

ORDINANCE

AN ORDINANCE OF THE CITY OF DESOTO, TEXAS, AMENDING CHAPTER 3 THE CODE OF ORDINANCES TO ADD ARTICLE 3.1100A, MANAGEMENT OF PUBLIC RIGHTS-OF-WAY AND ARTICLE 3.1100B, PROPERTY OWNER RESPONSIBILITIES IN RIGHT-OF-WAY TO ADMINISTER AND REGULATE THE USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ISSUANCE AND REGULATION OF CONSTRUCTION PERMITS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of DeSoto is charged with maintaining control of and access to the Right-of-Way in order to protect the health, safety and welfare of its citizens; and,

WHEREAS, in accordance with applicable federal, including, but not limited to, 47 U.S.C., Section 253(c) and state laws, including, but not limited to, Texas Utility Code, Section 14.008 and the Texas Local Government Code, the City seeks to exercise its historical rights to control and manage its Public Rights-of-Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations in the use of those Public Rights-of-Way; and,

WHEREAS, establishing a permitting process to improve coordination of work in Public Rights-of-Way under City jurisdiction will ease traffic congestion and limit inconvenience to citizens of and visitors to the City; and,

WHEREAS, the permitting process is necessary to enhance the public's access to information about construction in Public Rights-of-Way, and to protect and preserve the valuable investment of the City's taxpayers in the construction and maintenance of the Public Rights-of-Way; and,

WHEREAS, the permitting process is necessary to minimize the impact of construction on neighborhood residents and businesses by enforcing cleanliness and safety standards for construction sites, imposing strict timelines for construction, and requiring Owners to comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensure the best possible restoration of the paved surface over and adjacent to any excavation; and,

WHEREAS, the permitting process is necessary to allow the City to properly enforce violations of this Ordinance by the imposition of criminal penalties; and,

WHEREAS, the permitting process is necessary to conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City; and,

WHEREAS, regulation of excavations in Public Rights-of-Way helps reduce disruption of an interference with public use of the streets, helps prevent pavement damage, helps maintain

ORDINANCE NO. 1444-01

the safe condition of the streets, protects the public health, safety and welfare, is a valid and appropriate exercise of the City's police power, and is a municipal responsibility; and,

WHEREAS, the City Council finds there is increasing demand for use of the City Right-of-Way; and,

WHEREAS, the permitting process will assist in keeping track of the different entities using the Rights-of-Way to prevent interference between them; and,

WHEREAS, the permitting process will protect the safety, security, appearance, and condition of the Public Rights-of-Way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS:

SECTION 1. The Code of Ordinances of the City of DeSoto, Texas, be and the same is hereby amended by adding Article 3.1100A Management of Public Rights-of-Way, to Chapter 13, to read as follows:

"ARTICLE 3.1100A. MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

Sec. 3.1101 Definitions.

For the purpose of this article, the following words shall be defined hereinbelow:

City means the City of DeSoto, Texas, or its designated agent of the City.

Construction means any work performed above the surface, on the surface or beneath the surface of a Public Right-of-Way, including, but not limited to, installing, servicing, repairing, upgrading, or modifying any Facility in, above or under the surface of the Public Right-of-Way, and restoring the surface and subsurface of the Public Right-of-Way, subject to the provisions of Section 13-24(a). The phrase "construction" does not include the installation of Facilities necessary to initiate service to a customer's property, or the repair or maintenance of existing Facilities unless such installation, repair or maintenance requires the cutting or breaking of pavement, excavation or boring.

Construction Security means any of the following forms of Security provided at the Owner's option:

- (1) Individual project or performance bond
- (2) Cash deposit
- (3) Security of a form listed or approved under State of Texas Statutes
- (4) Letter of Credit, in a form acceptable by City

Construction Permit means the permit which, pursuant to this Ordinance, must be obtained before an Owner may construct facilities in, on, above or under a

Right-of-Way. A Construction Permit allows the holder to construct Facilities in that part of the Right-of-Way described in such permit.

Department means the Director of Development Services for the City.

Director means the Director of the Development Services of the City or designee.

Emergency means a condition that (1) poses a clear and immediate danger to life or health, or an immediate and significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore service to a customer.

Facility or *Facilities* shall include, but not be limited to, any and all cables, pipelines, splice boxes, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an Owner or Owners, that are located or are proposed to be located in, on, above or under the Public Rights-of-Way. Plural shall also mean the singular.

