

**AGENDA**  
**City of Hobbs Planning Board – Regular Meeting**  
**October 17, 2017 at 10:00 AM**

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

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

**Tentative Agenda for the Planning Board Regular Session Meeting to be held on Tuesday, October 17, 2017 at 10:00 AM at the City of Hobbs Annex Building, First Floor Commission Chambers located at 200 E. Broadway, Hobbs, NM 88240.**

**AGENDA**

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

**September 19, 2017 – Regular Meeting**

- 4) Communications from Citizens.**
- 5) Review and Consider variance from MC 15.32 (Sign Code), as submitted by property owner representative Up-Lift Services.**
- 6) Review and Consider variance from MC 18.04 (Manufactured Homes) as submitted by property owner Ricardo Carrillo.**
- 7) Review and Consider requested street name change, as submitted by developer Del Norte Heights, Inc. The Developer is requesting to change Camino Chiquito, a stub street within Del Norte Heights Addition Unit 8, to Poco.**
- 8) Review and Consider requested street name change, as submitted by City of Hobbs. The City of Hobbs is requesting to change Dalmont, located between Clearfork and Glorietta, to Gantt.**
- 9) Review and Consider naming of public access streets located fully within public parks, as submitted by City of Hobbs.**
- 10) Review and Consider Subdivision Preliminary & Final Plan of Gage Subdivision #2 located northwest of the intersection of Campbell Lane and Denver City Highway.**
- 11) Report of Subdivisions approved via MC 16.12 – Alternate Summary Procedure since July, 2016.**
- 12) DISCUSSION ITEM – Review & discuss proposed Right – of – way management Ordinance.**
- 13) Adjournment.**

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

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

**PLANNING BOARD MEETING  
MINUTES  
September 19, 2017**

The Hobbs Planning Board met on September 19, 2017 at 10:00 a.m. at City of Hobbs Annex Building, First Floor Commission Chambers, located at 200 E. Broadway, Hobbs, NM 88240 with Mr. W.M. “Tres” Hicks Chairman presiding.

**Members Present:**

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

**Members Absent:**

Bobby Shaw  
Bill Ramirez

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

Kevin Robinson, Development Director  
Todd Randall, City Engineer  
Julie Nymeyer, Staff Secretary

Dennis Holmberg  
Bruce Reid, County Planner  
Manny Marquez

**1) Call To Order.**

Chairman Hicks called the meeting to order at 10:03 am.

**2) Review and Consider Approval of Agenda.**

The first item of business was to review and approve the Agenda for the September 19, 2017 meeting. Mr. Hicks asked if there were any changes or additions to the Agenda? Mr. Robinson said there were none. Mr. Drennan made a motion, seconded by Mr. Penick to approve the agenda as presented. The vote on the motion was 5-0 and the motion carried.

**3) Review and Consider Approval of Minutes.**

**July 18, 2017 – Regular Meeting**

Mr. Hicks asked if everyone has had a chance to read the Regular Meeting Minutes from July 18, 2017? Mr. Kesner made a motion, seconded by Mr. Drennan to approve the minutes as amended. The vote on the motion was 5-0 and the motion carried.

**4) Communications from Citizens.**

There were no communications from citizens.

**5) Review and Consider proposed amendment to the City of Hobbs Address Assignment Manual as adopted per Resolution #6228 in 2014.**

Mr. Robinson said the Address Assignment Manual was adopted in 2014. He said the city and county staff has been having joint meetings. He said one of the items that have been discussed is development issues that the county oversees without the input of the city. He said in the past the city was allowing addresses in some instances without the county having opportunity to review the items. He said in the future there will be more communication between the city and the county on these items which were related to mobile homes.

Mr. Robinson said the Municipality and the County is going with the new CAD system which is the emergency operation addressing system. He said the Technical Review Committee is the Engineering and Planning Department and they shall approve all street names after they are assigned.

Mr. Robinson discussed development standards and addressing within the ETJ. Mr. Kesner suggested that you have a note in the manuals for developers that they also have to comply with development standards and codes contained in the IFC and IBC.

Mr. Robinson then discussed the address assignment procedures within the ETJ. He said that starts with where they are located either in the city or the ETJ. He said if you are within the ETJ the rules do not necessarily change but there are some other authorities that would have input prior to issuance of an address. He said addresses will be assigned to a habitable structure occupying a lot or parcel adjoining a dedicated public right-of-way or a county maintained roadway upon a receipt of an approved Lea County Driveway permit. He said the Lea County Driveway permit is very important.

Mr. Robinson said during the joint meetings there was an evaluation done with ETJ properties and one of the things that was noted is that there are a lot of properties located within the ETJ that emergency services cannot get to because the access from the public maintained roadway to the private roadway and crossing over the swell creates a process where the emergency response vehicle drags or gets high centered. He said the Drive Way permit will alleviate that.

Mr. Robinson said the second issue is an address request for a second habitable structure located on a lot or parcel adjoining a public right-of-way or county maintained roadway must provide approved documentation from the following Lea County Departments; Road, Environmental, Flood Plain and Fire Marshal.

Mr. Robinson said staff would like a one stop shop. If you come to the city you will be able to pick up some county forms instead of the public going to the county and then back to the city.

Mr. Drennan made a motion, seconded by Mr. Penick to approve the amendments to the City of Hobbs Address Assignment Manual. The vote on the motion was 5-0 and the motion carried.

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

Mr. Robinson said this is a subdivision located within the ETJ. He said the parent parcel is 26 acres divided into 5 individual lots. He said they are seeking a preliminary and final plat approval from this Board. He said it is compliant with our Title 16.

Mr. Randall said this area based on the FEMA Map is listed as a flood way. He said tract 2 is totally encompassed in the restricted area. He said this is outside our flood plain authority. He said he would just point out that some of these tracts may be undevelopable. He said it will come up again when developers ask for an address.

Mr. Randall said the developer needs to come up with a plan ahead of time and recreate the south part of the subdivision. Mr. Hicks said ultimately there is going to be a flood way needed there and someday Dal Paso will be widen and the Highway Departments minimum requirements will have to be addressed so getting ahead of it now and asking for a floodway dedication for the south 60 feet is not beyond the realm of good planning. He said they can require that the only way tract 2, 3 and 4 is allowed to be created as it is right now is to put a note on the plat that says tracts subject to the FEMA Floodway designation. Mr. Sanderson said this conversation needs to be with the property owner before the Board is asked to make a decision. He said he thinks this item should be tabled and sent back to the owner for answers to these questions.

Mr. Sanderson makes a motion, seconded by Mr. Kesner to table this item until there are decisions made about the flood way. The vote on the motion was 5-0 and the motion carried.

**7) Review and Consider fence height variance request for 2917 N. Selman as submitted by property owner. The City of Hobbs Major Thoroughfare Plan requires a maximum of 2' height for a fence located at the front property line; the property owner is requesting a height of 6' at the front property line.**

Mr. Robinson said the reason the Board is seeing this is because this is an area that does not have any fences in the front yards. Mr. Kesner said this may violate the restrictive covenants. Mr. Robinson said the covenants have been broken on Houston Street. He said that is the reason the Major Thoroughfare Plan gives a block by block requirement. He said the fence that was put in on Houston Street broke the covenants and now they are also broke on Selman Street because they are in the same subdivision. He said the municipality does not enforce restrictive covenants but we do have developmental rules and regulations. He said rather than stating subdivision the Major Thoroughfare Plan says block.

Mr. Hicks asked if there were front driveways? Mr. Robinson said yes. Mr. Penick asked if the neighbors were notified? Mr. Robinson said the neighbors within 150 feet were notified. He said if this request is approved the next person in this area will get an approval. Mr. Hicks said his issue is safety and that is the main concern.

Mr. Drennan made a motion, seconded by Mr. Kesner to deny the variance. The vote on the

motion was 5-0 and the motion carried.

**8) Adjournment.**

With nothing further to discuss Mr. Kesner made a motion, seconded by Mr. Penick to adjourn the meeting at 11:27 am.

**October 17, 2017  
Planning Board Regular Meeting**

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

## Variance Proposal

Zia Park free standing sign removal & reinstallation with upgrades.

Remove existing street sign located on City Property on Lovington Highway. Move sign approximately 1200' and install on Zia Park property.

Existing sign is 478.5 square feet and is 38'8" OAH. There will be no change in square footage or height of sign.

Sign face channel letters will be upgraded and a single side RGB EMC will replace existing digital double sided sign. Reverse side of this area will have Thank You message on flat panels.

All city regulation for the operation of the EMC will be followed by Zia Park.

We are requesting a variance to remove and reinstall existing out of compliance sign with proposed upgrades to Zia Park property.

