmitters, receivers, splice boxes, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an Owner or Owners, that are located or are proposed to be located in a Public Right-Of-Way.

Major Thoroughfares mean S.H. 380 and any other major highways designated on the City's comprehensive plan.

Municipal Authorization means the grant issued by the City and accepted by an individual Owner to use the Public Rights-Of-Way in accordance with the ordinances of the City, a franchise agreement, a license, or under operation of state law which provides a specific grant of authority to use the Rights-of-Way.

Owner means any Person who owns any Facility or Facilities that are installed or are proposed to be installed or maintained in the Public Right-Of-Way. Included within this definition are any and all of Owner's contractors, subcontractors, agents or authorized representatives.

Permit or Construction Permit means authorization or a Permit issued by the City to perform Construction in accordance with this article.

Person means any natural or corporate Person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision (excluding the City), a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Right(s)-Of-Way or Public Right(s)-Of-Way means the area of land within

the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, or by prescriptive right and that is expressly or impliedly available, accepted or used in fact or by operation of law as a public roadway, highway, street, sidewalk, alley, or drainage or utility easement. The term includes the area on, below, and above the surface of the Public Right-Of-Way. The term applies regardless of whether the Public Right-Of-Way is paved or unpaved. The term does not include airwaves above the Public Right-Of-Way with regard to wireless telecommunications.

Restore or Restoration means the process by which a Public Right-Of-Way is returned to a condition that is equal to or better than the condition that existed before Construction.

### **Sec. 66-122. - Right-Of-Way Occupancy**

- (a) Any Person, prior to constructing Facilities in, on or over the Public Rights-Of-Way, must first obtain separate Municipal Authorization.
- (b) This article does not constitute or create authority to place, reconstruct, or alter Facilities in, on or over the Rights-Of-Way nor to engage in Construction, excavation, encroachments, or work activity within or upon any Public Right-Of-Way, and said authority must be obtained in accordance with the terms of this article.
- (c) Any Person with a current, unexpired franchise, Municipal Authorization, license or other authorization from the City or state to use the Public Right-Of-Way that is in effect at the time this article takes effect, shall continue to operate under and comply with that grant, and in the event this ordinance conflicts with existing authorization, the more restrictive provision shall apply.
- (1) Regardless of any prior existing unexpired franchise, Municipal Authorization, license or other authorization from the City or State to use the Public Right-Of-Way, an Owner shall be required to obtain a Permit prior to performing any Construction within a Public Right-Of-Way.

### **Sec. 66-123. - Registration**

- (a) In order to protect the public health, safety and welfare, all Owners of Facilities in the Right-Of-Way will register with the City. Registration and Permits will be issued in the name of the Person who owns or will own the Facilities. Registration must be renewed on or before September 30 of each year. If a registration is not renewed, and subject to 60 calendar days

notification to the Owner, the Facilities of the Owner will be deemed to have been abandoned. When any information provided for the registration changes, the Owner will inform the City of the change no more than 30 days after the date the change is made. Registration shall include:

- (1) The name, address(es) and telephone number(s) of the Owner;
  - (2) The names, address(es) and telephone number(s) of the contact Person(s) for the Owner;
  - (3) The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the Right-Of-Way on behalf of the Owner. If the names of contractors and subcontractors are not available at the time of Registration, they must be submitted to the City prior to Permit issuance;
  - (4) Proof of insurance and bonds as required in Section 66-135;
  - (5) The name(s) and telephone number(s) of an emergency contact who shall be available 24 hours a day;
  - (6) The source of the Owner's Municipal Authorization (e.g., franchise, state law, etc.). If the Owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission; and
  - (7) The Owner's two-year projections of plans for the Construction of Facilities in the City at the time of registration renewal.
- (b) Registration shall be a prerequisite to issuance of a Construction Permit. Each Owner shall update and keep current the registration with the City at all times.

#### **Sec. 66-124. - Construction Permits**

(a) General

- (1) An Owner shall not perform any Construction or installation of Facilities in the Public Right-Of-Way without first obtaining a Construction Permit, except as provided herein. In the discretion of the Director, an Owner may be required to apply for and receive multiple Permit applications for Construction which will involve more than one work site.