Municipal Authorization means the individual grant to use the Public Rights-of-Way issued by the City and accepted by the individual Owners in accordance with the Ordinances of the City of DeSoto, Texas, a Franchise Agreement, a License, or under operation of state law which provides a specific grant of authority to use the Rights-of-Way.

Owner means any Person who owns any Facilities that are or are proposed to be installed or maintained in, on, above or under the Public Right-of-Way. Included within this definition is the Owner's contractor, subcontractor, agent or authorized representative.

Permit or *Permit to Construct* means a Permit to perform Construction in accordance with this ordinance.

Person means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity, but excluding the City.

Public Rights-of-Way means the area of land within the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, or by prescriptive right and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, highway, street, sidewalk, alley, or utility access easement. The term includes the area on, below, and above the surface of the Public Right-of-Way. The term applies regardless of whether the Public Right-of-Way is paved or unpaved. The term does not include airwaves above the Public Right-of-Way with regard to wireless telecommunications.

Restore or *Restoration* means the process by which a Right-of-Way is returned to a condition that is equal to or better than the condition that existed before Construction.

Sec. 3.1102 Right-of-Way Occupancy.

(a) Any person prior to constructing Facilities in, on or over the Public Rights-of-Way, shall first obtain separate Municipal Authorization.

(b) This article does not constitute or create authority to place, reconstruct, or alter Facilities in, on or over the Rights-of-Way nor to engage in construction, excavation, encroachments, or work activity within or upon any Public Right-of-Way, and said authority shall be obtained in accordance with the terms of this article.

(c) Any person with a current, unexpired Franchise, Municipal Authorization, License or other authorization from the City (Grant) or State to use the Public Right-of-Way that is in effect at the time this Ordinance takes effect, shall continue to operate under and comply with that Grant, and in the event this article conflicts with existing authorization, the more restrictive provision shall apply.

Sec. 3.1103 Registration.

(a) In order to protect the public health, safety and welfare, all Owners of Facilities in the Right-of-Way shall register with the City. Registration and Permits shall be issued in the name of the Person who owns the Facilities. Registration shall be renewed on or before January 31 of each year. The City shall provide written notification of this renewal requirement. If a registration is not renewed, and subject to 60 calendar days notification to the Owner, the facilities of the user will be deemed to have been abandoned. When any information provided for the registration changes, the Owner will inform the City of the change no more than thirty (30) days after the date the change is made. Registration shall include:

- (1) The name, address(es) and telephone number(s) of the Owner;
- (2) The names, address(es) and telephone number(s) of the contact person(s) for the Owner;
- (3) The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the Right-of-Way on behalf of the Owner. If the names of contractors and subcontractors are not available at the time of permit application, they must be submitted to the City prior to permit issuance;
- (4) The name(s) and telephone number(s) of an emergency contact who shall be available twenty-four (24) hours a day;
- (5) The source of the Owner's Municipal Authorization (e.g., franchise, state law, etc.). If the Owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission;

ORDINANCE NO. 1444-01

- (6) The Owner shall submit two year projections of their plans for the construction of facilities in the City at the time of Registration Renewal; and
- (7) Registration shall be a prerequisite to issuance of a construction permit. Each Owner shall update and keep current its registration with the City at all times.

Sec. 3.1104 Construction Permits.

(a) General

- (1) No Owner shall perform any Construction or installation of Facilities in, on, above or under the Right-of-Way without first obtaining a Construction Permit, except as otherwise provided herein. Permit applications are required for Construction of new, replacement or upgrades of the Facilities in the Right-of-Way whether aerial or underground.
- (2) Emergency responses related to existing Facilities may be undertaken without first obtaining a Permit; however, the Department shall be notified in writing within two (2) business days of any Construction related to an emergency response; including a reasonably detailed description of the work performed in the Right-of-Way. An updated map of any Facilities that were relocated, if applicable, shall be provided within 90 days.
- (3) A permit is not required under Subsection (1) if the activity in the public Right-of-Way consists exclusively of:
 - a. a residential service connection on the same side of the Public Right-of-Way, if the connection does not require a pavement cut; or
 - b. the replacement of a single damaged pole.
 - c. This exemption from a permit does not exempt owner from all other provisions.
- (4) Unless approved by the City Engineer, the Owner or Contractor shall not close any traffic lanes or otherwise impede rush hour traffic on Major Thoroughfares during the morning or evening rush hours on weekdays during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:30 p.m. Any closure of a traffic lane for more than four hours during any non-peak traffic period shall also require a Permit, unless waived by the Director.
- (5) All Construction and installation in the Right-of-Way shall be in accordance with the Permit for the Facilities. The Director shall be provided access to the work and to such further information as he

ORDINANCE NO. 1444-01

or she may reasonably require to ensure compliance with the Permit.