27' 27 ft

30"  
12"

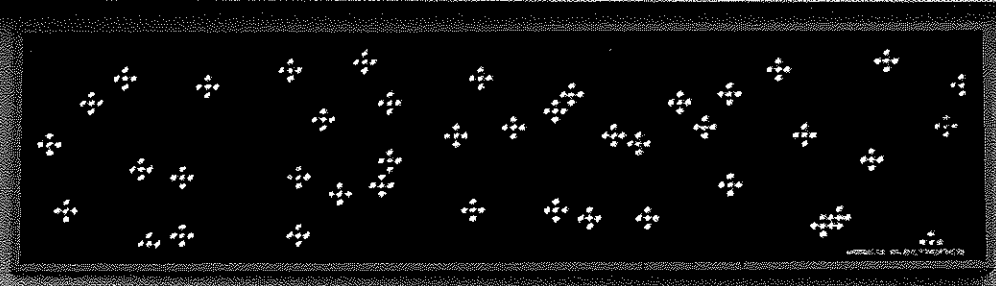
ZIA PARK  
CASINO

515 sf

124"

14"

70"



20' 10"

14"

9"

9"

20' 8"  
04H

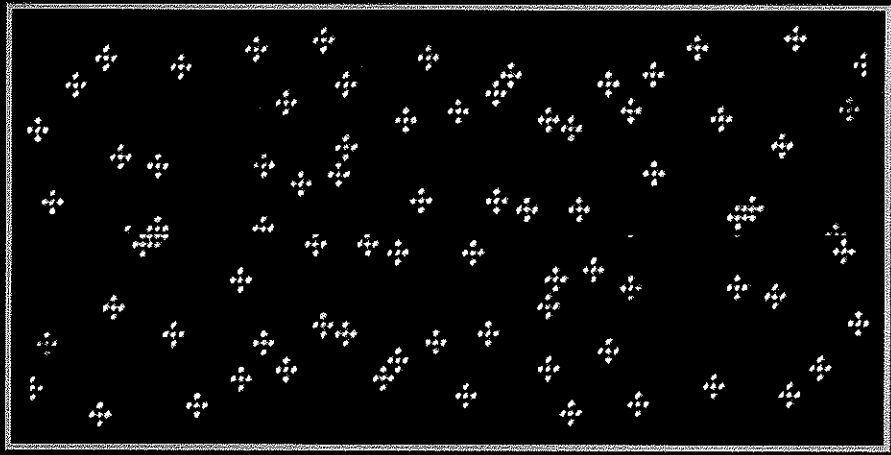
ZIA PARK

Existing Free  
Standing Sign



**ZIA PARK**  
**RACETRACK**  
**HOTEL & CASINO**

585 sf



Open

**Proposed Free  
Standing Sign**



Google Earth

© 2017 Google

600 ft  
600 ft



General location of sign. To be located within current fence boundaries (fence @ corner to be relocated).

50 ft



**October 17, 2017**  
**Planning Board Regular Meeting**

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

Ricardo Carrillo  
612 E. Albertson Cir.  
Hobbs, NM. 88240  
Oct. 4, 2017

Kevin  
Planning and Development  
City of Hobbs  
200 E. Broadway  
Hobbs, NM. 88240

Dear Kevin:

My name is Ricardo Carrillo, I am a long-time resident of our city, I contribute some of time in coaching Little League Baseball and Sponsorship. I am also writing to express my full support for the pending improvement and changes within the property that I have purchase (Twin Circle Mobile Park ).

On the month of July 17, 2017. I purchase the property called Twin Circle Mobile Home Park. After weeks went by I was contacted by Officials from the City of Hobbs. Apparently there are some issue with the property that I have purchase, with the City of Hobbs.

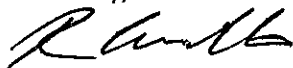
1. Two Mobile Home Trailers (Unsaved to live-in). Abandoned
2. Piles of dangerous debris scatter all around the park.
3. Weeds grow high above knee level.
4. Dogs and cats running wild, (not vaccinated).
5. Vehicle with no tags.

And now the fencing and the road paving. What I understand and with the research that I have done. I can accomplish this improvements within more time. I also don't have the funds for these large projects. In past 3 months, I have lost 3 residents with their Mobile Home Trailers.

I am trying very hard to accomplish what the Planning Board wants, All I'm asking is for a chance, I hope that I am given the opportunity to fix the situation and problem with the road in the trailer park.

I am looking forward to your response!

Sincerely, Ricardo Carrillo



N Houston St

E Albertson Cir

E Albertson Dr

E Sunset Cir

N Sunset Cir

Google Earth 1997

Image U.S. Geological Survey

300 ft

14



N Houston St

E Albertson Cir

E Albertson Dr

25 Units

E Sunset Cir

N Sunset Cir

Google Earth 2009

Irrage USDA Farm Service Agency

300 ft

15



N Houston St

E Albertson Cir

E Albertson Dr

E Sunset Cir

N Sunset Cir

27 Units

Google Earth 2011

300 ft

16





N Houston St

E Albertson Cir

E Albertson Dr

28 Units

E Sunset Cir

N Sunset Cir

Google Earth 2016

300 ft

17



**October 17, 2017**  
**Planning Board Regular Meeting**

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

# Del Norte Heights, Inc.

P.O. Box 1258 • Hobbs, New Mexico 88241 • 505-393-5191 • Fax 505-397-4762

Mr. Kevin Robinson  
City of Hobbs  
200 E. Broadway St.  
Hobbs, New Mexico 88240

September 22, 2017

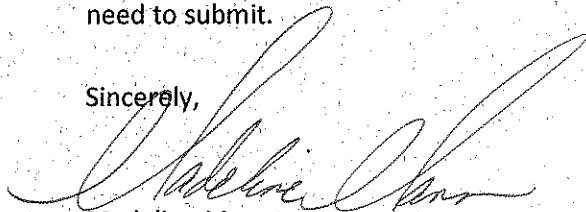
Re: Re-naming of Camino Chiquito Street

Dear Kevin:

I am submitting a request to change the name of a street in our subdivision in which we are the developer of all the land surrounding this address. Also, there is only one resident, who requested name change, on this street. We would like to change the name from Camino Chiquito to Poco. We feel this name is concurrent with the other named streets in our development. As stated above we are the developer and will continue with the new name of street throughout the rest of the development.

Your consideration in this matter is greatly appreciated. Please let me know if there is anything else I need to submit.

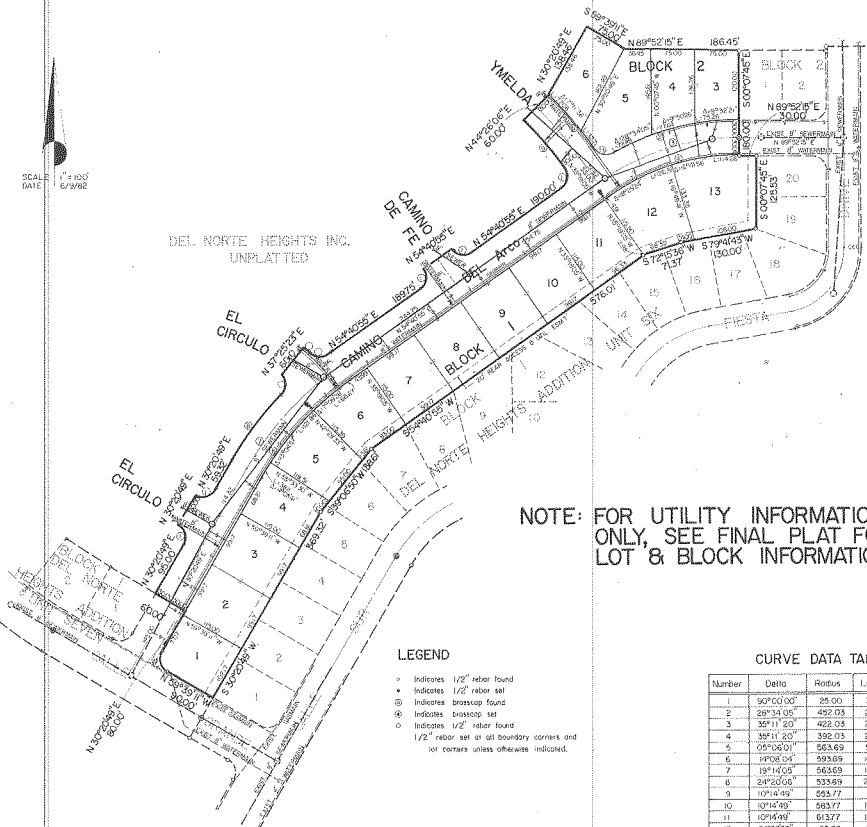
Sincerely,



Madeline Mann  
Secretary/Treasurer

# DEL NORTE HEIGHTS ADDITION UNIT EIGHT

CITY OF HOBBS  
LEA COUNTY NEW MEXICO  
BROWN, HENDERSON & ASSOCIATES, INC.



NOTE: FOR UTILITY INFORMATION ONLY, SEE FINAL PLAT FOR LOT & BLOCK INFORMATION.

- LEGEND**
- Indicates 1/2" rebar found
  - Indicates 1/2" rebar set
  - ⊙ Indicates broom-spread found
  - ⊙ Indicates broom-spread set
  - Indicates 1/2" rebar found
  - 1/2" rebar set at all boundary corners and lot corners unless otherwise indicated.

- GENERAL NOTES**
1. All lot lines are perpendicular or parallel to street right-of-way lines.
  2. All dimensions are given in feet or decimals of a foot.
  3. Curve information is numbered and shown in Curve Data Table.
  4. --- indicates utility easement lines.

