

ORDINANCE NO. 3715

AN ORDINANCE ADOPTING REGULATIONS CONCERNING FACILITIES AND CONSTRUCTION IN CITY RIGHTS-OF-WAY

Recitals.

A. Several problems are being addressed by this Ordinance. First, each instance of underground use of the City right-of-way ("ROW") has historically meant cutting the road surface. The best repairs of such cuts still means that until the road is overlaid or rebuilt, the surface cannot be fully restored. Because of such cuts, roads are always more susceptible to water damage and increased maintenance. Roads that have been cut cost more to repair over time and are more inconvenient to City users.

B. Another problem being addressed is the increasing number of entities laying lines and other facilities in City Rights of Way for that utility's or company's purposes. Without an overall plan or method, each placement of facilities, and later repairs, extensions and maintenance of those installations leads to a nearly haphazard, intertwined, both horizontally and vertically, series of pipes, conduits, manholes and similar facilities.

In many cases the City does not know what lines, cables and pipes are located where, neither does any other service or utility provider. The City has developed a sophisticated and very accurate geographical information system ("GIS") over the past decade. The City has invested large sums of money and labor to locate its water, sewer and other facilities on this modern GIS. The City, its citizens, and the various Providers and utilities will all benefit if this GIS can be used to help locate existing facilities, and to plan for the extension of future facilities. This Ordinance will allow this to occur.

C. Even with modern efforts to locate utilities in advance of digging, such as Colorado's underground excavation statute (§9-1.5-101, *et seq.*, C.R.S.), work in City ROW must go slowly, increasing labor and other costs. Deliberate work is necessary because the consequences of damaging the facilities of others in terms of loss of time, customer service and increased costs are so significant. While in such circumstances it may be that no one is "at fault," the public, the utility providers and the City will benefit from accurate information of the vertical and horizontal location of infrastructure, so that such data can be blended into the City's GIS, resulting in a coordinated system of use, repair and additions to infrastructure within City controlled ROW.

D. The City can help all concerned by creating a system that regulates and directs the ever-increasing myriad of cables, pipes, manholes, lines, fibers, conduits, utility boxes, culverts, ditches, canals and many other structures and appurtenances in City streets and alleys. The City, developers, utilities and other

providers will save money during the design phase, during construction, and when excavations are required for routine and emergency repairs.

E. Congress has dictated some rules, the General Assembly has added others, and the City has its own broad powers as a regulator of the health, welfare and safety of its citizens, visitors and ROW. The City's voters have authorized the use of City streets by Public Service Company of Colorado and Grand Valley Power, pursuant to franchises. The voters approved a cable television operator's use of public ROW in 1966 pursuant to a revocable permit. Congress and others have directed, however, that the City cannot require that every provider obtain a franchise, as once was required; however, the City is lawfully authorized to make reasonable regulations that can apply to providers without franchises, so long as the net effect is not to discriminate or unreasonably burden modern telecommunications and similar functions.

This Ordinance adopts these reasonable rules to solve legitimate local health, safety and welfare problems, within the constraints imposed by evolving federal and state laws that preempt, if any, local control of City ROW.

F. The City has the power and authority to provide a systematic method of permitting, standards, cost recovery and coordination, within the limits of any preemptive federal or state laws that may apply. The Council finds that it would be irresponsible not to do so, because our citizens are being injured financially without this Ordinance as are other utilities and providers. Further, a systematic approach protects the City's and the public's infrastructure.

G. It is noted that above-ground facilities within the City ROW are, for the most part, already adequately regulated pursuant to franchises, the Public Utilities Commission and contracts between the affected parties.

H. These rules and regulations will benefit every provider and utility, as well as the City and its citizens, because the overall costs to and time of each will be reduced.

I. Although existing state law requires utilities to locate their facilities, that law and current local practice is such that the owners of such facilities are not willing to routinely locate their facilities at the City's request. Even if such owners do mark the location of their facilities, experience has shown that frequently the information is incomplete or outside the limits of reasonable accuracy. It is within the City's power and authority to regulate rights of way for the protection of its citizens.

J. The City incurs significant costs by having to redesign and to relocate during construction when inaccurate information is available. Providers also incur unforeseen costs as a result of incomplete or inaccurate location information. Until information as required herein is readily available to accurately locate, both

horizontally and vertically, all infrastructure, all providers must pothole their infrastructure as described herein.

K. This Ordinance responds to the changing reality of utility providers, especially telecommunications and cable industry entities, both old and new, that desire to lay new facilities in City ROW. There are now so many different utilities, in so many different horizontal and vertical locations, that the City must plan for the years to come so that inter- and intra-state communications, information and similar facets of the modern economy can continue to expand and bring the benefits to this City. An overall plan and systematic way to integrate all these activities, functions and facilities will benefit the City, its citizens, and the Providers and utilities that operate in and have infrastructure that runs under and through the City.