- (6) A copy of the Construction Permit and approved engineering plans shall be maintained at the Construction site and made available for inspection by the Director at all times when Construction work is occurring.
- (7) All Construction work authorized by Permit shall be completed in the time specified in the Construction Permit. If the work cannot be completed in the specified time periods, the Owner may request an extension of the time period from the Director. The Director will use best efforts to approve or disapprove a request for Permit as soon as possible. If the request for the extension is made prior to the expiration of the permit, work may continue while the request is pending.
- (8) Construction, Excavation, or Work Area. No Owner or contractor shall perform construction, excavation, or work in an area larger or at a location different than that specified in the permit or permit application. If, after construction, excavation, or work is commenced under an approved permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application, the Owner or Contractor shall notify the Director immediately and, within 24 hours, shall file a supplementary application for the additional construction, excavation, or work.
- (9) A copy of any Permit or approval issued by federal or state authorities for work in federal or state Right-of-Way located in the City shall be provided, if requested by the Department.

(b) Permit Application

- (1) The Permit shall state to whom it is issued, location of work, location of Facilities, dates and times work is to take place and any other conditions set out by the Director. Permit shall expire within 90 calendar days after issuance if the Owner fails to commence work pursuant to the Permit during that period; and the Owner will be required to obtain another Permit. A Permit is non-transferable.
- (2) The Permit shall be issued in the name of the Owner of the Facilities to be constructed. The Permit application must be completed and signed by a representative of the Owner of the Facilities to be constructed.
- (3) Any person requesting a Permit will provide the Director with documentation in the format specified by the Department, at the time of Permit submittal describing and containing:

ORDINANCE NO. 1444-01

- a. The proposed location and route of all Facilities to be constructed or installed and the Owner's plan for Right-of-Way Construction.
 - b. Three (3) sets of engineering plans, including plan and profile, which will be on a reasonable scale, acceptable to the Department, unless waived by the Director. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas.
 - c. The location of all Right-of-Way and utility easements that Owner plans to use.
 - d. The existing utilities located in the Right-of-Way, including the City's utilities, in relationship to Owner's proposed route.
 - e. Detail of what Owner proposes to construct including size of facilities, materials used, such as pipe size, number of ducts, valves, etc.
 - f. The plans to remove and replace asphalt or concrete in streets in accordance with the City's Paving Design Manual and the Standard Construction Detail Sheets.
 - g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth located in Public Right-of-Way.
 - h. Typical details of manholes and/or handholes Owner plans to use or access.
 - i. Complete legend of drawings submitted by Owner, which may be provided by reference to previously submitted documents acceptable to the City.
 - j. The construction methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Right-of-Way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Director.
 - k. Proof of Insurance and Bonds as required by Section 3.1114.
 - l. Traffic Control Plans.
- (4) A request for a Permit must be submitted at least fifteen (15) business days before the proposed commencement of work identified in the request, unless waived by the Director.

ORDINANCE NO. 1444-01

- (5) Requests for Permits will be approved or disapproved by the Director within a reasonable time of receiving all the necessary information. The Director will use best efforts to approve or disapprove a request for Permit as soon as possible. The Director will consider all information submitted by the applicant including a review of the availability of space in the Right-of-Way based on the applicant's proposed route and location. The Director will provide a written notification of denial for rejected permits.
- (6) The Department or the Owner can request a pre-construction meeting with the construction contractor.

Sec. 3.1105 Construction Standards.

(a) All Construction shall be in conformance with all City codes and applicable local, state and federal laws.

(b) The Department must be notified two (2) business days in advance that Construction is ready to proceed by either the Owner, its contractor or representative. At the time of notification, the Owner will inform the Department of the number (or other information) assigned from the appropriate one-call notification center. "Notification center" means the same as in Texas Civil Statutes, Article 9033, or its successor. The name, address and phone numbers of the contractor or subcontractor who will perform the actual Construction, including the name and telephone number of an individual with the contractor who will be available at all times during Construction. Such information shall be required prior to the commencement of any work.