CURVE DATA TABLE

Number	Bearing	Radius	Length	Tangent
1	S0°00'00"	25.00	38.27	25.00
2	S29°54'00"	425.05	325.39	115.09
3	S32°11'20"	422.05	259.19	153.82
4	S52°11'20"	395.05	240.77	124.42
5	S55°04'00"	563.89	50.19	25.11
6	N73°06'04"	593.69	46.86	73.60
7	N54°40'55"	564.69	189.23	95.82
8	S42°20'56"	533.89	226.67	115.07
9	N71°45'59"	253.77	93.62	-98.5
10	N71°45'49"	583.77	104.90	52.34
11	N71°45'49"	613.77	105.77	55.03
12	S44°35'59"	25.00	37.04	22.87
13	S32°22'40"	25.00	36.39	22.87

LOT AREA TABLE

Lot	Area (sq. ft.)	Lot	Area (sq. ft.)
BLOCK 1			
1	11,271	11	11,405
2	11,405	12	11,405
3	11,405	13	11,540
4	12,228	BLOCK 2	
5	12,282		
6	11,867		
7	11,805		
8	11,405		
9	11,405		

## LEGAL DESCRIPTION AND DEDICATION

BE IT REMEMBERED that the undersigned Owners and Proprietors of that certain tract of land located all within the South One Half (S1/2) of Section 16, Township 18 South, Range 38 East, NMRM, Lea County, New Mexico, being more particularly described as follows:

Beginning at a point on the north Northerly Boundary Corner of DEL NORTE HEIGHTS ADDITION UNIT SIX, as shown by plat on file in the office of the Lea County Clerk in Book 39, Page 756 miscellaneous records of said county, thence along the Westerly and Southerly Boundary Line of said DEL NORTE HEIGHTS ADDITION UNIT SIX S 12°07'45" E 18000 feet, thence N 69°52'15" E 3000 feet, thence S 60°03'45" E 2500 feet, thence S 79°41'45" W 15000 feet, thence S 72°53'36" W 1157 feet, thence S 54°40'55" W 2760 feet, thence S 29°08'52" W 1361 feet, thence S 30°25'49" W 5832 feet to the most Southeastly Boundary Corner of DEL NORTE HEIGHTS ADDITION UNIT SEVEN as shown by plat on file in the office of the Lea County Clerk in Book \_\_\_\_\_ Page \_\_\_\_\_ miscellaneous records of said county, said point also being on the Easterly Right-of-Way Line of Calle Grande (80 feet wide), thence along the Easterly Boundary Line of said DEL NORTE HEIGHTS ADDITION UNIT SEVEN N 59°35'17" W 9000 feet to the beginning of a curve to the right having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 30°00'00" 3927 feet, thence N 30°20'49" E 8000 feet, thence N 59°36'11" W 6000 feet, thence along said Easterly Boundary N 30°20'49" E 9500 feet to the beginning of a curve to the left, having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 30°00'00" 3927 feet, thence N 30°20'49" E 6000 feet to the beginning of a curve to the left, having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 16°00'00" 146.46 feet to the beginning of a reverse curve to the left having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 34°52'55" 3704 feet, thence N 49°45'59" E 5000 feet, to the beginning of a curve to the right having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 44°53'52" 3704 feet, thence N 54°40'55" E 18975 feet to the beginning of a curve to the left having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 30°00'00" 3927 feet, thence N 54°40'55" E 6000 feet to the beginning of a curve to the left having a radius of 2500 feet, thence Southerly along the arc of said curve through a central angle of 30°00'00" 3927 feet, thence N 54°40'55" E 19000 feet to the beginning of a curve to the left having a radius of 2500 feet, thence Northerly along the arc of said curve through a central angle of 30°00'00" 3927 feet to the beginning of a compound curve to the left having a radius of 653.77 feet, thence Northerly along the arc of said curve through a central angle of 16°00'00" 5004 feet, thence N 49°45'59" E along a line radial to said curve 6000 feet, thence N 30°20'49" E 138.48 feet, thence S 59°35'11" E 7500 feet, thence N 69°52'15" E 186.46 feet to the point of beginning, containing \_\_\_\_\_ acres more or less.

Have caused the surface of the same to be subdivided and platted as shown on the plat with their free consent and in accordance with their desires, into what is known and is hereby designated and named DEL NORTE HEIGHTS ADDITION UNIT EIGHT to the City of Hobbs, and out of the streets shown said property on hereby and by this instrument, and by the filing of this dedication and plat, dedicated to the use and benefit of the public. Notice is hereby given that there has been filed in the office of the County Clerk of Lea County, New Mexico, certain restrictive covenants applicable to the above described property which said covenants are recorded on Page \_\_\_\_\_ Book \_\_\_\_\_ miscellaneous records of said county. DEL NORTE HEIGHTS INC.

## ACKNOWLEDGMENT

"Ben Alexander, President Carl Baldwin, Secretary  
STATE OF NEW MEXICO )  
COUNTY OF LEA ) 55

On this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, before me personally appeared Ben Alexander and Carl Baldwin, President and Secretary, respectively, of Del Norte Heights Inc., to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same on their free and clear.

Witness my hand and official seal the day and year last above written.

My commission expires: \_\_\_\_\_

Notary Public: \_\_\_\_\_

## CERTIFICATE OF MUNICIPAL APPROVAL

STATE OF NEW MEXICO )  
COUNTY OF LEA ) 55

I, Joyce Edmiston, the duly appointed and acting City Clerk to the City of Hobbs, Lea County, New Mexico, do hereby certify that the foregoing plat of \_\_\_\_\_, 198\_\_\_\_, A.D. was approved by the Commission of the City of Hobbs by Resolution No. \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, A.D.

Joyce Edmiston, City Clerk

## CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD

The Plan, restrictions and dedications approved and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, A.D.

Chairman: \_\_\_\_\_

## CERTIFICATE OF SURVEY

I, Hiram H. Williams, hereby certify that I am the Registered Land Surveyor who has prepared the above plat from field notes of actual surveys made under my direction and that the same are true and correct to the best of my knowledge and belief.

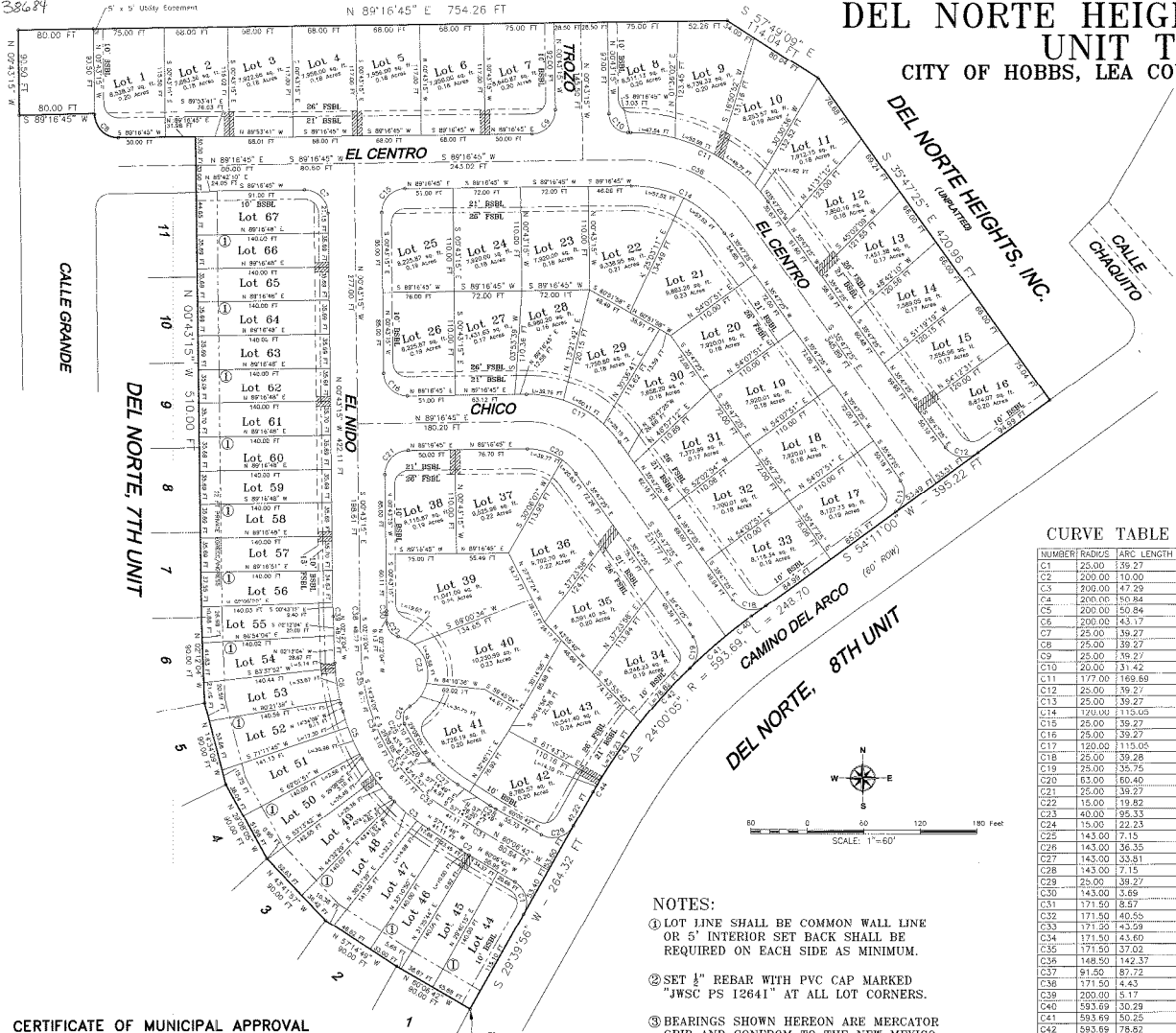
IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, A.D.

