

CITY OF SEGUIN  
STATE OF TEXAS

ORDINANCE NO:

AN ORDINANCE OF THE CITY COUNCIL OF SEGUIN, TEXAS AMENDING THE SEGUIN CODE OF ORDINANCES, CHAPTER 90, ARTICLE IV, RIGHT-OF-WAY WORK, AND APPENDIX C, FEE SCHEDULE; AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE AS A SUPPLEMENT TO THE CITY CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE

WHEREAS, to update the Right-of-Way Work article of Chapter 90 to reflect standard practice in the region; and

WHEREAS, to reflect the changes in department staffing for responsibility of permitting and inspections in the city right-of-way; and

WHEREAS, to add warranty requirements for completion of proposed work in the city right-of-way.

**BE IT ORDAINED BY THE CITY COUNCIL OF SEGUIN, TEXAS**

**SECTION ONE.** The Seguin Code of Ordinances, Chapter 90, Streets, Sidewalks, and Other Public Places, Article IV is amended deleting Article IV in its entirety and replacing it with the following:

**ARTICLE IV. RIGHT-OF-WAY WORK**

**DIVISION 1. GENERALLY**

**Sec. 90-91. Definitions.**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means any person who seeks a permit for work within the right-of-way.

*Backfill* means excavation fill material meeting city specified quality requirements of the placement thereof.

*Contractor* means any person or group of persons entering into an agreement with the city via an approved permit issued under the provisions of this article.

*Detour* means an alternate route in which vehicular traffic is directed around a street which is closed.

*Emergency* means an unforeseen combination of circumstances or the resulting state that endangers health, life or property and calls for immediate action.

*Excavation* means an activity that cuts, penetrates, or bores under any portion of the public right-of-way with a paved surface for street, sidewalk, surface drainage, related public transportation infrastructure purposes, or area of public right-of-way intended for public or municipal use. The term includes but is not limited to cutting, tunneling, jacking and boring, backfilling, restoring, and repairing the public right-of-way. The term does not include a transportation improvement or excavations that are undertaken for the improvement or maintenance of municipal utility systems, such as electric, water and wastewater lines and facilities, utility maintenance or other activities that are performed within already existing structures, vaults, conduits, or cable ways that are located underneath street improvements, provided that any access required for the work is obtained through manholes, or other previously constructed entrances that may be utilized without cutting or penetrating any pavement or other street improvement.

*Facility* means any structure, device, or other thing whatsoever that may be installed or maintained in, on, within, under, over, or above a public right-of-way.

*Manual* means the latest version of the Texas Manual on Uniform Traffic Control Devices.

*Owner* means a person, including the city, who holds title to or will hold title to any facility that is installed or is proposed to be installed or maintained in the public right-of-way.

*Pavement condition index (PCI)* means the city-assigned general condition of the pavement section.

*Permit* means a current and valid authorization issued under the provisions of this article.

*Public right-of-way* means any public street, highway, roadway, alley, or sidewalk.

*Responsible person* means the city engineer, the city engineer's designee, or any other city manager appointed representative.

*Shall, should and may.* The term "shall" is a mandatory condition, the term "should" is an advisory condition to ensure safe operation conditions and the term "may" is a permissive condition.

*Streets and alleys.* The term "street" means a traveled way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated.

- (1) *Major thoroughfares or arterial streets* are principal traffic arteries more or less continuous across the city which are intended to connect remote parts of the city and which are used primarily for fast or heavy-volume traffic and shall include, but not be limited to, each street designated as an arterial or higher classification on the approved master thoroughfare plan.
- (2) *Collector streets* are those which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.

- (3) *Minor streets* are those which are used primarily for access to abutting residential properties which are intended to serve traffic within a limited residential district. Also referred to as local streets.
- (4) *Alleys* are minor traveled ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

*Transportation improvement* means work undertaken by or pursuant to contract for the state or political subdivision of the state for the purpose of improving or maintaining public right-of-way transportation and related storm drainage infrastructure.

**Sec. 90-92. Prohibited activities.**

- (a) It shall be unlawful for any person (unless expressly exempted hereunder) to work within the city public right-of-way without a permit except as follows:
  - (1) Work was begun in response to an emergency and a permit was timely applied for in compliance with section 90-111 of this article.
  - (2) Work that is being performed by a public right-of-way construction entity or its contractor in connection with a transportation improvement and the owner, with the consent of the public works construction entity, has retained the public works construction entity or its contractor to install the facility concurrently with the making of the transportation improvement.
- (b) It shall be unlawful for a permittee to work within the city public right-of-way in violation of any term of a permit issued pursuant to this article.
- (c) It shall be unlawful for any person to fail to exhibit a permit upon request. If any prosecution under this article, it shall be presumed that there is no permit if the permit is not properly exhibited upon request.
- (d) It shall be unlawful for a permittee or person to fail to remove or relocate facilities in the city public right-of-way when required or instructed by the city to do so under Section 90-117.
- (e) It shall be unlawful for any person to place an unyielding object in the city public right-of-way.