(c) Public Notification of work to be performed.

- (1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting six days or less, the permittee shall conspicuously mark its vehicles with the permittee's name and telephone number.
- (2) For projects scheduled to last more than seven (7) calendar days, an informational sign measuring three feet by three feet (3' x 3') stating the identity of the person doing the work, a local telephone number and Owner's identity shall be placed at the location where Construction is to occur forty-eight (48) hours prior to the beginning of work in the Right-of-Way and shall continue to be posted at the location during the entire time the work is occurring. The informational sign shall be posted on Public Right-of-Way one hundred (100) feet before the Construction location commences, unless other posting arrangements are approved or required by the Director.
- (3) When projects last more than seven (7) calendar days, the Owner shall also provide written notification to all adjacent property occupants forty-eight (48) hours prior to the beginning of construction. Informational fliers shall include the person doing

ORDINANCE NO. 1444-01

the work, the permittee's local telephone number, Owner's identity, and proposed schedule.

(d) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.

(e) Lane closures on major thoroughfares will be limited to one lane between 9:00 a.m. and 3:30 p.m. unless the Director grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices.

(f) Without affecting the legal relationship between the Owner and their contractor, Owners are responsible for the workmanship of, and any damages by, their contractors or subcontractors. A responsible representative of the Owner will be available to the Department at all times during construction.

(g) Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request Owner may be required to furnish documentation submitted or received from federal or state government.

(h) Owner or contractor or subcontractor shall notify the Department immediately of any damage to other utilities, either city or privately owned.

(i) It is the City's policy not to cut streets or sidewalks; however, except in case of emergency when a street or sidewalk cut is required, prior approval must be obtained from the Department and all requirements of the Department shall be followed in all street and sidewalk cuts. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with City Standard Specifications and Details for Restoration within Public Rights-of-Way.

(j) Installation of Facilities must not interfere with City utilities, in particular gravity dependent facilities. Facilities shall not be located over, or within three (3) feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the Director.

(k) New Facilities shall be installed to a minimum depth required by state and federal codes and standards. Underground and buried utilities, shall be installed at a minimum depth of twenty-four (24) inches, unless otherwise approved by the Director.

(l) All Directional Boring shall have a locator place bore marks and depths while the bore is in progress. Locator shall place a mark at each stem with a paint dot and depth at least every other stem.

ORDINANCE NO. 1444-01

(m) No directional boring zones. In the City, the public infrastructure must be maintained and protected by all Owners and Contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no Person, Agency, or Contractor will be allowed to directionally bore longitudinally with water mains that are larger than 12" and sewer mains that are 12" or larger, unless this requirement is waived in writing by the Director. The installation of Facilities in the Public Rights-of-Way or easements will be installed by open excavation to assure the protection of the City's water and sewer system. The City has available mapping that identifies such mains. The Owner is responsible for obtaining and using this information in the design of new Facilities

(n) The working hours in the Rights-of-Way are 7:00 a.m. to 8:00 p.m., Monday through Friday, unless otherwise approved by Director. Any work performed on Saturday must be approved by the utility inspector by 9:00 a.m. on the Thursday prior to the proposed Saturday. Only emergency work shall be permitted on Sundays or City holidays.

(o) Persons working in the Right-of-Way are responsible for obtaining line locates from all affected utilities or others with Facilities in the Right-of-Way prior to any excavation. Use of a Geographic Information System or the plans of records does not satisfy this requirement.

(p) Owner shall be responsible for verifying the location, both horizontal and vertical, of all Facilities. When required by the Department, Owner shall verify locations by pot holing, hand digging or other method approved by the Department prior to any excavation or boring.

(q) Placement of all manholes and/or handholes must be approved in advance by the Department. Handholes or manholes shall not be located in sidewalks, unless approved by the Director.

(r) Locate flags shall not be removed from a location while Facilities are being constructed.

(s) When Construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the Department.

(t) A Person shall perform operations, excavations and other Construction in the Public Rights-of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-of-Way. The City shall waive the requirements of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the City by the Person. All excavations and other Construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

(u) A three foot by three foot information sign stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur twenty-four (24) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. All vehicles and equipment used at the location shall also be marked to indicate the identity of the permittee, contractor, or subcontractor using the vehicles and equipment.

