

ORDINANCE NO. 2023-05

AN ORDINANCE PROVIDING FOR THE PROTECTION AND AUTHORIZED USE OF LAKE POINT PUBLIC PROPERTY AND RIGHTS OF WAY

WHEREAS Lake Point is authorized pursuant to Utah Code §§ 10-8-2 10-8-11, 10-8-14, and 72-7-102, to protect and regulate the use of Lake Point property, including city streets, highways, sidewalks, and other public ways and rights of way, such as but not limited to regulating the use of public rights of ways by utility, telecommunications, and other service providers;

WHEREAS the Lake Point City Council desires to regulate and provide for the protection and proper use of all public property and rights of way;

WHEREAS the Lake Point City Council desires to establish conditions and procedures by which a provider may, pursuant to a franchise agreement or other similar arrangement, use the public rights of way on a fair and equitable basis as between Lake Point and the provider and as among various providers;

NOW, THEREFORE, BE IT ORDAINED by the Lake Point City Council as follows:

Section 1. Purpose.

- a. The purpose of this Ordinance is to establish the terms and conditions by which non-city persons and entities may excavate, engage in construction on, in, or under, improve, occupy, and otherwise use public property and rights of way owned or controlled by Lake Point in such a manner as to protect the public and the city while facilitating telecommunication, utility, and other similar services to Lake Point residents, in a fair and equitable manner.
- b. The city finds that the rights of way within the city are critical to the travel and transport of persons and property in the business and social life of the city, are intended for public uses and must be managed and controlled consistent with that intent, can be partially occupied by the facilities of utilities, telecommunications providers, and other service entities delivering utility and services rendered for profit or not-for-profit, to the enhancement of the health, welfare and general economic well-being of the city and its citizens; and are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the rights of way.
- c. The city finds that the city should receive fair and reasonable compensation for use of the rights of way to offset the burdens and costs to the residents of Lake Point for damage and use of the rights of way.
- d. The city finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights of way, municipal franchising and vital business and community service, which are of local concern.

Section 2. Definitions. The following terms shall have the meanings set forth below for purposes of this Ordinance only:

- a. "City": the municipality of Lake Point.
- b. "Franchise": The rights and obligations extended by the city to a person to own, lease, construct, maintain, use, or operate a utility, telecommunication, internet access service, or other similar system or facility in the rights of way within the boundaries of the city. Any such authorization, in whatever form granted, shall not mean or include:
 - i. Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city;
 - ii. Any other permit, agreement or authorization required in connection with operations on rights of way or public property, including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights of way.
- c. "Franchise Agreement": A contract entered into, regardless of the form of such contract, in accordance with the provisions of this ordinance between the city and a person desiring to use the rights of way that sets forth, subject to this ordinance, the terms and conditions under which a franchise will be granted to and exercised by the franchisee.
- d. "Park Strip": The area within a right of way between private property and the closer of the shoulder, curb, or gutter of the right of way. Includes the area between a sidewalk and the shoulder, curb, or gutter of the right of way, and includes barrel pits, swales, and other features designed to manage or provide for safety, drainage, and/or the protection of the right of way and adjacent property.
- e. "Permit": A permit, license, or other grant of authority issued in writing by the city that authorizes a particular scope of work within the rights of way, which scope may be defined and limited in the permit by location, duration, work site restoration requirements, and other conditions necessary to protect public or private property and rights of way.
- f. "Person": Any individual, business, company, corporation, firm, partnership, venture, or other entity of any kind, including state, federal, local, school, interlocal, and other governmental or public entities.
- g. "Public Property": Any real property, any interest in real property, and all appurtenances and improvements thereto, owned or controlled by the city, other than rights of way.
- h. "Rights of Way": The surface of and the space above and below any public street, sidewalk, park strip, alley or other public way of any type whatsoever, including an

unimproved right of way or easement dedicated for use as a public right of way, now or hereafter existing as such within the city, but not including any easement dedicated to or owned by the City that is granted or reserved for the City's exclusive use and not for use by third parties or the public (such as easements for City utility, water, or drainage facilities).

- i. "Work site restoration": The restoring and remediation of the original ground or surface area to a condition at least as good as its original state in compliance with engineering regulations and standards, and includes but is not limited to repair, cleanup, backfilling, grading, leveling, vegetating, compaction, stabilization, paving, surfacing, and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

Section 3. Freedom of Expression.

