

ORDINANCE 2024-O-128

AMENDING THE CODE OF ORDINANCES CHAPTER 28, ARTICLE IX, PUBLIC RIGHT-OF-WAY MANAGEMENT, DIVISION 1. – SECTION 28-165 DEFINITIONS, BY DELETING DEFINITIONS MAJOR PROJECTS AND MINOR PROJECTS; AND REPLACING DEFINITIONS OF PROPERTY FRONTAGE IMPACT PROJECTS, ADJACENT PROPERTY FRONTAGE IMPACT PROJECTS, AND CURB/STREET/PAVED AREA IMPACT PROJECTS DEFINITIONS. AND AMENDING SECTION 28-166. UTILITY PLANNING AND COORDINATION COMMITTEE BY NOT REQUIRING RIGHT-OF-WAY CLEARANCE LETTER FOR PROPERTY FRONTAGE IMPACT PROJECTS, AND BY REQUIRING RIGHT-OF-WAY CLEARANCE LETTER FOR ADJACENT PROPERTY FRONTAGE IMPACT PROJECTS, AND BY REQUIRING RIGHT-OF-WAY CLEARANCE LETTER FOR CURB/STREET/PAVED AREA IMPACT PROJECTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING FOR A SEVERABILITY CLAUSE, AND DECLARING AND EFFECTIVE DATE.

WHEREAS, the City of Laredo Code of Ordinances currently requires coordination regarding construction in the Public Right-of-Way and requiring a Clearance Letter and;

WHEREAS, the amendments proposed herein provide a more efficient way for the orderly and healthful development of the City of Laredo and;

WHEREAS, the amendments of said help provide better customer service and have been deemed necessary and appropriate and;

WHEREAS, the City Council agrees that it is in the best interest of the city that all projects that will have an impact on the Public Right-of-Way shall have to follow the Utility Planning Coordination Guide before securing a Right-of-Way permit.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAREDO THAT:

Section 1: Section 28.165 of the City of Laredo Code of Ordinances is hereby is amended as follows:

ARTICLE IX. PUBLIC RIGHT-OF-WAY MANAGEMENT

DIVISION 1. GENERAL PROVISIONS

Section 28-165 Definitions.

The following definitions apply in this article of the City Code. The terms, phrases, words, abbreviations, and their derivations shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

Abandon and its derivatives means facilities no longer in service or physically disconnected from the operation facilities, or from any other facilities that are in use or that still carry service for a consecutive period of time in excess of two (2) years unless, within the aforesaid two-year period, the city receives written confirmation and reasonable evidence that the ROW user intends to use the facilities.

Above ground utility structure or AGUS means any utility structure that extends higher than the surrounding grade.

Administrative fee means the fee charged by the city to recover its costs incurred for right-of-way management including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way ROW permit applications; inspecting job sites and restoration improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and other costs the city may incur in implementing the provisions of this article.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes mean: (a) uniform building, fire, electrical, plumbing, or mechanical codes as adopted by the city and adopted by a recognized national code organization; and (b) any local amendments to those codes to the extent not inconsistent with chapter 284.

Applicant means an owner, authorized agent of an owner, or a homestead owner, who applies for a ROW permit under these provisions of the City Code.

Area of influence means that area around a utility excavation where the pavement and subgrade are impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

~~Minor impact project means lot development connecting utilities services from existing infrastructure onto lot.~~

~~Major impact project means development along right of way affecting various lots by installing or maintaining mains and services.~~

- Property Frontage Impact- Where construction activity impacts Right-of-Way behind the curb and adjacent to the front and/or side of the property. (Does not require Right-of-Way Clearance Letter). * Limited to 10' on either side of the property line.
- Adjacent Property Frontage Impact – Where construction activity impacts the Right-of-Way adjacent to the property frontage outside of the 10' limit. (requires Right-of-Way Clearance Letter)
- Curb/Street/Paved Area Impact – Where construction activity impacts the curb and/or street area (requires Right-of-Way Clearance Letter)

Certified telecommunications provider or CTP means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Public Utility Commission of Texas or "PUCT" to offer local exchange telephone service as defined by V.T.C.A., Local Government Code § 283 or "the Act."

Chapter 284 means Chapter 284 of Subtitle A, Title 9 of the Texas Local Government Code.

City means the City of Laredo.

City manager shall mean city manager or his or her designee.

City's rights-of-way management ordinance means chapter 28, article IX, divisions 1 to 11 of the city's Code of Ordinances.