- (2) Emergency Construction related to existing Facilities may be undertaken without first obtaining a Permit; however, the Department shall be notified in writing within two business days of any Construction related to an Emergency response; including a reasonably detailed description of the work performed in the Right-Of-Way. An updated map of any Facilities that were relocated, if applicable, shall be provided to the Department within 90 days.
- (3) A Permit is not required under subsection (a) if the activity in the Public Right-Of-Way consists exclusively of:
- a. a residential service connection on the same side of the Public Right-Of-Way, if the connection does not require a pavement cut; or
  - b. the replacement of a single damaged pole.
- (4) Unless the Director has issued prior approval, the Owner or contractor shall not close any traffic lanes or otherwise impede traffic on Major Thoroughfares during the morning or evening rush hours on weekdays during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:30 p.m. Any closure of a traffic lane for more than four hours during any non-peak traffic period shall also require a Permit unless waived by the Director.
- (5) All Construction in the Right-Of-Way shall be in accordance with the Permit for the Facilities. The Director shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the Permit.
- (6) A copy of the Construction Permit and approved Construction plans shall be maintained at the Construction site and made available for inspection by the Director at all times when Construction work is occurring.
- (7) All Construction work authorized by Permit must be completed in the time specified in the Construction Permit. If the work cannot be completed in the specified time periods, the Owner may request an extension of the time period from the Director. The Director will use his/her best efforts to approve or disapprove a request for extension of a Permit as soon as possible. If the request for the extension is made prior to the expiration of the Permit, work may continue while the request is pending.
- (8) Construction, excavation, or work area. No Owner or contractor shall perform Construction, excavation, or work in an area larger or at a location different than that specified in the Permit or Permit application. If, after Construction, excavation, or work is commenced under an

approved Permit it becomes necessary to perform Construction, excavation, or work in a larger or different area than originally requested under the application, the Owner or contractor shall notify the Director immediately and, within 24 hours, shall file a supplementary application for the additional Construction, excavation, or work.

(9) Applicants are solely responsible for obtaining any and all necessary permits or other approvals from other applicable regulatory authorities, including but not limited to the Texas Public Utility Commission and the Texas Department of Transportation. The City's issuance of a Permit is not a substitute for approval by other regulatory authorities and does not constitute any representation by the City that the proposed Construction would meet the requirements established by other entities. A copy of any Permit or approval issued by federal or state authorities for work in federal or state Rights-Of-Way located in the City shall be provided, if requested by the Department.

(10) If state or federal law addresses the same issue as any part of this Right-of-Way management ordinance, the regulation which creates the greatest limitations on Construction activity shall control unless otherwise agreed in writing.

**(b) Modifications and Pole Attachments**

(1) Any desired modification from the technical specifications of an existing permit requires a new permit application or amendment to a pending permit application. For purposes of this provision, "modification" shall include but not be limited to a change in pole height, addition of equipment which increases overall pole/structure height, rerouting or adding new underground connections to an above-ground installation, rerouting or adding new above-grade lines, or addition of any equipment which adds additional functions to an existing facility (i.e., adding telecom equipment to an electric pole)..

(2) Any person or entity seeking to install additional equipment of any kind to an existing pole owned by another entity must obtain a permit before commencing with the work.

**Sec. 66-125. - Permit Application**

(a) The Permit shall state to whom it is issued, location of work, location of Facilities, dates and times work is to take place and any other conditions set out by the Director. If the Owner fails to act upon any Permit within 90 calendar days of issuance, the Permit shall become invalid, and the Owner will be required to obtain another Permit. No Permit shall be

transferable.

- (b) The Permit will be in the name of the Person who will own the Facilities to be constructed. The Permit application must be completed and signed by an authorized representative of the Owner of the Facilities to be constructed.
- (c) Any Person requesting a Permit will provide the Director with documentation in the format specified by the Department, at the time of the Permit application submittal, including:
- (1) the proposed location and route of all Facilities to be constructed or installed and the Owner's plan for Right-Of-Way Construction;
  - (2) three sets of engineering plans, including plan and profile, which will be on a reasonable scale acceptable to the Department, unless waived by the Director. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas;
  - (3) detail of the location of all Rights-Of-Way (including utility easements) that the Owner plans to use;
  - (4) detail of existing utilities located in the Right-Of-Way, including the City's utilities, in relationship to Owner's proposed route;
  - (5) detail of what Owner proposes to construct including size of Facilities, services to be provided by the Facilities, materials used, and other detail such as pipe size, total pole height, number of ducts, valves, etc;
  - (6) detail of plans to remove and replace asphalt or concrete in streets, and details for Restoration within Public Right-Of-Way;
  - (7) drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth located in Public Right-Of-Way;
  - (8) typical details of manholes and/or handholes Owner plans to use or access;
  - (9) complete legend of drawings submitted by Owner, which may be provided by reference to previously submitted documents acceptable

to the City;