- a. Nothing herein shall be construed as a restriction on the use of traditional public fora, including but not limited to sidewalks and parks, subject to reasonable and generally applicable restrictions regarding time, place, and manner of such use.
- b. The use of public property and rights of way that are not traditional public fora, such as the portion of a right of way dedicated for use by vehicular traffic and the interior of public buildings, may be authorized on a content-neutral basis, as follows:
 - i. The designation of areas for limited use for expressive activities shall be done by resolution of the council.
 - ii. The council may establish restrictions and conditions on the use of such areas in accordance with the requirements and limitations of this section, state law, and constitutional law.
 - iii. Persons seeking to use an area designated for limited use for expressive activities shall first apply for a special event permit authorizing such use for a specified location and time.
 - iv. A permit shall be granted to any applicant who agrees to comply with the terms and conditions of this section and the resolution designating the area for limited use for expressive activities. Applicants seeking to use the same area at the same time shall be granted permits on a first-come, first-served basis. In no event shall a permit be denied based on the content or subject of the expression. Requests seeking to use other areas may be submitted.
 - v. A person that is lawfully engaged in expressive activities pursuant to this section shall be exempt from City ordinances related to obstruction of rights of ways or the impeding of traffic.

Section 4. Permit Required.

- a. It is unlawful for any person to commence work, excavation, or construction upon or in any right of way until the city has approved and issued a permit for such work,

except as specifically approved to the contrary in this Ordinance. Such prohibition includes maintenance, construction, excavation, and improvement work performed by a city other than Lake Point, a county, state, federal, or other government entity.

- b. Any person desiring to perform work of any kind in a right of way shall make application for a permit, including the payment of such fees as may be established by the city council, which permit shall be in addition to a franchise if a franchise is required.
- c. Permits shall not be assigned or transferred.
- d. A person shall not be eligible to apply for or receive permits to do work within the rights of way, save and except the following:
 - i. Contractors licensed by the state as general contractors;
 - ii. Franchisees and public utilities;
 - iii. Property owners installing, replacing, or maintaining less than five hundred square feet or one hundred ten linear feet of sidewalk, curb, and gutter, or driveway approach, or other work approved by the city, upon a portion of the right of way adjacent to their residence; or
 - iv. Persons offering a service which requires occupation of the right of way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or sign boards or other structures.

Section 5. Park Strips, Sidewalks, and Driveways.

- a. The property owner that is immediately adjacent to a park strip shall maintain the park strip in good condition, free of nuisances, weeds, debris, and trash, and may, without a permit, landscape the park strip, as follows:
 - i. Landscaping shall be limited to the installation of grass, sod, xeriscape materials, mailbox, and other similar work that does not alter the grade or elevation of the park strip area, does not require excavating or extending any material more than twelve inches from the prior grade of the park strip, and does not alter any drainage or water flow through the park strip area.
 - ii. The property owner shall contact Blue Stakes prior to performing any digging or excavation.
- b. No person shall fill in, pipe and culvert, install a hard or impermeable surface upon, or perform other work that alters the fill, grade, drainage, design, elevation, or slope of a shoulder or park strip of a right of way without a permit.
- c. No person shall alter, break into, excavate, remove, or damage any sidewalk without a permit.

- d. All construction or other work that connects to or modifies the existing right of way, such as the installation of a driveway or other access for private property, shall require a permit.

Section 6. Utility Easements. No person shall install any permanent surface, building, or structure on, under, or over a public utility easement or municipal utility easement.

Section 7. Permit Application. Each permit application shall contain such information and documentation as the city may require in order to demonstrate compliance with the terms, conditions, and requirements of this Ordinance, including but not limited to the following:

- a. The anticipated starting and completion date, and the season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the right of way by the public;
- b. The scope of work to be performed under the permit;
- c. The applicant's plan for maintaining the safe and effective flow of pedestrian and vehicular traffic on the right of way affected by the work;
- d. The applicant's plan for protecting the existing improvements to and facilities within the right of way impacted by the work; and
- e. Drawings, plans, details, specifications, typical cross-sections, and other construction drawings necessary to describe and document the work to be performed, including work site restoration.

