

ORDINANCE 0905183.001

AN ORDINANCE OF THE VILLAGE OF BEAR CREEK, TEXAS, ESTABLISHING STANDARDS FOR THE EXCAVATION AND CUTTING OF CITY STREETS AND RIGHT-OF-WAYS, AND FOR THE PLACEMENT, REMOVAL AND ALTERATION OF FACILITIES THEREIN; PROHIBITING CERTAIN ACTIVITIES; ESTABLISHING DUTIES AND RESPONSIBILITIES; REQUIRING PERMITS; ESTABLISHING FEES, CHARGES, AND RATES FOR PERMITS; ESTABLISHING BOND REQUIREMENTS; MAKING FINDINGS OF FACT; PROVIDING PENALTIES; PROVIDING SEVERABILITY, OPEN MEETINGS AND PUBLICATION CLAUSES; AND PROVIDING FOR CERTAIN OTHER MATTERS.

Whereas, the Village of Bear Creek, Texas, (the "City") a general law municipality, owns streets, road easements, and right-of-ways within the City limits;

Whereas, certain public road easements, public rights-of-way, public thoroughfares, and public streets were in existence prior to the City's incorporation;

Whereas, after incorporation, pursuant to state law, the City assumed control over the public road easements, public rights-of-way, public thoroughfares, and public streets within the City;

Whereas, state law authorizes the City to exercise the following powers over public road easements, public rights-of-way, public thoroughfares, and public streets within the City (the "ROWs"): to abate or remove an encroachment from a ROW; to open, change, regulate, or improve a ROW; and to put a drain or sewer in a public ROW, prevent the obstruction of the drain or sewer, or protect the drain or sewer from encroachment or damage;

Whereas, damage, injury and failure to repair public streets and right-of-ways will require the City to unnecessarily expend public funds to repair the streets and right-of-ways;

Whereas, it is appropriate for the costs and expenses for repair and construction to be paid by the persons excavating, injuring or damaging public streets or right-of-ways;

Whereas, the occupation of right-of-ways and streets affects the public health, safety and welfare of the citizens and travelers thereon;

Whereas, regulating and setting standards for the cutting, excavation, digging, alteration of facilities, addition of facilities, occupation, obstruction and similar activities and requiring permits, bonds, licenses and/or franchises for work in and use of areas in, over, under, through, along and across the public streets and right-of-ways is necessary to protect the public property and general public health, safety and welfare of the citizens and travelers thereon, as well as, the value of property abutting or adjoining such public property; and

Whereas, the City Council, after holding a public meeting and accepting comments, has determined that a public necessity exists for the regulation of all construction activities, excavations and installations, repairs and removals of facilities in the streets and right-of-ways in the manner hereinafter provided;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF BEAR CREEK, TEXAS, THAT:

Section 1. Findings of Fact. The findings and recitations set out above in the preamble of this Ordinance are found to be true and correct and that they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2. Definitions. As used in this ordinance, all words shall have the common meaning of such word and the following terms shall have the meaning indicated below unless the context clearly indicates otherwise:

Construction Activity or Work shall include, but is not limited to, the causing or carrying out of any man-made change in any property or facility through building, erecting, installing, bulkheading, filling, mining, dredging, clearing, paving, grading, excavating, boring, drilling, or the addition, removal or alteration of any facility or any improvement to property, including altering of the size of any facilities, or other similar work or activity in, over, under, through, along or across the right-of-ways or streets within the City limits.

Contractor shall mean and include, but is not limited to, the person possessing a permit, franchise or license agreement as required under this ordinance and all persons actually performing, directing, monitoring, managing or overseeing any construction activity, work or other such similar activity in, over, under, through, along or across any streets or right-of-ways within the City limits.

Excavation shall mean any man-made formation of a cavity, hole or hollow by way of any means of digging, plowing, quarrying, uncovering, blasting, scooping, drilling, dredging, bulldozing, relocating or making cuts, openings, borings or other action or processes to form a cavity, hole or hollow.

Facility or Facilities shall mean any plant, equipment and property, including, but not limited to, duct spaces, manholes, poles, towers, utility pipes, pipes, conduits, lines, wires, transmission media, underground and overhead passageways or other equipment, structures and appurtenances which are located in, over, under, through, along or across the right-of-ways or streets.