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

Concealment or camouflaged means any wireless facility or pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the wireless facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for city advance approval under Chapter 284, § 284.105 in historic or design districts, a concealed or camouflaged wireless facility or pole also includes any wireless facility or pole conforming to the surrounding area in which the wireless facility or pole is located and may include, but is not limited to hidden beneath a facade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Contractor means any public or private person or organization other than the city.

Day, unless stated otherwise, means a business day, which excludes Saturdays, Sundays and holidays recognized by federal or state government or the city.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary

holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Department means the building development services department or a successor department that is responsible for management of the right-of-way and roadway infrastructure.

Design district means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Director means the director of the city building development services or his or her designee.

Disaster emergency or disaster or emergency means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city, state or federal governmental authorities.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Emergency operations means those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address a service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means an activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does include irrigation activity of the right-of-way.

Facilities means the plant, equipment, and property, including, but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, and wires located under, on, or above the surface of the ground within the right-of-way and valves and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the mayor and the city council of the City of Laredo, Texas.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district, or other municipal corporation, quasimunicipal corporation or political subdivision of the State of Texas or of any other state of the United States and any agency or instrumentality of the State of Texas or of any other state of the United States or of the United States.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the corporate boundaries of the city.

Location means the city approved and lawfully permitted location for the network node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, § 284.103 and that supports or is capable of supporting antennas.

Mayor means the mayor for the city.

Micro network node means a network node that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, not longer than eleven (11) inches.

Minor encroachment license means the legal document outlining the rights and obligation of a non-CTP owner of a wire telecommunication system to be in the rights-of-way of the city.

Municipal park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by V.T.C.A. Utilities Code, § 11.003, and located in a public right-of-way.

MUTCD means Manual of Uniform Traffic Control Devices.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes: (a) equipment associated with wireless communications; (b) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; (c) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and (d) a distributed antenna system or DAS. The term does not include: (a) an electric generator; (b) a pole; or (c) a macro tower. Small cell shall be included as a type of "network node."

Network provider means: (a) a wireless service provider; or (b) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: (1) network nodes; or (2) node support poles or any other structure that supports or is capable of supporting a network node. Provider has the same meaning as "network provider."

New street means the paved portion of the right-of-way that has been constructed reconstructed, or resurfaced with an asphalt overlay, hot in place recycling, full-length reclamation, reconstruction or other structural Street maintenance treatment. "New street" includes all concrete paved streets, streets constructed or structurally resurfaced during the preceding seven (7) years, for a collector or arterial street or during the preceding five (5) years for a residential street or alley.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

ROW permit means a ROW permit issued under this article authorizing excavation in the right-of-way or a written authorization for the use of the public right-of-way or collocation on a service pole required from the city before a network provider may perform an action or initiate, continue, or complete a project over which the city has police power authority.

Permittee means any person, homestead owner (for the purpose of driveway and sidewalk permits of existing homes located on residential local streets with low traffic volumes only) or right-of-way user (including its authorized agents and representatives) to whom a ROW permit is issued to excavate a right-of-way.

Person means any person, company, partnership, agency or other public or private entity (including its authorized agents and representatives) except the city.

Pole means a service pole, municipally owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Registration means the application process of an ROW user to use any portion of the right-of-way.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around an excavation where the pavement and subgrade are impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.

Resurfacing means any repaving; overlay; seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way means the surface of, and the space above and below, any street, road, highway, freeway, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter held by the city or over which the city exercises any rights of management or control and shall include but not be limited to all easements now held, or hereafter held, by the city but shall specifically exclude private property and the airwaves above a public right-of-way with regard to wireless telecommunications.

Right-of-way utility (ROW) user means a person, its successors and assignees, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain and repair facilities thereon, including, but not limited to, land owners and service providers.

Right-of-way driveway (ROW) user means a person, its successors and assignees or a homestead owner (for the purpose of driveway and sidewalk permits of existing homes located on residential local streets with low traffic volumes only), that uses the right-of-way for purposes of work, excavation, or to install, construct, maintain and repair driveway and sidewalks

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric delivery, water, telegraph, data transmission, petroleum pipelines or sanitary sewage.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by the city and located in a public right-of-way, including: (a) a pole that supports traffic control functions; (b) a structure for signage; (c) a pole that supports lighting, other than a decorative pole; and (d) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Street means only the paved portion and sub-grade of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two (2) parallel edges of the paved roadway for vehicular travel where there is no curb. A "street" is generally part of but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a "street" does not. A "street" does not include the curb or the sidewalk, if either are present at the time of a ROW permit application or if added later.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in or to extend a ROW permit that has already been issued.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, latest edition.

Traffic signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground requirement area means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility means any privately or publicly owned entity which uses the public right-of-way to furnish to the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this article.