Hiram H. Williams R.L.S. No. 0710

DEL NORTE HEIGHTS ADDITION UNIT EIGHT  
SUBDIVISION PLAT  
DEL NORTE HEIGHTS ADDITION UNIT EIGHT  
SUBDIVISION PLAT  
SHEET 2 OF 9A SHEETS

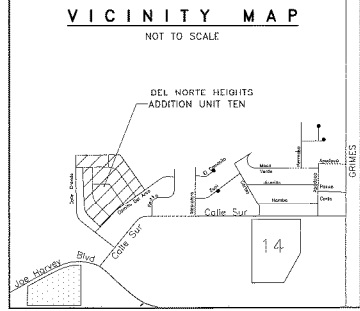
# DEL NORTE HEIGHTS ADDITION UNIT TEN CITY OF HOBBS, LEA COUNTY, NEW MEXICO

SECTION 16 TOWNSHIP 18 SOUTH RANGE 38 EAST



Lot Sizes for Lots 44 - 67

Lot Number	Square Feet	Acreage
44	6260.91	0.14
45	5113.15	0.12
46	5113.98	0.12
47	5553.79	0.13
48	5593.52	0.13
49	5890.26	0.13
50	5907.40	0.14
51	5973.16	0.14
52	5945.67	0.14
53	5344.21	0.12
54	5297.36	0.12
55	5253.33	0.12
56	5052.83	0.12
57	4997.27	0.11
58	4938.54	0.11
59	4996.34	0.11
60	4997.85	0.11
61	4938.56	0.11
62	4996.39	0.11
64	4996.36	0.11
65	4996.39	0.11
66	4938.56	0.11
67	6308.56	0.14



### LEGAL DESCRIPTION AND DEDICATION

THE FOREGOING SUBDIVISION OF A CERTAIN TRACT OF LAND SITUATED WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, LYING IN THE WEST HALF OF SECTION 16, TOWNSHIP 18 SOUTH, RANGE 38 EAST, MAP 14, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 1, DEL NORTE HEIGHTS ADDITION, UNIT SEVEN TO THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO;

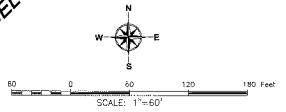
THEN N89°16'45" E A DISTANCE OF 90.00 FEET; THEN N27°14'49" ALONG THE NORTHEASTERLY LINE OF LOT 9, SAID BLOCK 1, A DISTANCE OF 90.00 FEET; THEN N44°16'57" ALONG THE NORTHEASTERLY LINE OF LOT 4, SAID BLOCK 1, A DISTANCE OF 80.00 FEET; THEN N48°07'17" ALONG THE EASTERLY LINE OF LOT 4, SAID BLOCK 1, A DISTANCE OF 80.00 FEET; THEN N14°09'09" ALONG THE EAST LINE OF LOT 5, SAID BLOCK 1, A DISTANCE OF 90.00 FEET; THEN N02°12'09" ALONG THE EAST LINE OF LOT 4, SAID BLOCK 1, A DISTANCE OF 90.00 FEET TO THE MOST EASTERLY NORTHEAST CORNER OF SAID DEL NORTE HEIGHTS, UNIT SEVEN; THEN S88°18'02" ALONG THE NORTH LINE OF EL CENTRO STREET A DISTANCE OF 13.00 FEET; THEN S90°00'00" TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 26.00 FEET AND A CENTRAL ANGLE OF 90°00'; THEN ALONG SAID CURVE A DISTANCE OF 39.27 FEET; SAID CURVE SUSTAINED BY A CHORD WHICH BEARS N44°43'10" W 38.38 FEET TO A POINT OF TANGENCY; THEN S89°18'57" ALONG THE NORTH LINE OF SAID UNIT SEVEN A DISTANCE OF 90.00 FEET; THEN N40°07'14" W 94.89 FEET; THEN N02°12'09" E 14.00 FEET; THEN S89°18'57" E 48.00 FEET TO A POINT IN THE NORTHEASTERLY LINE OF DEL NORTE HEIGHTS ADDITION, UNIT EIGHT TO THE CITY OF HOBBS; THEN S64°11'00" W ALONG THE NORTHEASTERLY LINE OF SAID UNIT EIGHT A DISTANCE OF 38.52 FEET TO THE POINT OF BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY FROM WHICH THE RADIUS POINT BEARS S38°07'56" E 88.89 FEET; THEN ALONG SAID CURVE A DISTANCE OF 38.52 FEET; SAID CURVE SUSTAINED BY A CHORD WHICH BEARS S41°00'00" W 38.89 FEET; THEN S32°08'18" W ALONG THE NORTHEASTERLY LINE OF SAID UNIT 8 A DISTANCE OF 204.32 FEET TO THE POINT OF BEGINNING AND CONTAINING 14.54 ACRES MORE OR LESS.

### CURVE TABLE

NUMBER	RADIUS	ARC LENGTH
C1	25.00	39.27
C2	20.00	10.00
C3	20.00	47.29
C4	20.00	50.84
C5	20.00	50.84
C6	200.00	43.17
C7	25.00	39.27
C8	25.00	39.27
C9	25.00	39.27
C10	20.00	31.42
C11	177.00	169.89
C12	25.00	39.27
C13	25.00	39.27
C14	129.00	115.05
C15	25.00	39.27
C16	25.00	39.27
C17	120.00	115.05
C18	25.00	39.28
C19	25.00	39.28
C20	63.00	60.40
C21	25.00	39.27
C22	15.00	19.82
C23	40.00	95.33
C24	15.00	19.82
C25	143.00	7.15
C26	143.00	36.35
C27	143.00	35.81
C28	143.00	7.15
C29	25.00	39.27
C30	143.00	3.69
C31	171.50	8.57
C32	171.50	40.55
C33	171.50	43.99
C34	171.50	43.60
C35	171.50	37.02
C36	148.50	142.37
C37	91.50	87.72
C38	171.50	4.43
C39	200.00	5.17
C40	593.69	30.29
C41	593.69	50.25
C42	593.69	78.82
C43	593.69	78.23
C44	593.69	14.11

### NOTES:

- LOT LINE SHALL BE COMMON WALL LINE OR 5" INTERIOR SET BACK SHALL BE REQUIRED ON EACH SIDE AS MINIMUM.
- SET 1" REBAR WITH PVC CAP MARKED "JWSC PS 12641" AT ALL LOT CORNERS.
- BEARINGS SHOWN HEREON ARE MERCATOR GRID AND CONFORM TO THE NEW MEXICO COORDINATE SYSTEM "NEW MEXICO EAST ZONE" NORTH AMERICAN DATUM 1983. DISTANCES ARE SURFACE VALUES.



### CERTIFICATE OF MUNICIPAL APPROVAL

STATE OF NEW MEXICO )  
COUNTY OF LEA )

I, JUAN FLETCHER THE DULY APPOINTED AND ACTING CITY CLERK OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, DO HEREBY CERTIFY THAT THE FOREGOING PLAT OF THE DEL NORTE HEIGHTS ADDITION TO THE CITY OF HOBBS, NEW MEXICO, WAS APPROVED BY THE COMMISSION OF THE CITY OF HOBBS BY RESOLUTION NO. 4747 ON THE 14th DAY OF MAY, 2007 A.D.

*Juan Fletcher*  
JUAN FLETCHER, CITY CLERK



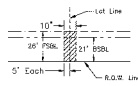
### CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD

THE PLAT, RESTRICTIONS AND DEDICATION APPROVED AND ACCEPTED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007 A.D.  
THE CITY PLANNING BOARD OF HOBBS, NEW MEXICO.

*Treo Nole*  
CHAIRMAN

### LEGEND

- ESBL: Building Setback Line 27" to 5' B.F. ROW, AND NO REAR ACCESS TO B.F. ROW, WITH REAR ACCESS
- FBL: Fence Setback Line 36" to 5' B.F. ROW, AND NO REAR ACCESS TO B.F. ROW, WITH REAR ACCESS
- DL: Dotted Casements



Typical Utility Easement  
\* Utility Easement extends to Fence Set Back Line  
This distance is 5' for Lots with rear access.

SUBDIVIDED AS THE SAME APPEARS HEREON, WITH ALL RIGHTS-OF-WAY AS SHOWN BEING DEDICATED TO THE PUBLIC, COMPRISING UNIT TEN OF DEL NORTE HEIGHTS, AND ADDITION TO THE CITY OF HOBBS, WITH THE PRIOR CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER AND PROPRIETORS THEREOF. NOTICE IS HEREBY GIVEN THAT THESE ARE BEING FILED IN THE OFFICE OF THE COUNTY CLERK OF LEA COUNTY, NEW MEXICO, CERTAIN RESTRICTIVE COVENANTS APPLICABLE TO THE ABOVE DESCRIBED PROPERTY, WHICH SAID COVENANTS ARE RECORDED ON PAGE \_\_\_\_\_ OF BOOK \_\_\_\_\_ MISCELLANEOUS RECORDS OF SAID COUNTY.

