

## ORDINANCE NO.54-08-22

**AN ORDINANCE AMENDING TITLE 8 – PUBLIC UTILITIES, CHAPTER 2 ‘SEWER USE AND SERVICE’, SECTION 8-2-6 ‘EXCAVATIONS’ TO ESTABLISH EXCAVATION PERMIT POLICIES; PROVIDING FOR A CUMULATIVE PROVISION; PROVIDING FOR A SEVERABILITY PROVISION; PROVIDING FOR AN EFFECTIVE DATE TO ENABLE THE ADJUSTED RATES; INSTRUCTING THE CITY SECRETARY TO PUBLISH THE CAPTION OF THIS ORDINANCE IN A NEWSPAPER OF LOCAL CIRCULATION; AND PROVIDING INSTRUCTION TO THE CITY SECRETARY TO HAVE THE PROVISIONS AND RATES PUBLISHED AS PROMPTLY AS POSSIBLE IN THE CITY OF ALAMO’S CODE OF ORDINANCES**

**WHEREAS**, the City of Alamo, Texas is responsible and has stewardship over its public rights-of-ways and public easements where, among other approved improvements, its utilities may be installed, replaced, and/or repaired; and,

**WHEREAS**, such public rights-of-ways and easements may occasionally be used by other utility companies desiring to place, install, and/or repair their own utility infrastructure; and,

**WHEREAS**, the City of Alamo, Texas has a current regulation, Section 8-2-6, requiring prior written approval from the Director of Public Works of any reviewed/approved excavation work within the city’s rights-of-ways but where these 1946 regulations lack structure, accountability, and specifics; thus, being in dire need to be updated; and,

**WHEREAS**, the City of Alamo, Texas has reviewed the proposed excavation policies thereby determined that it is in the City’s best interests to update Section 8-2-6 ‘Excavations’.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ALAMO, COUNTY OF HIDALGO, STATE OF TEXAS, THAT:**

1. Section 8-2-6 ‘Excavations’ of Alamo’s Code of Ordinances be updated as follows:
  - A. Notice to City: Any person desiring to excavate or cause an opening in any city street, city alley or other public way of the City, to lay water, sewer, gas, ~~steam~~, drainage improvement, or any purpose ~~in any street or alley upon which sewers are laid~~ shall secure an excavation permit to do so; and shall give at least seventy two (72) hours’ written notice to the Director of Public Works before opening the street or alley.
  - B. Approval Excavation Application & Permit: The application for a permit to make any excavation or opening in any of the city streets, city alleys, or any other of the city’s public ways shall be made before any such excavation or opening is made. The manner of excavating the trenches and laying the pipe and backfilling over the same shall be subject to the approval of the Director of Public Works, and such approval shall be in writing. The

permit application shall be made on a form administratively prepared, and amended from time-to-time as circumstances warrant, and shall include but not be limited to the following type of information:

- 1) Name & Block juncture of city street or public way in which the excavation/opening is proposed;
  - 2) The exact location and depth of the proposed excavation/opening; marked maps, exhibits, and/or aerials may be used to express this data; if such exhibits are not provided, the application shall be deemed 'incomplete' and will not be processed.
  - 3) As part of the data needed, the applicant shall declare the type of safeguarding measures to be used, and shall be shown 'where' they will be placed on the marked excavation plan; see Sec. 8-2-6 (L).
  - 4) Current color photographs that are date-stamped of the area proposed to be excavated; if not provided, the application shall be deemed 'incomplete' and will not be processed.
  - 5) The applicant proposing to excavate shall also provide needful data of any and all utilities' location within close proximity of the proposed excavation
  - 6) The purpose or intent for the excavation/opening shall be clearly stated;
  - 7) The name of the person, the firm, the utility company, etc., who is engaged to perform such work.
  - 8) The name of the last two (2) cities or entities where the person/firm/company last did similar excavation-type work, with the contact name of said city/entity, phone number(s), and email addresses; should this data not be provided, or substantially provided, the application shall be deemed 'incomplete' and will not be processed.
  - 9) When deemed necessary by the Director of Public Works Director based on the proposed excavation/opening, the applicant shall prepare a basic 'Notice' (English & Spanish) informing neighboring residents/tenants/owners of the excavation work to be performed and its intent, the projected time frame that the excavation may remain 'open', the safeguarding measures to be employed, the end result of the backfilled excavated area, i.e., to be left in a like manner or better; and to include the name and cell phone number of a contact person to address any questions or issues that may arise during the course of the authorized excavation work.
  - 10) The cost for the excavation permit shall be one hundred dollars (\$100).
  - 11) All excavation permits shall be signed by the authorized applicant, and said permit shall express the following: 'RELEASE OF LIABILITY AND INDEMNITY AGREEMENT' – The undersigned, a contractor performing work on public streets, city alleys, or other public ways located within the City of Alamo, Texas, hereby agrees to release the City of Alamo, its elected officials, city employees, and other city officials, from any and all liability from any claim that may originate out of the work being performed by me, whether due to property damage, personal injury or death incurred by me, or others engaged to perform said excavation/opening work; and further, I agree to indemnify and hold the City of Alamo harmless from any and all costs, expenses, and claims of any type, including attorney's fees and court costs that may arise from such claim(s)."
- C. Protection from Injury/Damage: All such work, as it relates to sanitary sewer, shall be planned and executed so that no injury or property damage shall occur to any public sewer



or drain; or to any house or other private structure the sanitary sewer or drain is connected therewith to.

- D. Responsibility for Injury/Damage: In regard to sanitary sewer work, the property owner or plumber or both shall be held responsible for any injuries and/or damage to property that the plumber shall cause to the sewer or street in making such connections.
- E. Bond required: The Director of Public Works, or other person authorized by the City Manager, shall estimate the probable cost of replacing the soil which may be removed from such public street, alley, or public way; and may require the applicant to file a written bond in an amount sufficient to cover such cost, with two or more sufficient sureties, conditioned that the street/alley shall be restored in as good condition as it was before, or better, before the proposed excavation or opening. Such bond, when required, shall be received and approved by the Director of Public Works or other person so authorized by the City Manager. If the applicant elects to forego the written bond, he/she may make a cash deposit when required in such sum as may be set by the Director of Public Works or other person so authorized to do so by the City Manager.
- F. Before any permit is issued for any excavation or opening in any city street, city alley, or other public way owned/governed by the City of Alamo, the applicant will provide proof of a liability insurance policy issued by an insurance company duly authorized to transact liability insurance in the State of Texas, covering bodily injuries, and injury to or the destruction of property resulting from such work. Minimum amount of coverage required will be \$100,000 if working on public or private streets; and \$100,000 if working in unimproved easement or alleys.
- G. Issuance of Excavation Permit: When the bond and deposit required in Section 8-2-6 (E)(F) has been confirmed to be bona fide and found acceptable by the Director of Public Works or other person so authorized, then the City of Alamo shall issue a permit for the excavation or opening identified in the application; and the applicant may then proceed with the work in the exact location named in his/her application, and in no other place.
- H. Limitation of Permit: Each specific permit issued for any excavation or opening in any city street, city alley, or other public way owned/governed by the city, shall expire by limitation and become null and void if the work authorized by such permit has not been started within thirty (30) days from the date of its issuance; or if the excavation work authorized by such permit is suspended or abandoned at any time for a period of 30 days after the work is started. Before such work can be started again, a new permit shall be applied for and obtained; however, should there be acts of God or other emergency-related circumstances (pandemic mandates, supply interruptions, declared national or State emergencies, etc.), then the Director of Public Works may consider an extension of permit validation based on the time consumed of such un-expected circumstances.
- I. Supervision of work: All the work of the excavation or making the opening of the city street, city alley, or other public way owned/governed by the City of Alamo, shall at all times be under the supervisory inspection of the Director of Public Works or other person assigned by said Director; and the person doing the work shall do such work in the manner directed by him/her to the end that the streets, alleys, or other public ways shall not be unduly disturbed and traffic thereon obstructed. The excavation must be patched within seven (7) calendar days after completion of the work. The Director of Public Works is

hereby granted the authority to require a patching in less time or grant extensions IF the situation warrants special considerations due to safety, weather, location, and traffic safety considerations. If there is a severe emergency related to traffic/pedestrian safety that requires immediate action, then the City of Alamo shall have the right to perform the patch work and have all calculated costs, plus a \$50 administrative fee, reimbursed by the applicant. If payment is not received within 30 days, then this is a violation to this provision and shall be code enforced according to procedural protocol.