- (10) the Construction methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Right-Of-Way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Director; and
- (11) proof of insurance and bonds as required by Sec. 66-135.
- (d) A request for a Permit must be submitted at least 15 business days before the proposed commencement of work identified in the request, unless waived in writing by the Director.
- (e) Requests for Permits will be approved or disapproved by the Director within a reasonable time of receiving all the necessary information. The Director will use his/her best efforts to approve or disapprove a request for Permit as soon as practicable. The Director will consider all information submitted by the applicant including a review of the availability of space in the Right-Of-Way based on the applicant's proposed route and location. The Director will provide a written notification of denial for rejected Permits.
- (f) The Department or the Owner can request a pre-construction meeting with the Construction contractor.
- (g) No Person receiving a Permit shall authorize or otherwise allow any equipment, device, or other feature not depicted in the Permit application submittal to be erected, installed, attached, collocated, or otherwise affixed to any materials placed in a Right-of-Way. Allowing such activity is unlawful, constitutes a public nuisance, and constitutes a violation of this ordinance for each day the improper installation remains. An Owner must take action to remove an installation exceeding the scope of the Permit within 48 hours of receiving notice of a violation of this section from the City, or the City may remove the improper installation at the Owner's expense.
- (h) Submission of an application for a Permit constitutes the Owner's acceptance of responsibility for monitoring the Facilities which are the subject of the respective Permit, and agreement that any future transfer of ownership of Facilities in any Right-of-Way is strictly limited to the exact specifications of an approved Permit, and further that the Owner originally listed on an approved Permit is responsible for all costs of City abatement of any improperly installed equipment or failure to timely conform as needed for public improvements, except as may be specifically provided

for in this article or applicable franchise agreement.

- (i) Owner shall provide the City a copy of any related pole attachment contract (or any other arrangement for collocation on or within Owner's Facilities) as part of the Owner's permit application. Said contract must include, as a binding term, a provision requiring the Owner or the collocating entity to move all of its equipment to a new permitted location within 30 days after notice that relocation is necessary. Said contract must also provide that if it is necessary to remove or relocate any Facilities and the collocating entity fails to move its equipment within 30 days after receiving notice of the need to move, the collocating party authorizes both the permit applicant (or pole owner, as applicable) and the City to transfer or remove the equipment at the permit applicant's expense and fully indemnifies and holds harmless the City (and its officers, employees, contractors, and other agents) from all liability to the same degree as described by Texas Utilities Code § 252.006(c)(as amended). Submission of an unexecuted or nonconforming contract shall result in denial of the permit application.
  
- (j) Supplementation. Any person receiving a permit under this section shall have an ongoing duty to promptly provide written notice to the City of any proposed or anticipated change to the application details previously supplied to the City, including but not limited to providing notice to the City of any proposal for collocation of any other party's equipment on previously permitted Facilities. Work under a proposed modification to a permit cannot commence unless all relevant information is supplied to the City at least 15 days in advance, unless otherwise waived in writing by the Director.

**Sec. 66-126. - Construction Standards**

- (a) All Construction shall be in conformance with all City codes and applicable local, state and federal laws.
  
- (b) The Department must be notified two business days in advance that Construction is ready to proceed by either the Owner, its contractor or authorized representative. At the time of notification, the Owner will inform the Department of the number (or other information) assigned from the appropriate one-call Notification center. "Notification center" means the same as in V.T.C.A., Utilities Code Ch. 251, or its successor. The name, address and phone numbers of the contractor or subcontractor who will perform the actual Construction, including the name and telephone number of an individual with the contractor who will be available at all times during Construction. Such information shall be required prior to the

commencement of any work.

(c) Public Notification.

- (1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting six days or less, the Permittee shall conspicuously mark its vehicles with the Permittee's name and telephone number.
  - (2) For projects scheduled to last more than seven calendar days, a three feet by three feet informational sign stating the identity of the Person doing the work, a local telephone number and Owner's identity shall be placed at the location where Construction is to occur 48 hours prior to the beginning of work in the Right-Of-Way and shall continue to be posted at the location during the entire time the work is occurring. The informational sign will be posted on the Public Right-Of-Way 100 feet before the Construction location commences, unless other posting arrangements are approved or required by the Director.
  - (3) When projects last more than seven calendar days, the Owner shall also provide written notification to all adjacent property occupants 48 hours prior to the beginning of Construction. Informational fliers shall include the Person doing the work, a local telephone number, Owner's identity, and proposed schedule.
- (d) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.
- (e) Lane closures on Major Thoroughfares will be limited to one lane between 9:00 a.m. and 3:30 p.m. unless the Director grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and 36-inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices.
- (f) Without affecting the legal relationship between the Owner and their contractor, Owners are responsible for the workmanship of, and any damages caused by, their contractors or subcontractors. A responsible representative of the Owner will be available to the Department at all times during Construction.
- (g) Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with City, state and federal guidelines. Requirements shall include, but not be limited to, Construction

fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request, Owner may be required to furnish documentation submitted or received from federal or state government.