Section 8. Permit Standards. The decision by the city to issue a permit, and the terms and conditions of such permit, shall be based on the information submitted by the applicant and the factors determined by the city, including the following:

- a. The capacity of the right of way to accommodate the facilities or structures proposed to be installed or constructed in addition to all existing facilities or structures.
- b. The capacity of the right of way to accommodate the facilities or structures without impacting or limiting the provision of critical public infrastructure such as electrical power, gas, sewer, and water.
- c. The damage or disruption to public or private property, facilities, improvements, or landscaping previously existing in the right of way.
- d. The public interest in minimizing the cost and disruption of construction from numerous excavations of the right of way.
- e. The past performance of the applicant in conforming with this ordinance and all applicable engineering regulations, specifications, design standards, insurance and bonding requirements, and work site restoration requirements.

- f. The satisfaction of engineering regulations, construction specifications, and design standards, as demonstrated by plans, designs, specifications, drawings, and/or details submitted by the applicant.

Section 9. Permit Terms. Any permit authorizing any work within or upon a right of way shall contain such terms and conditions as are necessary to protect resident and public property, the public, Lake Point, and existing facilities within the right of way, including the following:

- a. All work shall conform to city engineering regulations, design standards, construction specifications, and traffic control regulations.
- b. Where a job site is left unattended, before completion of the work, signage with minimum two inch high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after hours telephone number.
- c. The city shall be notified by the permittee of commencement of the work within twenty-four hours prior to commencing work. The city's law enforcement and fire protection service shall be notified by the permittee at least twenty-four hours in advance of any planned excavation requiring street closure or traffic detour.
- d. Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval prior to the blockage of the channel.
- e. Provision of temporary sidewalks, curb ramps, roadway plates, and other improvements to allow for continued access where existing sidewalks, accesses, and roadways are blocked, impaired, or obstructed by the work. The temporary improvement shall be safe for travel and convenient for users, consistent with governing standards.
- f. Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.
- g. All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the right of way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the city; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the city. From sunset to sunrise, all barricades and excavations must be clearly outlined or illuminated.
- h. Work site restoration to original condition of all impacted private and public property not owned by the permittee at the permittee's sole expense and within a

reasonable timeframe, including the replacement of any removed or damaged pavement with the same type and depth of pavement as that which is adjoining or as that which previously existed, including the gravel base material. All restoration shall conform to applicable engineering regulations, design standards, and construction specifications.

- i. The permittee satisfies and provides evidence to the city of their satisfaction of the insurance and bonding requirements set forth herein.
- j. The permit shall have a definite period for the commencement and completion of the authorized work, including all work site restoration, after which the permit shall expire. If the work is not completed during such period, prior to the expiration of the permit, the permittee may apply for an additional permit or an extension, which may be granted for good cause shown. The length of the extension requested by the permittee shall be subject to the approval of the city. No extension shall be made that allows work to be completed in the winter period without demonstration of how the applicant shall complete work and protect the public and the right of way during the winter.
- k. All work performed pursuant to a permit shall be subject to inspection and review by the city for compliance with this Ordinance and the terms of such permit.
- l. The requirements imposed upon the permittee extend to any subcontractor or independent contractor that the permittee might employ to perform the tasks pursuant to the permit.

Section 10. Franchise Required.

- a. Except to the extent preempted by federal or state law, every person desiring to use the rights of way for purpose of constructing, installing, operating, and maintaining any utility, telecommunication, internet access service, or other similar system or facility must obtain a franchise for such system or facility prior to any construction or installation.
- b. A person shall not be eligible to obtain a franchise, save and except the following:
 - i. Public utilities and entities that provide similar services and products as public utilities;
 - ii. Governmental entities, including districts;
 - iii. Telecommunications, cable television, telephone, and internet access service providers;
 - iv. Persons offering a service, whether for profit or not-for-profit, that will be generally available or offered to the residents of the city, whether in whole or in part, which service requires the installation of facilities within the rights of way.

Section 11. Franchise Standards. The city finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

- a. Fairly and reasonably compensate the city on a competitively neutral and nondiscriminatory basis as provided herein;
- b. Encourage competition by establishing terms and conditions under which providers may use the rights of way to serve the public;
- c. Fully protect the public interests and the city from any harm that may flow from such commercial use of rights of way;
- d. Protect the police powers and rights of way management authority of the city, in a manner consistent with federal and state law;
- e. Otherwise protect the public interests in the development and use of the city infrastructure;
- f. Protect the public's investment in improvements in the rights of way; and
- g. Ensure that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting telecommunication services, within the meaning of the telecommunications act of 1996.

