

AN ORDINANCE 2007-01-11-0065

**ADOPTING A NEW CHAPTER OF THE CITY CODE SETTING OUT PROCEDURES FOR THE ACQUISITION, USE, AND DISPOSITION OF CITY PROPERTY, INCLUDING INTRAJURISDICTIONAL AGREEMENTS, PERMITS, LEASES, LICENSES, AND SALES AND REPEALING OLD CODE SECTIONS AND ORDINANCES SUPERSEDED BY THE NEW CHAPTER.**

\* \* \* \* \*

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

**SECTION 1.** The following uncodified ordinances are repealed in their entirety:

Ordinances 29494 (5/24/1961), 83931 (4/11/96), 96507 (10/03/2002), 96508 (10/03/2002), and 96509 (10/03/2002)

**SECTION 2.** The following sections of the Municipal Code of the City of San Antonio are repealed in their entirety:

Chapter 6, Article 10, Division 3, Sec. 6-278  
Chapter 29, Article 1, Secs. 29-9, 29-22, and 29-23  
Chapter 29, Article 4, Division 8, Secs. 29-189 and 29-190

Until further ordinance, Chapter 29, Article 1, Section 29-9 should be marked "Reserved." This repeal of Code sections likewise repeals the same provisions embodied in the ordinances on the basis of which the Code sections were created. If the affected ordinances contain provisions not embodied in the listed Code sections, those additional provisions are not repealed.

**SECTION 3.** A new chapter 37 entitled "Acquisition, Disposition, or Use of City Property" is added to the Municipal Code of the City of San Antonio that, in its entirety, reads as follows:

**Chapter 37: Acquisition, Disposition, or Use of City Property**

**Sec. 37-1. Definitions.**

The definitions in this section apply only in Chapter 37 of this Code:

- (a) "Director" is defined as the head of the City department responsible for the applicable duty.
- (b) "Historical," with reference to a structure, is defined as a structure determined by council to be a City of San Antonio Historic Landmark.
- (c) "Petition" is defined as a written request by a Petitioner for rights or privileges under this chapter. The Petition may be in letter form and must state the location of the affected City property and the purpose and scope of the proposed use or disposition of it. The Petition must further include such attachments and additional detail as the Director may require.

(d) "Petitioner" is defined as a person requesting a right or privilege governed by this chapter. More than one person may combine as one Petitioner, but in such case each is jointly and severally liable for the obligations of the Petitioner.

(e) "Public Right of Way" is defined as any real estate owned by the City of San Antonio in easement or fee over which the public has a right to pass, such as public streets, roads, lanes, paths, alleys, and sidewalks, whether improved or unimproved. Public Right of Way further includes water, wastewater, drainage, and utility easements.

### **Sec. 37-2. General Provisions.**

(a) No one may use Public Right of Way or other City property, whether fee or easement, in a way governed by this chapter without acquiring rights under the relevant section. To acquire licenses or permits under this chapter, a Petitioner must submit a Petition to the Director of the proper City department and follow the procedures prescribed by the Director.

(b) The Director may require recording of instruments granting rights under this chapter in the Official Public Records of Real Property of the county in which the land is situated. Petitioner must pay the recording cost.

(c) The Director may approve a permit or right of entry under this chapter without City Council action, if the permitted use conforms to the requirements of this chapter.

(d) Only City Council may approve leases and license agreements under this chapter, including renewals or continuations previously granted.

(e) Any City officer to whom authority is delegated under this chapter may further delegate that authority to subordinates, but the authority to bind the City to a contract may not be delegated below the level of director.

(f) Permits have indefinite duration but may be terminated by City Council action. Licenses have stated durations and are terminable according to their terms.

(g) All construction, excavation, and placement of utilities or other facilities in Public Right of Way are subject to regulation under the City's Public Right of Way Management Policy.

(h) When fair market value is required by this chapter, City may, at its option, rely on an average of the per square foot Bexar Appraisal District assessed land as opposed to improvement values in the vicinity or may require that an independent professional appraisal be obtained. Petitioner and the City will jointly select the appraiser, if they can agree. If they cannot promptly agree, City selects the appraiser. In either case, Petitioner pays for the appraisal. Except as otherwise stated in a particular section, independent professional appraisals are of the fee simple interest in the affected land. Public Right of Way

must be appraised not as right of way but as if it were useable in the same way and to the same extent as the property it abuts.

(i) Those receiving rights under this chapter must maintain in good repair and condition any structure, covering, or appurtenance and the accompanying structural members extending over, under, or on Public Right of Way, a drainage or utility easement, or other City property. No such encroachment may be a nuisance or safety hazard. All such encroachments, when built or renovated, must conform to the latest edition of the International Building Code and other applicable building discipline codes.

(j) By accepting rights under this chapter, a Petitioner is obligated to indemnify the City against all loss, cost, liability, or expense arising from or relating to the City's grant of the rights or Petitioner's exercise of them. This section controls whether or not Petitioner's agreement with the City so provides. This section controls even if the agreement provides otherwise, unless an ordinance expressly states that City Council intends to override this section as to the particular use by the particular Petitioner. The indemnity specifically covers the City's own negligence, whether joint or sole. Entities that may not lawfully grant indemnities or may not lawfully be required to do so by the City need not grant the indemnity provided for in this section.

(k) Grants of rights under this chapter do not relieve Petitioner of any other approvals, permits, or licenses that may otherwise be required. No permit or license should be granted under this chapter if the proposed use would impair the primary public purpose of the affected Public Right of Way.

(l) Property owners may install and maintain mail boxes conforming to U.S. Postal Service regulations without a permit or license under this chapter.

(m) Driveways, bridges, and other ingress and egress-related encroachments over drainage easements need not be licensed or permitted under this chapter.

(n) Before granting or recommending granting rights under this chapter, the Director may canvass some or all interested City departments, utility agencies, and registered neighborhood associations in the vicinity. Based on comments received, the Director may impose or recommend imposing special terms as a condition of approval of the Petition.

(o) Nothing in this chapter relates to use in the ordinary course of business of park and recreation facilities, City cemeteries, airport facilities, community centers, libraries, convention facilities, the Alamodome, or leases or other uses of City-owned or operated office or retail space, parking lots, and garages.

(p) Responsibilities allocated to a City Department in this chapter automatically succeed to any other Department into which the designated Department or the relevant function of that Department is reorganized.

(q) Any request under this chapter required by City Charter Section 123 to be submitted to the Planning Commission must be so submitted according to the terms of Section 123.

**Sec. 37-3. Permits for Encroachments onto Public Right of Way from Abutting Property.**

(a) Petitions for abutting-property encroachment permits must be submitted to the Director of Development Services. Petitions must be accompanied by a non-refundable \$50 review fee. The Director may process permit requests and may establish forms and procedures to carry out this section. Abutting-property encroachment permits may be issued by the Director to an owner of property abutting the City property to be encroached upon.

(b) Abutting-property encroachments are:

(1) Awnings, canopies, or similar coverings designed to provide shade to pedestrians;

(2) Planters, flagpoles, door swings, landings, parapets, cornices, and other solely decorative or non-structural appurtenances deemed by the Director to be beneficial to the public;

(3) Building features required by code, such as fire escapes or disability access ramps and Historical features extending beyond property lines;

(4) Utility vaults; and

(5) Minor encroachments extending from abutting property on an area reserved for drainage. Such encroachments may include limited paving, roof overhangs, and private utility lines for the benefit of one or two abutting structures.

(d) Permits cannot be granted over the objection of the Historic Preservation Division of the Planning Department, or its successor.

(e) Petitioner must pay a \$100 processing fee when the permit is issued. The Director may specify the construction, characteristics, quality, and placement of abutting encroachments. The Director may further require relocation or removal of an encroachment when appropriate for the efficient use of the Public Right of Way. The Petitioner is responsible for the costs associated with such relocation or removal.

**Sec. 37-4. Intra-jurisdictional Agreements.**

(a) Petitions for intra-jurisdictional agreements for use of drainage right of way may be submitted by City agencies and other governmental jurisdictions to the Director of Asset Management. The Director may process permit requests and may establish forms and procedures to carry out this section.

(b) City agencies must pay fair market value for use of property owned in fee by the City.

(c) The agreement may impose limitations on the proposed use to assure drainage is not interfered with. All such agreements are terminable by the City without cause on reasonable notice, and Petitioner must pay the cost of relocating its improvements. The agreement does not grant the right to trespass on or otherwise use property in which persons other than the City have an interest. Petitioner is responsible for obtaining consent from the owner of the fee and any other person with a possessory right in the affected property, unless the City also owns the fee.

#### **Sec. 37-5. Riverwalk and Public Right of Way Leases**

Petitions to use City property in the River Improvement Overlay District or to use Public Right of Way for dining and retail purposes must be submitted to the Director of Downtown Operations, or its successor. The Director may process requests and may establish forms and procedures to carry out this section. Lease rates for such leases must be at market value.

#### **Sec. 37-6. Landscaping Permits.**

(a) Petitions for permits to landscape or maintain Public Right of Way must be submitted to the Director of Development Services. The Director may process permit requests and may establish forms and procedures to carry out this section.

(b) Petitions must be in writing and may be in the form of a letter. The Petition must specify a contact person; the number, character, and age of the trees, shrubs, or other vegetation; the line or place where the vegetation will be planted; and the proposed maintenance schedule. The permit must specify so much of the detail of the Petition as is approved. Petitions should be approved only if doing so would improve appearance and not adversely affect use of the Public Right of Way. Landscaping permits may consist of an approved landscaping plan.

#### **Sec. 37-7. Fiber Optic Licenses.**

(a) Petitions by telecommunications providers to install fiber optic cable or related facilities on Public Right of Way or other City property must be submitted to the Director of Asset Management. The Director may process requests and may establish forms and procedures to carry out this section. The non-refundable processing fee for each fiber optic license is \$2,500. This section does not apply to a provider of local telephone service and does not include Public Right of Way that is a drainage easement unless the City also owns the underlying fee.

(b) The Director may negotiate the license fee for any fiber optic conduit to be installed in property owned by the City in fee that is not Public Right of Way.

(c) Fiber optic licenses have 10-year terms.

(d) The fee for fiber optic conduit is calculated on each 4½ inches or fraction thereof in outside diameter.

(1) Fiber optic license fees for conduit in Public Right of Way for years 1 through 5 of the 10-year terms are as follows:

(A) For fiber optic conduit installed by open-cut trenching, the fee is \$2.10 a linear foot, a year.

(B) For fiber optic conduit installed by boring, the fee is \$1.85 a linear foot, a year.

(2) Fiber optic license fees for years 6 through 10 are 15% higher than the fees above and are due at the beginning of the sixth year.

(3) Fees for renewals are at the then current rates.

(e) The Director may require a Petitioner to sign and deliver an agreement setting out the applicable license fee and conditions imposed by City departments and utility agencies. When reasonably conducive to the efficient use of the property on which the cable is located, the Director may require the Licensee to relocate the fiber optic conduit at Licensee's expense. If City Council rescinds the license, Petitioner must remove the cable and conduit at its own expense.

#### **Sec. 37-8. Licenses to Use of City Property.**

(a) Uses of Public Right of Way or other City property, other than drainage easements, that are subject to this chapter but are not described elsewhere in this chapter must be licensed. Building features ineligible for an abutting-property encroachment permit are covered by this section. Petitions for such licenses must be submitted to the Director of Asset Management. The Director may process license requests and may establish forms and procedures conducive to carrying out this section. The Petitioner must obtain Planning Commission approval when otherwise required by law.

(b) The non-refundable license processing fee for each petition is \$500.

(c) Except as provided below, the license fee for each use of City property is the greater of \$5,000 or

(1) 10% a year of the fair market value for surface uses,

(2) 7.5% a year of the fair market value for air uses, and

(3) 5% a year of the fair market value for sub-surface uses.