**Sec. 90-93. Provisions cumulative.**

- (a) The provisions of this article are cumulative of all other requirements of this article and other laws, including, without limitation, building and fire codes, utility franchises, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law, and permittees are additionally required to obtain any other permits, licenses, and authorizations required by law including but not limited to utility franchises, permits, licenses and authorizations that are required to be obtained from the city, state department of licensing and regulation, the state public utility commission, municipal utilities and the state underground facility notification corporation, or any other appropriate governmental agency. However, to the extent that any

provision set forth in this article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, this article shall be construed and applied in a manner that conforms with the applicable state or federal law.

- (b) To the extent that any other city permit or authorization is required for work that is also governed by this article, the city engineer shall, to the extent practicable, devise consolidated application forms and issue the required permits or authorizations on a combined basis.

**Sec. 90-94. Penalties.**

Any person violating this article shall, upon conviction, be punished pursuant to section 1-14.

**Sec. 90-95. No private rights in public right-of-way.**

Nothing in this article shall be construed to give any person or permittee any property right in or to the use of the public right-of-way. All permits issued and held under this article shall be subject to the superior right of the public to control the use of the public right-of-way and ensure the safe and orderly movement of traffic.

**Sec. 90-96. Rules and regulations.**

The city engineer shall promulgate rules and regulations regarding any aspect of the operation of this article, including, without limitation, construction standards, methods by which excavations will be performed, debarment procedures, and inspection procedures. The rules and regulations shall be consistent with applicable federal and state laws, city ordinances, and sound engineering practices.

**Sec. 90-97. Work done by city and public utility companies.**

In addition to their application to other persons, the provisions of this article are applicable to work within the city public right-of-way made by the city and its contractors, as well as to work within the city public right-of-way made by or on behalf of other governmental entities and subdivisions, to the extent of the city's police power jurisdiction. In connection with work within the city public right-of-way done by the city, the city engineer may waive compliance with insurance, fees, and other requirements that have no practical application as applied to the city.

**Secs. 90-98—90-110. Reserved.**

DIVISION 2. PERMIT

**Sec. 90-111. Application.**

- (a) A permit for work within the city public right-of-way shall be obtained by the owner of the facility. If the owner of a facility will not be conducting the work 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 projects are being performed as part of the same project, the application and permit may cover the related work.

- (b) The permit application shall, unless otherwise authorized by the city engineer for good cause shown, be filed with the city engineer at least five business days, but not more than 30 calendar days, before the start of work.
- (c) 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, and email address.
  - (3) The location of the work, including the depth, length, and width of each excavation to be made in each block and/or intersection, if applicable.
  - (4) The pavement condition index (PCI) of the street(s) being excavated, if applicable.
  - (5) The purpose of the work, including a description of the facilities to be installed, maintained, and/or repaired.
  - (6) The methods of work.
  - (7) The proposed work start date and duration.
  - (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, 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 work.
  - (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 any excavation commences.
  - (15) Evidence of insurance as required in section 90-121.
  - (16) The work warranty as required by section 90-115.

- (d) Each application for a permit for an excavation shall be accompanied by a non-refundable permit fee to defray the expense of carrying out the provisions of this article. This fee schedule is established by the city council and is set forth in Appendix C to this Code.
- (e) An application for a permit for emergency work within the city public right-of-way performed pursuant to section 90-114 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 work being performed.
  - (3) Describing any work remaining to be performed in the public way.
  - (4) Stating the time and date when the emergency occurred.

**Sec. 90-112. Combined permitting.**

- (a) Applications for right-of-way work permits and construction plans associated with plats may be submitted and reviewed simultaneously.
- (b) Applications for right-of-way work permits and building permits may be submitted and reviewed simultaneously. Each permit application should clearly indicate the work covered under other permits, referencing appropriate permit numbers.