DEL NORTE HEIGHTS, INC.  
*Ben Alexander*  
BEN ALEXANDER, PRESIDENT  
*Madeline Mann*  
MADIELINE MANN, SECRETARY

### ACKNOWLEDGEMENT

STATE OF NEW MEXICO )  
COUNTY OF LEA )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007, BEFORE ME PERSONALLY APPEARED BEN ALEXANDER AND MADIELINE MANN, PRESIDENT AND SECRETARY, RESPECTIVELY, OF DEL NORTE HEIGHTS, INC., TO ME KNOWN TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.



*Shannon L. Rice*  
SHANNON L. RICE  
COUNTY CLERK

### SURVEYORS CERTIFICATE

I, GARY G. EIDSON, A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR CERTIFY THAT I CONDUCTED AND AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; AND THAT THIS SURVEY AND PLAT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

IN WITNESS WHEREOF I HEREUNTO SET HAND AND AFFIX MY OFFICIAL SEAL THIS 26th DAY OF April, 2007, A.D.

*Gary Eidson*  
GARY G. EIDSON, N.M.L.S. 12841



STATE OF NEW MEXICO  
COUNTY OF LEA  
FILED

MAY 09 2007  
Shannon L. Rice  
COUNTY CLERK  
11

**Subject Street**



W El Centro

W Chico Dr

W Camino Delarco

Fiesta Dr

Google Earth

© 2017 Google

400 ft



22

**October 17, 2017  
Planning Board Regular Meeting**

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



Gantt

Dalmont

pper Ave

N Fowler St

N McKinley St

E Glorietta Dr

E Clearfork Dr

Google Earth

© 2017 Google

400 ft



24

W Coal Ave

39

3101

3112

3106

3100

3018

3014

3006

3000

106

101

3113

3107

3101

3019

3013

3007

3001

3112

3106

3100

3018

3012

3006

206

2910

3113

3107

3101

3019

3013

3007

220

2915

3119

3106

3100

3018

3012

3006

3006

300

304

308

402

3023

3021

3019

3015

3013

3007

3005

3003

3001

290



**October 17, 2017  
Planning Board Regular Meeting**

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

61

Del Norte Parkway

N Grimes St

N Mohawk St

N Fowler St

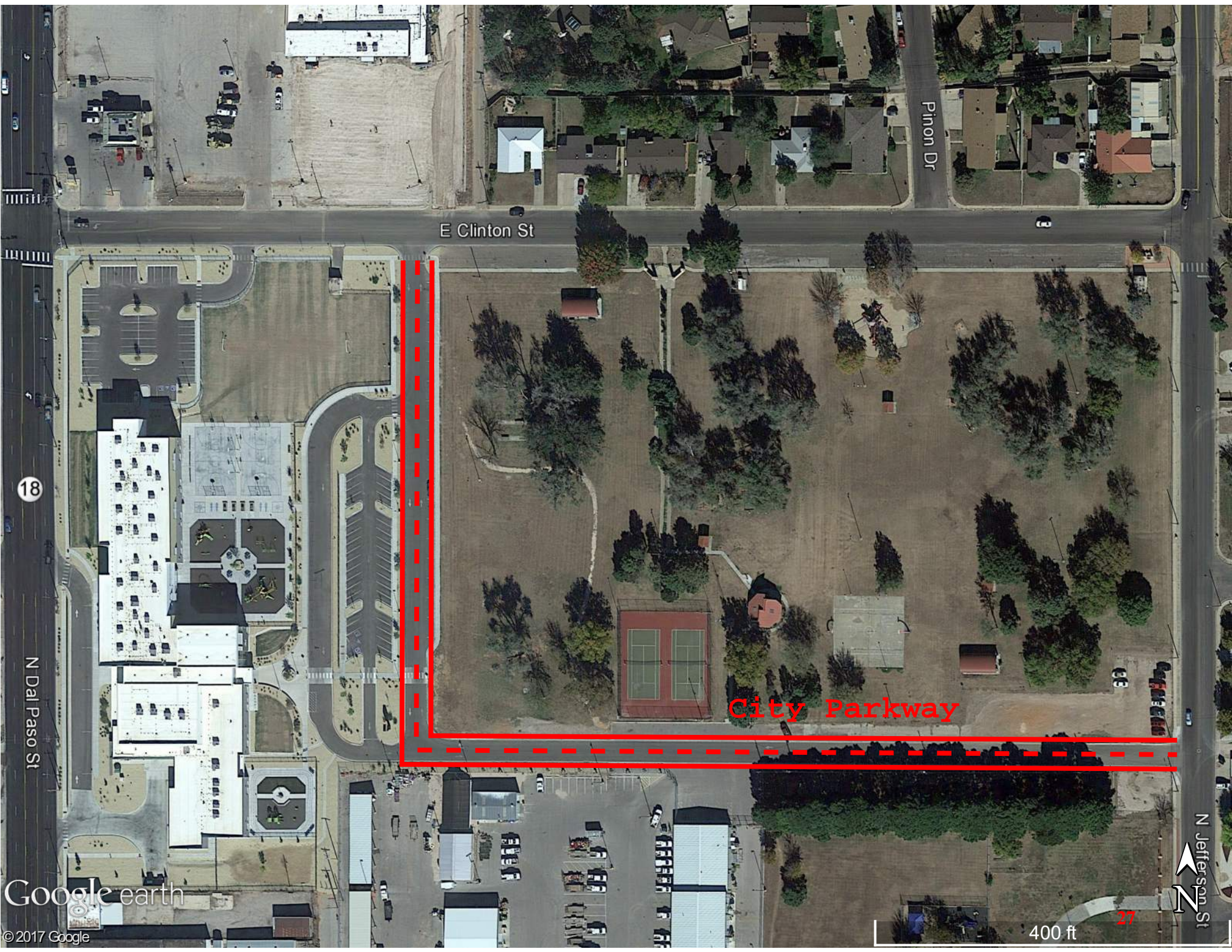
Google earth

© 2017 Google

1000 ft

26





E Clinton St

Pinon Dr

18

N Dal Paso St

N Jefferson St

City Parkway

Google earth

© 2017 Google

400 ft

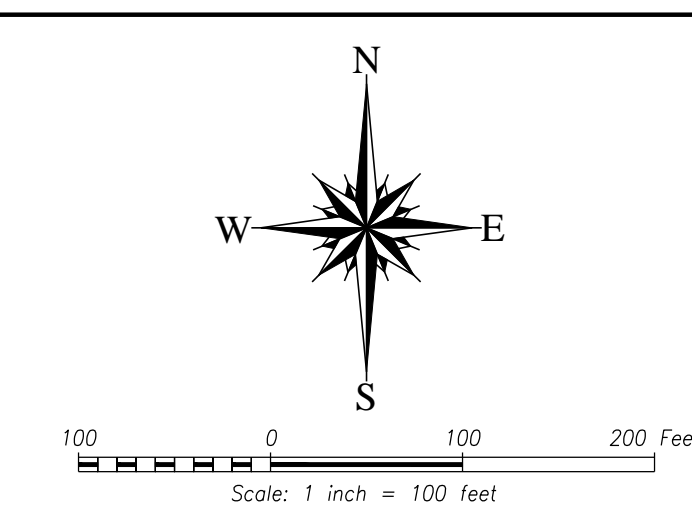
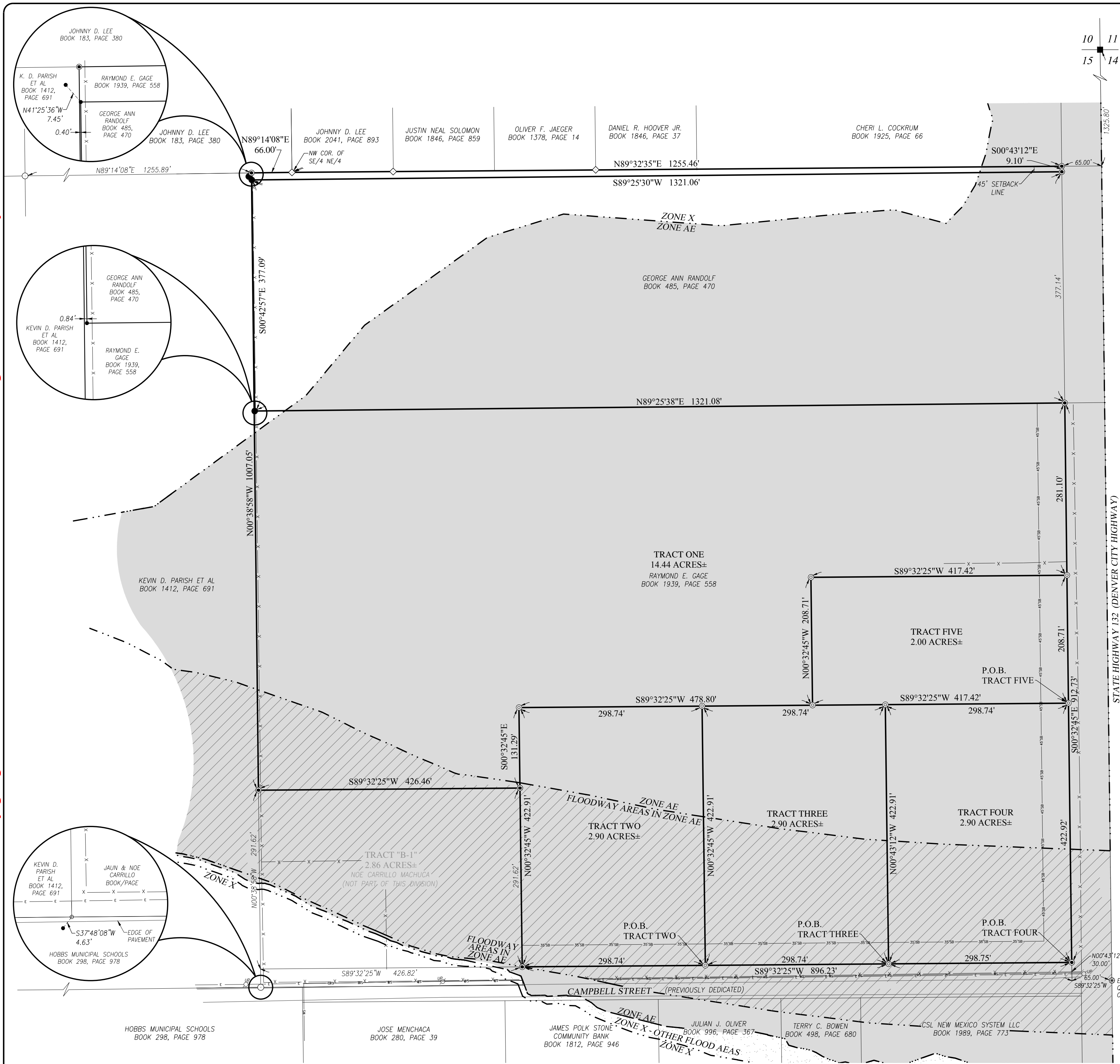
27