(v) Excavation Safety. On construction projects in which excavation will exceed a depth of five (5) feet, the owner shall have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with State law and Occupational Safety and Health Administration (OSHA) standards and regulations.

Sec. 3.1106 As-Built Plans.

(a) Right-of-Way users will provide the Director with "as-built plans" within ninety (90) days of completion of Facilities in the Right-of-Way. The plans shall be provided to the City with as much detail and accuracy as required by the Director. All the requirements specified for the plans submitted for the initial Permit, as set forth in Section 13-24(b)(3) shall be submitted and updated in the "as-built plans." Users which have facilities in the Right-of-Way existing as of the date of this ordinance who have not provided "as built plans" shall provide one (1) quarter of the information concerning facilities in City Right-of-Way within six (6) months after the passage of the ordinance and one (1) quarter within the next six (6) months, and the remaining portions within the next six (6) months. The detail and accuracy will concern issues such as location, size of Facilities, materials used, and any other health, safety and welfare concerns. Submittal of "as-built plans" shall be in digital format compatible with City hardware and software or shall be subject to a conversion fee. Owner shall include one set of plans in a paper format.

(b) If as-built plans submitted under this section include information expressly designated by the Owner as a trade secret or other confidential information protected from disclosure by state law, the Director may not disclose that information to the public without the consent of the Owner, unless otherwise compelled by an opinion of the Attorney General pursuant to the Texas Open Records Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an Owner to designate all matters in its as-built plans as confidential or as trade secrets.

(c) This requirement, or portions of this requirement, may be waived by the Director for good cause.

Sec. 3.1107 Conformance with Public Improvements.

(a) Whenever by reasons of widening or straightening of streets, side walks, water or sewer line projects, or any other City project, it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or

ORDINANCE NO. 1444-01

conform an Owner's underground or overhead facilities within the Right-of-Way to another part of the Right-of-Way, such alterations shall be made by the Owner of the Facilities at the Owner's expense (unless provided otherwise by state law, a franchise, a license or a Municipal Authorization until that grant expires or is otherwise terminated). The Owner shall be responsible for conforming its facilities within mutually agreed upon time limits. If no time limits can be agreed upon, the time limit shall be ninety (90) days from the day the City secures any additional Right-of-Way and transmits final plans and notice to make the alterations. The Owner of facilities shall be responsible for any direct costs associated with project delays associated with failure to conform facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this paragraph shall be made within thirty (30) calendar days.

(b) An Owner may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its Facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and the International Society of Arboriculture. Should the Owner, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days.

(c) An Owner shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures. The Owner shall temporarily remove, raise or lower its aerial Facilities within fifteen (15) working days of receiving a copy of a permit issued by the City. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The Owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

Sec. 3.1108 Improperly Installed Facilities.

(a) Any Owner doing work in the City Right-of-Way shall properly install, repair, upgrade and maintain Facilities.

(b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:

- (1) The installation, repair, upgrade or maintenance endangers people or property;
- (2) The Facilities do not meet the applicable City codes;
- (3) The Facilities are not capable of being located using standard practices;
- (4) The Facilities are not located in the proper place at the time of construction in accordance with the directions provided by the Department or the plans approved by the Department.

Sec. 3.1109 Location of Utility Structures.

- (a) Utility structures not exceeding 20 cubic feet are allowed in the right of way or utility easements, subject to available room and located as approved by the Director. The placement of utility structures larger than 20 cubic feet, but not exceeding 30 cubic feet will be reviewed on a case by case basis by the Director. Such structures shall not encroach within a sidewalk area, including a vertical clearance of 7.5 feet above the sidewalk or within the sight visibility area.
- (b) Utility structures larger than 30 cubic feet shall be located as close as practical to the back of a public or private utility easement and subject to available room and located as approved by the Director.
- (c) Above-ground Facilities such as pedestals, switching boxes and similar Facilities shall be located no less than three (3) feet from the edge of an alley or the back of street curbs and such that they do not create a physical or visual barrier to vehicles leaving or entering roads, driveway or alleys. They shall also not be located in front of residential lots creating an unreasonable visual or aesthetic impairment for the property owner.
- (d) The Owner's identity and telephone number shall be placed on all Utility structures placed in the Rights-of-Way.

Sec. 3.1110 Restoration of Property.

