# CITY OF GEM LAKE, RAMSEY COUNTY, MINNESOTA ORDINANCE NO. 113

AN ORDINANCE TO ADMINISTER AND REGULATE THE PUBLIC RIGHT-OF-WAY IN THE PUBLIC INTEREST AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS

#### THE GEM LAKE CITY COUNCIL OF ORDAINS:

SECTION 1. Findings, Purpose, and Intent. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Accordingly, the City hereby enacts this new Section of this Code relating to right-of-way permits and administration. This Section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this Section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This Section shall be interpreted consistently with Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the City and users of the right-of-way. This Section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this Section cannot be interpreted consistently with the Minnesota Rules, Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This Section shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

- 1.1. Election to Manage the Public Right-of-Way. In accordance with the authority granted to the City under state and federal statutory, administrative and common law, the City hereby elects pursuant to this Section to manage rights-of- way within its jurisdiction.
- **1.2.** *Definitions*. The definitions included in Minnesota Statutes § 237.162, Minnesota Rules 7819.0100 Subparts 1 through 23, and Minnesota Rules 7560.0100 Subparts 1 through 12 are hereby adopted by reference and are incorporated into this Section as if set out in full.

# SECTION 2. Permit Requirement.

- **2.1.** *Permit Required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the City.
  - (a) *Excavation Permit.* An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
  - (b) *Obstruction Permit*. An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

- **2.2. Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.
- 2.3. Delay Penalty. In accordance with Minnesota Rule 7819.1000 Subpart 3, the City shall impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The permittee shall not be assessed a delay penalty of delays in project commencement or completion are due to circumstances beyond the control of the permittee. An application for permit extension is independent of delay, and does not preclude the assessment of a delay penalty even if the extension is granted.
- **2.4. Permit Display.** Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Zoning Administrator.
- **SECTION 3. Permit Applications.** Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
  - **3.1.** Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:
    - (a) Each permittee's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
    - (b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of application.
    - (c) A certificate of insurance or self-insurance:
      - (1) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the Zoning Administrator;
      - (2) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
      - (3) Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
      - (4) Requiring that the Zoning Administrator be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

- (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts established by the Zoning Administrator sufficient to protect the City and the public and to carry out the purposes and policies of this Section.
- (6) The City may require a copy of the actual insurance policies.
- (7) If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statute § 300.06 as recorded and certified to by the Secretary of State.
- (8) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
- 3.2. Payment of money due the City for
  - (a) permit fees, estimated restoration costs and other management costs,
  - (b) prior obstructions or excavations;
  - (c) any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;
  - (d) franchise fees or other charges, if applicable.

## SECTION 4. Issuance of permit; conditions.

- **4.1. Permit Issuance.** If the applicant has satisfied the requirements of this Section, the Zoning Administrator shall issue a permit.
- **4.2.** Conditions. The Zoning Administrator may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes §216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Section 7560.
- 4.3 Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Section 216D and Minnesota Rules Section 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.
- **SECTION 5. Permit Fees.** The City Council establishes, and shall from time to time examine and adjust as needed to conform to the City's actual costs of regulation, fees for permits and applications governed by this Ordinance.
  - **5.1.** *Excavation Permit Fee.* A fee shall be collected with an application for an excavation permit, and the amount of the fee is determined by the type of excavation proposed:

(a) Hole excavation: \$125.00

(b) Emergency Hole: \$55.00

- (c) Trench:
- **5.2. Obstruction Permit Fee.** A fee of \$50.00 plus \$.05 per lineal foot of obstruction shall be collected with an application for a permit to obstruct a right-of-way.
- **5.3.** *Payment of Permit Fees.* No excavation permit or obstruction permit shall be issued without payment of permit fees.
- **5.4.** *Permit Extension Fee.* A fee of \$55.00 shall be collected with an application for extension of an existing right-of-way permit.
- **5.5. Delay Penalty.** If the Zoning Administrator finds that a delay penalty is warranted under Section 2.3, the penalty shall be \$60.00 for the first three days of delay, and \$10.00 per day thereafter.
- **5.6.** *Non refundable.* Permit fees that were paid for a permit that the Zoning Administrator has revoked for a breach as stated in Section 14 are not refundable.
- **5.7. Application to franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

#### **SECTION 6.** Supplementary Applications.

- **6.1.** Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
- **6.2.** Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply or a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.
- **SECTION 7. Denial of permit.** The City may deny a permit for failure to meet the requirements and conditions of this Section or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

#### **SECTIONS 8-9.** (RESERVED).

**SECTION 10. Installation Requirements.** The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes § 237.162 and § 237.163.

## SECTION 11. Right-of-Way Patching and Restoration.

- 11.1. *Timing*. The work to be done under an excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 14.
- **11.2.** *Patch and Restoration*. Permittee shall patch its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
  - (a) *City Restoration*. If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.
  - (b) *Permittee Restoration*. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
  - (c) **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- 11.3. *Standards*. The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rule 7819.1100.
- 11.4. Duty to correct defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the Zoning Administrator, correct all restoration work to the extent necessary, using the method required by the Zoning Administrator. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Zoning Administrator, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 14.
- 11.5. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Zoning Administrator, or fails to satisfactorily and timely complete all restoration required by the Zoning Administrator, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

#### **SECTION 12. Inspection.**

- **12.1.** *Notice of Completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.
- **12.2.** Site Inspection. Permittee shall make the work-site available to City personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

#### 12.3. Authority of Zoning Administrator.

- (a) At the time of inspection the Zoning Administrator may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public.
- (b) The Zoning Administrator may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Zoning Administrator that the violation has been corrected. If such proof has not been presented within the required time, the Zoning Administrator may revoke the permit pursuant to Section 14.
- **12.4.** Supplementary Notification. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the Zoning Administrator of the accurate information as soon as this information is known.