- (h) Owner or contractor or subcontractor will notify the Department immediately of any damage to other utilities, either City or privately owned.
- (i) It is the City's policy not to cut streets or sidewalks; however, except in case of Emergency when a street or sidewalk cut is required, prior approval must be obtained from the Department and all requirements of the Department shall be followed in all street and sidewalk cuts. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with City standard specifications and details for Restoration within Public Rights-Of-Way.
- (j) Installation of Facilities must not interfere with City utilities, in particular gravity dependent Facilities. Facilities shall not be located over, or within three feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the Director.
- (k) New Facilities must be installed to a minimum depth required by state and federal codes and standards.
- (l) All directional boring shall have a locator place bore marks and depths while the bore is in progress. Locator shall place a mark at each stem with a paint dot and depth at least every other stem.
- (m) No directional boring zones. In the City, the public infrastructure must be maintained and protected by all Owners and contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no Person, agency, or contractor will be allowed to directionally bore longitudinally with water mains that are larger than eight inches and sewer mains that are eight inches or larger, unless this requirement is waived in writing by the Director. The installation of Facilities in the Public Rights-Of-Way or easements will be installed by open excavation to assure the protection of the City's water and sewer system.
- (n) Hours of Operation for Non-Emergency Work. Construction may not start

earlier than 7:00 am on weekdays nor continued after dark without prior permission from the City. Construction on Saturday may not start before 7:00 am and must be approved by the Director by noon on the Thursday prior to the proposed Saturday. Work on Sunday is prohibited without special permission by the City Manager or his/her designee. An after hours fee must be paid to the City prior to Saturday work, if City inspection is required. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed. Construction work on recognized City holidays is prohibited.

- (o) Persons working in Public Rights-Of-Way are responsible for obtaining line locates from all affected utilities or others with Facilities in the Right-Of-Way prior to any excavation. Use of a geographic information system or the plans of records does not satisfy this requirement.
- (p) The Owner of any Facilities located within Public Rights-Of-Way is required to mark the location of such Facilities when requested by the City. Location and marking of said Facilities shall occur within six hours of an Emergency request, and within three days of a non-emergency request.
- (q) Owner will be responsible for verifying the location, both horizontal and vertical, of all Facilities. When required by the Department, Owner shall verify locations by pot holing, hand digging or other method approved by the Department prior to any excavation or boring.
- (r) Placement of all manholes and/or handholes must be approved in advance by the Department. Handholes or manholes will not be located in sidewalks, unless approved by the Director.
- (s) Locate flags shall not be removed from a location while Facilities are being constructed.
- (t) When Construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the Department.
- (u) A Person shall perform operations, excavations and other Construction in the Public Rights-Of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-Of-Way. The City shall waive the requirements of trenchless technology if it determines that

the field conditions warrant the waiver, based upon information provided to the City by the Person. All excavations and other Construction in the Public Rights-Of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable Construction directions given by the City in order to minimize any such interference.

- (v) All Construction shall conform to the City tree preservation standards.
- (w) Excavation safety. On Construction projects in which excavation will exceed a depth of five feet, the agency must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural features, or any Construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with state law and occupational safety and health administration (OSHA) standards and regulations.
- (x) Confined Space. On Construction projects that involve entry into a "confined space" or "permit-required confined space" as said terms are defined under 29 CFR §1910.146(b), as amended, the Owner shall comply with all related City regulations and applicable state and federal law.
- (y) To the extent permitted under state law and/or an applicable tariff from the Texas Public Utility Commission and where it is technologically feasible, it is preferred that all Facilities be installed underground. Any claim that underground installation is not technologically feasible is subject to denial by the Director unless the Permit application is accompanied by a suitable report prepared by a certified civil engineer which individually addresses the conditions that prevent the feasibility of underground installation on each site where above-ground installation is proposed. Cost of installation must not be the sole factor used to support a claim that underground installation is not feasible.

**Sec. 66-127. - As-Built Plans**

- (a) Right-Of-Way users will provide the Director with "as-built plans" within 90 days of completion of Facilities in the Right-Of-Way. The plans shall be provided to the City with as much detail and accuracy as required by the Director. All the requirements specified for the plans submitted for the initial Permit, as set forth in Sec. 66-126(c) shall be submitted and updated in the as-built plans. Users which have Facilities in the Right-Of-Way existing as of the date of this article who have not provided as built plans shall provide 1/4 of the information concerning Facilities in City

Right-Of-Way within one year after the passage of the article and 1/4 each six months thereafter. The detail and accuracy will concern issues such as location, size of Facilities, materials used, and any other health, safety and welfare concerns. Submittal of as-built plans shall be in digital format compatible with City hardware and software or shall be subject to a conversion fee. Owner shall include one set of plans in a paper format.