Section 12. Franchise Terms. In order to satisfy the franchise standards required herein, the franchise agreement shall incorporate terms that address the following requirements:

- a. All franchises shall be nonexclusive and shall not prohibit the city from granting or authorizing other franchises for similar or different services and facilities as those provided by the franchisee.
- b. No franchise agreement shall operate to limit the police power of the city regarding to use, regulation, and protection of public property and rights of way.
- c. The franchisee shall obtain all required permits and approvals, including construction and excavation permits as required by this ordinance, prior to beginning any work within the rights of way.
- d. The franchisee shall restore, repair, and remediate, at its sole cost and expense, all public and private property and right of way that is impacted or damaged by the franchisee's work, construction, facilities, and services.
- e. The franchisee shall not obtain any ownership of or interest in any portion of the rights of way.
- f. The franchisee shall indemnify and hold the city harmless from all claims and damages of any kind whatsoever arising out of the franchisee's work, facilities, and services.

- g. The franchisee shall relocate or remove, at its sole cost and expense, any of franchisee's facilities that interfere with the normal use of the rights of way or that are located within a right of way that is realigned or removed by the city, as required by this Ordinance.
- h. A franchise may not be assigned or transferred to a third party without the prior, written authorization of the city, unless such third party is in common ownership with the franchisee or is a parent or subsidiary of the franchisee. This shall not restrict the right or ability of the franchisee to lease, mortgage, or grant other rights in or to its facilities and systems, so long as such rights do not purport to grant any right or interest in or to the franchise or the rights of way.
- i. The removal or abandonment in place, without compensation or payment from the city, of all facilities and improvements installed or constructed by the franchisee upon the termination of the franchise.
- j. Appropriate enforcement and default provisions, including provisions related to notice and a reasonable period to cure any alleged default.
- k. Compliance with or payment of any tax or franchisee fee lawfully imposed by the city.
- l. Other terms as may be negotiated and approved by the city and the franchisee, provided that such terms shall provide for fair and equitable treatment of the franchisee as compared to all other persons providing similar facilities or services.

Section 13. Conflicting Terms. In the event of a conflict between a permit, franchise agreement, applicable design, engineering, and construction standards, and the ordinance, the following shall govern, in order of highest to lowest priority:

- a. City, state, and federal design, engineering, and construction standards;
- b. The permit and plans approved therewith;
- c. The terms of a franchise agreement;
- d. This Ordinance.

Section 14. Hold Harmless Agreement; Limitations On City Liability

- a. Any person who obtains a permit or franchise pursuant to this Ordinance shall agree to save the city, its officers, employees, and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit or pursuant to such franchise. The issuance and acceptance of any permit or franchise agreement under this ordinance shall constitute such an agreement.
- b. This Ordinance shall not be construed as imposing upon the city, its officers, employees, and agents, any liability or responsibility for damages to any person

injured by or by reason of the performance of any work within a right of way, or under a permit issued pursuant to this chapter; nor shall the city, its officers, officials, employees, agents, volunteers, or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized or required hereunder, the issuance of any permit or franchise, or the approval of any work.

Section 15. Emergency Work.

- a. Any person maintaining pipes, lines, or facilities in the rights of way may proceed with work upon existing facilities without a permit when emergency circumstances demand the work to be done immediately; provided, a permit could not reasonably and practicably have been obtained beforehand.
- b. In the event that emergency work is commenced on or within any right of way during regular business hours, the city shall be notified within one-half hour from the time the work is commenced. The person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall insure that work is accomplished according to city engineering regulations, the manual on uniform traffic control devices and other applicable laws, regulations, or generally recognized practices in the industry.
- c. Any person commencing emergency work in the rights of way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which city offices are open for business after such work is commenced. A permit for such emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the city.
- d. The city may, at any time, in case of fire, disaster, or other emergency, as determined by the city in its reasonable discretion, cut or move any parts of any franchised system or any other improvement, facility, or appurtenance on, over, or under the rights of way, in which event the city shall not be liable therefor to a person. The city shall notify the owner or other responsible person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

Section 16. As-Built Plans. Upon completion of any work on public property, within a right of way, for a public improvement required for a subdivision or other development, or other work authorized by a permit or franchise under this Ordinance, the person shall provide "as-built" plans in an approved format showing the location of all facilities so installed, which plans shall comply with the following requirements:

- a. All improvements and facilities must be shown in actual location with a horizontal control based off of an approved GIS coordinate system or other control measure.
- b. Points shall be listed with the dimensions of the improvements; the plans shall include a reference table with all of the points.

