

ORDINANCE NO. 98-6B

THE TOWN COUNCIL OF THE TOWN OF BEAR RIVER CITY DOES ORDAIN AS FOLLOWS:

The following Ordinance is added to the Town of Bear River City Municipal Code:

EXCAVATION PERMIT ORDINANCE

Section 1-- Definitions.

- 1.1 **"Applicant"** means any Person who makes application for a permit.
- 1.2 **"Business"** means any place in the TOWN in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.
- 1.3 **"TOWN"** means, Bear River City a municipal corporation of the State of Utah.
- 1.4 **"TOWN Engineer"** means the TOWN Engineer, or his/her authorized representative.
- 1.5 **"Emergency"** means any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.
- 1.6 **"Engineering Regulations", "Regulations", "Specifications", and/or "Design Standards"** mean the latest version of the Engineering Regulations, specifications, design standards or criteria published or adopted by the TOWN Engineer.
- 1.7 **"Failure"** means a Work Site Restoration which fails to meet TOWN Engineer Specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or other surface irregularities. Measurement of Failure shall be further defined in the Engineering Regulations.
- 1.8 **"Infrastructure Provider"** means a Person providing to another, for the purpose of providing Telecommunication services to customers, all or part of the necessary System which uses the right-of-way.

- 1.9 **"Operator"** means any Person who provides service over a Telecommunications System and directly or through one or more affiliates owns a controlling interest in such System, or who otherwise controls or is responsible for the operation of such a System.
- 1.10 **"Permittee"** means any Person which has been issued a permit and thereby has agreed to fulfill the requirements of this Section.
- 1.11 **"Person"** means and includes any natural Person, partnership, firm, association, Provider, corporation, company, organization, or entity of any kind.
- 1.12 **"Pipe Driveway"** means a driveway approach which uses a pipe or other means to bridge the gutter or ditch.
- 1.13 **"Property Owner"** means Person or Persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.
- 1.14 **"Provider"** means an Operator, Infrastructure Provider, Reseller, System Lessee, or Public Utility Company.
- 1.15 **"Public Utility Company"** means any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility product or services for use by the general public.
- 1.16 **"Public Way"** means and includes all public rights-of-way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways. It does not, however, include utility easements not within Public Ways of the TOWN.
- 1.17 **"Private Drain Line"** means a pipe installed solely for the transmission of water collected or generated on private property such as drainage, spring, or storm water, or condensate into the public drainage system.
- 1.18 **"Reseller"** refers to any Person that provides service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission and does not install any System in the rights-of-way.
- 1.19 **"Resident"** means the Person or Persons currently making their home at a particular dwelling.
- 1.20 **"Storm Drain"** means a dedicated pipe, conduit, water way, or ditch installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include Private Drain Lines.

- 1.21 **"System Lessee"** refers to any Person that leases a System or a specific portion of a System to provide services.
- 1.22 **"Public Utility and/or Telecommunications System"** or **"System"** means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and Appurtenances owned, leased, or used by a Provider located in the construction, ownership, operation, use or maintenance of a Public Utility and/or Telecommunications System.
- 1.23 **"Work Site Restoration"** means and includes the restoring of the original ground or paved hard surface area to comply with Engineering Regulations, and includes but is not limited to repair, cleanup, backfilling, compaction, and stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

Section 2-- Permit Required; Basis for Issuance

- 2.1 Any Person desiring to perform work of any kind in a Public Way within the TOWN, shall make application for a permit. The decision by the TOWN to issue a permit shall include, among other factors determined by the TOWN, the following:
- 2.1.1 The capacity of the Public Way to accommodate the facilities or structures proposed to be installed in the Public Way;
- 2.1.2 The capacity of the Public Way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the Public Way, such as electrical power, telephone, gas, sewer and water;
- 2.1.3 The damage or disruption, if any of public or private facilities, improvements, or landscaping previously existing in the Public Way;
- 2.1.4 The public interest in minimizing the cost and disruption of construction from numerous excavations of the Public Way.

Section 3--Permit Application Requirements.