**Sec. 90-113. Approval of application; issuance or denial of permit.**

- (a) The city engineer, or their designee, shall initially review each application to determine whether it is complete. The engineering department shall return an incomplete application with an explanation of the deficiencies. Consistent with the terms of this article, the city engineer, or their designee, shall approve, approve with conditions, or deny each complete application within 10 business days of acceptance of a complete application.
- (b) Upon approval of an application, the city engineer shall issue a permit. The permit shall include the following:
  - (1) Identity of the work within the city public right-of-way that is authorized.
  - (2) Name, mailing address, telephone number, and email address of permittee and owner.
  - (3) Date of issuance.
  - (4) Any special conditions applicable to the permit.
  - (5) The number of days from the date of entry on the public way to final completion to be allowed for the work, taking into consideration the nature and extent of the work and the vehicular and pedestrian use of the public way. Where a permit covers two or more work locations, the number of days for final completion may, consistent with the nature of the work, be separately established for each portion of the work.
  - (6) Any additional information deemed necessary for compliance with this article.

- (7) A statement that the permit is issued subject to the terms of this article, the construction standards, and all other applicable requirements.
- (c) If an application is denied, the city engineer shall notify the applicant of the grounds for denial.

**Sec. 90-114. Applicability to emergency situations.**

Nothing contained in this article shall be construed to prevent any person from completing work within the city public right-of-way that is necessitated by an emergency; provided that the owner of the facility shall apply for a permit for work within the city public right-of-way within 24 hours after the initiation of the excavation or, if the city offices are then closed, within 24 hours after the offices of the city are first opened subsequent to the initiation of the work within the city public right-of-way. Under these conditions the contractor or agency will still be required to follow required traffic control standards.

**Sec. 90-115. Work warranty.**

Each applicant shall execute and provide a work warranty in a form approved by the city attorney, which shall be incorporated into the application form. The purpose of the work warranty is to undertake and ensure that the permittee will:

- (1) Timely perform the work in accordance with the permit, all applicable laws, rules, and regulations and the construction standards adopted in or pursuant to this article, subject to remediation as provided in section 90-135 of this article.
- (2) Warrant the work following its completion for two years, subject to remediation as provided in section 90-136 of this article.

**Sec. 90-116. Permit not transferrable; void if work not timely commenced.**

- (a) A permit issued under this article is personal to the permittee and may not be transferred to another person or used by any other person to perform the work authorized in the permit.
- (b) A permit is valid only for the location(s) described on the application, depicted on the drawings and specifications, and authorized in the permit, and no work shall be authorized at any other location without another permit.
- (c) Unless extended by the city engineer upon written request and for reasonable cause, a permit shall be void if the work has not commenced within 60 days of its issuance.

**Sec. 90-117. Removal or relocation of facilities.**

All permittees that place facilities thereby obligate and bind the permittee to move or change the location of facilities wherever required or instructed to do so by the city in order to accommodate the construction, repair, or relocation of city infrastructure facilities.

**Sec. 90-118. Coordination of work.**

Prior to the issuance of a permit, the city engineer may require the applicants to coordinate their work within the city public right-of-way, coordinate work within the city public right-of-way

with transportation improvements that are ongoing or are scheduled by public way construction entities, and/or complete work within the city public right-of-way before transportation improvements commence. The city engineer may grant a waiver of coordination requirements for good cause. The city engineer shall consider the following before granting a waiver:

- (1) Effect of each proposed work on the surrounding vicinity and on traffic mobility.
- (2) The applicant's need for the facility.
- (3) Public health, safety, welfare, and convenience.

**Sec. 90-119. Newly constructed or reconstructed streets.**

- (a) Except as provided in subsection (b), no permit shall be issued for an excavation in any public way that has been constructed, reconstructed, repaved, or resurfaced in the preceding period of five years, as measured from the date of acceptance by the city or has a pavement condition index (PCI) of 85 or greater. Owners shall determine alternative methods of making necessary repairs and facility installations to avoid excavations that are subject to this section. If no other methods are possible, the installation and associated pavement repairs shall be at the city engineer's discretion.
- (b) The city engineer, for good cause, may allow an applicant for repair of existing utilities, to respond to emergencies, or to afford an owner the means to provide service to buildings that the owner has no other reasonable means of serving in the determination of the city engineer. The city engineer may require special conditions appropriate to the circumstances, such as special coordination with other excavations, special paving requirements, additional soil compaction test reports, or any other requirements needed to restore the integrity of the public way to "as new" condition. In addition to the information provided on the application, applicant shall provide the following with respect to that part of the public way subject to this provision:
  - (1) Reason why the excavation was not performed before or when public way was paved.
  - (2) Reason why the excavation cannot be performed at another location or the owner's need cannot be accomplished by a method that does not require excavation.