(d) The Director may negotiate the license fee for any pipeline in Public Right of Way or other City property.

(e) The Director may recommend that City Council reduce or waive license fees if Petitioner requests to (1) use sub-surface space under City property for an existing basement; (2) make improvements beneficial to the public; (3) preserve, protect, or enhance historically, culturally, architecturally, or archaeologically significant sites or structures; or (4) make improvements qualifying for reduced or waived fees under the City's Incentive Scorecard, or its equivalent.

(f) Those using Public Right of Way or other City property in a manner subject to this section without a license before September 1998 must pay City a fee equal to 50% of the license fee for the unauthorized use prescribed at the time the fee is paid. For all uses from September 1998 forward, those using such property in a manner subject to this section without a license must pay the fees that were in effect from time to time for rolling 10-year licenses until the present date.

### **Sec. 37-9. Closure, Vacation, and Abandonment of Public Right of Way.**

(a) Petitions for closure, vacation, and abandonment of Public Right of Way, other than drainage easements, must be submitted to the Director of Asset Management. The Director may process requests and may establish forms and procedures to carry out this section.

(b) Petitioner must demonstrate ownership of each abutting property and must submit at least a Category 1B Standard Land Survey with field notes for each abutting-property owner's portion of the affected Public Right of Way. All owners of abutting property must consent to the action under this section. The consent must be in writing and may be by quitclaim deed.

(c) The non-refundable processing fee for a petition to close, vacate, or abandon Public Right of Way is \$500.

(d) For any closure, vacation, or abandonment approved by City Council, Petitioner must pay City a fee equal to the fair market value of the affected land. The Director may recommend that City Council reduce or waive the fee if:

(1) Petitioner originally granted the subject Public Right of Way at no cost, e.g. by dedication through plat or other instrument; or

(2) Petitioner proposes to make improvements qualifying for reduction or waiver of fees under the City's Incentive Scorecard, or its equivalent.

(e) The Director may require a Petitioner to sign and deliver an agreement setting out the applicable closure fee and conditions imposed by City departments and utility agencies.

(f) Not later than 10 days before the Planning Commission takes up a proposed closure, vacation, or abandonment, the Director must cause sign(s) to be placed at or near the Public Right of Way to be closed. The signs must state the proposed action and the location and dates of the Planning Commission and City Council action. The signs are to remain in place until City Council acts

on the Petition. Signs need not be erected for closure, vacation, or abandonment of undeveloped (“paper”) Public Right of Way.

(g) Closing, vacating, and abandoning Public Right of Way must approved by ordinance.

**Sec. 37-10. Sale of Surplus Real Property.**

(a) Petitions for sale of surplus property must be submitted to the Director of Asset Management, unless another department is responsible for the property. The Director may process requests and may establish forms and procedures to carry out this section.

(b) Except property that is the responsibility of other departments, the Director of Asset Management is responsible for the disposition of all City-owned real property deemed surplus to the City’s needs as established by a canvassing of City departments and agencies.

(c) The Housing and Neighborhood Services Department, or its successor, is responsible for offering developable City-owned, surplus real property deemed appropriate for single-family affordable housing to the public. The Director will establish the forms, criteria, and procedures to administer this public offering and manage the resulting development. Surplus real property offered for sale for affordable housing shall be zoned to an appropriate single-family zoning district prior to sale if the property is not already zoned as such.

(d) Developable, surplus, City-owned real property not sold, exchanged, or otherwise conveyed for development of affordable housing 12 months after initiation of a public offering will no longer be subject to an affordable housing requirement and can be disposed of as permitted by state law.

(e) Surplus status may finally be determined only by City Council, upon the recommendation of the Planning Commission, and only City Council can authorize sales. All sales of surplus property must conform to law.

(f) The non-refundable processing fee for a request to canvass a particular City-owned property for designation as surplus for disposition purposes shall be \$500, unless initiated by a department Director.

**Sec. 37-11. Cell Tower Leases.**

(a) Petitions for cell tower leases on City-owned property must be submitted to the Director of Asset Management. The Director may process requests and may establish forms and procedures to carry out this section. Provider means any person putting cellular telephone antennae on a tower on City-owned property.

(b) The City Attorney must approve the form of each cell tower lease. The City Manager can bind the City to cell towers leases without specific council action if the leases conform to this section.

(c) The City Manager may dictate the type and height of towers to be constructed on City property.

(d) The non-refundable processing fee for each petition for cell tower lease is \$2,500.

(e) Cell tower leases are for 20-year terms.

(f) The Standard Cell Tower Lease Form must impose fees according to the following schedule:

I. One Tower, One Provider		
	Per Year	5-Year Total
1 <sup>st</sup> Five-Year Period	\$15,625	\$78,125
2 <sup>nd</sup> Five-Year Period	\$18,000	\$90,000
3 <sup>rd</sup> Five-Year Period	\$20,750	\$103,750
4 <sup>th</sup> Five-Year Period	\$23,875	\$119,375
<b>20-Year Total:</b>		<b>\$391,250</b>
II. One Tower, Two Providers		
	Per Year	5-Year Total
1 <sup>st</sup> Five-Year Period	\$10,938	\$109,375
2 <sup>nd</sup> Five-Year Period	\$12,625	\$126,250
3 <sup>rd</sup> Five-Year Period	\$14,500	\$145,000
4 <sup>th</sup> Five-Year Period	\$16,750	\$167,500
<b>20-Year Total:</b>		<b>\$548,125</b>
(\$274,063 per provider per 20-year lease term)		
III. One Tower, Three or More Providers (fees per provider)		
	Per Year	5-Year Total
1 <sup>st</sup> Five-Year Period	\$8,750	\$131,250
2 <sup>nd</sup> Five-Year Period	\$10,063	\$150,938
3 <sup>rd</sup> Five-Year Period	\$11,625	\$174,375
4 <sup>th</sup> Five-Year Period	\$13,375	\$200,625
<b>20-Year Total:</b>		<b>\$657,188</b>
(\$219,063 per provider per 20-year lease term)		

### **Sec. 37-12. Granting and Releasing Easements**

(a) Petitions for granting or releasing easements must be submitted to the Director of Asset Management. The Director may process requests and may establish forms and procedures to carry out this section. The non-refundable processing fee for the release or grant of easements in City property or Public Right of Way is \$500. The Director may require Petitioner to demonstrate that the City owns the fee of the property for which an easement is being requested.

(b) The fee for granting or releasing an easement in City property is the greater of \$5,000 or the fair market value of the easement. In the absence of an independent professional appraisal, the value of the easement is presumed to equal the Bexar Appraisal District land values determined according to section 37-2 (h).

(c) The Director may recommend that City Council reduce or waive the consideration for the release or grant of easement if:

(1) Petitioner originally granted the subject Public Right of Way or City property at less than fair market value, *e.g.* by dedication through plat or other instrument; or

(2) Petitioner proposes to make improvements qualifying for reduced or waived fees under the City's Incentive Scorecard, or its equivalent.

(d) The Director may require a Petitioner to sign and deliver an agreement setting out the applicable fee and conditions imposed by City departments and utility agencies.

(e) Easements need not be granted when they would be inconsistent with the City's use or planned use for the affected property and may be granted or released only with City Council authorization.

(f) All easements granted after the effective date of this section are revocable by City Council. City Council may further require relocation of such easements or installations within easements at the expense of the easement holder. This section controls whether or not the easement instrument so provides. It controls even if the instrument provides otherwise, unless an ordinance expressly states that City Council intends to override this section as to the particular easement to the particular Petitioner.

### **Sec. 37-13. Rights of Entry**

(a) A Director may, without council action, permit surveying, measuring, testing, and similar activities on City property for which their departments are responsible. Directors may process requests and may establish forms and procedures to carry out this section.

(b) The Director of Public Works may, without Council action, enter into agreements with property owners permitting the City to improve drainage characteristics of land within the City's jurisdiction. Such action may include removing vegetation and contouring the surface.

(c) Agreements authorized by this section must be in writing and in form satisfactory to the City Attorney.

#### **Sec. 37-14. Acquisition of Interests in Real Estate**

The City Manager, or designee, may, with no further authority than this Code section, acquire interests in real estate on behalf of the City in connection with any capital project approved by City Council by adoption of an Ordinance. Any such acquisition must be in form satisfactory to the City Attorney.

#### **Sec. 37-15. Notices of Non-Acceptance.**

(a) When the Director of Asset Management learns of real property deeded to the City without the City's consent, the Director must canvass City departments and utility agencies to determine whether a use exists for the property.

(b) If a use exists, the Director shall seek City Council authorization for the acceptance of the property.

(c) If a use does not exist, the Director shall cause a notice of non-acceptance of the real property to be filed in the appropriate county records of real property.

(d) If a utility agency identifies a use for the property, the agency must agree to assume responsibility for the property and its maintenance as a condition of the City's acceptance.

**SECTION 4.** If any part of this Ordinance, or any appendix hereto, for any reason, is held illegal or invalid, or any exception to or limitation on any general provision contained in this Ordinance or its attachments is held to be unconstitutional or invalid, the remainder nevertheless stands effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid.

**SECTION 5.** The City Clerk for the City of San Antonio is hereby directed to publish notice of this Ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

**SECTION 6.** It is officially found, as a matter of legislative finding, that the meeting at which this Ordinance is adopted was open to the public and that public notice of the time, place and subject matter of the public business to be considered at such meeting, including consideration and adoption of this Ordinance was appropriately given, all as required by law, including Texas Government Code Chapter 551.

SECTION 7. This ordinance becomes effective January 21, 2007.

PASSED AND APPROVED this 11<sup>th</sup> day of January 2007.



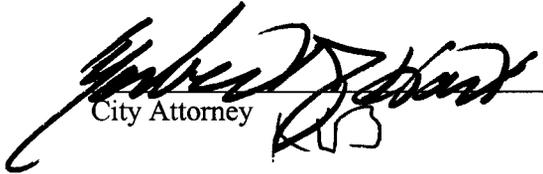
M A Y O R

Attest:



City Clerk

Approved As To Form:



City Attorney

# Agenda Voting Results

**Name:** Consent Agenda, except for Items 13, 14, 22, 23, 25

**Date:** 01/11/07

**Time:** 09:15:55 AM

**Vote Type:** Multiple selection

**Description:**

<b>Voter</b>	<b>Group</b>	<b>Status</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Affidavit of Publisher

STATE OF TEXAS  
COUNTY OF BEXAR  
S.A. - CITY CLERK

**PUBLIC NOTICE**

**AN ORDINANCE  
2007-01-11-0065**

**ADOPTING A NEW CHAPTER OF THE CITY CODE SETTING OUT PROCEDURES FOR THE ACQUISITION, USE, AND DISPOSITION OF CITY PROPERTY, INCLUDING INTRAJURISDICTIONAL AGREEMENTS, PERMITS, LEASES, LICENSES, AND SALES AND REPEALING OLD CODE SECTIONS AND ORDINANCES SUPERSEDED BY THE NEW CHAPTER.**

**PASSED AND APPROVED:  
this 11th day of January, 2007.  
/s/ PHIL HARDBERGER  
Mayor**

Before me, the undersigned authority, on this day personally appeared Helen I. Lut by me duly sworn, says on oath that she is Publisher of the Commercial Recorder, a r general circulation in the City of San Antonio, in the State and County aforesaid, and t Ordinance 2007-01-11-0065 here to attached has been published in every issue o newspaper on the following days, to wit:

**ATTEST:  
/s/ LETICIA M. VACEK  
City Clerk  
1/24**

01/24/2007.

*Helen I. Lut*

Sworn to and subscribed before me this 24th day of of January, 2007.

*Martha L. Machuca*