**October 17, 2017  
Planning Board Regular Meeting**

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

PRELIMINARY 10/11/17

This document shall not be recorded for any purpose and shall not be used or relied upon as a final survey document.



**GAGE SUBDIVISION #2**  
 A TYPE THREE "A" DIVISION OF A TRACT OF LAND LOCATED IN THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO, BEING DIVIDED INTO THE TRACTS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**OWNER'S STATEMENT, DEDICATION AND AFFIDAVIT:**  
 THE FOREGOING SUBDIVISION OF A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED BY WARRANTY DEED RECORDED IN BOOK 1939, PAGE 558, OF THE OFFICIAL RECORDS OF LEA COUNTY, NEW MEXICO, SITUATED IN THE SOUTH HALF OF SECTION 15, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO, ALSO KNOWN AS TRACT A, AS SHOWN ON THAT CLAIM OF EXEMPTION - LEA COUNTY, FILED JUNE 9, 2017, IN BOOK 2, PAGE 459, LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO, INTO THE "GAGE SUBDIVISION #2", BEING DESCRIBED AS FOLLOWS:

**NOTE:**  
 1) BEARINGS SHOWN HEREON ARE MERCATOR GRID AND CONFORM TO THE NEW MEXICO COORDINATE SYSTEM.  
 2) WITH RESPECT TO THE FLOOD INSURANCE RATE MAP FOR LEA COUNTY, NEW MEXICO AND INCORPORATED AREAS, PANEL 2102 OF 2150, MAP No. 35025C2102D, EFFECTIVE DATE, DECEMBER 18, 2008, THIS PROPERTY IS SITUATED IN THE FOLLOWING ZONES:  
 ZONE AE, DEFINED AS BASE FLOOD ELEVATIONS DETERMINED.  
 ZONE AF FLOODWAY AREAS: THE FLOODWAY IS THE CHANNEL OF STREAM PLUS ANY ADJACENT FLOODPLAIN AREAS THAT MUST BE KEPT FREE OF THE ENCROACHMENT SO THAT THE 1% ANNUAL CHANCE FLOOD CAN BE CARRIED WITHOUT SUBSTANTIAL INCREASES IN FLOOD HEIGHTS.  
 ZONE X OTHER FLOOD AREAS: DEFINED AS AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM ANNUAL 1% CHANCE FLOOD.  
 ZONE X OTHER FLOOD AREAS: DEFINED AS AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN. (GRAPHICAL LOCATION BASED ON FIRM, FLOOD INSURANCE RATE MAP, BOUNDARIES ARE APPROXIMATE).

THIS PROPERTY LIES WITHIN THE PLANNING AND ZONING JURISDICTION OF LEA COUNTY AND THE CITY OF HOBBS EXTRATERRITORIAL JURISDICTION. SAID PROPERTY IS BEING SUBDIVIDED WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER THEREOF SURVEYED AND SUBDIVIDED ACCORDING TO THE TRACTS AS THEY APPEAR HEREON, AS A CONDITION OF ACCEPTANCE, THE SUBDIVIDER AGREES TO PROVIDE ACCESS TO THE SUBDIVISION IN FULL COMPLIANCE WITH THE REQUIREMENTS OF THE LEA COUNTY SUBDIVISION REGULATIONS AND TO SELL OR LEASE PARCELS ONLY IN ACCORDANCE THEREWITH. SAID PROPERTY WILL BE SUBDIVIDED IN ACCORDANCE WITH THIS SUBDIVISION PLAT.

RAYMOND E. GAGE, OWNER  
**ACKNOWLEDGMENT:**  
 STATE OF NEW MEXICO  
 COUNTY OF LEA  
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 A.D., BY RAYMOND E. GAGE.

NOTARY PUBLIC  
 MY COMMISSION EXPIRES \_\_\_\_\_

**CERTIFICATE OF APPROVAL BY THE LEA COUNTY PLANNING & ZONING BOARD:**  
 BE IT KNOWN THAT THE PLAT OF GAGE SUBDIVISION #2, SITUATED IN SECTION 15, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO, CONSISTING OF LAND SUBDIVIDED AS PROPOSED IN LEA COUNTY, NEW MEXICO, WAS SUBMITTED TO THE LEA COUNTY PLANNING AND ZONING BOARD, ASSEMBLED AT A MEETING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 A.D., AND THE SUBDIVISION AS SHOWN IN THE ATTACHED PLAT WAS THEREBY APPROVED AND ACCEPTED BY A MAJORITY OF THE SAID BOARD.

KALLIE WINDSOR, CHAIRMAN  
 ATTEST: KEITH MANES, COUNTY CLERK

**ACKNOWLEDGMENT:**  
 STATE OF NEW MEXICO  
 COUNTY OF LEA  
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 A.D., BY KALLIE WINDSOR AND KEITH MANES.

NOTARY PUBLIC  
 MY COMMISSION EXPIRES \_\_\_\_\_

**CERTIFICATE OF MUNICIPAL APPROVAL BY RESOLUTION:**  
 STATE OF NEW MEXICO  
 COUNTY OF LEA  
 I, JAN FLETCHER, THE DULY APPOINTED AND ACTING CITY CLERK OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, DO HEREBY CERTIFY THAT THE FOREGOING PLAT OF "GAGE SUBDIVISION #2," WAS APPROVED BY THE COMMISSION OF THE CITY OF HOBBS BY RESOLUTION NO. \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 A.D.

JAN FLETCHER, CITY CLERK

**LEGEND:**  
 ● - DENOTES SET 1/2" STEEL ROD W/CAP MARKED "JWSC P.S. 12641"  
 ○ - DENOTES FOUND 1/2" STEEL ROD W/CAP MARKED "JWSC P.S. 12641"  
 ■ - DENOTES FOUND SPIKE NAIL IN PAVEMENT  
 ⊙ - DENOTES FOUND SPINDLE  
 ○ - DENOTES FOUND STEEL ROD W/2" ALUM. ALUM. MARKED "W.M. HICKS N.M.P.S. 12348"  
 ● - DENOTES FOUND 1/2" STEEL ROD W/CAP MARKED "PS 7977"  
 ◇ - DENOTES FOUND 3/8" STEEL ROD  
 CALC. - DENOTES CALCULATED CORNER  
 --- - DENOTES ELECTRIC LINE  
 UP/3 - DENOTES UTILITY POLE  
 X - DENOTES FENCE LINE  
 - - - - - DENOTES WINDSTREAM LINE  
 - - - - - DENOTES 35 FT. BUILDING SETBACK LINE  
 - - - - - DENOTES 45 FT. BUILDING SETBACK LINE

**FLOOD INSURANCE RATE MAP LEGEND:**  
 - - - - - DENOTES ZONE AE - BASE FLOOD ELEVATIONS DETERMINED  
 - - - - - DENOTES FLOODWAY AREAS IN ZONE AE  
 - - - - - DENOTES ZONE X - "OTHER FLOOD AREAS"  
 - - - - - DENOTES ZONE X - AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN

**LEGEND:**  
 ● - DENOTES SET 1/2" STEEL ROD W/CAP MARKED "JWSC P.S. 12641"  
 ○ - DENOTES FOUND 1/2" STEEL ROD W/CAP MARKED "JWSC P.S. 12641"  
 ■ - DENOTES FOUND SPIKE NAIL IN PAVEMENT  
 ⊙ - DENOTES FOUND SPINDLE  
 ○ - DENOTES FOUND STEEL ROD W/2" ALUM. ALUM. MARKED "W.M. HICKS N.M.P.S. 12348"  
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 - - - - - DENOTES 45 FT. BUILDING SETBACK LINE

**FLOOD INSURANCE RATE MAP LEGEND:**  
 - - - - - DENOTES ZONE AE - BASE FLOOD ELEVATIONS DETERMINED  
 - - - - - DENOTES FLOODWAY AREAS IN ZONE AE  
 - - - - - DENOTES ZONE X - "OTHER FLOOD AREAS"  
 - - - - - DENOTES ZONE X - AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN

**CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD:**  
 THE PLAT, RESTRICTIONS AND DEDICATION REVIEWED AND APPROVED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 A.D. BY THE CITY PLANNING BOARD OF HOBBS, NEW MEXICO.