Installation shall mean the addition, removal, repair or alteration of any facility located in, over, under, through, along or across the right-of-ways or streets.

Owner shall mean any person having financial interests in property or facilities located in, over, under, through, along or across streets and right-of-ways in the City, including the person directing the actions of any Contractor, paying a Contractor, or for whose benefit the actions of the Contractor are undertaken.

Person shall mean and include an individual human, partnership, firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, association, legal entity, or corporation of any kind, including but not limited to any provider of any Utility Service or Public Service, as those terms are defined below.

Permanent Structure shall mean any facility located in, over, under, through, along or across the right-of-ways or streets within the City limits that occupies, affixes or otherwise is to remain in the same location for a period of time of more than thirty (30) days.

Public Service shall mean any business or commercial activity which is not included in the definition of "Utility Service" that requires the use of the public streets or right-of-ways for the location of any facility or equipment to provide services to persons or property situated within the City, including but not limited to cable television service and services using a transmission media, but excluding telephone, taxi service and solid waste collection.

Right-of-ways shall mean the surface of, and the space above and below any and all present and future public thoroughfares, public utility easements, road easements, public ways, public grounds, public waterways and without limitation by the foregoing, any other public property within the corporate limits of the City.

Streets shall mean the surface of, and the space above and below, any and all present and future public streets, avenues, highways, boulevards, drives, roads, bridges, alleys, lanes, viaducts and all other public roadways and road easements within the City limits and any highways, county roads or other public roadways for which the City has an agreement or contract to control, regulate or maintain.

Transmission Media shall mean all cables, fibers, wires, tubes, pipes or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, video or data, or other purposes, which are physically located in the right-of-ways or streets.

Utility Service shall have its common meaning and shall specifically include, but not be limited to, electric, water, wastewater, gas and telephone service.

Section 3. Streets and Right-of-way.

A. The City shall have exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and right-of-ways, and may provide for the improvement and maintenance thereof by paving, re-paving, raising, draining, realigning, closing, mowing, clearing of drainage facilities, trimming of trees projecting into the right-of-way, or otherwise the use thereof. The provisions, without limitations, of law providing for assessments against abutting property for street improvements are expressly adopted. Such exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and right-of-ways of the city shall also include, but not be limited to, the power to regulate, locate, remove or prohibit the location, installation, alteration or removal of any type of facility or other property in, over, under, through, along or across any streets or right-of-ways. The location, alteration or removal, including the route, of all facilities within the right-of-ways or streets shall be subject to the reasonable direction of the City.

B. It shall be unlawful for any Owner or Contractor, including his or her agents, servants, independent contractors, or employees to occupy or obstruct any portion of the right-of-way or streets or to perform any construction activity or excavation, or to cause another to do the same, for any purpose in, over, under, through, along or across any street or right-of-way without first having

made all applications for permits and, when required, obtained all permits therefore.

C. It shall be unlawful for any person to use or occupy any street or right-of-way for the purpose of providing abutting, adjoining or other property with any Utility Service, Public Service, data, voice or video transmission service, cable television, taxi or solid waste collection service, without having first obtained a franchise or license issued and approved by the City Council; except as specifically provided otherwise by state law.

D. It shall be unlawful for the owner of any building or property abutting on any street or right-of-way in the City, or any tenant occupying such building or property, or any other person, to construct, build, operate or maintain any building, facility, structure, or part thereof, including, but not limited to, a show window or fencing, which extends over or into any part of any street or right-of-way.

Section 4. Permits. Application for a permit required by Section 3 of this ordinance shall be addressed to the City Secretary and made on a form furnished for that purpose, detailing the extent, character and purpose of any construction activity or other work to be performed, the location of the construction activity or other work to be performed by street and number if possible, the time in which the construction activity or work is to be completed, and any other information required in the application.

A. Franchise Holders. A permit shall not be required from any holder of a franchise, license or holder of a permanent occupation permit to perform any minor alteration of an existing facility necessary to initiate service, repair service or for routine maintenance to an individual customer's property unless the repair or maintenance requires excavation or temporary closure of nonresidential traffic lanes.

