

AN ORDINANCE **96508**

RESCINDING ORDINANCE NO. 88489; AMENDING ARTICLE IV, DIVISION 8, SECTION 29-190, ET SEQ, OF THE CITY CODE CURRENTLY ENTITLED "FIBEROPTIC CONDUIT AND MINOR ENCROACHMENT LICENSE", RENAMING SAID DIVISION 8 TO READ "LICENSES TO USE PUBLIC RIGHT OF WAY"; ESTABLISHING NEW POLICIES, PROCEDURES AND FEES RELATED TO USING PUBLIC RIGHT OF WAY; ESTABLISHING A TEN (10) YEAR TERM FOR ANY LICENSE AGREEMENT; ESTABLISHING A \$500.00 PROCESSING FEE FOR A LICENSE; AUTHORIZING STAFF TO NEGOTIATE A LICENSE FEE FOR EACH PIPELINE IN PUBLIC RIGHT OF WAY; ESTABLISHING A FEE FOR EACH NON-PIPELINE COMMERCIAL USE OF PUBLIC RIGHT OF WAY FOR THE GREATER OF \$5,000.00, 10 PERCENT PER YEAR OF THE AVERAGE BEXAR APPRAISAL DISTRICT VALUES IN THE VICINITY FOR SURFACE RIGHTS, 7.5 PERCENT PER YEAR OF THE AVERAGE BEXAR APPRAISAL DISTRICT VALUES IN THE VICINITY FOR AIR RIGHTS, OR 5 PERCENT PER YEAR FOR THE AVERAGE BEXAR APPRAISAL DISTRICT VALUES IN THE VICINITY OF SUBSURFACE RIGHTS; AND PROVIDING FOR THE REDUCTION OR WAIVER OF LICENSE FEES FOR SPECIFIC USES OF PUBLIC RIGHT OF WAY.

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WHEREAS, Ordinance No. 88489, passed and approved on September 17, 1998, standardized the fees charged by the City for Minor Encroachment Licenses; and

WHEREAS, it is necessary to rename Article IV, Division 8, of Chapter 29 of the City Code currently entitled "FIBEROPTIC CONDUIT AND MINOR ENCROACHMENT LICENSE", to read "LICENSES TO USE PUBLIC RIGHT OF WAY" and to amend Article IV, Division 8, Section 29-190 entitled "Minor encroachment license." to read "Other licenses to use Public Right of Way."; and

WHEREAS, use of Public Right of Way under this policy is defined as a specific, limited use of Public Right of Way and does not include use by certified telecommunications providers (CTP's) for the provision of local exchange service or by a cable television provider which is authorized to run its facilities over under, along and across City streets pursuant to a franchise agreement; and

WHEREAS, this action does not require a license to use Public Right of Way for the landscaping and maintenance of Public Right of Way which is governed by Section 29-9 of the City Code; and

WHEREAS, this action is not intended to limit or modify the City's franchising authority, which is granted pursuant to Article XI of the City Charter, and

WHEREAS, this action excludes licensing of public pay telephones; and

WHEREAS, this action also excludes licensing of bandit signs or other temporary directional signs; and

WHEREAS, this ordinance will rescind Ordinance No. 88489 approved on September 17, 1998 and establish new policies, procedures and fees charged by the City for use of Public Right of Way; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Ordinance No. 88489, which was passed and approved on September 17, 1998, is hereby rescinded.

SECTION 2. Article IV, Division 8, of Chapter 29 of the City Code currently entitled "FIBEROPTIC CONDUIT AND MINOR ENCROACHMENT LICENSE", is amended and changed to read "LICENSES TO USE PUBLIC RIGHT OF WAY."

SECTION 3. Article IV, Division 8, Section 29-190 of the City Code entitled "Minor encroachment license." is hereby amended to read "Other licenses to use Public Right of Way."

SECTION 4. The City Code of the City of San Antonio, Texas, Chapter 29, Article IV, Division 8, as amended in **SECTION 3.**, Section 29-190 is hereby amended by adding the following definition as an introductory paragraph, prior to subsection (a), said additional language identified by underline:

The term **Public Right of Way**, as used herein is intended to include, but not be limited to, any public street, traffic easement, road, lane, path, place, alley, sidewalk, median, boulevard, parkway, or drive, including drainage, whether used by easement or owned in fee by the City, whether improved or unimproved.

