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**ORDINANCE NO. 2024-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 114, ARTICLE V “EXCAVATING IN THE PUBLIC WAY” OF THE NEW BRAUNFELS CODE OF ORDINANCES; AMENDING ROAD/RIGHT OF WAY EXCAVATION PERMITS AND MOVING FEES TO APPENDIX D; PROVIDING FOR SEVERABILITY, SAVINGS CLAUSE; REPEALER CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

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**WHEREAS**, the City of New Braunfels (“City”) operates the Public Works Department that oversees excavation and rights-of-way activities in the city; and

**WHEREAS**, the road/right of way permit fees have never been increased since originally adopted by City Council; and

**WHEREAS**, expenses in the Public Works Department have grown since the inception of this fee; and

**WHEREAS**, updating the road/right of way rates will assist with sustaining higher administrative costs; and

**WHEREAS**, the City Council of the City of New Braunfels desires to adopt the updates to Chapter 114, Article V, Excavating in the Public Way, of the City of New Braunfels Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:**

**SECTION 1**

**THAT** the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

**SECTION 2**

**THAT** Chapter 114, Article V, Excavating in the Public Way, of the City of New Braunfels Code of Ordinances, is hereby amended with additions indicated with underlined font and deletions indicated with strikethrough font:

Sec. 114-141. Application.

- (a) A permit for an excavation shall be obtained by the owner of the facility. If the owner of a facility will not be making the excavation with its own personnel, then the contractor retained to perform the work shall join with the owner as an applicant in obtaining the permit. Where two or more related excavations are being performed as part of the same project, the application and permit may cover the related work.
- (b) Applications for permits shall be submitted to the city engineer and shall include the following:
  - (1) The name, assumed name or business names, business type (corporation, partnership, individual/sole proprietor or other) of each applicant.
  - (2) Each applicant's mailing address (and street address if different), telephone number, facsimile number, and email address.
  - (3) The location, depth, length, and width of each excavation to be made in each block and/or intersection.
  - (4) The purpose of the excavation, including a description of the facilities to be installed, maintained and/or repaired.
  - (5) The methods of excavation.
  - (6) The proposed excavation start date and duration.
  - (7) The estimated cost of the excavation.
  - (8) A statement that each person executing the application is fully authorized to act on behalf of and bind his principal in executing and filing the application.
  - (9) A statement that each applicant accepts and obligates itself to the release and indemnification provisions detailed on the application.
  - (10) The name of the owner of the facility.
  - (11) The 24-hour telephone number at which each applicant's representative who will respond to emergencies may be contacted.
  - (12) The name, mailing address, telephone number, facsimile number, and email address of a person who is authorized to receive all notices authorized to be given by the city under this article to each applicant.
  - (13) Confirmation that all materials necessary for construction will be on hand and ready for use so as not to delay the excavation.
  - (14) A transmittal number issued by the state underground facility notification corporation showing that the applicant has complied with the Texas Underground Facility Damage Prevention and Safety Act or an assurance that the transmittal number will be provided to the city engineer before excavation commences.
  - (15) A transmittal number issued by the NBU water utility division showing that the applicant has notified the city utilities of the proposed excavation.
  - (16) Evidence of insurance as required in section 114-151.
  - (17) The work warranty as required by section 114-145.
- (c) Each application for a permit for an excavation shall be accompanied by a non-refundable permit fee based on the total valuation of the cost of the excavation to defray the expense of carrying out the provisions

of this article. ~~The following schedule shall be utilized to determine the permit fee:~~ The schedule used to determine the permit fee can be found in Appendix D.

<del>Total Valuation</del>	<del>Fee</del>
<del>\$1,000.00 and less-</del>	<del>\$20.00-</del>
<del>\$1,000.01 to \$50,000.00-</del>	<del>\$20.00 for the first \$1,000.00 plus \$5.00 for each additional thousand or fraction thereof, to and including \$50,000.00-</del>
<del>\$50,000.01 to \$100,000.00-</del>	<del>\$265.00 for the first \$50,000.00 plus \$4.00 for each additional thousand or fraction thereof, to and including \$100,000.00-</del>
<del>\$100,000.01 to \$500,000.00-</del>	<del>\$465.00 for the first \$100,000.00 plus \$3.00 for each additional thousand or fraction thereof, to and including \$500,000.00-</del>
<del>\$500,000.01 and up-</del>	<del>\$1,665.00 for the first \$500,000.00 plus \$2.00 for each additional thousand or fraction thereof-</del>

(d) An application for a permit for an excavation performed pursuant to section 114-143 shall, in addition to the items required above, also include a written statement containing the following:

- (1) Explaining the basis for the emergency actions.
- (2) Describing the excavation being performed.
- (3) Describing any work remaining to be performed in the public way.
- (4) Stating the time and date when the emergency occurred.

(e) A municipal utility is exempt from the permitting requirements of division 2 of this article, however the municipal utility is required to provide to the city engineer notification of any excavation within the paved portion of the public way according to the notification procedures set out and agreed to between the city engineer and the municipal utility.

(Ord. No. 2005-75, § 1(Exh. A), 10-24-05)

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## APPENDIX D FEE SCHEDULE

### Sec. A. Schedule of Fees.

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Fee Name	Fee <u>Total</u>
<u>ROW Excavation Permit (Total Valuation \$1,000 and less)</u>	<del>\$20</del> <u>\$100.00</u>
<u>ROW Excavation Permit (Total Valuation \$1,001.01 to \$50,000.00)</u>	<del>\$20</del> <u>\$100 for the first \$1,000.00 plus \$5.00 \$25.00 for each additional thousand or fraction thereof, to and including \$50,000.00</u>
<u>ROW Excavation Permit (Total Valuation \$50,000.01 to \$100,000.00)</u>	<del>\$265.00</del> <u>\$1,325 for the first \$50,000.00 plus \$4.00 \$20.00 for each additional thousand or fraction thereof, to and including \$100,000.00</u>
<u>ROW Excavation Permit (Total Valuation \$100,000.01 to \$500,000.00)</u>	<del>\$465.00</del> <u>\$2,325 for the first \$100,000.00 plus \$3.00 \$15.00 for each additional thousand or fraction thereof, to and including \$500,000.00</u>
<u>ROW Excavation Permit (Total Valuation \$500,000.01 and up)</u>	<del>\$1,665.00</del> <u>\$8,325 for the first \$500,000.00 plus \$2.00 \$10.00 for each additional thousand or fraction thereof.</u>

**II.**

THAT all provisions hereof are hereby declared to be severable and if any provisions hereof are declared to be invalid or unconstitutional, such shall not invalidate or affect the remaining provisions hereof which will be and remain in full force and effect.

**III.**

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

**IV.**

This Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office.

PASSED AND APPROVED: First reading this the \_\_\_\_\_ day of August, 2024.

PASSED AND APPROVED: Second reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF NEW BRAUNFELS, TEXAS

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*NEAL LINNARTZ, MAYOR*

ATTEST:

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*GAYLE WILKINSON, CITY SECRETARY*

APPROVED AS TO FORM:

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*VALERIA M. ACEVEDO, CITY ATTORNEY*