

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 30 “STREETS AND SIDEWALKS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, BY PROVIDING REGULATIONS FOR DAMAGE TO AND IN CITY RIGHT RIGHT-OF-WAY WHILE PERFORMING CONSTRUCTION OR EXCAVATION IN PUBLIC RIGHT-OF-WAY BY ADDING SECTION 30-20 “DAMAGE TO AND IN PUBLIC RIGHT-OF-WAY”; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEAL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.**

*WHEREAS*, the City of Fort Worth (“City”) seeks to provide for the health, safety, and welfare of its citizens by regulating all excavation, obstructions, and construction in, on, or along public rights-of-way;

*WHEREAS*, under Texas Transportation Code Section 311.001(a) the City has exclusive control and the authority regulate over and under the public highways, streets, and alleys of the City;

*WHEREAS*, a permit or agreement is required for any person desiring to cut into, open, occupy, or do any work whatsoever in, on, or along any public street, alley, sidewalk or public ground;

*WHEREAS*, the Transportation and Public Works Department (“TPW”) has reported incidents where a person (1) has cut into, opened, or worked in, on, or along a public street, alley, sidewalk, or public ground without being issued a permit or agreement, (2) fails to comply with requirements set forth in a permit or agreement, and (3) has damaged public or private facilities when cutting, opening, occupying, or worked in, on, or along a public street, alley, sidewalk, or public ground;

*WHEREAS*, TPW seeks to amend Chapter 30, Article I “In General” to create offenses related to when a person cuts into, opens, occupies or does any work whatsoever in, on, or along a public street, alley, sidewalk or public ground in violation of the Fort Worth City of Code;

*WHEREAS*, TPW seeks to have the authority to issue citations to persons who commit an offense under Chapter 30, Article I, Section 30-20;

**WHEREAS**, TPW believes that enforcement of such offenses will help deter any person from violating the City’s Code of Ordinances as it relates to excavations, obstructions, and any work in, on, or along a public street, alley, sidewalk, or public ground; and

**WHEREAS**, City Council finds amending Chapter 30, Article I “In General”, to create offenses related to cutting, opening, occupying, or doing any work in, on, or along any public street, alley, sidewalk or public ground is necessary for the health, safety and welfare of the general public.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:**

**SECTION 1.**

Chapter 30, Article I, “In General” of the Fort Worth City Code is hereby revised to add a new section to read as follows:

**§ 30-20 DAMAGE TO AND IN PUBLIC RIGHT-OF-WAY**

(a) A person commits an offense if he:

(1) performs, authorizes, directs, or supervises construction, excavation, any type of cutting or opening, or any work whatsoever in, on or along any public street, alley, sidewalk or public ground without a valid permit or agreement as required under the City of Fort Worth, Texas Code of Ordinances or City of Fort Worth’s Charter.

(2) fails to comply with restrictions or requirements of a permit or agreement as required under the City of Fort Worth, Texas Code of Ordinances or the City of Fort Worth’s Charter.

(b) A person commits an offense if he, performs, authorizes, directs, or supervises construction, excavation, any type of cutting or opening, or any work whatsoever in, on or along any public street, alley, sidewalk or public ground and:

(1) damages the public street, alley, sidewalk or public ground beyond what is incidental or necessary to the performance of the construction, excavation, any type of cutting or opening, or any work whatsoever in, on, or along any public street, alley, sidewalk or public ground; or

(2) damages public or private facilities in, on, or along any public street, alley, sidewalk or public ground.

(c) It is a defense to prosecution under Subsection (b)(2) if the person complied with all of the requirements with a permit or agreement, and state law and caused the damage because the facilities in question:

(1) were not shown or indicated in a plan document, plan of record, record construction drawing, or field survey, staking, or marking; and

(2) could not otherwise be discovered in the public street, alley, sidewalk or public ground through the use of due diligence.

(d) An offense under this section is punishable by a fine not to exceed \$500. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized, directed, or permitted.

(e) This section may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the city has for a violation of this article.

(f) The Director of Transportation and Public Works or designee has the authority enforce the violations under this section.

## **SECTION 2.**

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth, Texas, and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

## **SECTION 3.**

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil and criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

## **SECTION 4.**

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

## **SECTION 5.**

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

**SECTION 6.**

That the City Secretary of the City of Fort Worth, Texas, is hereby directed to publish this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by the V.T.C.A. Local Government Code Subsection 52.013.

**SECTION 7.**

This ordinance shall take effect after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

By: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Secretary

Adopted: \_\_\_\_\_

Effective: \_\_\_\_\_