**Sec. 90-120. Defaults; unauthorized work.**

- (a) The city engineer shall not issue a permit to any person who is in default or breach of any obligation to the city under this article on a prior permit or on warranty obligation under section 90-135 or 90-136.
- (b) Except as limited by applicable law, the city engineer is authorized to debar from obtaining a permit any person who has performed unpermitted work within the city public right-of-way or any owner who has knowingly allowed that practice. Any such debarment shall be for a reasonable amount of time that is consistent with the nature and circumstances of the alleged actions.

- (c) Before invoking the provisions of this section, the city engineer shall provide a written notice to the affected persons.

**Sec. 90-121. Insurance; surety bonds.**

- (a) As a condition of the issuance of a permit, the applicant shall file with the city engineer evidence that the applicant holds a current insurance policy of the type and in limits as set forth below. Such insurance shall name the parties required to secure same as insured, shall include the city as an additional insured, and provide the city with waiver of subrogation. Each policy shall include a provision obligating the insurer to furnish to the city engineer at least 15 days prior written notice of any cancellation. The insurance limits listed below are considered minimum amounts and may be increased at the discretion of the city engineer as appropriate to the circumstances.
  - (1) Liability insurance. A policy of comprehensive general liability insurance covering the work within the city public right-of-way, with an endorsement for any liability assumed under this article and policy limits of not less than \$1,000,000.00 for property damage, per occurrence, and of not less than \$1,000,000.00 per person, and \$1,000,000.00 per occurrence, for bodily injury or death.
  - (2) Workers compensation insurance. Such insurance will provide applicable statutory workers compensation coverage pursuant to the Workers Compensation Act, State of Texas, including employer's liability protection with a minimum limit of \$1,000,000.00 per occurrence.
- (b) The failure of the permittee to continuously maintain any required coverage shall cause any permit covered thereby to become invalid. No work may be performed on any work within the city public right-of-way any time when any required proof of insurance coverage is not on file in the city engineer's office. Following notice the city engineer shall revoke any permit for which any required proof of insurance is not being maintained.
- (c) Evidence that the contractor who will perform the construction meets the requirements in this article shall be submitted as a part of the application for a right-of-way work permit.
- (d) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or permittee.
- (e) The insurance requirements of this section do not apply to work being performed by a homeowner performing work in connection with their owner-occupied homestead. Before a permit may be issued for such work, the homeowner shall name the City as an additional insured with waiver of subrogation under their homeowners or umbrella policies of insurance.
- (f) For good cause, and if necessary to protect the health, safety, and welfare of the public, the city engineer may require as a condition to the issuance of a right-of-way work permit or before work begins under the permit, that the applicant or permit holder post a bond to

insure the repair of streets or the completion of the proposed work or to insure compliance with any other requirement of this article.

**Sec. 90-122. Amendments; extensions.**

- (a) A permit shall no longer be valid if there are material changes to the work within the city public right-of-way, including but not limited to a change in the scope of work or the method of performing the work of such consequence that the description of work in the permit application no longer accurately depicts the work. An amendment shall be required in order to continue the work within the city public right-of-way. To obtain an amendment, the permittee shall submit an application therefore, including amended drawings and specifications, indicating any changes. A permit shall not be amended to include work within the city public right-of-way that is not related to the original permit or to extend the work within the city public right-of-way into any geographical area not included in the original permit.
- (b) For good cause not relating to any fault of the permittee in diligently prosecuting the work within the city public right-of-way, the city engineer may extend the number of days allowed in the permit pursuant to subsection 90-113(b)(5) for completion of the work within the city public right-of-way. Extensions of time under this subsection shall not be regarded as amendments but shall be noted on the records regarding the permit.

**Secs. 90-123—90-130. Reserved.**

DIVISION 3. PERFORMANCE OF WORK

**Sec. 90-131. Access to fire hydrants.**

Each work within the city public right-of-way shall be performed so it does not obstruct emergency access to any fire hydrant or public water supply valve.

**Sec. 90-132. Crossings; traffic control devices.**

It shall be the duty of each permittee to make provisions for the safe crossing of pedestrians and the orderly movement of vehicular traffic. Provisions therefore shall be included in the permit application for the work within the city public right-of-way. Any required traffic control devices shall conform to applicable laws, including but not limited to the Texas Manual on Uniform Traffic Control Devices.

**Sec. 90-133. Street restoration.**

All restoration shall be performed in compliance with construction standards promulgated by the city engineer pursuant to section 90-96.

**Sec. 90-134. Requirements for installation of utility lines.**

- (a) All public and private utility lines including, but not limited to, gas, telephone, cable, and telecommunication lines that are installed within or under any city right-of-way or street,

shall be placed so that the uppermost surface of the utility line is at least 24 inches below the existing surface.

- (b) The minimum depth established above in subsection (a) shall apply to any subdivision in the city's extraterritorial jurisdiction that is subject to the city's unified development code.

**Sec. 90-135. Warranty of completion of work.**

A permittee shall notify the city engineer before commencing and obtain permission to commence the work within the city public right-of-way before it enters the public way. In connection with the notification and permission, the authorized date of entry on the public way, for purposes of subsection 90-113(b) shall be established. In connection with the notification, the permittee shall also furnish the transmittal number required under subsection 90-111(c)(14), if it has not previously been provided. The permittee shall diligently prosecute the work within the city public right-of-way to its final completion within the time authorized under the permit. If a permittee commences work within the city public right-of-way and then fails, refuses, or neglects to diligently prosecute or to timely complete the work in accordance with the permit and all applicable rules and regulations and the construction standards adopted in or pursuant to this article, the city engineer may, following written notice to the permittee, perform the work or cause a city contractor to perform the work. The city engineer shall afford the permittee five days written notice and opportunity to cure before taking over the work within the city public right-of-way, unless the city engineer determines that hazards to public safety and convenience that are posed by the condition of the work require a shorter notice period. The city engineer may charge the cost of having the work within the city public right-of-way performed, including related administrative expenses, to the permittee. The city engineer shall notify the permittee, and the permittee shall be obliged to pay the cost within 30 days following receipt of notifications.

**Sec. 90-136. Warranty of work; correction of defects.**

Each permittee shall warrant its work within the city public right-of-way against all defects in workmanship and materials for a permit of two years after its final completion. Whenever within the two-year period any portion of the work within the city public right-of-way under such a warranty is, in the city engineer's determination, in need of repair, by reason of any defect in workmanship or materials, the city engineer shall serve upon the permittee a written notice stating the repairs necessary and requiring the repairs to be made within five business days after service of notice. If the repairs are not timely made, the city engineer shall at once make or cause to the repairs to be made at the expense of the permittee. The expenses, including any related administrative expenses, shall be charged to the permittee, and the permittee shall be obliged to pay the cost within 30 days following receipt of notification.

**Sec. 90-137. Inspections of work.**

- (a) All work within the city public right-of-way shall be inspected by the city engineer or designee to ensure compliance with construction standards and all applicable provisions relating to the permit. Based upon the complexity and nature of the work and as specified in the permit, inspections may be required during the performance of the work, immediately upon completion of the work, or both.

- (b) Consistent with applicable laws, sound engineering practices, and the nature of the work within the city public right-of-way, the city engineer may, in addition to or in lieu of the city inspections called for under subsection (a), require that a permittee, at the permittee's expense, retain a professional engineer licensed in the state, to observe the work and, based upon the observations, to provide written certification upon completion of the work stating that the public way has been restored in accordance with all other applicable technical requirements.

**Sec. 90-138. Damage to facility.**

A permittee who, in connection with work within the city public right-of-way, damages another owner's facility shall immediately notify the city engineer and, to the extent that the owner's identity is reasonably determinable, the owner of the damaged facility.

**SECTION TWO.** The Seguin Code of Ordinances, Appendix C, Fee Schedule, is amended to read as follows (underlining indicates added text, ~~strikethrough~~ indicates deleted text):

Description	Amount	Section This Code
<b>Chapter 90. Streets, Sidewalks and Other Public Places</b>		
<i>Article II. Streets</i>		
(a)	Fees for events in Downtown Historic District, see Chapter 74 above.	
(b)	Banners, installation of temporary street banners:	90-32
	1. Installation fee per banner	30.00
	2. Late fee for non-pickup	50.00
(c)	Barricades - Cost is set forth in Chapter 74, Parks, subsection (dd), street closure and barricades/cones.	
<i>Article IV. Right-of-Way Work</i>		
(a)	<u>ROW Work Permit</u>	<u>100.00</u>
(b)	<u>ROW Work Re-inspection</u>	<u>50.00</u>
<i>Article VI. License and Franchise Fees</i>		
(a)	Small cell structures per node per year	256.31

**SECTION THREE.** This Ordinance shall become effective beginning ten days after its publication.

**SECTION FOUR.** If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portions of the Ordinance, which shall continue to have full force and effect.

**SECTION FIVE.** Any ordinance or parts or ordinances in conflict with this Ordinance are hereby repealed to the extent of the conflict.

**SECTION SIX.** City Staff is hereby authorized to submit this Ordinance as a supplement to the Seguin Code of Ordinances.

**PASSED UPON FIRST READING** on March 7, 2023.

**PASSED UPON SECOND READING** on March 21, 2023.

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Donna Dodgen, Mayor

ATTEST:

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Naomi Manski, City Secretary