- 3.1 Application for a permit shall be filed with the TOWN Engineer on a form or forms to be furnished by the TOWN. Property owners and/or tenants for whom work is being done shall be responsible for obtaining the permits, provided, however, contractors may obtain the permit in the contractor's name.
- 3.2 No Person shall be eligible to apply for or receive permits to do work within the Public Ways of the TOWN, save and except the following:

- 3.2.1 Contractors licensed by the state as general contractors;
 - 3.2.2 Providers;
 - 3.2.3 Property owners installing, replacing, or maintaining less than five hundred square feet or one hundred linear feet of sidewalk, curb, and gutter, or driveway approach, or other work approved by the TOWN Engineer, upon a portion of the Public Way adjacent to their residence; or
 - 3.2.4 Persons offering a service which requires occupation of the Public Way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or sign boards or other structures.
- 3.3 The TOWN Engineer may deny the issuance of permits to contractors, utility companies, or other permit Applicants who have shown by past performance that in the opinion of the TOWN Engineer they will not consistently conform to the Engineering Regulations, Specifications, Design Standards, or the requirements of this Section.
- 3.4 When necessary, in the judgment of the TOWN Engineer, to fully determine the relationship of the work proposed to existing or proposed facilities within the Public Ways, or to determine whether the work proposed complies with the Engineering Regulations, construction Specifications and Design Standards, the TOWN Engineer may require the filing of engineering plans, Specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.
- 3.5 It shall be unlawful for any Person to commence work upon any Public Way until the TOWN Engineer has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary in this Section.
- 3.6 The disapproval or denial of an application by the TOWN Engineer may be appealed by the Applicant to the Mayor and Town Board by filing of a written notice of appeal within ten days of the action of the TOWN Engineer. The Town Board shall hear such appeal, if written request therefor be timely filed as soon as practicable, and render his/her decision within two weeks following notice of such appeal.
- 3.7 In approving or disapproving work within any Public Way, or permits therefor, in the inspection of such work; in reviewing plans, sketches or Specifications; and generally in the exercise of the authority conferred upon him/her by this Section, the TOWN Engineer shall act in such manner as to preserve and protect the

Public Way and the use thereof, but shall have no authority to govern the actions or inaction of Permittees and Applicants or other Persons which have no relationship to the use, preservation or protection of the Public Way.

- 3.8 It shall be unlawful for a TOWN, County, State, Federal or other government employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefor.
- 3.9 A permit is not required from the TOWN Engineer for hand digging excavations for installation or repair of sprinkler systems and landscaping within the non-paved areas of the Public Way. However, conformance to all TOWN Specifications is required.

Section 4-- Emergency Work.

- 4.1 Any Person maintaining pipes, lines, or facilities in the Public Way may proceed with work upon existing facilities without a permit when Emergency circumstances demand the work to be done immediately; provided a permit could not reasonably and practicably have been obtained beforehand.
- 4.2 In the event that Emergency work is commenced on or within any Public Way of the TOWN during regular business hours, the TOWN Engineer shall be notified within one-half hour from the time the work is commenced. The Person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall insure that work is accomplished according to TOWN Engineering Regulations, the Manual on Uniform Traffic Control Devices and other applicable laws, regulations, or generally recognized practices in the industry.
- 4.3 Any Person commencing Emergency work in the Public Way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which TOWN offices are open for business after such work is commenced. A permit for such Emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the TOWN Engineer.

Section 5-- Permit Fees.

- 5.1 The TOWN shall charge and the Permittee shall pay upon issuance of the permit, fees for costs associated with the work performed under the permit as outlined in the Consolidated Fee Schedule. Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the

Public Way or diminution of the useful life of the Public Way, and other costs to the TOWN associated with the work to be done under the permit. All costs shall be assessed in a non-discriminatory manner.

- 5.2 The TOWN Engineer may waive permit fees or penalties or portion thereof provided for in this Section, when he/she determines that such permit fee or penalty:
 - 5.2.1 pertains to construction or rehabilitation of housing for Persons whose income is below the median income level for the TOWN; or
 - 5.2.2 pertains to an encroachment on the Public Way involving a beautification project which furthers specific goals and objectives set forth in the TOWN's strategic plan, master plans, or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping.
- 5.3 Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection, and Work Site Restoration associated with each undertaking may be charged by the TOWN to each Permittee, in addition to the permit fee.

Section 6-- Permit - Contents - Duration and Extensions.