B. Permit Fees. In the event an application is made for a permit to perform any construction activity in any of the streets or right-of-ways, such permit shall be subject to the following permit fees to cover the costs and expenses of the City. Acceptance of any such permit shall constitute an acceptance by the permittee of the conditions of the permit and any of the obligations and duties to repair any cut, damage, injury or excavation in full compliance with the requirements set forth in Exhibit "A", attached hereto and incorporated herein as if fully transcribed herein. Payment for each such permit shall be made with the application for the permit. No permit shall be issued for less than the required permit fee.

(1) Construction Permit Minimum Fee. The fee for each permit required pursuant to this Ordinance for any construction activities, other than excavations, including but not limited to, installation, removal, repair, addition or other alteration of any facilities or foliage in the right-of-ways or streets shall be Two Hundred Fifty and No/100 Dollars (\$250.00), plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the City for and with respect to such permit. In the event that the permit is recommended for issuance, an additional fee of fifty and No/100 Dollars (\$50.00) per calendar month for the duration of the permit shall be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the construction process.

(2) Excavation Permit Minimum Fee. The fee for each permit required pursuant to this

Ordinance for any drilling, boring, cutting or otherwise any excavation of any portion of the right-of-ways or streets shall be Two Hundred Fifty and No/100 Dollars (\$250.00), plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the City for and with respect to such permit. In the event that the permit is recommended for issuance, an additional fee of fifty and No/100 Dollars (\$50.00) per calendar month for the duration of the permit shall be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the excavation process.

(3) Professional Fees. In addition to the above permit fees, the City shall be fully reimbursed for all reasonable costs associated with activities in the streets or right-of-ways pursuant to this ordinance that require inspection, plan review or any other reasonable overview or action by an engineer, building inspector, or other professional. All engineer and other professional fees shall be paid prior to issuance of a permit. Permits shall not be issued to, and may not be maintained by, any person owing engineer or other professional fees to the City.

(4) Plumbing Permits Fees. Any person who desires to install, repair or alter any pipes lines, tubes or pipes for which any water, solid waste, gas, oil or other such product may flow, in or under the right-of-ways or streets shall submit to the Building Inspector the plans and specifications showing the proposed improvements. It shall be the duty of the Building Inspector, when such plans and specifications have been submitted, to cause a qualified plumbing inspector to make an inspection of the proposed improvements. An inspection fee equal to the estimated time required for the inspections multiplied by 1.2 times the cost per hour of the plumbing inspector shall be paid by the applicant before such permit is issued.

(5) Electrical Permit Fees. Any person who desires to build, erect, alter, install, repair or remove any poles, posts, towers or other similar facilities for which any wires, cables, electrical wires or transmission media are located or will be located shall submit to the Building Inspector plans and specifications showing the proposed improvements and existing conditions on such poles, posts, towers or such similar facility. It shall be the duty of the Building Inspector, when such plans and specifications have been submitted, to cause a qualified electrical inspector to make an inspection of the proposed improvements. An inspection fee equal to the estimated time required for the inspections multiplied by 1.2 times the cost per hour of the electrical inspector shall be paid by the applicant before such permit is issued.

(6) Certificate of Occupation Fees. The fee for each certificate of occupation required pursuant to this Ordinance for a permanent structure to occupy any right-of-way or streets shall be One Dollar (\$1.00), per year per linear foot of street or right-of-way so occupied and such fee shall be paid in advance annually from the original date of the issuance of the certificate of occupation.

(7) Fee for Temporary Obstruction of the Right-of-way. A fee and special assessment for temporary obstruction or occupation of any right-of-way or street shall be One Hundred Dollars (\$100.00) per day of obstruction, to reimburse the City for costs of increased supervision and overview of such sight while such obstruction exists, plus any costs or charges for special assignment of police officers to monitor, escort, or otherwise provide

services to help protect the public from the construction activities or excavation and any other similar expenses reasonably incurred by the City for and with respect to such temporary obstruction. Such requirement shall not excuse, diminish or waive the duty of the Owner or Contractor to conduct any such obstruction or excavation, and to erect warning signs, devices and barricades, in a manner to protect the general public, pedestrians and motorist.