This Ordinance addresses practical concerns regarding the use and work in ROW by all types of providers; including special districts, conservancy districts, telecommunications and existing franchisees. Collectively, these may be known or referred to as “Providers” or “the Providers”

L. This Ordinance requires that every entity must first give a specified notice before it may operate (replace, modify, relocate, etc.) in any form in City controlled ROW. Each Provider must show its plan for use of the City’s ROW; establish a systematic way of identifying and enforcing schedules, impacts, location and other technical standards. It requires that accurate information be provided to the City. It provides a mechanism whereby the entity causing delays and damages to the City is responsible to pay for such delays and to reimburse for such damages so that this City’s citizens do not inadvertently subsidize any wrongful or negligent activities of others.

M. The Federal Telecommunications Act of 1996 (47 U.S.C. § 253) makes clear that cities are entitled to be reimbursed for the actual reasonable costs associated with the use of City ROW by utilities and Providers of telecommunications. In addition, various cases around the country, such as the case of *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67 (Second Circuit, 2002), interpret applicable federal law as allowing cities to also receive compensation, equivalent to rent, of up to five percent (5%) per year of a telecommunications provider’s annual revenues generated in the cities’ limits.

N. The City is not by this Ordinance claiming or imposing a reimbursement, however, future City Council’s and the City’s voters may choose to receive a reasonable return on the investment in the ROW of the City, as allowed by law and applicable decisions in cases such as *TCG v. White Plains* .

O. The existing franchises between the City and its two power Providers, Grand Valley Power and Public Service Company of Colorado, provide for franchise fees, analogous to the compensation that may be charged relative to providers of telecommunications and other entities subject to the Telecommunications Act of 1996.

P. The Council determines that it will not require such compensation, nor request voter approval at this time.

Q. This Ordinance is intended to integrate with the City Code, Chapter 38, Article IV. References in this Ordinance to section numbers shall be to Article IV of the Grand Junction Code of Ordinances.

R. This Ordinance shall not apply to irrigation systems including open ditches, canals, underground pipelines and related facilities associated with a federal water project to the extent application of the ordinance is prohibited by the June 17, 1902 Federal Reclamation Act.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE City of Grand Junction: The following is hereby adopted as an Ordinance of the City, as set forth, and shall be effective as of February 20, 2005. The City Clerk shall codify these provisions as Article IV of Chapter 38 of the City Code.

Sec. 38-201. Definitions.

City Work: Capital projects of the City, or other City digging or excavating in ROW, according to the schedule adopted by the City Manager, notice of which can be obtained at the City Manager's office at City Hall.

Contact Information: Name, title, email address, physical and mailing address and telephone number of each person to whom inquiries and requests for decisions may be directed and who has decision-making authority to bind the Provider, pursuant to this Ordinance. If more than one (1) person must be identified so that the City may locate a contact person at all reasonable times in response to emergencies, the Provider must supply the City Manager with a prioritized list containing contact information for each person on the list.

Construction Plans: The Provider supplied P.E. stamped plans and standards for all Provider work in the ROW. Construction Plans shall be stamped by a professional engineer if required by the Director or 12-25-101 et. seq. C.R.S.

Digging: Means to dig, cut, excavate, move any earth, remove any earth by any means, auger, backfill, bore, ditch, drill, grade, plow-in, pull-in, rip, scrap, trench and/or tunnel.

Dry: Wires, pipes other than wet, cables, fiber optics, electrical lines.

Franchisee: Any Provider that is also a franchisee with terms regarding relocation of such Provider's facilities at the direction of the City, namely Public Service Company of Colorado and Grand Valley Rural Power Lines, Inc.; and a political subdivision of the state of Colorado that is also a Provider, such as Ute Water Conservancy District, Clifton Water District, the Grand Junction Drainage District, Orchard Mesa Sanitation District, Central Grand Valley Sanitation District, or other title 32 districts.

Infrastructure: Includes the wires, pipes (of metal, plastic, pvc or otherwise), valves, connections, conduits, gas lines, water lines, sewer lines, fiber optics, irrigation pipes and canals and conveyancing devices, cable television, and the various connecting junctions and connectors. Infrastructure includes publicly and privately owned and operated facilities. Unless the City Manager finds another reasonable basis, based on an industry standard, to measure or determine a "unit" of a Provider's infrastructure for purposes of determining City costs, or a duty to upgrade, or a duty to replace to meet standards, four hundred (400) feet of length of infrastructure shall constitute one (1) unit or element of infrastructure.

Locate or Locates: Means to establish and in compliance with the Locate Law and the terms of this Ordinance.

New Provider: A person or entity of whatever form who has not previously given notice to the City under this Ordinance, or who has otherwise been made subject to the requirements of a new Provider.

Overall Plan: The Provider's overall map or maps of the City ROW, with explanatory text, indicating which streets, alleys and other ROW the Provider desires to use, and when, to place the Provider's facilities. Explanatory text must describe what specific facilities are proposed and what services the Provider expects to offer to what customers.

P.E.: means a Colorado licensed professional engineer, pursuant to §12-25-101, *et seq.*, C.R.S., or a successor statute.