- (a) Owners shall restore property affected by Construction of Facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Owners shall submit photographs and/or a video of the construction area at the time of the issuance of the permit. Restoration must be approved by the Department.
- (b) Restoration must be made within ten (10) working days of completion of trench backfill. If Restoration is not satisfactory and performed in a timely manner, after written notice, then all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any future Permits until all Restoration is complete.
- (c) Upon failure of an Owner to perform such Restoration, and five (5) days after written notice has been given to the Owner by the City, and in the event Restoration has not been initiated during such five day period, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Owner, its contractors or agents. Upon receipt of an invoice from the City, the Owner will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.
- (d) If the City determines that the failure of an Owner to properly repair or Restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and Restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the City, the Owner shall promptly reimburse the City for the costs incurred by the City within thirty (30) calendar days from the

ORDINANCE NO. 1444-01

date of the City invoice. If payment is not received within the thirty (30) calendar days, the City shall initiate a claim for compensation with the appropriate bonding company.

(e) Should the City reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional Restoration work to meet the standards of subsection (a), an Owner shall perform such additional Restoration work to the satisfaction of the City, subject to all City remedies as provided herein.

(f) Restoration must be to the reasonable satisfaction of the Department. The Restoration shall include, but not be limited to:

- (1) Replacing all ground cover with the type of ground cover damaged during work to a condition equal to or better either by sodding or seeding, or as directed by the Department;
- (2) Adjusting of all manholes and handholes, as required;
- (3) Backfilling all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the Department. Holes with only vertical walls shall be covered and secured to prevent entry. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded to secure the work site as approved by the Department;
- (4) Leveling of all trenches and backhoe lines;
- (5) Restoration of excavation site to City specifications;
- (6) Restoration of all paving, sidewalks, landscaping, ground cover, trees, shrubs and irrigation systems.

(g) Removal of all locate flags and any other trash, garbage, or litter during the clean up process is the responsibility of the Owner or his/her contractor at the completion of the work.

Sec. 3.1111 Revocation or Denial of Permit.

If any of the provisions of this article are not followed, a Permit may be revoked by the Director. If a person has not followed the terms and conditions of this article in work done pursuant to a prior Permit, new Permits may be denied or additional terms required. Revocation shall be effective upon the expiration of fifteen days after written notice of the violation(s), unless cured during that period, except for violations which pose a threat to public safety or health, for which the revocation will be immediate upon delivery of written notice.

Sec. 3.1112 Appeals.

(a) Applicability. Appeals may be filed pursuant to this article for decisions of the Director related to the denial, suspension, or revocation of a permit. However, the appeal process provided by this Section shall not be available for criminal violations of this article.

(b) Appeal to City Manager. A permittee may appeal decisions referred to in Subsection A above by filing a written appeal with the City Manager within seven (7) working days of receipt of denial, suspension, or revocation of the permit. An appeal filed pursuant to this Section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this article.

(c) Issuance of Decision by City Manager. Decisions of the City Manager shall be issued within five (5) working days of receipt of the written appeal. Decisions of the City Manager shall be final.

Sec. 3.1112. Penalty for Violation.

Any person, firm or corporation violating any of the provisions or terms of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not exceeding two thousand dollars (\$2,000) for each violation, and each day that such violation shall continue to exist constitutes a separate offense.

Sec. 3.1113. Indemnity.

(a) Each Owner placing Facilities in the Public Rights-of-Way shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or Restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Owner's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgements for (a) damage to or loss of the property of any Owner (including, but not limited to the Owner, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Owner (including, but not limited to the agents) arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Owner, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this Ordinance.

(b) This indemnity provision shall not apply to any liability resulting from the negligent or willful acts of the City, its officers, employees, agents, contractors, or subcontractors.

(c) The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other Owner or entity.