C. Duration. All activities or construction authorized by a permit issued under this ordinance shall be commenced within six (6) months after the date of issuance of the permit and thereafter be continuously prosecuted to completion, or such permit shall be void and the person to whom the permit was issued must make a new application before commencing or continuing any further activities or construction. Each permit issued shall be issued for a specific time period with a maximum period of one year, after which period the permit shall be void and the person to whom the permit was issued must make a new application for a new permit for each succeeding year or portion thereof. If the permit is allowed to expire, the person shall apply for and procure a new permit, paying the fee therefore as before, prior to proceeding with any such work

Section 5. Bond and Liability. A person considering any construction activity, installation of facilities, excavation, cutting, boring, digging or demolition activity in, over, under, through, along or across the streets or right-of-ways within the City, and who is not under a written contract, franchise, license or other express written agreement with the City, shall post a bond, make a cash deposit with the City, or provide other suitable forms of financial security as determined by the Building Inspector in an amount that approximates the projected costs of inspection, observation, labor, equipment, materials, and overhead associated with the permit work, and the restoration, reconstruction and repair of the cut, work or excavation in compliance with the standards and requirements set forth in Exhibit "A" attached hereto and incorporated herein for all purposes. Such security shall be posted prior to the issuance of a permit and the start of construction.

A. Bond Required. A good and sufficient bond shall be filed with the application for the permit required by this ordinance, executed by a bonding company, which bond shall be approved by the Building Inspector as to form and sufficiency and shall be in the sum of not less than two thousand dollars (\$2,000.00). The bond shall be conditioned, among other things, that the Contractor shall faithfully, at his or her own expense, furnish all proper materials, tools and appliances, and perform, execute, construct and complete all such work undertaken by such Contractor, and observe and comply with the specifications, requirements and provisions of this ordinance. The bond shall be and remain in effect at all times in which the excavation or construction activities are commenced or in progress.

B. Maintenance Provisions in bond.

- 1) Every permittee issued a permit under this ordinance shall be bound and obligated to construct all work, and use such materials in the construction thereof, so that the same shall be in as good or better condition that prior to the work, and will remain in such as good or better condition for and during a period of not less than one (1) year from and after the date of completion of the work, free from all cracks, breaks, disintegration, undue wear, scaling or departures from true line or grade, or other defects which might impair the permanence or usefulness of the work or construction

activity or surrounding facilities, streets or right-of-ways; however, such cracks as may appear in expansion joints, or cuts between blocks, shall not be deemed to be defects unless in the opinion of the Building Inspector such cracks are excessive in opening or deflecting of surface.

- 2) Each such bond issued pursuant to this ordinance shall continue in effect for and during the maintenance period of one (1) year following the completion of the work, construction activity or repair.
- 3) Each bond issuer shall promptly adjust, pay and settle all legitimate claims for damages or injuries that may result by reason of carelessness or negligence in the manner of performing the work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof.
- 4) Each permittee and bond issuer shall hold the City free and harmless from liability on all claims for damages that are based upon, that arise from, or that are related to, the work or construction, or the condition thereof during the maintenance period, or that arise by reason of carelessness or negligence of the permittee, Owner, or Contractor, in the manner of performing such work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof, or otherwise by reason of the work or construction.

C. Withdrawal of Surety on Bond. On written notice to the Building Inspector and the Contractor, any surety on a bond issued pursuant to this ordinance may withdraw from all liability thereon on account of any and all future work undertaken by the Contractor and for which excavation or construction activity was not begun before the delivery of the notice. After receipt of the such, the Contractor shall not begin any new work unless and until the Contractor shall provide and procure the approval of a new bond in the same manner as required for the first bond. No bond or surety may be withdrawn after the permitted work is commenced.

D. Emergency Conditions. In the event emergency conditions warrant immediate response by an affected person, the Building Inspector may waive and/or modify normal standard procedures outlined herein to promulgate standards or requirements to expeditiously address the resolution of the emergency conditions; provided that, in any such event, the Contractor shall obtain a permit for such work on the first business day of the City following performance of the work.

E. Decision Binding on Contractor and Sureties. The decision of the Building Inspector shall be binding and conclusive on the Contractor and the sureties on all such bonds as to when any work or construction was actually commenced.