Pot Hole: To dig or to excavate in order to locate infrastructure or other facility.

Provider: A public utility, a provider of services to the public, a governmental subdivision or another person or entity who has, or desires to have, infrastructure or other pipes in City ROW, including homeowner and similar associations, but excluding service lines for individual structures and open

ditches, canals, underground pipelines and other related facilities associated with the Grand Valley Water Users Association and the Orchard Mesa Irrigation District systems.

Replace or Replacing or Replacement: Dig, expose, fix or reconstruct, in whole or part, upgrade, patch or similar activities performed with the goal of gaining use or reuse; except that repairs ordinary to the Provider's work, and routine maintenance, is not within this definition.

Revocable Permit: For this Ordinance only, a revocable permit may be issued by the Director for the reasons set forth in the recitals and legislative history of this Ordinance.

ROW: Streets, alleys, highways, boulevards, avenues, roads, ROW owned or other ROW controlled or owned by the City within the limits of the City.

Service Line: A water or sewer line that connects a business, residence or other structure to the Provider's infrastructure or system.

Unit: A discrete segment of City ROW between intersections, or 400 feet of ROW, as determined by the Director.

Utility Locations: as indicated on Attachment A.

Joint Trench Details: as indicated on Attachment B

Wet: Water, sanitary sewer, storm sewer, drainage, natural gas and other fluids or gases.

Work: any change to any facility, Infrastructure or portion of any ROW, including digging and excavating and replacements

Section 38-202. Revocable Permits.

(a) If the terms of a voter approved franchise are inconsistent with or conflict with the terms of this Ordinance, the terms of the voter approved franchise shall control. In general the review and permitting provided for by this ordinance is to be accomplished on a project by project basis. In some circumstances a Revocable Permit may be required.

(b) Consistent with the requirements of the Federal Telecommunications Act of 1996, the City Council may approve variations from the terms of this Ordinance, as needed to implement specific technical needs of Providers, in the form of a revocable permit. A Revocable Permit is the term used in and authorized by the City Charter, although it is recognized that the Charter language that ostensibly would allow the Council to terminate such a permit without cause on thirty (30) days notice has been preempted by applicable

federal laws, discrimination contrary to the Telecommunications Act of 1996, or regulate the provision of telecommunication services.

(c) A revocable permit, pursuant to the City's charter, ordinarily can only be issued by the City Council. Because the Telecommunications Act of 1996 preempts inconsistent local government provisions, and because quick administrative issuance of a permit or license to a telecommunications Provider would not violate any such preemptive law, the Council determines that the extraordinary step of delegating to the Director the power and duty to issue revocable permits pursuant to this ordinance is mandated by federal law and is hereby authorized.

Section 38-203. Work in Right-of-Way.

(a) It shall be unlawful for any Provider, entity or telecommunications Provider as defined by the Telecommunications Act of 1996, within, under, in, through or on any City owned or controlled ROW within the limits of the City, to replace or dig as defined herein, unless such person is a franchisee, has obtained a revocable permit as described herein, or is certified by Colorado's Public Utilities Commission and unless such replacing or digging is performed in compliance with the provisions of this Ordinance; and

(b) The terms of any permit, franchise and revocable permit, and generally accepted engineering standards, including construction testing and inspection, and the other provision of this Ordinance shall apply to each such franchisee, local government, and revocable permittee.

(c) This Ordinance shall not apply to irrigation systems including open ditches, canals, underground pipelines and related facilities associated with a federal water project to the extent application of the ordinance is prohibited by the June 17, 1902 Federal Reclamation Act.

Section 38-204. Notice.

(a) Before beginning work, replacing, digging or making any use of any ROW, a Provider shall give written notice of its proposed work at least fifteen (15) City business days before beginning any such work or digging. The notice required by this section shall be reduced to five (5) days if a different customer service standard has been approved or is made applicable by the Colorado Public Utilities Commission. .

(b) If due to workload or other considerations, fifteen (15) days is not sufficient to adequately evaluate the notice and address possible impacts on the

City or other Providers, the Director may lengthen the advance notice period up to a total of forty-five (45) days.

(c) Advance notice for a new Provider shall be thirty (30) days, unless extended by the Director up to a total of sixty (60) days.

(d) For the notice to be adequate, the Provider shall supply the following information:

- (i) For out-of-state Providers and contractors, proof of authority to do business in Colorado;
- (ii) Proof of Colorado worker's compensation coverage;
- (iii) The name and street address of the provider, including State, City and area code.
- (iv) Contact information for the Provider;
- (v) The name, address and contact information for each contractor before such person(s) does any work or digs in any ROW;
- (vi) The business telephone number of the president, chief executive officer or other decision-maker of each such Provider and contractor. The Provider or contractor may each designate another individual so long as such designee has the requisite authority to make decisions for the Provider or contractor regarding the matters regulated herein, and if the contact information for such designee is provided:
- (vii) A proposed work plan showing:
 - a. what specific locations and segments of ROW will be effected;
 - b. when each such ROW will be used and effected;
 - c. the location, depth and width of any cuts, digging or other work within the ROW;
 - d. how, if at all, the proposed work or digging will interfere with any City work and how the Provider will mitigate or minimize the interference;
 - e. how warranty work will be secured;

- f. how the Provider intends to repair or replace any damaged ROW, including any facilities and infrastructure located within the ROW;

(viii) Traffic control plan, as necessary.