SECTION 5. Section 29-190 of the San Antonio City Code is hereby further amended by adding the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text of said Section and respective subsection as follows:

- (a) Each ~~minor encroachment~~ license shall be for a term of ten (10) years.
- (b) The non-refundable processing fee to be paid by a Petitioner for each ~~minor encroachment~~ license to use Public Right of Way shall be five hundred dollars (\$500.00).
- (c) ~~The fee for each residential minor encroachment license shall be two thousand five hundred dollars (\$2,500.00).~~
- (d) ~~The fee for each water or sewer pipeline minor encroachment license shall be five thousand dollars (\$5,000.00).~~
- (e) ~~The fee for each Commercial non oil or non gas pipeline equal to or less than six and five eights (6 5/8) inches in diameter.~~

- ~~(f) Staff is hereby authorized to negotiate a minor encroachment license fee for each oil and gas pipeline and commercial non-oil or non-gas pipelines greater than six and five eighths (6 5/8) inches in diameter.~~
- ~~(c) City Staff is authorized to negotiate the license fee for any pipeline in Public Right of Way.~~
- ~~(g) (d) Except as provided below, the license fee for each non-pipeline minor encroachment license use of Public Right of Way shall be the greater of five thousand dollars (\$5,000.00), or ten percent (10%) per year of the fee-land-value average of Bexar County Appraisal District assessed values in the vicinity for surface rights, seven and one-half percent (7.5%) per year of the fee-land-value average of Bexar County Appraisal District assessed values in the vicinity for air rights or five percent (5%) per year of fee-land-value the average of Bexar County Appraisal District assessed values in the vicinity for sub-surface rights.~~
- ~~(e) City Staff may recommend to City Council the reduction or waiver of the license fee if the Petitioner for a license for use of Public Right of Way requests to 1) use sub-surface space under a Public Right of Way for an existing basement or utility vault; 2) make improvements specifically beneficial to the public; 3) preserve, protect, or enhance historically, culturally, architecturally, or archaeologically significant sites or structures; or 4) make improvements that would qualify for reduction or waiver of fees in the City's Incentive Toolkit, or its equivalent.~~
- ~~(f) City Staff shall collect a discounted license fee that is equal to approximately fifty percent (50%) of the current license fee for any unauthorized use of Public Right of Way existing prior to September 1998 (when the current license fee structure was authorized by City Council).~~
- ~~(g) City Staff shall prepare, and Petitioner shall execute a Letter of Agreement by which Petitioner agrees to the closure fee and all conditions imposed by City departments and utility agencies.~~
- ~~(h) Upon the submission of all required documents and tender of fees by Petitioner, City Staff shall present the request for consideration during a regular meeting of the Planning Commission, unless the request is a renewal of an existing license agreement, and at a regular City Council meeting. In cases of renewal, Council action shall be required.~~
- ~~(i) A Memorandum of License Agreement shall be recorded by City Staff in the Official Public Records of Real Property of Bexar County, Texas, at the sole cost and expense of the Petitioner.~~
- ~~(j) All construction, excavation and placement of utilities, or other facilities, in Public Right of Way is subject to regulation under the City's Public Right of Way Management Policy as codified in the City Code, as may be amended from time to time, or its successor ordinance.~~

SECTION 6. The fees indicated in (b) and (d) in **SECTION 5.** shall be deposited in Fund No. 11-000000 (General Fund) in Index Code 012732 entitled "License Agreements - Use of ROW".

SECTION 7. A single \$5,000.00 Public Right of Way License Fee to be charged for a License to use a Public Right of Way, regardless of commercial or residential designation, established in **SECTION 2.** of Ordinance No. 96402, passed and approved on September 19, 2002, as part of the Fiscal Year 2002-2003 City of San Antonio Budget Ordinance is hereby revised and expanded as indicated in **SECTION 5.** above which amends **ARTICLE IV, DIVISION 8, Section 29-190, subsections (a), (b) and (d)** and adds new subsections (c), (e) through (j) of the City Code of the City of San Antonio, and in case of conflict in interpretation or application, the amendments to the City Code shall apply and control.

SECTION 8. All other provisions of Chapter 29, City Code of the City of San Antonio shall remain in full force and effect except as expressly amended by this Ordinance.

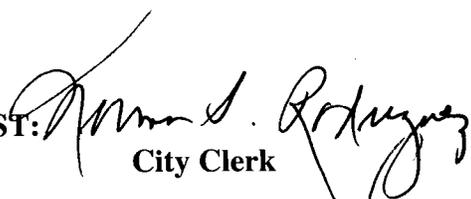
SECTION 9. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, or any appendix hereof, for any reason, be held illegal, or invalid or any exception to or limitation upon any general provision contained in this Ordinance or its attachments held to be unconstitutional or invalid, the remainder shall, nevertheless, stand as effective and as valid as if it had been enacted and ordained without the portion held to be unconstitutional.

SECTION 10. The City Clerk of the City of San Antonio, Texas is hereby directed to publish the aforementioned amendments.

SECTION 11. This ordinance shall take effect on the 13th day of October, 2002.

PASSED AND APPROVED this 3rd day of October, 2002.


M A Y O R P R O T E M

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney