

AN ORDINANCE 2009-12-10-1025

**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INTRAJURISDICTIONAL AGREEMENTS, PERMITS, LEASES, LICENSES, AND SALES AND REPEALING OLD CODE SECTIONS AND ORDINANCES SUPERSEDED BY THE NEW CHAPTER.**

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

**SECTION 1.** The previously existing Chapter 37 of the Municipal Code of the City of San Antonio is deleted in its entirety:

**SECTION 2.** The text below is enacted as a new chapter 37 entitled "Acquisition, Disposition, or Use of City Property":

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

The definitions in this section apply only in this chapter:

*CIMS* means the Capital Improvements Management Services Department.

*City* means the City of San Antonio.

*Director* means the director of the department responsible for the applicable duty.

*Encroachment* means any intrusion from abutting property or other use of City property, whether the property is owned in fee or by easement.

*Historical*, with reference to a structure, means a structure determined by council to be a city historic landmark.

*Petition* means 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 the property. The petition must further include such attachments and additional detail as the director may require.

*Petitioner* means a person requesting a right or privilege governed by this chapter. More than one person may combine as one petitioner, but then each is jointly and severally liable for the obligations of the petitioner.

*Public right of way or right of way* means any real estate owned by the city 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.

*Utility agency* means either or both of the San Antonio Water System and CPS Energy or their successors, for so long as the utility agency is part of the City of San Antonio.

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

- (a) No one may use public rights of way or other property in which the City has an interest, whether in fee or easement, in a way governed by this chapter without acquiring rights under the relevant section. Nothing in this chapter requires a permit, license, or other document for utilities to place their facilities in streets or alleys as otherwise permitted by law.
- (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) Except as otherwise provided, 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) Except as expressly stated, this chapter delegates no authority to approve, without council action, leases and license agreements, including renewals or continuations of rights previously granted. But nothing in this chapter impairs a delegation of authority outside this chapter.
- (e) Any city officer to whom authority is delegated under this chapter may further delegate that authority to subordinates. Authority to bind the city to a contract may not be delegated below the level of director, unless the delegation is made personally by the city manager or a deputy or assistant city manager. All delegations must be in writing. Despite the foregoing, the director of CIMS and CIMS' assistant director for real estate may sign and bind the City to all contracts, deeds, and other documents and instruments part of real estate transactions approved by Council.
- (f) Permits have indefinite duration but may be terminated by city council action. Licenses have stated durations and are terminable according to their terms. Neither permits nor licenses under this chapter create property rights, and

no permittee or licensee is entitled to compensation for revocation of a permit or license.

(g) Permits need state only: (i) the City's identity as the issuing authority, (ii) the identity and address of the permittee, (iii) a description of the affected city property, (iv) the scope of the activity permitted, (v) the permit's indefinite duration, subject to city council revocation, and (vi) any special conditions imposed under subsection 37-3(e). Permits should be signed on behalf of both the city and the petitioner and be in recordable form. Permits should be recorded in the real property records of the county in which the affected city property is located, but failure to record does not destroy the effectiveness of the Permit. Permits are not defective for having more than the minimum required information.

(h) All construction, excavation, and placement of utilities or other facilities in public rights of way are subject to regulation under the city's Right-of-Way Management Ordinance, which is outside this Chapter.

(i) When fair market value must be determined under this chapter, the following procedures apply:

(1) A director may require that an independent professional appraisal be obtained. In such case, 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, according to its highest and best use.

(2) Alternatively, a director may rely on an average of the per-square-foot Bexar Appraisal District-assessed values in the vicinity. If the property being appraised does not have structures, the director should consider only land values, not improvement values.

(3) In choosing between requiring a formal appraisal or relying on Bexar Appraisal-assessed values, a director should balance whether the probable cost of a formal appraisal is disproportionate to the probable value of the affected property. Streets and alleys must be appraised not as rights of way but as if marketable fee-simple title to the affected property were in private hands and the city were condemning it for public-street right of way. Appraisals of other strips or oddly configured parcels must not be discounted because of the parcels' configuration.

(j) 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 rights of way, 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, and installation must be consistent with the City's Right-of-Way Management Ordinance.

(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 or other city property.

(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.

(o) Nothing in this chapter governs 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) Nothing in this chapter impairs an otherwise applicable requirement to seek planning commission approval of a proposed transaction.

(r) All fees under this chapter are waived for governmental petitioners other than utility agencies. This waiver does not include requirements to pay out of pocket costs or to pay fair market value for property interests.

(s) Except as may be specifically provided as to a particular fee, all processing and other fees and charges provided for in this chapter are non-refundable.

(t) Nothing in this chapter repeals by implication or otherwise impairs the effect of any part of Chapter 29.

(u) The City has a lien against property of non-governmental persons using rights governed by this chapter until the sums owing under this chapter are paid.

(1) The city may assert the lien by recording a lien claim in the real property records of the county in which the property subject to the lien is located.

(2) The property subject to the lien is all property of the person making use of City property any portion of which is within 100 yards of the unpaid-for use of City property. The lien extends to property beyond the 100-yard limit, but only if it adjoins property within the 100-yard limit.

(3) Lien claims may be signed and acknowledged by the City manager or her designee without council action.

(4) The lien may be enforced judicially in any court of competent jurisdiction.

(5) The lien applies only to sums owing for periods after January 1, 2010.

(6) This section does not imply that fees the City otherwise requires to be paid up front may be paid other than up front.

(v) No petitioner seeking rights under this chapter may acquire such rights before paying in full for all previously obtained rights of the type governed by this chapter.

### **Sec. 37-3. Permits for Encroachments onto Public Streets or Alleys.**

(a) Petitions for permits for encroaching on public streets or alleys from owners of abutting property or from property-owner associations must be submitted to the director of CIMS. If an encroachment is specifically addressed in another section of this chapter, the more specific section applies. Petitions must be accompanied by a non-refundable \$100 processing fee. The director may process permit requests and may establish forms and procedures to carry out this section. Permits under this section may be issued by the director without specific council action to an owner of property abutting the right of way to be encroached upon or to a property-owners association seeking to improve nearby rights of way.

(b) Encroachments eligible for permits under this section are not limited to structures primarily on private property abutting public streets or alleys, but also include irrigation systems, non-commercial signs and structures for such signs, and other independent installations otherwise meeting the requirements of this section.

(c) Any encroachment obstructing public passage, utility facilities, or other uses of public streets or alleys is ineligible for a permit. A permit may cover as many eligible encroachments as a building has, but a separate permit must be obtained for each building of a project. Where encroachments do not relate to a building, permits cover a radius of 250 feet. Any encroachment not within a 250-foot radius of a permitted encroachment must obtain a separate permit.

(d) Permits cannot be granted over the objection of the historic preservation division of the planning department, or its successor, except with council approval.

(e) Permits may be in the following form, but use of another form does not invalidate the permit:

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**Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.**

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State of Texas                    §

County of Bexar                §

**Public Street or Alley Encroachment Permit**

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This Right-of-Way Encroachment Permit is issued under Sec. 37-3 of the City Code of San Antonio, Texas.

It authorizes Permittee to construct, maintain, repair, replace, and reconstruct the Permitted Encroachment on the Affected Right of Way. This permit has indefinite duration and may be revoked only by action of City Council.

**Delegated Authority:**                    City Code of San Antonio, Texas § 37-3

**Name of Permittee:**

**Address of Permittee:**

**Description of Permitted  
Encroachment:**

**Description of Affected  
Right of Way:**

**City of San Antonio**

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of Texas  
County of Bexar

This instrument was acknowledged before me this date by \_\_\_\_\_ of the City of San Antonio in the capacity therein stated and on behalf of that entity.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public State of Texas

My Commission Expires: \_\_\_\_\_

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(f) Petitioner must pay a \$500 permit fee when the permit is issued. The director may specify the construction, characteristics, quality, and placement of abutting encroachments. The City Council may require relocation or removal of an encroachment when appropriate for the efficient use of the public street or alley. The Petitioner is responsible for the cost associated with relocation or removal.

(g) Permits issued after January 1, 2010 are not effective unless recorded in the real property records of the county in which the encroachment is located.

(h) The only mechanism to provide rights more secure than a permit that the city can provide is a release of the city's right-of-way interest in the affected property. A petitioner insisting on rights more secure than a permit may request the director to present to council a request for such a release upon paying a \$100 application fee. The director should present the request to council without recommendation and inform council that the request is a deviation from normal processes. If council approves the release, the petitioner must also pay the city an amount equal to what the city would pay if the affected property were in private hands and the city were acquiring it for street right of way.

**Sec. 37-4. Governmental-Related Agreements.**

(a) Petitions for intrajurisdictional agreements or joint use agreements by other governmental jurisdictions and by utility agencies for use of City property must be submitted to the director of CIMS, unless the property is under the jurisdiction of the parks department or the airport. Petitions relating to parks property must be submitted to the parks director, and petitions relating to airport property must be submitted to the airport director.

(b) The director may process requests and may establish forms and procedures to carry out this section and may charge a \$500 processing fee. Agreements under this section must either be recorded or described in a recorded memorandum of agreement. For the purposes of this section, City property does not include utility easements or public streets or alleys that utility agencies are otherwise permitted by law to use. Nothing in this section alters the rights and obligations of the City and utility agencies in street repairs, widenings, and reroutings.

(c) As to City fee-owned property, if petitioners pay fair market value for the property used, their rights are governed by this section. All petitioners other than utility agencies must apply under this section. Rights granted under this section have indefinite duration and may be terminated only by action of city council. If city council terminates a utility agency's rights under an agreement subject to this section and has appropriated adequate funds in the terminating ordinance or otherwise, the utility agency may seek reimbursement from the city for the reasonable costs of:

- (1) removing existing facilities permitted by the agreement,
- (2) acquiring a new location for the facilities, up to a maximum of the fee charged for the agreement, and
- (3) installing replacement facilities in the new location.

(d) The area subject to the agreement must be as wide as reasonably necessary to maintain the pipeline, but not less than 20 feet. For the purpose of calculating the payment due, the minimum licensed area is 600 square feet.

(e) As to City fee-owned property, if petitioners do not pay fair market value for the property used, their rights are governed by this section. Rights granted under this section have indefinite duration and may be terminated only by action of city council. If city council terminates a utility agency's rights under an agreement subject to this section, the utility agency must, at its own expense, find an alternate place for its facilities and remove and relocate the facilities.

(f) As to property in which the City owns only an easement, the Petitioner need not pay more than the processing fee provided for above. The agreement may impose limitations on the proposed use to assure city easement rights are not interfered with and is terminable only if the use interferes with City's easement rights.

(g) No agreement under this section grants the right to trespass on or otherwise use property in which persons other than the city have an interest. When the city does not own the fee or another owns an easement, petitioner must get consent from the owner of all non-City interests.

**Sec. 37-5. Use of City Easement Property by Private Parties.**

(a) Petitions for use of property over which the City owns an easement, other than by the owner of the fee underlying an easement, must be submitted to the director of CIMS. The director may process requests and may establish forms and procedures to carry out this section. This section does not apply to public street, alley, sidewalk, plaza, or other public area easements.

(b) Petitioner need pay only an administrative fee of \$500. The agreement may impose limitations on the proposed use to assure city easement rights are not interfered with. Rights under an agreement subject to this section have indefinite duration, and they may be terminated only if the use interferes with City's easement rights.

(c) A director may, without council action, approve agreements conforming to this section and not impairing the City's rights in the affected property. Termination may be by the director without council action. One whose rights are terminated by the director may appeal to city council by sending written notice of such appeal to the director. The director must then act with reasonable dispatch to put the appeal on city council's agenda. One appealing a termination is responsible for monitoring upcoming council agendas to learn when council will take the appeal up.