F. Liability of the Contractor and Sureties for Defective Work. A Contractor whose work, construction activities or excavations are completed, or caused to be completed, by the City shall, on completion of such work and receipt of a certified bill of the cost thereof approved by the City Administrator, pay to the City, on its order, the cost of the work. The sureties on the Contractor's bond shall be liable for all items and amounts listed in the certified bill of costs submitted to the Contractor by the City. In the event the Contractor, or the surety on any bond, shall

fail and refuse to timely pay any such certified bill to the City, the Contractor and such surety shall be and become liable to the City for its attorney fees and costs of collection.

G. Liability of Contractor and Sureties for Maintenance and Repair Work. If any defect in the work or construction develops during the one (1) year guaranty period established by this ordinance, which, in the opinion of the Building Inspector, is due in any measure to defects of workmanship or material, the Contractor shall remedy, repair and reconstruct such work, and/or any part thereof, as may be required by the Building Inspector, and such work shall be known as maintenance and repair work, and the surety on the Contractor's bond shall be fully liable for any default of such Contractor under this section.

Section 6. City Facilities and Lands. City facilities and lands shall not be altered, obstructed or occupied without the express written permission of the City. Facilities not owned by the City shall not be located closer than ten feet (10') laterally, and shall not be located above or below any City owned facility located underground, without express written permission from the City. Additionally, no facilities may be located in, over, under, through, along or across any parks, recreational land or other similar City owned property, which is not a street or street right-of-way, without the express written permission of the City.

Section 7. Duties and Responsibilities. The Contractor and the Owner, and any other person to whom a permit is issued, shall, during the period for which the permit is issued, and as provided in Section 4, have all of the duties and responsibilities identified in this ordinance, other applicable ordinances of the City, and as provided for in State and Federal law. The Owner, its agents, assigns, Contractors and subcontractors installing the facilities, shall continually have the duties identified in this ordinance for so long as facilities or property, under the control of any such Owners, and any subsequent Owners thereof, are located in the right-of-ways or streets, to perform pursuant to the terms of this ordinance.

A. Duty to Barricade and Protect. The Owner and the Contractor, and every person to whom a permit is issued under this ordinance, shall have a duty to ensure that each contractor, subcontractor, employee, agent or assignee:

- (1) prosecutes such work diligently and in a good and workmanlike manner; and
- (2) safeguards and protects the public upon or using the street, right-of-way, or other place where the work is being performed, from accidents, injury or damage

by placing barriers, lights and other sufficient safeguards, including a watchman, if necessary, around all cuts, openings, excavations, installation sight and materials, implements and tools used in connection with the construction activity, and shall conform to the provisions of this ordinance and all requirements of the Building Inspector during the prosecution and completion of such work. All barricades and barriers shall be erected and maintained in compliance with accepted industry practices and applicable safety standards. The Owner and the Contractor shall be responsible for the costs and expenses of all such barricades, barriers and watchmen.

B. Supervision of Work. It shall be the duty of the Owner, the Contractor, and the supervisor of the work site, who shall cause to be made any hole, cut, trench, excavation, mound,

embankment, installation or other obstruction in any street or right-of-way, to carefully guard or cause to be guarded such hole, trench, excavation, mound, embankment, installation or other obstruction while the same may exist and not to suffer the same to remain beyond a time reasonably sufficient for the completion of the construction or removal of the obstruction, and to repair the portion of such street or right-of-way or any facility or property affected thereby so as to restore the same to as good or better condition than existed just previous to such activity.

C. Duty to Promptly Repair. It shall be the duty of the Owner, the Contractor and the supervisor of the work site, on whose behalf the hole, trench, mound, excavation, construction activity, installation or other obstruction or intrusion shall be made, or has been made, in the streets or right-of-ways of the City, to protect the same while such condition exists and to promptly repair the same so as to leave the street or right-of-way in as good or better condition than as before the work. All facilities, streets, sidewalks or other structures or property damaged, altered or injured, in any fashion, shall be restored with similar material and workmanship to that existing before the same was damaged, altered or injured through any actions of the Owner, Contractor or person employed in any fashion thereby.