CHAIRMAN: WILLIAM M. HICKS, III

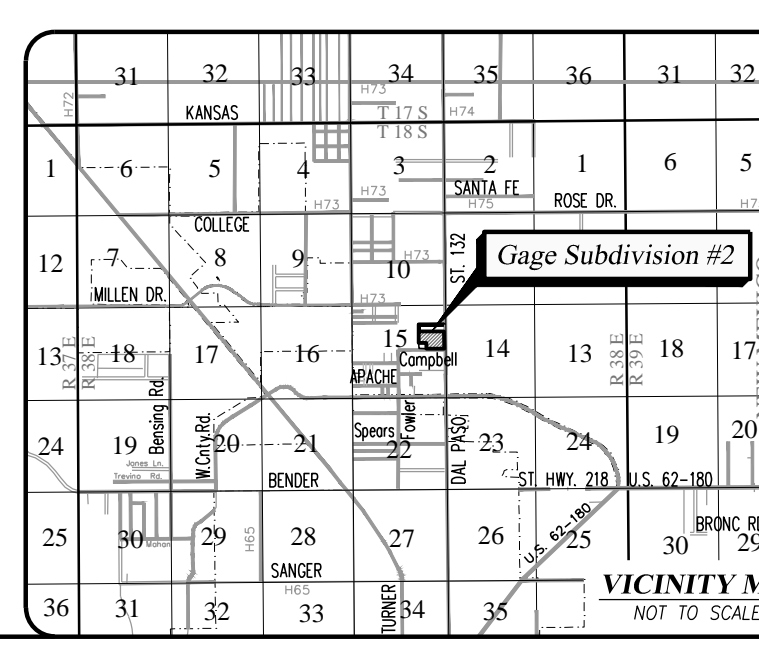
**ACKNOWLEDGMENT:**  
 STATE OF NEW MEXICO  
 COUNTY OF LEA  
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 A.D., BY WILLIAM M. HICKS.

NOTARY PUBLIC  
 MY COMMISSION EXPIRES \_\_\_\_\_

**SURVEYOR'S CERTIFICATE:**  
 I, GARY G. EIDSON, NEW MEXICO PROFESSIONAL SURVEYOR No. 12641, DO HEREBY CERTIFY THAT THIS SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



GARY G. EIDSON  
 DATE: \_\_\_\_\_  
 PROVIDING SURVEYING SERVICES SINCE 1946  
**JOHN WEST SURVEYING COMPANY**  
 412 N. DAL PASO • HOBBS, N.M. 88240  
 (575) 393-3117 www.jwsc.biz  
 TBLPS# 10021000



©Dennis Summary Subdivision 2017/17/10663  
 Gage Subdivision #2 515 1185 R38E City of Hobbs  
 JWSC File No.: E-3497B CAD Date: 10/11/17  
 Survey Date: 6/26/17

STATE OF NEW MEXICO  
 COUNTY OF LEA  
 FILED

and recorded in: \_\_\_\_\_  
 Cabinet \_\_\_\_\_ Slide \_\_\_\_\_

**October 17, 2017  
Planning Board Regular Meeting**

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

**Handout**

**At**

**Meeting**

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



- ★ Favorites
  - Desktop
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  - OneDrive
  - Recent Places
- Libraries
- Computer
  - OS (C:)
  - Drive (D:)
  - krobinson (\\192)
  - engineering (\\Ei)
  - DRT (Z:)
  - A360 Drive
- Network

Name	Date modified	Type	Size
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Carrolton TX.pdf	3/29/2017 11:47 A...	PDF Document	1,321 KB
Chapter 12.pdf	4/13/2017 2:38 PM	PDF Document	85 KB
Chapter_25.pdf	4/13/2017 2:52 PM	PDF Document	258 KB
Cleburne TX.pdf	3/29/2017 11:52 A...	PDF Document	1,214 KB
Comprehensive_Landscape_Guidelines_a...	4/13/2017 2:10 PM	PDF Document	2,149 KB
Davenport IA.pdf	6/6/2017 7:27 AM	PDF Document	5,311 KB
LC Ordinance #86 Right of Way.pdf	5/31/2017 1:48 PM	PDF Document	1,256 KB
LTAPFS10-Rightofway.pdf	4/13/2017 2:30 PM	PDF Document	464 KB
McKinney TX Right of Way construction ...	3/29/2017 11:53 A...	PDF Document	60 KB
Rights of Way - Landowner's Guide.pdf	4/13/2017 2:45 PM	PDF Document	393 KB
rowtable.pdf	4/13/2017 3:00 PM	PDF Document	175 KB
SDOT Street Use Frequently Asked Questi...	4/13/2017 2:40 PM	PDF Document	187 KB
Township of Ohio.PDF	3/29/2017 11:49 A...	PDF Document	818 KB
Williamstown Michigan.pdf	3/29/2017 11:50 A...	PDF Document	754 KB

## Proposed Ordinance

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

### Chapter 12.20 RIGHT OF WAY MANAGEMENT REGULATIONS

- 12.20.010 Title.
- 12.20.020 Legislative findings.
- 12.20.030 Purposes.
- 12.20.040 Rules of Construction.
- 12.20.050 Definitions.
- 12.20.060 Authority.
- 12.20.070 Reservation of rights; police power.
- 12.20.080 Authorization required.
- 12.20.090 Construction standards.
- 12.20.100 Placement of facilities.
- 12.20.110 Relocation of facilities.
- 12.20.120 Restoration.
- 12.20.130 Work permits.
- 12.20.140 Business license.
- 12.20.150 Reimbursement of costs.
- 12.20.160 Administration and permitting to use space within the right of way.
- 12.20.170 Reserved.
- 12.20.180 Reports and records.
- 12.20.190 Bond of letter of credit.
- 12.20.200 Insurance.
- 12.20.210 Enforcement.
- 12.20.220 Indemnification.
- 12.20.230 Severability.

12.20.010 Title.

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

12.20.020 Legislative findings.

The City Commission hereby finds and declares:

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

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

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

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

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

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

12.20.030 Purposes.

The city commission adopts this chapter to better:

A. Manage a limited resource to the long term benefit of the public;

B. Recover and allocate the costs of managing the public rights of way;

C. Minimize inconvenience to the public occasioned by the emplacement and maintenance of facilities in the public rights of way;

D. Prevent premature exhaustion of capacity in the public rights of way to accommodate communications and other services; and

E. Promote competition in the provision of communications service in the city and ensure that citizens have a wide variety of services available to them by establishing clear and consistent rules by which providers may occupy the public rights of way.

#### 12.20.040 Rules of construction.

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

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

C. Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

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

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

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

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

#### 12.20.050 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

acquired, may be used for the purpose of constructing, operating, and maintaining a facility.

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

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

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

#### 12.20.060 Authority.

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

#### 12.20.070 Reservation of rights; police power

All rights and privileges granted in a franchise agreement are subject to the police powers of the city and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate a grantee and the construction, operation and maintenance of the grantee's system, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the city shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right of way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

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

#### 12.20.080 Authorization required.

- A. No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property without first obtaining from the city the necessary authorization required under local, state or federal law.

- B. An owner or operator of facilities may be required to hold different authorizations for

its use of the public rights of way to provide different services. For example, and without limitation, the owner or operator of facilities that provides both cable service and wireless internet service must obtain both a franchise agreement and any authorization needed to provide wireless internet service.

#### 12.20.090 Construction standards.

- A. Compliance with Regulations; Safety Practices: Construction, operation, maintenance, and repair of facilities shall be in accordance with all applicable law and regulation, and with sound industry practice. All safety practices required by law shall be used during construction, maintenance, and repair of facilities.
- B. Excavations: No holder of any work permit for any facility shall dig, trench, or otherwise excavate in the public rights of way without complying with the provisions of the New Mexico one call system.
- C. Prevention Of Failures And Accidents: An owner or operator shall at all times employ at least ordinary care and shall install and maintain using commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.
- D. Most Stringent Standards Apply: In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards).
- E. Construction Schedule: Every owner or operator shall, at least forty five (45) days prior to commencing significant construction activity (including a significant rebuild, upgrade, or repair to existing facilities)—emergencies excepted - upon, across, beneath, or over any public right of way in the city or other city property, strive to provide to the city in writing the date on which the owner or operator anticipates it will begin construction and the approximate length of time required for such construction. This timeframe represents a preference only.
- F. Coordination Of Construction With City: Prior to the erection, construction, upgrade, or rebuild of any facilities in the public right of way, the owner or operator of such facilities shall first submit to the city for written approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required by the city, together with maps and plans indicating the proposed location of all such facilities. The owner or operator shall provide the best information it has in such reasonable format as may be specified by the city engineer for the city's planning function. No such erection or construction shall be commenced by any person until approval therefor has been received from the city. At the time of such approval, the city shall inform the grantee whether the reports and other information described by subsection 12.20.180(C)(1) of this chapter shall be required with respect to the approved construction.
- G. Coordination of Construction With Third Parties: Developers or other parties planning the

construction or opening of streets in the city shall provide reasonable notice to the city and to the owners or operators of facilities subject to this chapter so that joint trenching and joint emplacement of facilities may be conducted wherever practicable. Such owners and operators shall similarly provide notice to each other and to any relevant developers, for the same purpose. The city shall maintain a list of owners and operators of facilities subject to this chapter for reference by other parties.