#### SECTION 13. Work Done Without a Permit.

13.1. Emergency Situations. Each person with facilities in the right-of-way shall immediately notify the City of any event regarding its facilities that it considers being an emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding facilities, the City will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

**13.2.** *Non-Emergency Situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the City the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Section.

## **SECTION 14. Revocation of Permits.**

- **14.1. Substantial Breach**. The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - (a) The violation of any material provision of the right-of-way permit;
  - (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
  - (c) Any material misrepresentation of fact in the application for a right-of-way permit;

- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 18.
- **14.2.** Written Notice of Breach. If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations might be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- **14.3.** *Response to Notice of Breach.* Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, which will cure the breach.

Permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

**14.4.** *Reimbursement of City Costs.* If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

### **SECTION 15. Mapping Data.**

- 15.1. Information Required. Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the Zoning Administrator accurate maps and drawings certifying the "as-built" location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the city's electronic mapping system, when practical or as a condition imposed by the Zoning Administrator. Failure to provide maps and drawings pursuant to this subsection shall subject the permittee to the delay penalties established in accordance with Section 1.04 and may affect the grant of any future permits for right-of-way excavation or obstruction.
- 15.2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 Subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the City reasonably requires it. Permittees or their subcontractors shall submit to the City evidence of the installed service lateral locations. Compliance with this Section and with applicable Gopher State One Call law and Minnesota Rules governing service laterals shall be a condition of any City approval necessary for: 1) payments to contractors working on a public improvement project (including those under Minnesota Statutes, Chapter 429); and 2) City approval of performance under development agreements, or other subdivision or site plan approval under the City's official land use controls. The City shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed

may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

#### SECTION 16. Location of Facilities; Undergrounding.

- 16.1. *Purpose*. The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the City. Location and relocation, installation and reinstallation of Facilities in the right-of-way must be made in accordance with this section. This section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to Minnesota Statutes, §§ 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, Title 47, USC Section 253.
- **16.2.** Undergrounding of Facilities. Unless otherwise agreed in a franchise between the applicable right-of-way user and the City, facilities placed in the public right-of-way must be located, relocated and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards.
- **16.3.** *Undergrounding of New Facilities.* A new facility or a permanent extension of facilities must be installed and maintained underground when supplied to:
  - (a) a new installation of buildings, signs, streetlights or other structures;
  - (b) a new subdivision of land; or
  - (c) a new development containing new commercial or industrial buildings.
- 16.4. Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities. A permanent replacement, relocation or reconstruction of a facility of more than 300 feet must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding is required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the City in connection with (1) the present or future use by the City or other local government unit of the right-of-way for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way.
- **16.5.** Corridors. The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- **16.6.** Limitation of Space. The Zoning Administrator shall, to the extent possible, accommodate all existing and potential users of the right-of-way. In doing so, the Administrator shall be guided by consideration of the public interest, including the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects.

- **SECTION 17. Retirement of Overhead Facilities**. The City Council may determine whether it is in the public interest that all facilities within the City, or within certain districts designated by the City, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to Section 16 of this Ordinance. The decision to underground existing facilities must be preceded by a public hearing, after notice published for two consecutive weeks and written notice mailed to the utilities affected at least 30 days prior to the hearing. At the hearing the City Council must consider, at a minimum, all of the issues stated in 17.2 below and make findings. Undergrounding of existing facilities may not take place until the City Council has, after hearing and notice, adopted a plan in accordance with 17.3 below.
  - 17.1. Public Hearings. A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether Facilities in the right-of-way in the City, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under Section 16 of this Ordinance.
  - 17.2. Public Hearing Issues. The issues to be addressed at the public hearings include but are not limited to:
    - (a) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way.
    - (b) The feasibility and cost of undergrounding all facilities by a date certain as determined by the City and the affected utilities.
    - (c) The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the City.
    - (d) Alternative financing options available if the City deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either Citywide or within districts designated by the City.

- 17.3. Undergrounding Plan. If the City finds that it is in the public interest to underground all or substantially all facilities in the public right of way, the City must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:
  - (a) Timetable for the undergrounding.
  - (b) Designation of districts for the undergrounding unless, undergrounding plan is Citywide
  - (c) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.
  - (d) Procedures for the undergrounding process, including but not limited to coordination with City projects and provisions to ensure compliance with nondiscrimination requirements under the law.

- (e) A financing plan for funding of the incremental costs if the City determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility.
- (f) Penalties or other remedies for failure to comply with the undergrounding.

SECTION 18. Damage to Other Facilities. When the City does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect its workers or its project, the Zoning Administrator shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the City's response to an emergency occasioned by that owner's facilities.

**SECTION 19. Right-of-Way Vacation.** If the City vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

**SECTION 20. Indemnification and Liability.** By applying for and accepting a permit under this Section, a permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule 7819.1250.

**SECTION 21.** Abandoned Facilities. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the Zoning Administrator waives this requirement. Failure to remove abandoned facilities may affect the grant of any future permits to the person responsible for the abandoned facilities.

SECTION 22. Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the City regarding Section 1.16 Subdivision 2 of this Ordinance, may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

**SECTION 23. Reservation of Regulatory and Police Powers.** A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**SECTION 24. Severability.** If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

**SECTION 25. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication.

Dated: JANUARY 197 , 2010

Robert Uzpen – Mayor William Short - Clerk