D. Removal and Reconstruction Where Work Defective. All construction activities undertaken in the streets and right-of-ways of the City are declared to be wholly subject to the exclusive control of the City, and whenever, in the opinion of the Mayor, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or material or because not true to lines or grades or specifications required therefor, then upon written demand or notice from the Mayor, such Contractor or the Owner shall promptly remedy, complete or remove and reconstruct such incomplete or defective construction all as the Mayor may require, and these provisions shall also comprehend and apply to all repairs, installations and maintenance activities. If the Contractor or Owner shall fail or refuse so to do within a reasonable time as specified in writing by the Mayor, then, if the Mayor shall so order, such work may, at the expense of the Owner and Contractor, be completed, corrected or removed and wholly or partially reconstructed by the City, or its instance, in such manner as in the opinion of the Mayor may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the provision of this ordinance and the direction of the Mayor.

E. Relocation of Facilities. All persons placing facilities in the right-of-way or streets or owning, operating or maintaining facilities in, over, under, through, along and across the right-of-ways or streets of the City shall be responsible for the relocation and costs of relocation of such facilities when the public health, safety or a public purpose requires relocation, or when such facilities are located therein without a permanent occupation permit, license or franchise as appropriate for the occupation.

(1) Permanent Relocation. Upon thirty (30) days written notice by the City, the Owner of a facility shall, at the Owner's expense, begin relocation of its facilities that are within a right-of-way or street, when deemed necessary by the City for the public health or safety, or for any public purpose, or to permit the widening, straightening or improvement of a street, drainage, water or sewer project, or any other public works project. The notice by the City may specify the new location for the owner's facilities along the right-of-ways or streets. The City shall have the right to move any facilities within the right-of-ways or streets to cure

or otherwise address a public health or safety concern, to accomplish a public purpose, or to widen, straighten or improve a street, water or sewer projects or other public works projects, or when no permit for occupation has been granted and the owner refuses to move the facilities. The Owner shall pay the costs and expenses of moving the facilities.

(2) Temporary Relocation. Upon thirty (30) days written notice by the City, the owner of a facility shall temporarily relocate any portion of its facilities within the right-of-ways or streets at the owner's own expense when deemed essential by the City for the public's health and safety or to permit construction activities of the City, or water or sewer projects or any other public works project. The notice by the City shall specify the affected areas where the facilities are located and the area for temporary relocation of the owner's facilities along the right-of-ways or streets. The City shall have the right to move any facilities within the right-of-ways or streets to cure or otherwise address a public health or safety concern, to widen or straighten streets, water or sewer projects or other public works projects or construction activities where the owner refuses to move the facilities. The City shall assess the reasonable costs and expenses of moving the facilities against the owner.

3) Temporary Removal of Aerial Wires. The owner of aerial wires, on the request of any person, shall remove or raise or lower aerial wires within the City temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the owner of the wires may require such payment in advance. The owner shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.

F. Traffic Interference. The Owner and Contractor shall endeavor to minimize disruptions to the efficient use of the right-of-ways and streets by pedestrians and vehicular traffic, and the right-of-ways and streets shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. Prior to blocking any street or right-of-way the owner and/or contractor shall obtain a permit as required herein.

G. Maintenance of Facilities. The Owner of any facility and person holding a certificate of occupancy, license or franchise shall be responsible for ensuring the continued maintenance, repair, removal of any nuisances and other such upgrades or repairs to maintain such facility in a safe and good workman like condition. Any vegetative growth interfering with such facilities that is determined by the Building Inspector to be a nuisance shall be removed, cut or cleared at the sole cost and expense of the Owner of the facility or holder of the certificate of occupancy, license or franchise. Circumstances and conditions that impose an threat to the public health, safety or welfare shall be promptly remedied by the Owner, and a known emergency condition that exists and is determined to require immediate attention so as not to reasonably allow for notice under this section may be immediately abated by the City, and notice of the abatement and costs for the expenses incurred will be forwarded to the Owner or holder of the certificate of occupation, franchise or license for reimbursement to the City as required in Section 8.

Section 8. Costs. The reasonable costs and expenses for repairing, re-constructing or correction of any construction activity, excavation, addition, removal or alteration of a facility or any other alteration thereof to any street, right-of-way, or facilities located thereon, within the City, without a permit or express written contract or written agreement with the City, shall be charged

against the persons, the corporation, company, or entity actually responsible for the actions; the Owner(s) responsible for the work or for whose benefit such activity was undertaken which caused the damage to the street or right-of-way; and/or the permittee in whose name the permit to perform such activities was issued.