(d) No agreement under this section grants the right to trespass on or otherwise use property in which persons other than the city have an interest. Petitioner must get consent from the owner of all non-City interests.

(e) Owners of the fee underlying city easements need not apply for rights under this chapter. In no event may an underlying owner's use of the fee impair the City's easement rights.

**Sec. 37-6. Riverwalk and Downtown Right-of-Way Leases.**

Use of city property in the River Improvement Overlay District and use of public right of way for dining and retail purposes in the downtown area are not subject to this chapter. The downtown area means the area defined by the following boundaries:

Starting at the intersection of Salado and El Paso Streets;

Thence north on Salado to its intersection with Frio Street;

Thence northeast in a straight line to the intersection of IH-10 and Cadwalder;

Thence south on IH-10 to IH-35;

Thence northeast on IH-35 to a perpendicular point connecting with Cherry Street;

Thence south on Cherry street to Durango Boulevard;

Thence west on Durango to the San Antonio River;

Thence south along the San Antonio River to Arsenal street;

Thence west on Arsenal to El Paso Street; and

Thence west on El Paso to Salado to the point of beginning.

**Sec. 37-7. Landscaping Permits.**

(a) Petitions for permits to landscape or maintain city right of way must be submitted to the director of CIMS. 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. 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.

(c) Landscaping permits may be combined with permits issued under section 37-3, may be in the same form as such permits, and should be recorded as are 37-3 permits.

**Sec. 37-8. Fiber Optic Licenses.**

(a) Petitions by telecommunications providers to install fiber optic cable, conduit, and related facilities on city right of way or other city property must be submitted to the director of Information Technology Services Department. 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 \$3,500. This section does not apply to a certificated telecommunications provider licensed by the Texas Public Utility Commission that is providing retail telecommunications service within the City and does not include public right of way that is a drainage easement unless the city also owns the underlying fee interest.

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

(c) The annual fee for use of public right of way for the purpose of installing aerial and/or subterranean fiber optic facilities is based on the fair market value of the right of way used by the petitioner. The licensed area must be as wide as the petitioner will reasonably need to maintain the licensed facilities but not more than 20 feet. Notwithstanding section 37-2(i), the director in his discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the right of way subject to the license, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. The petitioner will be responsible for paying the right of way appraisal separate from the processing fee. The director will determine the fair market value on a per-linear-foot basis of the right of way area associated with the petitioner's network footprint. The usage fee for the first year of the license will be determined by multiplying the per linear foot fair market value by the total number of square feet of right of way. An annual escalation factor of 4% will be applied to the fee for year one in order to derive the usage fees for years two to ten of the license term. At the discretion of the director, the City may negotiate a discount off the total licensing fee in exchange for in-kind contributions of equivalent value.

(d) The licensing fee will authorize the petitioner to install fiber facilities on City right of way, but does not grant authority to use poles or other infrastructure of the City or utility agencies. 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 fiber facilities are located, the director may require licensee to relocate the fiber optic facilities, including conduit, at licensee's expense.

(e) Following termination of the license for any reason, licensee must remove or otherwise dispose of the fiber facilities at its own expense within 60 days. Failure to take this action will result in the fiber facilities being considered abandoned and the property of the City.

### **Sec. 37-9. Licenses of City Property.**

(a) Uses of property owned by the City in fee that are subject to this chapter but are not described elsewhere in this chapter must be licensed. Petitions for such licenses must be submitted to the director of CIMS. The director may process license requests and may establish forms and procedures conducive to carrying out this section. If a use is specifically addressed in another section of this chapter, the more specific section applies.

(b) The non-refundable license processing fee for each petition is \$815.

(c) Except as provided below, the license fee for each use of city property for a 10-year period is the greater of \$8,150, or

- (1) 10% a year of the fair market value for surface uses;
- (2) 7½% 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 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.

(e) The City may collect license fees for uses of public right of way or other City property before rights under this section have been granted, even if the uses are now eligible for a permit.

- (1) 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.
- (2) 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 ten-year licenses until December 1, 2009. Past-due license fees need not be paid for a period after December 1, 2009, but after that date, past-due permit fees must be paid.

### **Sec. 37-10. Licenses for Petrochemical Pipelines on City Property.**

(a) Uses of public right of way or other city property for petrochemical pipelines must be licensed under this section. Petitions for such licenses must be submitted to the director of CIMS. The director may process license requests and may establish forms and procedures conducive to carrying out this section.

(b) The non-refundable license processing fee for each petition is \$5,000.

(c) Except as provided below, the license fee for the first year of a pipeline license is the fair market value of the licensed area. The fee for each succeeding year is the previous year's fee multiplied times 1.04. Licenses do not exceed 10 years. If the director requests the petitioner to install fiber-optic cable alongside the pipeline and the petitioner agrees to do so, petitioner's license fee is reduced by petitioner's actual out-of-pocket cost for the cable, conduit, and associated facilities installed. The discount is deducted ratably from each payment due under the license. The installation must meet City's specifications.

(d) The licensed area must be as wide as the petitioner will reasonably need to maintain the pipeline, but not less than five feet. For the purpose of calculating the fee, the minimum licensed area is 300 square feet.

(e) Those using public right of way or other city property in a manner subject to this section without a license before February 2009 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 February 2009 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 ten-year licenses until the license is granted.

#### **Sec. 37-11. Closure, Vacation, and Abandonment of Public Right of Way.**

(a) Petitions for closure, vacation, and abandonment of public streets or alleys must be submitted to the director of CIMS. 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 rights 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. Unless Petitioner demonstrates that City owns the right of way in fee, City will assume the right of way exists by easement.

(c) Fees for closures, vacations, or abandonments are:

(1) A non-refundable processing fee of \$815, and

(2) The fair market value of the right-of-way segment being closed, vacated, or abandoned.

No fees of any type are owing for City-initiated closures, vacations, or abandonments.

- (d) The director may recommend that city council reduce 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;
  - (2) Petitioner proposes to make improvements qualifying for reduction or waiver of fees under the city's incentive scorecard, or its equivalent; or
  - (3) Petitioner has a federal income-tax exemption under section 501(c) of the federal Internal Revenue Code.
- (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 signs 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 and must remain in place until city council acts on the petition. Signs need not be erected for undeveloped ("paper") public right of way or for slivers not affecting the path of public travel. In addition to the processing fee, the director may require a petitioner to deposit up front the reasonable cost of procuring, installing, and removing the signs.
- (g) Not later than 10 days before the planning commission takes up a proposed closure, vacation, or abandonment, the director must cause letters to be sent out to the persons the director reasonably believes to be owners of all tracts within 500 feet of any portion of the affected right of way. In determining ownership of tracts, the director need not inquire further than the ownership listings by Bexar Appraisal District. Letters need not be sent for paper public right of way or for slivers not affecting the path of public travel.
- (h) Closing, vacating, and abandoning public right of way must approved by ordinance. Opposition by neighborhood groups may be considered by Planning Commission and City Council, but such opposition is not a basis for the director to fail to process a petition.

**Sec. 37-12. Sale of Surplus Real Property.**

- (a) Petitions for the sale of all city surplus property must be submitted to the director of CIMS, 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 for property that is the responsibility of other departments, the director of CIMS 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. The City must rezone surplus real property offered for sale for affordable housing 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 public advertisement 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 is \$815, unless initiated by a department director or assistant director.

### **Sec. 37-13. Wireless Communications Towers on City-Owned Property.**

(a) The following definitions apply to this section:

*City tower* means a wireless communications tower on city-owned property.

*Provider* means any person that erects a city tower other than the City.

*Collocator* means any person, other than a provider, that installs wireless antennae facilities on a city tower.

(b) Petitions for the right to erect a city tower or collocate antennae facilities on a city tower must be submitted to the director of the Information Technology Services Department. The director may process requests and may establish forms and procedures to carry out this section. Tower leases and collocation licenses are for 20-year terms.

(c) The City may lease space for the erection of city towers. When erected, city towers remain personal property and belong to the provider during the

existence of the lease. The provider is entitled to install one antennae array and antennae facilities on the city tower at a discounted licensing fee for the entire life of the lease. The lease may specify the required height of the city tower and the required number of antennae array locations. If following termination of a tower lease for any reason, the provider fails to remove the city tower within 60 days or otherwise dispose of the tower, the tower shall be considered abandoned and shall become the property of the City.

(d) Despite the city tower being the provider's personal property during the term of a lease, the City reserves the right to charge license fees to collocators desiring to install antennae facilities on the city tower. If a city tower was built before adoption of this section, the provider must obtain a tower lease from the city, and any collocator must obtain a collocation license for its antennae facilities.

(e) The City Attorney must approve the form of each tower lease and collocation license that does not conform to this section, both of which must be approved by the City Council. The director can bind the city to tower leases or collocation licenses without specific City Council action, if they conform to this section.

(f) The non-refundable processing fee for each petition for a wireless-communication tower lease is \$3,500.

(g) The licensing fees for tower leases and collocation licenses is based on the following rate elements:

1. Number of attachments
2. Length of cables
3. Number of square feet occupied in the common utility area

These elements have been incorporated into the following rate structure: \$2.00 per foot for each cable attachment per month for collocators, and \$1.00 per foot for each cable attachment per month for providers. In addition, tower leases and collocation licenses will include certain administrative fees as provided in those agreements. The City reserves the right to revise its rate structure every five years.

### **Sec. 37-14. Granting and Releasing Easements.**

(a) Petitions for granting or releasing easements must be submitted to CIMS. 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 is \$815. The director may require petitioner to demonstrate that the city owns the fee of the property for which an easement is being requested and that no inconsistent rights have previously been granted.

(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. The value of the easement to be released by City is presumed to equal the fair market value of the fee, determined according to the requirements of this Chapter. Nothing in this Chapter requires the city to grant an easement to another, and if another wants an easement from the City, the City may negotiate for a higher price than the minimum described above.

(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) If requested by the director, petitioner must 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.

### **Sec. 37-15. 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. A director may charge up to \$815 or accept up to \$815 in value in exchange for a right of entry without council approval.

(b) A director also may, without council action, enter into right-of-entry agreements permitting the city to conduct surveying, measuring, testing, and similar activities on property the city may wish to acquire or on property the city otherwise needs to enter in conducting its affairs. Directors may process requests and may establish forms and procedures to carry out this section. A director may not pay more than \$815 or give more than \$815 in value to get a right of entry without specific council approval.

(c) 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.

(d) Agreements authorized by this section must be in writing and in form satisfactory to the city attorney.

**Sec. 37-16. 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. Documents pertaining to the acquisition transaction must be in form satisfactory to the city attorney.

**Sec. 37-17. Notices of Non-Acceptance.**

(a) When the director of CIMS 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 must seek city council authorization for the acceptance of the property. If a use does not exist, the director should cause a notice of non-acceptance of the real property to be filed in the appropriate county records of real property.

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

**Sec. 37-18. Fee for Processing Requests to Assign Leases.**

A tenant under a lease in which the city is landlord must pay the city a processing fee of \$1,500 when seeking permission to assign the lease. The fee is not refundable whether or not the assignment is approved.

**Sec. 37-19. International Center.**

The director of the department responsible for administering the International Center may, without council authorization other than this section, enter into agreements pertaining to receptions and art exhibits in the common areas of the International Center and agreements authorizing caterers to provide catering services for events in the building. Nothing in this section requires the director to regulate persons providing catering services wholly within premises leased to tenants.