Utility pole means a pole that provides: (a) electric distribution with a voltage rating of not more than 34.5 kilovolts; or (b) services of a telecommunications provider, as defined by V.T.C.A. Utilities Code, § 51.002.

Utility structure means any structure, cabinet, or any other appurtenance other than a pole or device attached to a pole which is owned or used by a utility company, cable company, or telecommunications provider to provide service. The phrase does not include devices or structures used to control or direct pedestrian or vehicular traffic on an adjacent roadway or infrastructure that provides water used for fire suppression.

Above ground utility structure or AGUS means any utility structure that extends higher than the surrounding grade.

Video service has the same meaning as that set out in V.T.C.A., Utilities Code § 66.002 or as may be amended.

Video service provider has the same meaning as that set out in V.T.C.A., Utilities Code § 66.002 or as may be amended.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility locate in order to further identify the site.

Wire telecommunication system means a tangible closed facility for the transmission of voice, video or data services, including all instrumentalities, facilities and apparatus incidental to such transmission.

Wireless facilities mean "micro network nodes," "network nodes," and "node support poles" as defined in Chapter 284 of the Texas Local Government Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Section 28-166 Utility planning and coordination committee.

- (a) Projects **not** requiring Utility Coordination Committee a Right-of-Way Clearance Letter.
 - Property Frontage Impact- Where construction activity impacts Right-of-Way behind the curb and adjacent to the front and/or side of the property. (Does not require Right-of-Way Clearance Letter). * Limited to 10' on either side of the property line.
- (b) Projects requiring Utility Coordination Committee Clearance Letter.
 - Adjacent Property Frontage Impact – Where construction activity impacts the Right-of-Way adjacent to the property frontage outside of the 10' limit. (requires Right-of-Way Clearance Letter)
 - Curb/Street/Paved Area Impact – Where construction activity impacts the curb and/or street area (requires Right-of-Way Clearance Letter)
- (c) Platting projects shall require the completion of the Utility Coordination Process prior to final plat approval at the Planning & Zoning Commission
- (d) Each utility shall name a utility coordinator who shall participate in the utility planning and coordination committee.
- (e) Unless barred by the law, annually on the first day of October, each utility shall prepare and submit to the building development services department a plan that shows all known plans of foreseeable excavations in the paved portion of the public rights-of-way anticipated to be done in the next three (3) years or a statement that no excavations are planned. The utility shall report to the building development services department promptly any changes in the plan as soon as those changes become reasonably foreseeable.
- (f) The city may disclose information contained in a three-year plan to another utility only on a need-to-know basis in order to facilitate coordination and avoid unnecessary excavation. If a utility clearly and appropriately identifies information contained in the plan as confidential, proprietary, a trade secret, or otherwise protected from disclosure, then to the maximum extent permissible under federal or homeland security and state, and local laws applicable to public records, the city shall not disclose that information to the public. If the city determines that information is not clearly or appropriately identified, the city shall follow the procedures in the Texas Public Information Act for requesting a Texas Attorney General's opinion regarding exemption of the information from disclosure.
- (g) A three-year repaving plan shall be prepared by the city engineering department showing all proposed repaving and reconstruction in the paved portion of the rights-of-way, revise and update the plan on an annual basis after receipt of the three-year plans from the utilities, and make the plan available for public inspection.
- (h) The building development services department shall review and approve the three-year plans or plan available and identify conflicts and opportunities for coordination of excavations in the paved portion of the public rights-of-way.
- (i) If utilities propose to do excavations in the same paved portion of the public rights-of-way within a three-year period, the city shall issue permits for the work in a manner that maximizes coordination and minimizes the total period of construction.
- (j) A developer shall provide a development with underground facilities for utilities when required in accordance with article III of the Land Development Code. The developer shall execute all required agreements relating to the underground facilities, including easements, and provide proof to the city that the agreements have been executed.
- (k) The city may require conduit for underground facilities in the paved portion of the public rights-of-way.
- (l) The city or another utility may at its discretion install conduit and/or other facilities of its own when a street is cut by a utility. Such conduit or other facilities shall be installed at the city's or utility company's cost, but the city shall not pay any part of the cost of the street opening.

Section 2. This ordinance shall be cumulative of all provisions of ordinances of the City of Laredo, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4. This Ordinance shall become effective sixty days (60) after passage of this ordinance.

**PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR ON THIS
_____ DAY OF _____ 2024.**

DR. VICTOR D. TREVIÑO
MAYOR

ATTESTED:

MARIO I. MALDONADO, JR.
CITY SECRETARY

APPROVED AS TO FORM:

DOANH T. "ZONE" T. NGUYEN
CITY ATTORNEY