- c. Plans shall include an Engineer of Record Stamp certifying the locations of the completed improvements or facilities.

Section 17. Insurance.

- a. Before a permit is issued and for the duration of any permit, the applicant shall obtain and maintain a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions or with such alternative limits and provisions as may be approved by the city:
 - i. A minimum of one million dollars combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than one million dollars in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two times the required occurrence limit. The coverage shall be in the nature of broad form commercial general liability coverage. The city may increase minimum insurance limits, depending on the potential liability of any project.
 - ii. All policies shall include the city, its employees, officers, officials, agents, volunteers, and assigns, as additional insureds. Any reference to the city shall include the city, its employees, officers, officials, agents, volunteers, and assigns.
 - iii. The coverage shall be primary insurance as respects the city, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the city, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the permittee's insurance and shall not contribute to or with it.
 - iv. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the city, its employees, officers, officials, agents, volunteers, and assigns.
 - v. Coverage shall state that the permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - vi. Underwriters shall have no right of recovery or subrogation against the city, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
 - vii. The insurance companies issuing the policy or policies shall have no recourse against the city for payment of any premiums due or for any assessments under any form of any policy.
 - viii. Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except

after thirty days' prior written notice by certified mail, return receipt requested sent to the city.

- ix. Each policy shall be endorsed to indemnify, save harmless, and defend the city, its employees, officers, officials, agents, volunteers, and assigns against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of work done by the permittee, their subcontractor or agent, related to the rights of way until the work and all work site restoration is completed, whether or not the work has been completed, whether or not the work conformed to the terms of the permit, and whether or not the right of way has been opened to public travel.
- x. Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of "7" or higher.
- b. The permittee shall furnish, upon request, the city with evidence and proof of insurance, including certificates of insurance and original endorsements affecting coverage required by the permit.
- c. The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- d. Any deductibles or self-insured retentions shall be declared to and approved by the city. At the option of the city, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the city, its employees, officers, officials, agents, volunteers or assigns, or the permittee shall procure a bond, in a form acceptable to the city, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- e. A property owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this section.

Section 18. Bonding

- a. Each applicant other than a government entity or a public utility shall provide the city with an acceptable security in the form of a cash bond, letter of credit, or corporate surety, as approved by the city to guarantee faithful performance of the work authorized by a permit, prior to such permit being granted pursuant to this chapter.
- b. The amount of the security required shall be one thousand dollars, unless the work being performed involves excavation, cutting, removal, or other damage in or to a paved city street, in which case the amount of the security shall be no less than the reasonably estimated cost to repair or replace such street improvements. The form of the security and the entity issuing the security shall be subject to the approval of the city attorney.

- c. The security required by this section shall be conditioned as follows:
 - i. That the permittee shall fully comply with the requirements of the city ordinances and regulations, specifications and standards promulgated by the city relative to work in the right of way, and respond to the city in damages for failure to conform therewith;
 - ii. That after work is commenced, the permittee shall proceed with diligence and expedition and shall promptly complete such work and all work site restoration to construction specifications, so as not to obstruct the right of way or travel thereon more than is reasonably necessary;
 - iii. That the permittee shall guarantee the materials and workmanship for a period of one year from completion of such work, with reasonable wear and tear excepted.

Section 19. Protection of Rights of Way

- a. Except as expressly authorized by the city, no person owning, occupying, or having control of any premises shall place upon or permit to be placed upon the sidewalk, gutter, street, or other portion of a right of way:
 - i. Any rubbish, sweepings, refuse matter, ice, snow, water, garbage, ashes, rocks, dirt, mud, soil, gravel, landscaping materials, or other similar materials, provided that this shall not apply to the normal and intended use of appropriate portions of the rights of way for drainage and channeling water or to the placing of ice and snow upon the park strip in such a way that the use of the street and sidewalk, if any, is not impeded;
 - ii. Any vehicles, trailers, construction and building materials, merchandise or other thing that is not a nuisance or rubbish, in such a way as to obstruct such sidewalk, gutter, street, or other portion of a right of way.
- b. No person shall dig, excavate, cut, or damage any rights of way, nor shall any person install or construct any facility or improvement within, upon, or under the rights of way without the authorizations required by this Ordinance, unless otherwise authorized herein.
- c. No person shall obstruct or block the normal use and operation of the rights of way.