(e) The Director shall issue the construction permit. Unless all or a part is prohibited by other applicable law, the Provider shall pay the cost of the permit which shall be equal to the City's reasonable estimate of the actual costs required to process, issue, review the proposed work, make inspections during the work, perform field and other tests, and generally monitor the activities pursuant to the permit. From time to time, the City Council may adopt a schedule of average actual costs, based on prior experience, which sets the cost of such permits.

(f) If a provider cannot first provide notice and obtain a construction permit due to a bona fide emergency, the provider shall take such "action as is reasonably required" and shall as soon thereafter as practical give oral notice to the Director, and thereafter comply with the requirements of this Ordinance.

Section 38-205. Boring.

It is the City's policy to limit cuts, trenches or excavations in the surface of any ROW. Boring is required unless the applicant can reasonably demonstrate to the Public Works Director that it is impracticable to do so because of cost, emergency, unstable soil, existing utilities or other conditions.

Section 38-206. Performance/Warranty Guarantee for Permits and Insurance.

A performance/warranty guarantee and insurance shall be required for work within the ROW under the same terms and conditions as set forth in §§38-167 and 38-170 as amended herein.

Section 38-207. Provider's Proposed Plans. Director's Review.

(a) No Provider shall begin any work, nor dig within any ROW, nor make any cuts, nor occupy any City ROW unless the Director has accepted in writing the Provider's construction plans which shall comply with adopted City specifications and standards or standards that are mutually agreed upon by both the provider and City. The specifications and standards of the providers may be found to comply with "adopted City specifications and standards" if substantially equivalent to City standards and if use of the Provider's standards are approved in writing by the Director or pursuant to written agreements between such other Provider and the Director.

(b) At the time of application for a construction permit, a Provider shall deliver three (3) sets of its proposed construction plans for use or digging in any

ROW to the Director for the use of the City. Among other benefits such overall plans allow the City to coordinate its work with that of the Provider and other Providers. If the City's workload demands, or if the plans are complex, and if the Provider has not attended and provided the necessary notice and information at the most recent City planning meeting, then the Director may extend the review by giving notice to the Provider of an extended review period not to exceed a total of 60 business days. The scale of such plans shall be not less than one inch (1") equal to forty feet (40').

(c) If the plans are complete and adequate, the Director will be deemed to have accepted the plans unless the Director rejects or requests amendments to the plans within ten (10) City business days by giving notice thereof to the Provider.

(d) If the plans are incomplete and/or inadequate, then the Provider shall make such changes as the Director requires, consistent with this Ordinance and the City's other standards and requirements.

(e) To reject or amend the Provider's plans, the Director shall give notice thereof by sending an email, or facsimile, or by mailing a notice to the Provider. Such notice by the Director is effective upon the earlier of sending the email, facsimile or mailing the notice first class via the U.S. Postal Service, postage pre-paid.

(f) If the Director rejects or amends the proposed plans, in whole or in part, the Provider shall not thereafter do any work in the ROW until the Provider submits plans that the Director does not reject or amend; however, the Director may approve a portion of the plans, and thereafter the Provider may perform a portion of the proposed work in the locations or at such times as the Director directs.

Sec. 38-208. City Planning Meetings.

At least once per calendar year and up to four times per calendar year, the City shall give notice to each Provider, who so requests, of a City sponsored and coordinated meeting among the City and Providers ("City planning meeting(s)"). At the City planning meeting, each Provider that provides the City with copies of proposed projects, scope of work and estimated schedules for the subsequent twelve (12) months, and for future years as available, shall not be required to provide the information, and at the times, required by §§ 7(b), 7(c).

Section 38-209. Infrastructure Standards and "As-Built" Information

(a) From time-to-time, the Director may adopt additional or supplemental standards as Administrative Regulations to which each Provider shall thereafter conform its infrastructure in the City ROW whenever the infrastructure is repaired

or replaced.

(b) The Director shall adopt standards regulating the vertical and horizontal placement of Provider infrastructure relative to the City's infrastructure, the facilities of other Providers and other facilities in the ROW. The Director may solicit the public input of Providers and other affected interests when considering such standards.

(c) The City's standard cross section for "wet" & "dry" infrastructure is incorporated by this reference as if fully set forth on the attached detail. All work shall conform with City standard cross section, unless the Director has approved a variation proposed by a provider in accordance with §§ 6(a).

(d) For all replacements and new infrastructure installed, the Provider shall deliver "as built" information as required herein to the Director within 60 days of completion of the replacement or infrastructure work.