Section 9. City Rights Reserved. Nothing in this ordinance grants permission for the occupation, obstruction, excavation, repair or alteration of any street or right-of-way of the City, and any such use shall be subject to consent of the City at its sole discretion. Additionally, nothing in this ordinance shall be construed as an assumption by the City, its officers and employees, of any responsibility to supervise construction activities, ensure adequate safety precautions by Contractors or to protect any owners or customers of any facilities located in, over, under, through, along or across the right-of-ways or streets, or the owners of any property abutting, adjacent or within the right-of-ways or streets from any damages caused to the facilities located therein or as the result of the construction activities thereto. Further the City reserves the right to vacate any street or right-of-way at its sole discretion. If the City vacates or otherwise abandons a right-of-way or street or any portion thereof, the City, with or without notice to any permittee, may cancel any permits for such portion of a right-of-way or street without compensation or reimbursement to the permittee for any expenses associated with moving any facilities located therein, unless otherwise agreed in writing. The Owner and, as applicable, the Contractor shall be solely liable and responsible for any and all injuries and/or damages arising or resulting from any excavation, boring, trench, work or occupation of any street or right-of-way by or on behalf of such Owner or Contractor.

Section 10. Penalty. Any person who shall violate any provision of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

Section 11. Court Proceedings. Upon the request of the City Council, the City Attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this Ordinance, to obtain declaratory judgment, and to seek and recover court costs, attorney fees, and/or damages, including but not limited to, damages or costs incurred by the City to undertake any construction, repair, alteration or other activity necessary to bring about compliance with a requirement regarding the streets or rights-of-way and established pursuant to this Ordinance and other applicable ordinances of the City.

Section 12. Indemnity. Owners and Contractors shall indemnify, defend, and hold the City and its officers, employees and agents harmless from and against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused by the negligent act, error, or omission of any agent, officer, director, representative, employee, affiliate, or subcontractor of the Owner, Contractor or permittee installing, repairing, or maintaining facilities in the right-of-ways or streets.

Section 13. Governmental Immunity. Nothing in this ordinance shall be deemed to waive,

modify or amend any legal defense available at law or in equity to either the City or its officers, employees and agents, nor to create any legal rights or claims on behalf of any third party. This ordinance is solely for the benefit of the City, and the City in its representative capacity of the general public, and does not create or grant rights, contractual or otherwise, to any other person, entity or member of the general public. Neither the City, nor its officers, employees and agents waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

Section 14. Repeal of Conflicting Ordinances. All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

Section 15. Effective Date. This Ordinance shall be in full force and effect from and after publication of the caption in the manner and for the time provided by the Local Government Code.

Section 16. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 17. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 511, Tex. Gov't. Code.*

PASSED AND ADOPTED on this the ____ day of _____, 2009.

Village of Bear Creek, Texas

ATTEST:

Kathryn Rosenbluth, City Secretary

Bruce Upham, Mayor

Exhibit "A"

SPECIAL PROVISIONS FOR CONSTRUCTION IN CITY STREETS AND RIGHT-OF-WAY

1. Permit - The person in charge of this installation shall have a copy of the permit and its attachments on the job at all times. Deviations to the approved permit must have prior approval of the City. Utilities having a franchise with the City shall not be required to obtain permits for street cuts but shall coordinate with the City as advisable based on the size of the utility project and work.
2. Existing Utilities - The exact location of any utilities or facilities that may conflict with the proposed installation should be field verified by the installer during construction. Contractor will be responsible for verifying the location both horizontal and vertical of all affected facilities whether by pot holing or hand digging prior to any excavation or boring.
3. Safety - Warning and protective devices including flagmen, and watchmen as necessary, shall be used to prevent creation of a traffic hazard and to ensure the safety of the public as advisable and prudent considering the scope of the work. When provided such devices and flagmen shall be in accordance with the Manual of Uniform Traffic Control Devices.

Parking of employee's cars and trucks on both sides of the pavement will be prohibited and all such vehicles shall be parked on one side of the road and in no instance closer than a minimum of eight feet from the edge of the pavement.

All construction equipment and materials stored on city right-of-way shall be limited to work in progress and stored in such a manner and at such locations (a minimum of 30 feet from nearest traffic lane) as not to interfere with the safe passage of traffic.