Section 20. Relocation of Facilities.

- a. The city may direct and require any person owning or maintaining facilities or structures in the rights of way to alter, modify, or relocate such facilities or structures as the city may require as set forth herein or as set forth in a franchise agreement, if applicable. All facilities installed pursuant to a franchise agreement, and all sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and

communication facilities, fiber optic, and other similar wires, lines, and facilities shall specifically be subject to such directives.

- b. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the city, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the city. In the event that such person refuses or neglects to conform to the directive of the city, the city shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the city all costs incurred by the city in connection with such work performed by the city, including also design, engineering, construction, materials, insurance, court costs and attorney fees.
- c. Any directive for relocation or removal of facilities under this section by the city shall be based upon one of the following:
 - i. The facility or structure was installed, erected or is being maintained contrary to law, or determined by the city to be structurally unsound or defective;
 - ii. The facility or structure constitutes a nuisance as defined under state statute;
 - iii. The permit or franchise under which the facility or structure was installed has expired or has been revoked;
 - iv. The right of way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or
 - v. The grades or lines of the right of way are to be altered or changed.
- d. Any directive of the city under this section shall be under and consistent with the city's police power. Unless an emergency condition exists, the city shall make a good faith effort to consult with the person regarding any condition that may result in a removal or relocation of facilities in the right of way to consider possible avoidance or minimization of removal or relocation requirements and provide the directive as far enough in advance of the required removal or relocation to allow the person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.
- e. This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the right of way, if that prior private easement grants a superior vested right.

Section 21. City Not Limited. Nothing in this ordinance or in any franchise agreement shall limit the city's ability to provide any service or facility to its residents that it is lawfully authorized to provide, regardless of whether such service or facility is similar to that provided by a franchisee.

Section 22. Compliance and Revocation.

- a. Work Without a Permit.
 - i. A stop order may be issued by the city directed to any person doing or causing any work to be done on public property or within a right of way without a permit or in excess of the terms of a permit.
 - ii. Any person found to be doing work in a right of way without having obtained a permit or in excess of the terms of a permit shall be required to obtain a permit and pay a permit fee equal to two times the normal permit fee. Such permit shall require the remediation of any work performed that is not authorized by the permit. For replacement work, where a fee is not normally charged, the normal permit fee for new construction shall apply.
- b. Revocation and Stop Work on a Permit. Any permit may be revoked or suspended, after notice to the permittee, and a stop order issued by the city for:
 - i. Violation of any condition of the permit, the security, or of any provision of this ordinance;
 - ii. Violation of any provision of any other ordinance of the city or law relating to the work; or
 - iii. Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.
- c. Remedies Generally. For failure to conform to the design standards and regulations or other terms of a permit or franchise agreement, the city may:
 - i. Suspend or revoke the permit or franchise agreement, subject to terms regarding default provided for in such franchise agreement;
 - ii. Issue a stop order;
 - iii. Order removal and replacement of faulty work;
 - iv. Require an extended warranty period; and/or
 - v. Negotiate a cash settlement to be applied toward repair, restoration, or future maintenance costs.

Section 23. Violation and Penalty

- a. Unless otherwise specified in this Ordinance, a violation of any provision of this Ordinance, or failure to comply with an order of suspension, revocation or stop work, shall be a class B misdemeanor and may be enforced through both civil and criminal remedies.
- b. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this chapter, nor

shall any criminal citation or conviction prevent the city from enforcing this Ordinance by way of administrative proceedings, injunctions, or other civil remedies.

Section 24. This Ordinance shall be effective upon its adoption and publication in accordance with law.

PASSED, APPROVED, AND ADOPTED on the 8th day of February, 2023

Lake Point

By _____
Chair

ATTEST:

City Recorder

SEAL

Voting:

Daniel Crawford
Doyle Garrard
Jonathan Garrard
Kathleen VonHatten
Ryan Zumwalt

Yea / Nay ___ Absent ___
Yea / Nay ___ Absent ___
Yea / Nay ___ Absent ___
Yea / Nay ___ Absent ___
Yea / Nay ___ Absent ___