- (b) If as-built plans submitted under this section include information expressly designated by the Owner as a trade secret or other confidential information protected from disclosure by state law, the Director may not disclose that information to the public without the consent of the Owner, unless otherwise compelled by a decision of the attorney general pursuant to the Texas Public Information Act, V.T.C.A., Government Code Chapter 552, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an Owner to designate all matters in its as-built plans as confidential or as trade secrets.
- (c) The requirements set forth in Sec. 66-127, or portions of said requirements, may be waived by the Director for good cause.

**Sec. 66-128. - Conformance with Public Improvements**

- (a) Whenever by reasons of widening or straightening of streets, side walks, water or sewer line projects, or any other City project, it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform an Owner's underground, above ground, or overhead Facilities within the Right-Of-Way to another part of the Right-Of-Way, such alterations shall be made by the Owner of the Facilities at the Owner's expense (unless provided otherwise by state law, a franchise, a license or a Municipal Authorization until that grant expires or is otherwise terminated). The Owner shall be responsible for conforming its Facilities within mutually agreed upon time limits. If no time limits can be agreed upon, the time limit shall be 90 days from the day the City secures any additional Right-Of-Way and transmits final plans and notice to make the alterations. The Owner of Facilities shall be responsible for any direct costs associated with project delays associated with failure to conform Facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this subsection shall be made within 30 calendar days. Responsibility for the costs required to remove, alter, change, adapt, or conform Facilities ("modify" herein) is not affected by any transfer of ownership of some or all of the Facilities from the original Owner to any other Person, unless the original Owner establishes to the City's satisfaction that (1) the transfer of ownership of the Facilities at issue was completed no less than 30 days prior to receipt of notice to modify the

Facilities and (2) responsibility for the costs of removal, relocation, modification, and similar costs was disclosed to and accepted by the new Owner, who also provided the City with suitable documentation of all necessary bonds and insurance verifications prior to the receipt of notice to modify the Facilities. Any attempted transfer of Facility ownership (whether by sale, gift, abandonment, quitclaim, or any other devise) which does not comply with the requirements of this section shall be ineffective to relieve the original Owner of financial responsibility for the costs to modify the Facilities, and the City may use any means to recover its costs or ensure the prompt completion of the necessary work to modify the Facilities, including but not limited to making claims against bonds, issuing fines, pursuing liens, or any other lawful means.

- (b) An Owner may trim trees in or over the Public Rights-Of-Way for the safe and reliable operation, use and maintenance of its Facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and the International Society Of Arboriculture. Should the Owner, its contractor or agent, fail to remove such trimmings within 24 hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Owner shall promptly reimburse the City for all costs incurred within 30 calendar days.
- (c) An Owner shall temporarily remove, raise or lower its aerial Facilities to Permit the moving of houses or other bulky structures. The Owner shall temporarily remove, raise or lower its aerial Facilities within 15 working days of receiving a copy of a Permit issued by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

**Sec. 66-129. - Improperly Installed Facilities**

- (a) Any Owner doing work in the City Right-Of-Way shall properly install, repair, upgrade and maintain Facilities.
- (b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
- (1) the installation, repair, upgrade or maintenance endangers people or property;
- (2) the Facilities do not meet the applicable City codes;

- (3) the Facilities are not capable of being located using standard practices; or
- (4) the Facilities are not located in the proper place at the time of Construction in accordance with the directions provided by the Department or the plans approved by the Department.

**Sec. 66-130. - Location of Utility Structures**

- (a) Utility structures not exceeding 20 cubic feet are allowed in the Right-of-Way or utility easements, subject to available room and located as approved by the Director. The placement of utility structures larger than 20 cubic feet, but not exceeding 30 cubic feet will be reviewed on a case-by-case basis by the Director. Such structures shall not encroach within a sidewalk area, including a vertical clearance of 7.5 feet above the sidewalk or within the sight visibility area.
- (b) Utility structures larger than 30 cubic feet shall be located as close as practical to the back of a public or private utility easement and subject to available room and located as approved by the Director.
- (c) Above-ground Facilities such as pedestals, switching boxes and similar Facilities shall be located no less than three feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, Driveways or alleys. Such Facilities shall not be located in front of residential lots in a manner that creates an unreasonable visual or aesthetic impairment (as determined by the Director) for the property owner.
- (d) The Owner's identity and telephone number shall be placed on all utility structures placed in the Rights-Of-Way.
- (e) Notwithstanding anything in this article or other ordinance or regulation, whether or not codified, Antenna, Microwave Reflector & Antenna Support Structures and any part or component thereof are prohibited in Public Rights-of-Way without the express approval of the City Council by Resolution or Ordinance of a franchise agreement or license. Approval of any such facility, franchise agreement, or license is at the sole discretion of the City Council.
- (f) In areas where utilities are already present in a Right-of-Way, all Facilities are to be installed on the same side of the roadway as existing facilities.

unless it is established to the Director that the conformance to that requirement is not feasible. If pre-existing utility installations are underground in the vicinity of proposed Construction, all new Facilities must also be underground unless otherwise provided by an applicable tariff of the Texas Public Utility Commission. Applications for above ground and underground Construction may be subject to different requirements, even as applied to Facilities designed to provide similar services.