(e) The Provider shall deliver the as-built information in a format and medium specified by the Director so that the City may incorporate the information into its existing software, programs and GIS. The Director will work with the entities subject to this ordinance in order to agree upon a consistent format(s) that can be accepted by the City's GIS system.

Sec. 38-210 Oversizing.

Whenever a Provider's dry infrastructure in the City ROW is dug up, exposed or repaired, including by boring, if the Provider desires to rebury, replace, or install dry infrastructure as the Director determines is reasonable, the Provider shall place the additional (City provided) infrastructure and be reimbursed for any additional costs incurred from placing the additional infrastructure:

Sec. 38-211. Joint Use of Provider Infrastructure.

The City may require that a Provider locate and maintain one or more of its dry facilities in a common trench and/or conduit or similar facility in which the infrastructure of other Providers and/or the City is also located. Until the Director adopts different standards regarding the vertical and horizontal separation of facilities, the attached standards, the Standards of the American Waterworks Association and the National Electric Safety Code and Standards shall apply.

Sec. 38-212. City Costs and expenses - Provider Initiated Projects.

(a) Each Provider shall pay to the City the costs and expenses incurred by the City and its officers, officials, employees and agents regarding oversight, inspection, regulation, permitting and related activities (“City Costs”).

(b) City Costs include the actual wages, plus benefits, paid by the City for the Work of each City employee and/or agent, including clerical, engineering, management, inspection, enforcement, and similar functions.

(c) City Costs include the expenses and costs for computer-aided design programs, maps, data manipulation and coordination, scheduling software, surveying expenses, copying costs, computer time, and other supplies, materials or products required to implement this Ordinance and to regulate Providers hereunder.

(d) Unless the Director requires a Provider to resurface a part of a unit, portion of a City block or similar segment of ROW disturbed by the Provider, City Costs include the present value of the cost to replace and resurface the damaged asphalt, concrete or other ROW surface.

(e) The Director shall annually establish an average per unit cost which shall be for the calendar year in question, based on bids the City accepted for City projects in the previous one (1) or two (2) calendar years.

Section 38-213. Provider Payments to the City - Collections.

If a Provider fails to pay City Costs, or any other money, fee or compensation required by a City law or regulation, in full within 30 days of the City’s mailing a claim therefore, the City is entitled to, in addition to the amount of the claim, interest on all unpaid amounts at the statutory rate, or the City’s return on investment, as reported in the City’s then current annualized investment portfolio.

Section 38-214. City Required Utility Locates for Design.

(a) To increase the accuracy of project design and avoid conflicts encountered after construction begins, Providers will locate their utilities as required pursuant to §9-1.5-101, C.R.S., *et seq.* (“Locate Law”). The City will pothole the utilities based upon the painted locates provide by the utility owners. If the utility is not located within eighteen inches of the painted locate, the utility owner shall excavate and locate the utility and notice the City who will survey the location. This section does not apply to service lines.

(b) Any Provider who fails to comply with the Director’s notice to comply with the Locate Law is responsible and liable for all consequential damages that result from either the failure to comply with the Locate Law or from inaccurate

information regarding the vertical and/or horizontal location of such Provider's infrastructure.

(c) Any Provider may avoid claims for such consequential damages pursuant to this ordinance if such Provider "pot holes" in such locations and to such depths as such Provider determines is needed to provide accurate information to the City regarding the horizontal and vertical location of such Provider's infrastructure in the specified unit(s).

(d) Each Provider that does not accurately locate its infrastructure shall pay the City the costs incurred by the City in changing any design, relocating City infrastructure, and delay and similar costs incurred as a result of inaccurate locates.

(e) A Provider may avoid having to perform locates if it delivers to the City accurate vertical and horizontal information (pot hole data) that is compatible with the City's GIS that establishes the location of such Provider's infrastructure in the unit(s) in question.

Sec. 38-215. Suspension and/or Revocation of a Permit.

A construction or revocable permit authorized under this Ordinance may be void if/when the permittee is not in full compliance with any provision of this Ordinance or other City law.

(a) A permit to dig or excavate under this Ordinance is void if the Provider supplies materially false or deceptive information to the City at any time.

(b) If/when the permittee is in full compliance, the Provider shall give the notice required by section 4 and shall apply for a permit as a new Provider.

(c) The City Manager may order that a Provider immediately cease and desist any further use or work within the City's ROW and suspend any or all permits and previously granted City approvals, at any time based on reasonable grounds to believe that a violation of this Ordinance, or other City rules or specifications has occurred, and the public health, safety or welfare, or the property or rights of another Provider are at substantial risk of irreparable harm.

Sec. 38-216. Security.

(a) If the Provider has violated any provision of this Ordinance within the previous five (5) years, before the Provider is authorized to perform work in the ROW, the City Manager may require that a Provider post a letter of credit or equivalent security in the greater of:

- (i) The dollar value of any damage to the City or other Provider's infrastructure that has occurred in said five (5) year period;
- (ii) The amount of increased costs or price payable to a contractor or similar entity due to the Provider's violation; or
- (ii) The amount of gross profit the Provider realized due to the violation.