- 6.1 Each permit application shall state the starting date and estimated completion date. Work shall be completed within five days from the starting date or as determined by the TOWN Engineer. Such determination shall be based upon factors reasonable related to the work to be performed work to be under the permit. Such factors may include, in addition to other factors related to the performed, the following:
 - 6.1.1 The scope of work to be performed under the permit;
 - 6.1.2 Maintaining the safe and effective flow of pedestrian and vehicular traffic on the Public Way affected by the work;
 - 6.1.3 Protecting the existing improvements to the Public Way impacted by the work;
 - 6.1.4 The season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the Public Way by the public;
 - 6.1.5 Use of the Public Way for extraordinary events anticipated by the TOWN.

- 6.2 The TOWN Engineer shall be notified by the Permittee of commencement of the work within twenty-four hours prior to commencing work. The permit shall be valid for the time period specified in the permit.
- 6.3 If the work is not completed during such period, prior to the expiration of the permit, the Permittee may apply to the TOWN Engineer for an additional permit or an extension, which may be granted by the TOWN Engineer for good cause shown.
- 6.4 The length of the extension requested by the Permittee shall be subject to the approval of the TOWN Engineer. No extension shall be made that allows work to be completed in the winter period without payment of winter fees.

Section 7-- Permit - No Transfer or Assignment.

- 7.1 Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a Permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this Section and under said permit.

Section 8-- Compliance with Specifications, Standards, Traffic-Control Regulations; Site Permittee Identification.

- 8.1 The work performed in the Public Way shall conform to the requirements of the Engineering Regulations, Design Standards, construction Specifications and traffic control regulations of the TOWN, copies of which shall be available from the TOWN Engineer, kept on file in the office of the TOWN Recorder and be open to public inspection during office hours.
- 8.2 Where a job site is left unattended, before completion of the work, signage with minimum two inch high letters shall be attached to a barricade or otherwise posted at the site, indicating the Permittee's name, or company name, telephone number, and after hours telephone number.
- 8.3 All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to Residents and Businesses fronting on the Public Way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or Persons. Barricades must be in place until all of the Permittee's equipment is removed from the site and the excavation has been backfilled and proper

temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the TOWN; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the TOWN. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The Police Department and Fire Department shall be notified at least 24 hours in advance of any planned excavation requiring street closure or traffic detour.

Section 9-- Other Highway Permits.

- 9.1 Holders of permits for work on highways owned or under the jurisdiction of other government entities, but located within the TOWN limits, shall not be required to obtain permits from the TOWN under the provisions of this Section, unless the work extends beyond the back side of the curb, or beyond any other designated jurisdictional boundary. Any TOWN permit shall not be construed to permit or allow work on a County road on a State highway within the TOWN without an applicable County or State permit.
- 9.2 The TOWN Engineer, in his or her discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the Permittee of said governmental entity for the protection of traffic and safety of Persons and property. Notwithstanding the foregoing, nothing in this Section shall be construed to impose any duty, implied or express, on the TOWN or its employees, officers, agents or assigns, relative to the protection of traffic and safety of Persons or property, arising out of the issuance of any permit issued by government entities other than the TOWN, or arising out of any work performed on any Public Way owned or within the jurisdiction of the TOWN.

Section 10-- Relocation of Structures in Public Ways.

- 10.1 The TOWN Engineer may direct any Person owning or maintaining facilities or structures in the Public Way to alter, modify or relocate such facilities or structures as the TOWN Engineer may require as set forth herein. Sewers, pipes, drains, tunnels, conduits, Pipe Driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The Person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the TOWN, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the TOWN. In the event that such Person refuses or neglects to conform to the directive of the TOWN, the TOWN shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such Person. Such Person shall pay to the TOWN all costs incurred

by the TOWN in connection with such work performed by the TOWN, including also design, engineering, construction, materials, insurance, court costs and attorneys fees.

10.2 Any directive by the TOWN Engineer shall be based upon ~~of~~ the following:

10.2.1 The facility or structure was installed, erected or is being maintained contrary to law, or determined by the TOWN Engineer to be structurally unsound or defective;

10.2.2 The facility or structure constitutes a nuisance as defined under State statute;

10.2.3 The permit under which the facility or structure was installed has expired or has been revoked;

10.2.4 The Public Way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or

10.2.5 The grades or lines of the Public Way are to be altered or changed.

10.3 Any directive of the TOWN Engineer under this Section shall be under and consistent with the TOWN's police power. Unless an emergency condition exists, the TOWN Engineer shall make a good faith effort to consult with the Person regarding any condition that may result in a removal or relocation of facilities in the Public Way to consider possible avoidance or minimization of removal or relocation requirements and provide the directive as far enough in advance of the required removal or relocation to allow the Person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

10.4 This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the Public Way, if that prior private easement grants a superior vested right.

10.5 Any Person owning or maintaining facilities or structures in the Public Way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the TOWN Engineer shall be guilty of a class B misdemeanor. All costs of alteration, modification or relocation shall be borne by the Person owning or maintaining the facilities or structures involved.

10.6 The TOWN may, at any time, in case of fire, disaster or other emergency, as determined by the TOWN in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Public Way, in which

event the TOWN shall not be liable therefor to a Person. The TOWN shall notify a Person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

Section 11-- Impact of Excavation on Existing Improvements.

- 11.1 If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with TOWN standards for such.
- 11.2 Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.
- 11.3 At any time a Permittee disturbs the yard, residence or the real or Personal property of a private Property Owner or the TOWN, such Permittee shall insure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.
- 11.4 The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the Permittee. Further, a Permittee shall reimburse a Property Owner or the TOWN, for any actual damage caused by the Permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this Subsection shall require the Permittee to pay a subscriber or private Property Owner when that subscriber or private Property Owner requests that the Permittee remove, replace or relocate improvements associated with the service provided by the Permittee to the Property Owner and when the Permittee exercises due care in the performance of that service, or when the subscriber or private Property Owner provided false information to the Permittee on which the Permittee relied to its detriment.
- 11.5 Examples of types of acts specifically included in this Section are the following:
 - 11.5.1 Removal of sod, lawn, shrubbery, flowers, trees, driveways, or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other Appurtenances of the Permittee;
 - 11.5.2 Installation or removal of equipment or other Appurtenances of the Permittee's System within a private Property Owner's property or residence which requires drilling, excavating, plastering, or the like on the part of the Permittee;

- 11.5.3 Temporarily relocating or moving a piece of personal property or a fixture of a private Property Owner (such as a motor vehicle, fence, air conditioning, heating unit, or the like) in order to perform some sort of construction, maintenance or repair by the Permittee; or
- 11.5.4 Permanently removing a Permittee's equipment or other Appurtenances due to the revocation, termination or non-renewal of the franchise.
- 11.6 Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the TOWN Engineer prior to the blockage of the channel.
- 11.7 The requirements imposed upon the Permittee extend to any subcontractor or independent contractor that the Permittee might employ to perform the tasks pursuant to the permit.
- 11.8 The requirements of this Section shall not apply to the removal by a Permittee, of a permanent structure placed by a Property Owner in a Public Way, unless such Property Owner has received prior written permission from the TOWN granting the Property Owner the right to install a permanent structure on a Public Way, and such written permission has been recorded in the office of the County Recorder.

Section 12-- Restoration of Public Property.

- 12.1 The Permittee shall, at its own expense, restore the surface of any Public Way to its original condition and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall conform to the Engineering Regulations, Design Standards and Specifications promulgated by the TOWN and shall be accomplished within the time limits set forth in the permit, unless additional time is granted in writing by the Department.
- 12.2 At its option, the Permittee doing the actual excavation work may request that the TOWN restore the surface to its original condition. The fee for such resurfacing shall be determined by the TOWN Engineer in accordance with its reasonable costs for such work and shall be charged to the Person, firm, or corporation making the excavation. Payment for said work shall be received by the TOWN prior to the release of the bond.

Section 13-- Insurance Requirements.

- 13.1 Before a permit is issued, the Applicant shall furnish to the TOWN evidence that such Applicant has a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions or with such alternative limits and provisions as may be approved by the TOWN:
- 13.1.1 A minimum of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than One Million Dollars (\$1,000,000) in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two times the required occurrence limit. The coverage shall be in the nature of Broad Form Commercial General Liability coverage. The TOWN Attorney may increase or decrease minimum insurance limits, depending on the potential liability of any project.
 - 13.1.2 All policies shall include the TOWN, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the "TOWN" shall include the TOWN, its employees, officers, officials, agents, volunteers and assigns.
 - 13.1.3 The coverage shall be primary insurance as respects the TOWN, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the TOWN, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the Permittee's insurance and shall not contribute to or with it.
 - 13.1.4 Any Failure to comply with reporting provisions of the policy shall not effect coverage provided to the TOWN, its employees, officers, officials, agents, volunteers, and assigns.
 - 13.1.5 Coverage shall state that the Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 13.1.6 Underwriters shall have no right of recovery or subrogation against the TOWN, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
 - 13.1.7 The insurance companies issuing the policy or policies shall have no recourse against the TOWN for payment of any premiums due or for any assessments under any form of any policy.

- 13.1.8 Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested sent to the TOWN.
- 13.1.9 Each policy shall be endorsed to indemnify, save harmless and defend the TOWN and its officers and employees against any claim or loss, damage or expense sustained on account of damages to Persons or property occurring by reason of permit work done by the Permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.
- 13.1.10 Each policy shall be endorsed to indemnify, hold harmless and defend the TOWN, and its officers and employees against any claim or loss, damage or expense sustained by any Person occurring by reason of doing any work pursuant to the permit including, but not limited to falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and right-of-way is opened for public use.
- 13.2 Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of "7" or higher.
- 13.3 The Permittee shall furnish the TOWN with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The TOWN expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the Permittee shall be prepared to provide such copies prior to the issuance of the permit.
- 13.4 If any of the required policies are, or at any time become, unsatisfactory to the TOWN as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the TOWN, the Permittee shall promptly obtain a new policy, submit the same to the TOWN for approval, and thereafter submit verification of coverage as required by the TOWN. Upon failure to furnish, deliver and maintain such insurance as provided herein, the TOWN may declare the permit to be in default and pursue any and all remedies the TOWN may have at law or in equity, including those actions outlined in this Section.
- 13.5 The Permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

- 13.6 Any deductibles or self-insured retentions shall be declared to and approved by the TOWN. At the option of the TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TOWN, its employees, officers, officials, agents, volunteers or assigns, or the Permittee shall procure a bond, in a form acceptable to the TOWN, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- 13.7 A Property Owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this Section.
- 13.8 A Provider may be relieved of the obligation of submitting certificates of insurance under the following circumstances:
- 13.8.1 If such company shall submit satisfactory evidence in advance that:
- 13.8.1.1 It is insured in the amounts set forth in this Section, or has complied with State requirements to become self insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and
- 13.8.1.2 Said coverage provides to the TOWN the same scope of coverage that would otherwise be provided by a separate policy as required by this Section; or
- 13.8.2 The work to be performed under the permit issued to the Applicant is to be performed by the TOWN, in which case insurance or other risk transfer issues shall be negotiated between the TOWN and the Applicant by separate agreement.

Section 14-- Bond - When Required, Conditions, Warranty.

- 14.1 Except as noted in this Section, each Applicant, before being issued a permit, shall provide the TOWN with an acceptable security (this may include a corporate surety bond, cash bond or letter of credit, as determined by the TOWN) in the amount of One Million Dollars (\$1,000,000) to guarantee faithful performance of the work authorized by a permit granted pursuant to this Section. The amount of the security required may be increased or decreased at the discretion of the TOWN Engineer whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of security otherwise required under this Section. The form of the security and the entity issuing the security shall be subject to the approval of the TOWN Attorney.

- 14.2 Public utilities franchised by the TOWN shall not be required to file any security if such requirement is expressly waived in the franchise documents.
- 14.3 The security required by this Section shall be conditioned as follows:
- 14.3.1 That the Permittee shall fully comply with the requirements of the TOWN ordinances and Regulations, Specifications and standards promulgated by the TOWN relative to work in the Public Way, and respond to the TOWN in damages for failure to conform therewith;
 - 14.3.2 That after work is commenced, the Permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the Public Way to construction Specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;
 - 14.3.3 That the Permittee shall guarantee the materials and workmanship for a period of two years from completion of such work, with reasonable wear and tear excepted; and
 - 14.3.4 That unless authorized by the TOWN Engineer on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to Engineering Regulations. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the Permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

Section 15-- Hold Harmless Agreement; Limitations on TOWN Liability.

- 15.1 The Permittee agrees to save the TOWN, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this Section shall constitute such an agreement by the Permittee to this Section.
- 15.2 This Section shall neither be construed as imposing upon the TOWN, its officers, employees and agents, any liability or responsibility for damages to any Person injured by or by reason of the performance of any work within the Public Way, or under a permit issued pursuant to this Section; nor shall the TOWN, its officers,

officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

Section 16-- Work without Permit - Penalty.

- 16.1 A stop order may be issued by the TOWN Engineer directed to any Person or Persons doing or causing any work to be done in the public way without a permit. The abutting Property Owner shall be responsible for causing work to be done.
- 16.2 Any Person found to be doing work in the Public Way without having obtained a permit, as provided in this Section, shall be required to pay a permit fee equal to two times the normal permit fee. For replacement work, where a fee is not normally charged, the normal permit fee for new construction shall apply.

Section 17-- Failure to Comply; Default in Performance.

- 17.1 Any permit may be revoked or suspended and a stop order issued by the TOWN Engineer, after notice to the Permittee for:
 - 17.1.1 Violation of any condition of the permit, the security, or of any provision of this Section;
 - 17.1.2 Violation of any provision of any other ordinance of the TOWN or law relating to the work; or
 - 17.1.3 Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.
- 17.2 A suspension or revocation by the TOWN Engineer, and a stop order, shall take effect immediately upon entry thereof by the TOWN Engineer and notice to the Person performing the work in the Public Way. Notice to the Person performing the work shall be accomplished when the TOWN Engineer has posted a stop work order at the location of the work and written notice has been mailed, return receipt requested, to the address indicated by the Permittee on the permit.
- 17.3 Whenever the TOWN Engineer finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the TOWN Engineer to be reasonably necessary for the completion of the work.

- 17.4 In the event that the surety (or principal), within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of Persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the TOWN for the cost of doing the work, as set forth in the notice, the TOWN may perform the work, at the discretion of the TOWN Engineer, with TOWN forces or contract forces or both, and suit may be commenced by the TOWN Attorney against the contractor and bonding company and such other Persons as may be liable, to recover the entire amount due to the TOWN, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

Section 18-- Failure to Conform to Design Standards - Penalty.

- 18.1 For failure to conform to the Design Standards and Regulations, the TOWN Engineer may:
- 18.1.1 Suspend or revoke the permit;
 - 18.1.2 Issue a stop order;
 - 18.1.3 Order removal and replacement of faulty work;
 - 18.1.4 Require an extended warranty period; and/or
 - 18.1.5 Negotiate a cash settlement to be applied toward future maintenance costs.

Section 19-- Appeal of Suspension, Revocation, or Stop Order.

- 19.1 Any suspension, revocation or stop order by the TOWN Engineer may be appealed by the Permittee to Mayor and Town Board by filing a written notice of appeal within ten days of the action of the TOWN Engineer. The Mayor and Town Board shall hear such appeal, if written request therefor be timely filed, as soon as practicable, and render their decision within a reasonable time following filing of notice of appeal.

Section 20-- Tampering with Traffic Barricades.

- 20.1 It shall be unlawful for any Person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light

illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

Section 21-- Conflict with Governing Provisions.

- 21.1 Should there be a conflict between the provisions of this Section and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a Public Way, the more restrictive provisions of the aforesaid documents shall apply.

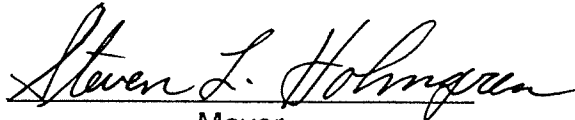
Section 22-- Violation - Penalty.

- 22.1 Unless otherwise specified in this Section, a violation of any provision of this Section, or failure to comply with an order of suspension, revocation or stop work, shall be a class B misdemeanor. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the Person from otherwise complying with the provisions of this Section.

Section 23-- Construed According to Utah Law.

- 23.1 This Ordinance and any Permit granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

PASSED, APPROVED, AND ADOPTED this 4th day of June, 1998.


Mayor

ATTEST:


Town Recorder

CERTIFICATE OF POSTING

I, the duly appointed and acting clerk for the Town of Bear River City, hereby certify that copies of the foregoing Ordinance No. 98-6B were posted at three public places within the municipality this 9th day of November, 1998 which public places are:

1. Bear River City Town Hall
2. Bear River City Post Office
3. Country Archers Market

Dated this 9th day of November, 1998

Carol S. Anderson
Town Clerk