4. Method of Construction - Trench width shall be held to a minimum and back-filled to a density approximating that of the adjacent soil in a manner satisfactory to the City. The fill material shall be installed in six-inch (6") layers, each compacted to 95% density. A six-inch concrete slab shall be placed over the trench to extend 12 inches on each side of the trench. The top of the slab shall be two inches below the top of paving. Alternatively, a six-inch layer of asphalt may be substituted and compacted to the finished grade of adjacent pavement.
5. Concrete Slab Design - The slab shall be reinforced with six inch by six inch No. 6 wire mesh. The wire mesh shall be supported properly throughout the placement to maintain its position approximately equidistant from the top and bottom surface of the slab. (High Early) Type III Portland Cement, making 2500 P.S.I. Concrete at three days or as directed by the City shall be used. The slab shall be cured and closed to traffic as per state specifications. [This section shall not apply if 6 inches of asphalt is substituted for the concrete.]
6. Asphalt - If asphalt is not substituted, the concrete shall be thoroughly cleaned and a tack coat of asphalt shall be applied. Then Hot Mix Asphaltic Concrete (Type D) as specified in Item 340 of the Texas Highway Department Manual, shall be applied and compacted. If 6 inches of asphalt is substituted, the asphalt shall meet the foregoing specifications.

7. Access - Ingress and egress at all private and public streets and drives will be provided at all times.

8. Right-of-Way and Street Restorations - All excess excavation, materials, supplies, etc. shall be removed from the right-of-way after installation is complete and the right-of-way reshaped to its original section including fertilizing, seeding and/or sodding as may be required when existing grass has been disturbed.

9. Right-of-Way and Street Damage - The Owner, Contractor and Permittee will be responsible for any damage to the right-of-way or streets, including but not limited to the pavement structure, caused by settlement due to pavement cuts. Contractors are responsible for obtaining exact facility locations from all utilities prior to excavation. Such liability shall extend for a period of one (1) year from the date the repair of such pavement cut is completed.

10. Excavation - Prior to beginning any excavation, trenching or digging which may damage a pipeline, cable, wire or any other such apparatus or facilities located in, over or under the streets or right-of ways of the City, the Owner or Contractor shall first obtain a permit before excavation and contact all of the owners of the such pipeline, cable, wire or other facility and determine if the proposed excavation will cause damage thereto.

If physical contact is made with, or damage or injury is suspected to, any pipeline, cable, wire or other such apparatus or facilities during any excavation, trenching, digging or other construction activities, the person or Contractor making the physical contact with, or suspecting the damage or injury to, the pipeline, cable, wire or other apparatus or facilities shall immediately contact the Building Inspector and the owner of the pipeline, cable, wire or other apparatus or facilities for any necessary inspections and repairs.

If during any excavation, trenching or digging, the person or Contractor so excavating, trenching or digging notices or suspects damage or injury to any lateral supports to streets or other facilities in the right-of-ways, streets or adjacent properties such person shall immediately contact the City and, if applicable, owner of the property for any necessary inspections and repairs.

All persons to whom permits may be granted to excavate the streets or right-of-ways shall, at their own cost and expense, deliver at such place as may be designated by the Building Inspector for such purpose all such surplus earth, dirt, stone, gravel or other material coming out of such excavation as shall be necessary for the purpose of refilling the same.

11. Erosion - Erosion control measures (i.e. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. Permittee shall be responsible for storm water management erosion control that complies with City, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing.

12. Weekend/Holidays - Construction work to be accomplished on weekends, nights or holidays will proceed at the discretion of the Building Inspector; provided that emergency work required to be undertaken on weekends, nights, holidays and outside of normal business hours shall be undertaken

and completed in compliance with the attached ordinance and this exhibit, and the Contractor shall obtain a permit therefor on the first business day following the date of such work.

13. Notice. The Permittee, Contractor or Subcontractor shall notify the Building Inspector not more than twenty-four (24) hours after any damage to other utilities, facilities, or other appurtenances or property, whether public or private. Once a permit has been issued, the Permittee must notify the Building Inspector at least forty-eight (48) hours prior to commencing any work or construction activity permit in such permit.

14. Liabilities - The City assumes no responsibility for conflict with existing utility lines, pipelines, highway appurtenances or natural obstacles. Permittees, Contractors and Owners shall be responsible for the workmanship and any damages by a contractor or subcontractor.