**Sec. 66-131. - Restoration of Property**

- (a) Owners shall Restore property affected by Construction of Facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Owners shall submit photographs and/or a video of the Construction area at the time of the issuance of the Permit. Restoration must be approved by the Department.
- (b) Restoration must be made within ten working days of completion of trench backfill for a length of 300 feet, or within the limits of one City block, unless otherwise approved by the Director. If Restoration is not satisfactory and performed in a timely manner, after written notice, then all work in progress (except that related to the problem), including all work previously permitted but not complete, may be halted at City direction and a hold may be placed on any future Permits until all Restoration is complete.
- (c) Upon failure of an Owner to perform such Restoration, and five days after written notice has been given to the Owner by the City, and in the event Restoration has not been initiated during such five-day period, the City may repair such portion of the Public Rights-Of-Way as may have been disturbed by the Owner, its contractors or agents. Upon receipt of an invoice from the City, the Owner will reimburse the City for the costs so incurred within 30 calendar days from the date of the City invoice.
- (d) If the City determines that the failure of an Owner to properly repair or Restore the Public Rights-Of-Way constitutes a safety hazard to the public, the City may undertake Emergency repairs and Restoration efforts, after Emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the City, the Owner shall promptly reimburse the City for the costs incurred by the City within 30 calendar days from the date of the City invoice. If payment is not received within the 30 calendar days, the City shall initiate a claim for compensation with the appropriate bonding company.

- (e) Should the City reasonably determine, within two years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional Restoration work to meet the standards of subsection 66-131(a), an Owner shall perform such additional Restoration work to the satisfaction of the City, subject to all City remedies as provided herein or available at law or in equity.
- (f) Restoration must be to the reasonable satisfaction of the Department. The Restoration shall include, but not be limited to:
- (1) replacing all ground cover with the type of ground cover damaged during work to a condition equal to or better either by sodding or seeding, or as directed by the Department;
  - (2) adjusting of all manholes and handholes, as required;
  - (3) backfilling all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the Department. Holes with only vertical walls shall be covered and secured to prevent entry. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded to secure the work site as approved by the Department;
  - (4) leveling of all trenches and backhoe lines;
  - (5) Restoration of excavation site to City specifications;
  - (6) Restoration of all paving, sidewalks, landscaping, ground cover, trees, shrubs and irrigation systems.
  - (7) removal of all locate flags during the clean up process by the Owner or his/her contractor at the completion of the work.

**Sec. 66-132. - Revocation or Denial of Permit**

If any of the provisions of this article are not followed, a Permit may be revoked by the Director or his/her designee. If a Person has not followed the terms and conditions of this article in work done pursuant to a prior Permit, new Permits may be denied or additional terms required. Revocation shall be effective upon the expiration of 15 days after written notice of the violation(s), unless cured during that period, except for violations which pose a threat to public safety or health, for

which the revocation will be immediate upon delivery of written notice.

**Section 66.133 - Appeals**

- (a) Applicability. Appeals may be filed pursuant to this section for decisions of the Director related to the denial, suspension, or revocation of a Permit. However, the appeal process provided by this section shall not be available for criminal violations of this article.
  
- (b) Appeal to City manager. A permittee may appeal decisions referred to in subsection 66.133(a) above by filing a written appeal with the City manager within seven working days of receipt of denial, suspension, or revocation of the Permit. An appeal filed pursuant to this section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this article, including but not limited to citations to all statutes, regulations, decisions, rulings, and other law or legal authority upon which a permittee relies.
  
- (c) Issuance of decision by City manager. Decisions of the City manager shall be issued within five business days of receipt of the written appeal. Decisions of the City manager shall be final.

**Sec. 66-134. - Indemnity**

- (a) Each Owner placing Facilities in the Public Rights-Of-Way shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses: (1) for the repair, replacement, or Restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Owner's acts or omissions; and (2) from and against any and all claims, demands, suits, causes of action, and judgments for (i) damage to or loss of the property of any Person (including, but not limited to the City's and Owner's respective agents, officers, employees and any third parties); and/or (ii) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including, but not limited to the agents) arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Owner, its agents, employees, and/or subcontractors, in the performance of activities governed under this article.
  
- (b) This indemnity provision shall not apply to any liability resulting from the negligent or willful acts of the City, its officers, employees, agents, contractors, or subcontractors.

- (c) The provisions of this indemnity are solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other Person.
- (d) A Permit is automatically revoked if ownership of the Facilities is transferred to any Person under terms which do not subject the new Owner(s) to the indemnity and hold harmless requirements of this article.