(b) The City may convert such security to cash and use such cash to pay for any warranty work or to correct any injury or damage caused to the City's infrastructure or property, or other damages, by the Provider's actions or failure to act or to improve the City's infrastructure.

Sec. 38-217. Construction Standards/City Laws.

(a) Each Provider has the duty to see that its work, and that of its contractors, complies with this Ordinance, other adopted City standards and specifications, and other applicable law. Other City adopted standards and requirements include: the Transportation, Engineering and Design Standards; the City's standard contract documents as applicable; the City's ordinances, including the Zoning and Development Code; and the City's Administrative Regulations.

(b) Each Provider has the affirmative duty to comply with the City's construction standards, such as soil density testing of repaired ROW.

Sec. 38-218. Appeal.

During such appeal process, the City Manager has the discretion to allow the Provider to use and/or operate within one (1) or more units, as determined by the City Manager, with conditions as the City Manager deems reasonable, including the posting of reasonable cash or other security, such as a letter of credit.

A Provider may appeal any City or City Manager decision pursuant to this Ordinance to the City Council, as provided below:

Any person, including any officer or agent of the City, aggrieved or claimed to be aggrieved by a final action of the Director on an administrative development permit, may request an appeal of the action in accordance with the following:

1. **Application and Review Procedures.** Requests for an appeal shall be submitted to the Director in accordance with the following:
 - a. **Application Materials.** The appellant shall provide a written request that explains the rationale of the appeal based on the criteria provided

herein.

- b. Notice to Applicant. If the appellant is not the applicant, the Director, within five (5) working days of receipt of the request for appeal, shall notify the applicant of the request and the applicant shall have ten (10) working days to provide a written response.
 - c. Preparation of the Record. The Director shall compile all material made a part of the record of the Director's action. As may be requested by the City Council, the Director also may provide a written report.
 - d. Notice. No notice of the appeal is required.
 - e. Conduct of Hearing. The City Council shall hold an evidentiary hearing to determine whether the Director's action is in accordance with the criteria provided stated below at 2. Approval Criteria. The City Council may limit testimony and other evidence to that contained in the record at the time the Director took final action or place other limits on testimony and evidence as it deems appropriate.
2. **Approval Criteria.** In granting an appeal of an administrative development permit, the City Council shall find that the Director:
- a. acted in a manner inconsistent with the provisions of this Code or other applicable local, state or federal law; or
 - b. made erroneous findings of fact based on the evidence in the record; or
 - c. failed to fully consider mitigating measures or revisions offered by the applicant; or
 - d. acted arbitrarily, acted capriciously and/or abused his discretion.

Sec. 38-219. Administrative Regulations.

The City Manager may implement this Ordinance by adopting Administrative Regulations. An implementing administrative regulation may be appealed to the City Council, as provided in the City Zoning Code, § 2.18 (C)(3).

Sec. 38-220. Severability.

If a court of competent jurisdiction declares one (1) or more provision(s) or terms of this Ordinance to be unenforceable or unconstitutional, the rest of the

provisions and terms shall be severed therefore and shall remain enforceable.

Sec. 38-221. Civil Remedies.

If any person or Provider violates any order of the Director, a hearing board or the Council, or otherwise fails to comply with the provisions of this Ordinance, the provisions and remedies provided for in section 38-69 (b) of the City Code shall apply and shall be available to the City.

Sec. 38-222. Violations.

(a) The provisions of Chapter 1 of the City Code apply to any violation hereof.

(b) It is a violation of this Ordinance if a Provider misrepresents any fact in any information provided to the City, to the City Manager, or the Director's employees or agents.

(c) A Provider violates this Ordinance if the contact person of such Provider, or the Provider, fails to amend or update the information and documentation supplied to the City pursuant to this Ordinance within 60 days of any change, error, mistake or misstatement.

INTRODUCED for FIRST READING and PUBLICATION on the 3rd day of November, 2004

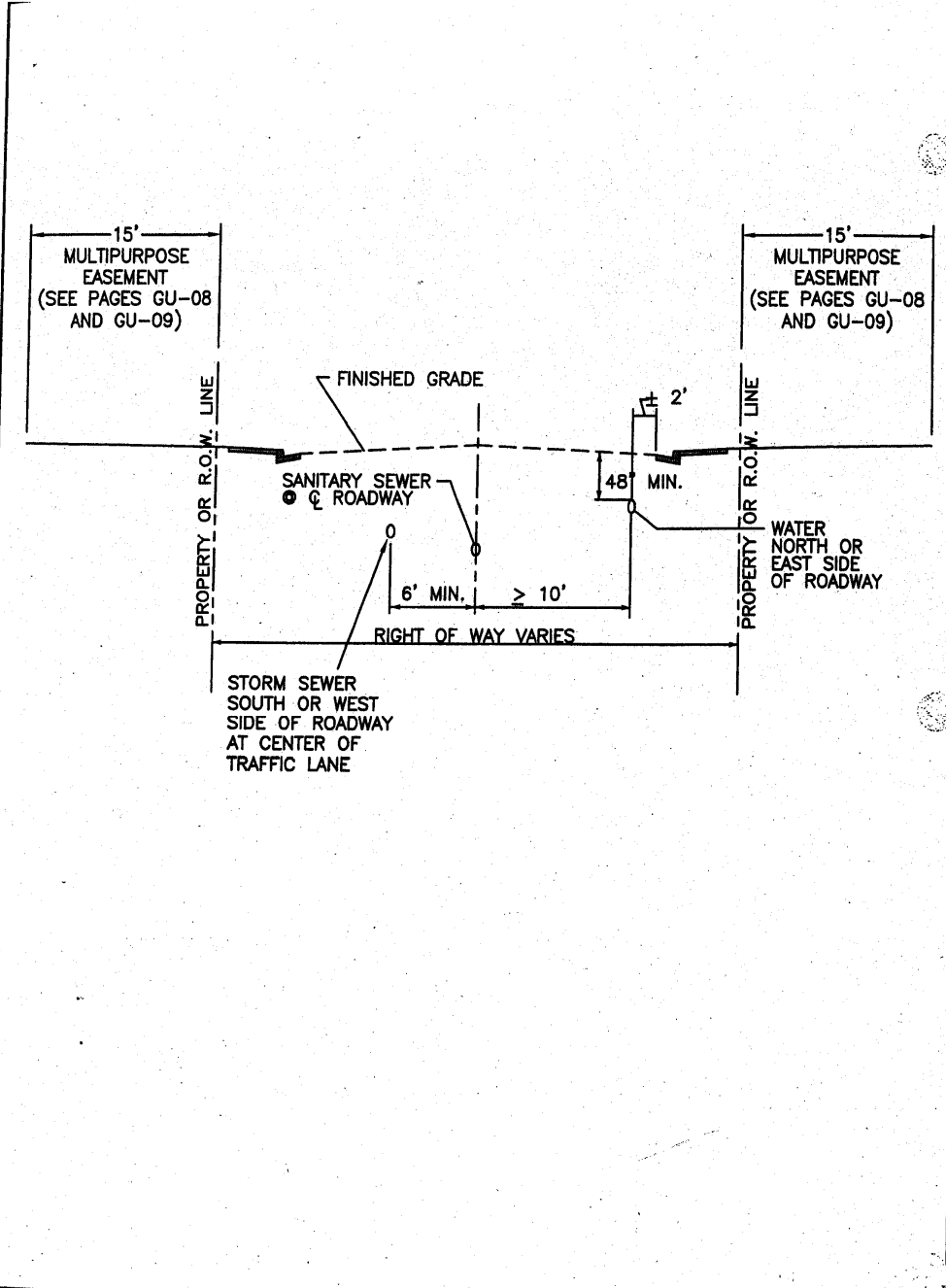
PASSED on SECOND READING this 19th day of January, 2005.

ATTEST:

/s/ Stephanie Tuin
City Clerk

/s/ Bruce Hill
President of City Council

Attachment A.



M:\CADD\CITY STANDARD\STANDARD DRAWING DETAIL\GENERAL UTILITY DETAILS.dwg 06/17/2003 07:46:22 AM NDT

TYPICAL STREET CROSS SECTION / UTILITY LOCATIONS

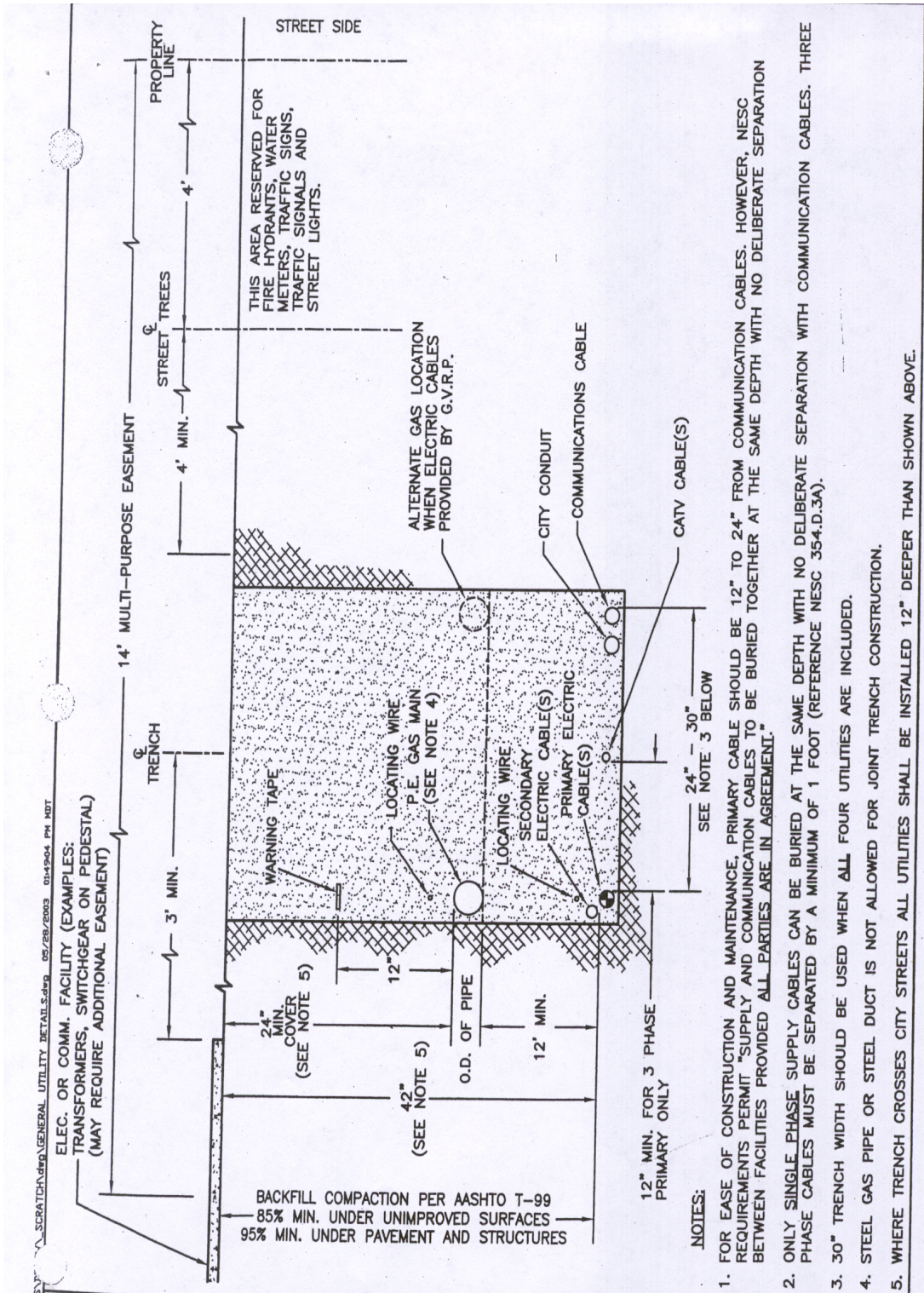
DEPARTMENT OF PUBLIC WORKS AND UTILITIES
ENGINEERING AND TECHNICAL SERVICES DIVISIONS
CITY OF GRAND JUNCTION, COLORADO

GENERAL UTILITY
DETAIL

APPROVED: *DN*
DATE: *JUN 2003*
DRAWN: *TEJ/DPW*

PAGE
GU-02

Attachment B



GENERAL UTILITY DETAIL (EXAMPLES: TRANSFORMERS, SWITCHGEAR ON PEDESTAL) (MAY REQUIRE ADDITIONAL EASEMENT)

THIS AREA RESERVED FOR FIRE HYDRANTS, WATER METERS, TRAFFIC SIGNS, STREET SIGNALS AND STREET LIGHTS.

ALTERNATE GAS LOCATION WHEN ELECTRIC CABLES PROVIDED BY G.V.R.P.

NOTES:

1. FOR EASE OF CONSTRUCTION AND MAINTENANCE, PRIMARY CABLE SHOULD BE 12" TO 24" FROM COMMUNICATION CABLES. HOWEVER, NESC REQUIREMENTS PERMIT "SUPPLY AND COMMUNICATION CABLES TO BE BURIED TOGETHER AT THE SAME DEPTH WITH NO DELIBERATE SEPARATION BETWEEN FACILITIES PROVIDED ALL PARTIES ARE IN AGREEMENT."
2. ONLY SINGLE PHASE SUPPLY CABLES CAN BE BURIED AT THE SAME DEPTH WITH NO DELIBERATE SEPARATION WITH COMMUNICATION CABLES. THREE PHASE CABLES MUST BE SEPARATED BY A MINIMUM OF 1 FOOT (REFERENCE NESC 354-D.3A).
3. 30" TRENCH WIDTH SHOULD BE USED WHEN ALL FOUR UTILITIES ARE INCLUDED.
4. STEEL GAS PIPE OR STEEL DUCT IS NOT ALLOWED FOR JOINT TRENCH CONSTRUCTION.
5. WHERE TRENCH CROSSES CITY STREETS ALL UTILITIES SHALL BE INSTALLED 12" DEEPER THAN SHOWN ABOVE.

JOINT TRENCH DETAILS

DEPARTMENT OF PUBLIC WORKS AND UTILITIES ENGINEERING AND TECHNICAL SERVICES DIVISIONS CITY OF GRAND JUNCTION, COLORADO	GENERAL UTILITY DETAIL	APPROVED: <i>DN</i> DATE: <i>MAY 2008</i> DRAWN: <i>DPW</i>	PAGE GU-09
--	---------------------------	---	---------------