**Sec. 37-20. Releases of Lien.**

(a) A director of a department responsible for putting a lien on private property may, without council action, release the lien if the amount secured by the lien is paid in full. The director may also release a lien on receipt of a compromised amount if the compromise is otherwise authorized directly by council or by delegation of authority.

(b) The Assistant Director of CIMS for Real Estate may, without council action, release liens in favor of the City when advised in writing by the City Attorney's Office that the liens are invalid according to law.

**Sec. 37-21. Use of City-Owned Traffic Poles.**

(a) Petitions for the use of city-owned traffic poles for the attachment of appropriate wireless devices shall be submitted to the director of the Information Technology Services Department. The petitioner shall pay a non-refundable processing fee of \$3,500, and enter into a pole attachment agreement with the city. The terms and rates of the pole attachment agreement shall be similar to the pole attachment agreement used by utility agencies consistent with Section 54.204 of the Public Utility Regulatory Act.

(b) The director shall establish forms, processes and procedures for carrying out this section. At the request of the director, the petitioner will provide engineering network designs and other relevant information in order to determine the most appropriate use of city-owned traffic poles.

(c) A pole attachment agreement will not grant the petitioner the right to use city rights of way. The petitioner must establish the legal right to use city rights of way outside the scope of this section.

(d) When traffic poles on which wireless devices are attached must be moved to accommodate a public works project, the petitioner will be required to relocate the wireless devices and any related facilities at its own expense. Upon termination of the pole attachment agreement for any reason, the petitioner shall remove or otherwise dispose of the wireless devices within 60 days. Failure to take this action will result in considering the wireless devices abandoned and they will become the property of the city.

**Sec. 37-22. [Reserved].**

**Sec. 37-23. Indemnity of City.**

(a) Any permit, license, or agreement accepting rights under this chapter automatically contains the indemnity contained in this section.

(b) These definitions apply to the indemnity provisions of this section:

*Indemnified Claims* mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this section, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

*Indemnitees* means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

*Indemnitor* means Petitioner.

(c) Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

(d) If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

(e) There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

(f) Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

(g) In addition to the indemnity required under this section, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

(h) Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

(i) Nothing in this section waives governmental immunity or other defenses of Indemnitees under applicable law.

(j) If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

(k) 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.

(l) Entities that may not lawfully grant indemnities or may not lawfully be required to do so by the city do not grant the indemnity provided for in this section by accepting rights under this Chapter.

**SECTION 3.** Funds generated by this ordinance will be deposited as per the table below.

<i>General Ledger</i>	<i>Internal Order</i>	<i>Fund</i>
4202410	240000000061	11001000
4903101	240000000060	11001000

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by

the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** 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 6.** 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 7.** 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.

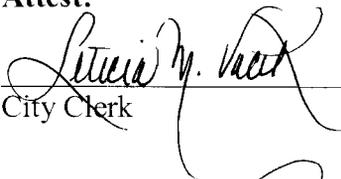
**SECTION 8.** This ordinance becomes effective 10 days after passage unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

**PASSED AND APPROVED** this 10<sup>th</sup> day of December 2009.

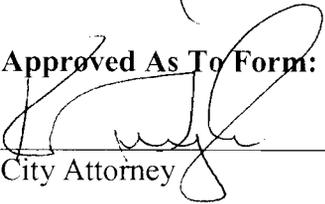
  
M A Y O R

**JULIÁN CASTRO**

**Attest:**

  
\_\_\_\_\_  
City Clerk

**Approved As To Form:**

  
\_\_\_\_\_  
City Attorney

<b>Agenda Item:</b>	<b>31</b>						
<b>Date:</b>	12/10/2009						
<b>Time:</b>	02:39:40 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance amending Chapter 37 of the City Code of San Antonio, Texas, relating to the acquisition, disposition, and use of City property, including changing fees, updating numerous sections, and better defining the processes applicable to private uses of City property. [Penny Postoak Ferguson, Assistant City Manager, Mike Frisbie, Director, Capital Improvements Management Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x			x	