**Sec. 66-135. - Insurance Requirements**

(a) General

- (1) An Owner must provide acceptable proof of insurance in the total amount required by this section for Permits for Construction within Public Rights-Of-Way, or make other provisions acceptable to the Director.
- (2) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.
- (3) The Owner shall file the required original certificate of insurance prior to the issuance of a Permit. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.
- (4) Owner shall file an annual surety bond, which will be valid for one full year, from a surety company authorized to do business in the State of Texas in the amount equal to the estimated amount of the cost to Restore the Right-Of-Way for the work anticipated to be done in that year, in the event the Owner leaves a job site in the Right-Of-Way unfinished, incomplete or unsafe. Owner may make other provisions, in lieu of a bond, as acceptable to the Director. The Director may waive the requirement if the Owner submits documentation, in a form acceptable to the City Attorney that demonstrates the Owner has assets in excess of \$10,000,000.00.
- (5) Owner shall file a maintenance bond for 25% of the cost of restoring the Right-Of-Way for the preceding year. Said bond shall be in force for two years. Owner may make other provisions, in lieu of a bond, as acceptable to the Director. The Director may waive the

requirement if the Owner submits documentation, in a form acceptable to the City Attorney, that demonstrates the Owner has assets in excess of \$10,000,000.00 and Owner formally accepts responsibility for any modification and/or relocation of Facilities to accommodate future public improvements.

(6) The above requirements (1)-(5) may be met by utilities with a current franchise, license or Municipal Authorization if their current franchise, license or Municipal Authorization adequately provides for insurance or bonds or provides an indemnity in favor of the City.

(7) The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the state does not issue such certificates, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City Attorney.

(8) An insurer has no right of recovery against the City. The required insurance policies shall protect the agency or public infrastructure contractor and include the City as an additional insured. The insurance shall be primary coverage for losses covered by the policies.

(9) Each policy must include a provision that requires the insurance company to notify the City in writing at least 30 days before canceling or failing to renew the policy or before reducing policy limits or coverages.

(b) Insurance Requirements

(1) Owners. Each Owner applying for a Permit shall obtain, maintain, and provide proof of each of the following types of insurance and coverage limits:

a. Commercial general liability on an occurrence form with minimum limits of \$5,000,000.00 per occurrence and \$10,000,000.00 aggregate. This coverage shall include the following:

1. Products/completed operations to be maintained for one year;
2. Personal and advertising injury;

- 3. Owners and contractors protective liability; and
- 4. Explosion, collapse, or underground (XCU) hazards.

b. Automobile liability coverage with a minimum policy limit of \$1,000,000.00 combined single limit. This coverage shall include all owned, hired and non-owned automobiles.

c. Workers compensation and employers liability coverage. Statutory coverage limits for coverage A and \$500,000.00 coverage B employer's liability is required.

(2) Contractors and sub-contractors. Each contractor and sub-contractor applying for a Permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in subsection 66-135.-(b)(1)(a) above; however, the policy limits under the general liability insurance shall be \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. All other coverage provisions outlined in subsection 66-135.-(b)(1)(a) above shall apply.

(c) An Owner or contractor that has registered and filed proof of insurance under Sec. 66-123 of this article is not required to furnish separate proof of insurance under this section when obtaining a Permit but must comply with all other requirements of this section.

(d) A Permit is automatically revoked if any Owner transfers ownership of any Facilities to any Person who does not have insurance coverage meeting or exceeding all of the requirements detailed above, including without limitation those relating to naming the City as an additional insured, without express prior written approval from the City.

#### **Sec. 66-136.- Driveways and other Private Improvements**

(a) The requirements and regulations in this section apply to Driveways and other private improvements constructed in the Public Right-Of-Way for the benefit of the adjacent property.

(b) Driveways

(1) A Permit shall be required to construct a Driveway or to reconstruct, alter, or repair any Driveway approach or other related improvement located within a Public Right-Of-Way.

- (2) Application for such Permit shall be made by the owner of the adjacent property, who shall represent all parties in interest.
- (3) The Permit application shall be in writing on a form provided by the City and shall include a site plan showing in sufficient detail the nature of the work proposed in the application including location, width, and related dimension of the proposed Driveway and related improvements.
- (4) The Construction, alteration, or repair of a Driveway shall conform to the applicable Construction standards and other related development regulations adopted by the City. The Director may apply other design and Construction criteria as deemed necessary.
- (5) The applicant shall furnish all materials necessary for the Construction of the Driveway and appurtenances authorized by a Permit issued under this section. All materials shall be of satisfactory quality, and shall be subject to inspection and approval of the City.