- J. Duties upon completion of work: After the excavation or opening is made, the person so making it shall backfill the excavation with such materials and in such a manner as the Director of Public Works or other person authorized by him/her may require; and the excavation permit holder shall leave the city street, alley, or other public way in at least the same condition as it was before, or better, before the excavation/opening was made.
  - K. Acceptance, inspection of completed work, responsibility for repairs (settling, etc.): The conditions of the bond required by this article shall not be considered to have been complied with until the Director of Public Works shall have accepted the street, alley, or public way as being in as good condition as it was prior to the excavation/opening; such acceptance may be expressed via an electronic message to the applicant (with a hard copy of the message cross-documented in the Excavation Permit's File).
  - L. If the person making the opening shall fail to leave the street, alley or public way in a good state of repair, satisfactory, to the Director of Public Works, then the Director shall call upon the bondsman to pay for the cost of repairing such street, alley, or public way; provided however, that in the even of a cash deposit instead of a bond, the Director may proceed to pay for such repairs out of the deposit made with him/her, and if there is any remainder of such deposit after paying for such reparatory work, such remainder shall be refunded to the person making the deposit minus a \$50 administrative fee for coordinating said repair work, inspecting the repairs (photos taken/filed), and other efforts for needful documentation. Once all work is completed, and any incidental repairs satisfactorily performed, and all fees properly dispersed, the Director of Public Works shall forward an electronic 'Release & Acceptance of the Work' to the permittee.
  - M. Safety precautions: It shall be the responsibility and duty exclusively of the permittee under the provisions of these policies to cause any excavation or opening made by him/her to be safeguarded pursuant to prevailing safety guidelines typically used for such work, e.g., Type I and Type II barricades, orange cones, warning signs, flag persons, warning lights, etc. During the application stage, the Director of Public Works shall review the applicants' plan in employing such safeguarding measures for pre-approval.
  - N. Once all work is completed, and any incidental repairs satisfactorily performed, and all fees properly dispersed, the Director of Public Works shall forward an electronic 'release' to the permittee
2. The provisions, regulations, rates, and/or other modifications in the context of the ordinance, shall be cumulative and supersede any conflicting provision(s), regulation(s), or other criteria.



3. Should any phrase, section, regulation, or other measure be declared unconstitutional by a court of competent jurisdiction, it is firmly stated that all other portion(s) shall remain valid and in full force and effect.
4. The full components, measures, and regulations of this ordinance shall be enforceable immediately after adoption of this ordinance and signature of the Mayor of the City of Alamo, Texas.
5. The Board of Commissioners hereby instructs the City Secretary to publish the caption of this ordinance in a newspaper of local circulation.
6. The Board of Commissioners hereby instructs the City Secretary of the City of Alamo, Texas, that this Ordinance shall, as promptly as possible, appear in the City of Alamo, Texas' Code of Ordinances.

**READ, DISCUSSED, AND APPROVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ALAMO, TEXAS**, in accordance with the provisions of Chapter 551 of the Texas Government Code, at a Regular Meeting called and publicly held at the City of Alamo's City Hall, on this the 2 day of AUGUST, In The Year of Our Lord, 2022.

**CITY OF ALAMO, TEXAS**

  
Diana Martinez, Mayor

**ATTEST:**

  
Alexandria Rangel, City Secretary

**APPROVED AS TO FORM:**

  
PALACIOS, GARZA & THOMPSON  
CITY ATTORNEYS