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

#### 12.20.100 Placement of facilities.

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



facilities and space limitations or will likely be used by at least four other entities including the city for running fiber optic cable. Such company shall then certify to the city engineer the additional cost of said installation per linear foot which the city shall pay. Other future users of the surplus duct will be charged an upfront, one-time fee to locate in said duct to recover a proportional share of the city's upfront and carrying costs as calculated by the city engineer. This fee will be in addition to, and not in lieu of, any recurring, or one-time fee charged by city for location within the right of way.

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

reconstruction of the roadway.

#### 12.20.110 Relocation of facilities.

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

#### 12.20.120 Restoration.

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

#### 12.20.130 Excavation permits.

- A. Unless otherwise provided by law, franchise, city authorization or emergency circumstances, no person shall install, erect, hang, lay, excavate, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right of way in the city, or enter into the public rights of way to work on a facility, without first

obtaining an excavation permit therefor from the city. Notwithstanding the foregoing, under no provision in this chapter shall any excavation permit or other approval from the city be required to install, construct, repair, maintain or replace any service drop.

- B. Denial. The city engineer may deny an excavation permit for failure to meet the requirements of this chapter, failure to meet monetary obligations to the city or it is necessary to protect the health, safety and welfare or the right of way and its current use. Failure to meet the requirements includes, but is not limited to, striking or damaging another facility within the right of way.
- C. Large Capital Programs. The city engineer may develop and institute a special streamlined permit and inspection process for large capital programs by mutual agreement with the applicant or applicants in the case of a joint project after receiving authorizing from the city manager.
- D. The city engineer may issue a stop work order to anyone failing to secure the proper permit or for not following the ordinances or city standards.

#### 12.20.140 Business license.

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

#### 12.20.150 Reimbursement of costs.

All grantees or permittees will reimburse the city for its internal and out of pocket costs, including, but not limited to, attorney and consultant fees actually and reasonably incurred by the city in connection with an application for an initial franchise or permit under this chapter as determined by the city after it takes action on the application. Any application fee submitted with the application will be credited against this amount. The applicant will remit to the city payment for such costs within thirty (30) days of its receipt of the city's invoice.

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

The city engineer shall oversee the following administrative functions:

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

The city engineer shall oversee permitting as follows:

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

Authority to issue permit; form of permit and term.

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

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

include, at a minimum, the following information:

- (1) The name, address and telephone number of the applicant.
- (2) The name, address and telephone number of a responsible person whom the city may notify or contact at any time or in case of emergency concerning the equipment or utility system.
- (3) A statement of the purpose for the equipment or system proposed for installation in the public right-of-way, the type of service it will provide, and the intended customers\person which it will serve.
- (4) Any additional information which the city engineer in his or her discretion may require.

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

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

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

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

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

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

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

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

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

- (1) The permittee's failure to observe or comply with any of the following:
- (2) The permittee's use or prior use of public right-of-way has been conducted in full and timely compliance with all laws and regulations applicable thereto, and the permittee has complied fully and in a timely manner with the requirements of any previously issued permit, and with the orders or instructions of city officials issued pursuant to this chapter; or
- (3) The permittee is current in the payment of permit fees, if applicable, and the permittee has made such payments fully and when due.
- (4) The permittee's commission of any of the following acts:
  - (a) The permittee has made a misleading statement or a material

misrepresentation in connection with an application for initial issuance or renewal of a permit, in connection with its registration of its use of the public right-of-way or in connection with its use of public right-of-way; or

- (b) The permittee has transferred its equipment, its business, or its permit to another person or has made a change in use of its equipment, without giving the city notice thereof and obtaining city consent thereto; or
- (c) Striking or damaging another facility within the right of way.
- (d) The subject right of way is highly congested and a reasonable likelihood exists in the city engineer's opinion that the space is needed in the future for a different service to a broader segment of the population.

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

- (1) The permittee's continued use of the public right-of-way will unduly burden the city or the public in its use of that property;
- (2) The public right-of-way for which the permit was issued will be required for municipal purposes during the term of the permit;
- (3) The permittee's equipment at a particular location will interfere with:
  - (a) A present or future city use of the right-of-way;
  - (b) A public improvement undertaken or to be undertaken by the city;
  - (c) An economic development project in which the city has an interest or investment;  
or
  - (d) The public's safety or convenience in using the right-of-way for ordinary travel; or
  - (e) The public health, safety and welfare requires it.

Notice of intent not to renew a permit for use of the public right-of-way shall be given to the permittee, either by certified mail, return receipt requested, or by actual service or delivery thereof, which notice shall be given not more than 90 days after submission of the renewal application. Notice of intent to revoke or cancel a permit shall also be given to the permittee in the manner provided above. The notice shall set forth the grounds for refusal to issue or renew or for revocation or cancellation and shall inform the applicant or permittee of the right to an appeal hearing upon request. Such request for hearing shall be filed in writing with the Planning **47**

Department, and the hearing shall be scheduled and held by the Planning Board at their next regularly scheduled public meeting. At the hearing, the applicant or permittee shall have the burden of establishing that the grounds asserted in the notice do not exist. Upon the effective date of revocation or cancellation as provided in the city engineer's notice thereof, or upon the effective date specified in the city engineer's written decision upon the permittee's appeal, the permittee shall be required to cease its use and occupancy of the right-of-way or to remove or relocate its equipment therefrom, as provided in the notice or decision. Equipment not removed or relocated from the right-of-way as required in such notice or order shall be considered a nuisance and may be removed, relocated, or taken possession of by the city, at the permittee's expense. Except in emergency circumstances, the requirement to relocate, remove, or cease use of equipment shall be suspended during the pendency of any appeal taken by a permittee.

If a permit is refused or cancelled upon the basis that the subject city property is or will be required for municipal purposes, the applicant or permittee shall not be entitled to an appeal. However, in that event, the permittee shall be entitled to a partial refund of the annual fee already paid, such refund to be computed on the basis of 1/12 of the required annual fee multiplied by the number of unexpired whole months of the year remaining in the permit term. In all other cases where a permit is not issued or renewed or is revoked, no refund of any portion of the required annual fee shall be paid to the permittee.

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

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

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

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

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



A franchisee or permittee shall not change the use of its equipment without giving the city 90 days' prior written notice of such proposed change in use. In such notice, the franchisee or permittee shall clearly and completely set forth the proposed change in use of equipment, how it would be accomplished, including any excavations required to accomplish such change, and projections as to the future maintenance implications of such change in use. Any proposed change in use of a franchisee's or permittee's equipment shall require the prior approval of the city engineer. Such approval may be withheld if the city engineer determines that the proposed use of the equipment at that location would be incompatible with or would likely damage or endanger other uses of the right-of-way, would involve a higher level of maintenance activities than the present use, would involve more street excavation or greater traffic disruption than the present use, or would be otherwise inappropriate.

I. Amendment to permit.

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

J. Duties of permittee.

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

12.20.170 Reserved.

12.20.180 Reports and records.

Upon request, the city shall have the right to inspect and analyze at any time during normal business hours at the nearest office of an owner or operator of facilities, or, if such office is not in the city, then at such other location in the city as the city may reasonably designate, all books, receipts, maps, records, codes, programs, and disks or other storage media and other like material reasonably appropriate in order to monitor compliance with the terms of this chapter or applicable law. This includes not only the books and records directly relevant to enforcement of this chapter or the owner's or operator's franchise agreement that are held by the operator, but any books and

records held by an affiliate, or any contractor, subcontractor or any person holding any form of management contract for the facilities in the public rights of way to the extent such books or records relate to the facilities. An owner or operator is responsible for collecting the information and producing it at a location as specified above. The city shall provide the owner or operator with advance notice stating the types of records sought to be reviewed and the reason for such review.

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

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

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

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

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

Reserved.

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

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

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

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

#### 12.20.190 Bond or letter of credit.

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

#### 12.20.200 Insurance.

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

#### 12.20.210 Enforcement.

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

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

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

#### Termination On Account Of Certain Assignments Or Appointments:

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

Such assignment, receivership or trusteeship has been vacated; or

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

the terms and conditions of this chapter and any applicable agreement.

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

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

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

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

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

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

#### 12.30.220 Indemnification.

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

#### 12.20.230 Severability.

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

further action by the city and shall thereafter be binding on owners and operators.

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

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

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