(c) Other Private Improvements in Public Rights-Of-Way

- (1) A Permit is required to construct or make private improvements in the Public Right-Of-Way for the benefit of the adjacent property. A Permit shall only be issued where such private improvements are specifically authorized by the laws and regulations of the City.
- (2) Permits under this section may be issued and are required for the following private improvements within a Public Right-Of-Way:
  - a. To plant or replace landscaping that has been authorized to be placed within the Public Right-Of-Way.
  - b. To install or replace outdoor irrigation systems.
- (3) Permits are not required to plant or replace turf grass, or to repair an outdoor irrigation system located within a Public Right-Of-Way.
- (4) Application for such Permit shall be made by the owner of the adjacent property, who shall represent all parties in interest. The Permit application shall be in writing on a form provided by the City

and shall include a site plan showing in sufficient detail the nature of the work proposed in the application including location, width, and related dimension of the proposed improvements.

(5) The following private improvements are prohibited in Public Rights-Of-Way

- a. Planting any tree, shrub or other plant, except for turf grass and other plants authorized by a landscape plan approved by the City
- b. Any other private improvement not specifically authorized by the laws and regulations of the City.

(d) Maintenance and Repair

(1) The owner of the adjacent property shall be responsible for the perpetual maintenance and repair of Driveways and other private improvements constructed in the Public Right-Of-Way for the benefit of the adjacent property.

(2) If the City determines that the failure of an adjacent property owner to properly repair or maintain a Driveway or other private improvement within a Public Right-Of Way constitutes a safety hazard to the public, the City may undertake repairs and Restoration efforts, after notice has been provided to the adjacent property owner, to the extent reasonable under the circumstances. Upon receipt of an invoice from the City, the owner of the adjacent property shall promptly reimburse the City for the costs incurred by the City within 30 calendar days from the date of the City invoice. If payment is not received within the 30 calendar days, the City may file a lien against the adjacent property as outlined in Chapter 14, Sec. 14-53 of the Princeton Municipal Code, or take any other action allowed in law or in equity.

(e) The requirements in Section 66-131, Restoration of Property, and City standard specifications and details for Restoration within Public Rights-Of-Way apply to all work performed in connection with a Permit authorized by Section 66-136, and any other work related to improvements constructed in the Public Right-Of-Way. (Ord. No. \_\_\_\_\_, adopted / / )

**Sec. 66-137.- Cost Participation Agreements.**

In accordance with any applicable state law or tariffs of the Texas Public Utility

Commission, Permit applicants may enter into agreements with the City and/or third parties to distribute or offset the costs of non-standard facility installations (i.e., certain underground installations) which may be required under this article. Such agreements shall always be in writing, signed by all parties to be bound, filed with the City, and are subject to approval by vote of the City council if the City is a necessary party.

**Sec. 66-138.- Exemptions.**

- (a) All utility companies which have a valid franchise agreement with the City shall be exempt from the Right-of-Way Construction Permit Fee listed in the City's Fee Schedule.
- (b) The City of Princeton is exempt from the requirements of this article.

2.02. Princeton Municipal Code, Appendix A (Fee Schedule), Sec. 1.- Fees., is amended to read as follows:

**Development/Building Fees**

[...]

- Right-of-Way Construction Permit Fee \$100
  
- Permit Fee for Driveways and other Private Improvements in Public Rights of Way\* \$75

*\* A permit fee is not required if: 1) the permit is being issued in connection with the construction of a new residential or non-residential building; or 2) the work described in the permit is included in another permit issued concurrently to the applicant. Ord. No. \_\_\_\_\_, adopted \_\_\_\_\_.*

[...]

**Section 3. Penalty.**

Any violation of any of the terms of this ordinance, whether denominated in this ordinance as unlawful or not, shall be deemed a misdemeanor. Any person convicted of any such violation shall be fined in an amount not to exceed \$2,000 for each incidence of violation. Each violation is considered a separate offense and will be punished separately. Each day in which an Owner is in violation of this ordinance is considered a separate offense and will be punished separately.

**Section 4. Savings, Severability and Repealing Clauses.**

All ordinances of the City in conflict with the provisions of this ordinance are repealed to the extent of that conflict. If any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof. The City declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

**Section 5. Publication of the Caption Hereof and Effective Date.**

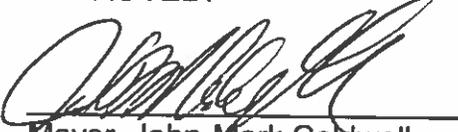
This ordinance shall be in full force and effective from and after its passage and upon the posting and/or publication, if required by law, of its caption and the City Secretary is hereby directed to implement such posting and/or publication.

**PASSED** by the City Council of the City of Princeton, Texas, this 26 day of September, 2016.

ATTESTED:

  
City Secretary, Lesia Gronemeier

APPROVED:

  
Mayor, John-Mark Caldwell