Sec. 3.1115 Insurance Requirements.**(a) General**

- (1) An Owner must provide acceptable proof of insurance in the total amount required by this Section for Permits for Construction within Public Rights-of-Way, or make other provisions acceptable to the Director.
- (2) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.
- (3) Each policy must include a provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
- (4) The Owner shall file the required original certificate of insurance prior to the issuance of a permit. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.
- (5) Owner shall file an annual surety bond, which will be valid for one full year, from a surety company authorized to do business in the State of Texas in the amount equal to the estimated amount of the cost to Restore the Right-of-Way for the work anticipated to be done in that year, in the event the Owner leaves a job site in the Right-of-Way unfinished, incomplete or unsafe. Owner may make other provisions, in lieu of a bond, as acceptable to the Director. The Director may waive the requirement if the Owner submits documentation, in a form acceptable to the City Attorney, that demonstrates the Owner has assets in excess of 10 million dollars.
- (6) Owner shall file a Maintenance Bond for twenty-five (25%) percent of the cost of Restoring the Right-of-Way for the preceding year. Said bond shall be in force for two (2) years. Owner may make other provisions, in lieu of a bond, as acceptable to the Director. The Director may waive the requirement if the Owner submits documentation, in a form acceptable to the City Attorney, that demonstrates the Owner has assets in excess of 10 million dollars.
- (7) The above requirements (1-6) may be met by utilities with a current franchise, license or Municipal Authorization if their current franchise, license or Municipal Authorization adequately provides for insurance or bonds required herein, or provides an indemnity in favor of the City.

ORDINANCE NO. 1444-01

- (8) The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City.
 - (9) An insurer has no right of recovery against the City. The required insurance policies shall protect the Agency or Public Infrastructure Contractor and include the City as an additional insured (except workers compensation). The insurance shall be primary coverage for losses covered by the policies.
- (b) Insurance Requirements.
- (1) Owners. Each owner applying for a Permit shall obtain, maintain, and provide proof of the each of the following types of insurance and coverage limits:
 - a. Commercial General liability on an occurrence form with minimum limits of \$5,000,000 per occurrence and \$10,000,000 aggregate. This coverage shall include the following:
 - (1) Products/Completed Operations to be maintained for one year.
 - (2) Personal and advertising injury.
 - (3) Owners and contractors protective liability.
 - (4) Explosion, Collapse, or Underground (XCU) hazards.
 - b. Automobile liability coverage with a minimum policy limits of \$1,000,000 combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
 - c. Workers Compensation and Employers Liability Coverage. Statutory coverage limits for Coverage A and \$500,000 Coverage B Employers Liability.
 - (2) Contractors and Sub-contractors. Each Contractor and sub-contractor applying for a permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in Subsection (1) above; however, the policy limits under the General Liability insurance shall be \$1,000,000 per occurrence and \$2,000,000 aggregate. All other coverages provisions outlined in Subsection (1) above shall apply.
 - (3) An Owner or Contractor that has registered and filed proof of insurance under Section 3.1103 of this article is not required to furnish separate proof of insurance under this Section when

obtaining a permit but must comply with all other requirements of this Section."

ARTICLE 3.1100B PROPERTY OWNERS' RESPONSIBILITIES IN RIGHTS-OF-WAY

Sec. 3.1116 Scope

This Article shall govern the construction and installation of improvements, and the use of, the City's rights-of-way by persons who own property abutting the rights-of-way.

Sec. 3.1117 Permit Required

Prior to construction and improvements in the right-of-way by persons who own property abutting the right-of-way, such persons shall acquire a building permit, as set forth in Article 3.100 in this Chapter, and unless otherwise indicated, the procedures and fees of such permits shall apply to the construction requirements contemplated under this Article.

Sec. 3.1118 Property Owner's Responsibilities

- (a) Extent of construction required:
 - (1) Commercial. All construction in the right-of-way shall be subject to the provisions of this Article and the City subdivision ordinance. Construction improvements within public rights-of-way where permanent structures exist on abutting property shall be allowed, provided such improvements do not create a hazardous condition provided that all construction materials and methods conform the provisions of this chapter.
 - (2) Residential. When a new structure is to be built on a lot or moved onto a lot and used for residential purposes and the right-of-way improvements are not covered under the City subdivision ordinance or the City zoning ordinance, then there shall be no right-of-way improvement requirements under this Article; however, any construction that is done in the right-of-way shall be done in compliance with the provisions of this Chapter. Construction improvements within the public right-of-way where permanent structures exist on abutting property shall be allowed, provided such improvements do not create a hazardous condition and provided that all construction materials and methods conform to the provisions of this Chapter. Notwithstanding any of the above provisions in this subsection, whenever any structure is built on a lot or moved onto a lot and used for residential purposes, the installation of sidewalks around such lot shall be required if either of the following conditions exist:
 - (a) If all or any portion of such lot is bordered by existing curb and gutter; or

ORDINANCE NO. 1444-01

- (b) If the City Council has determined the necessity for, and has ordered the installation of, curb and gutter improvements around all or any portion of said lot.
- (b) Protection of Adjoining Property. The permittee shall at all times, and at his own expense, preserve and protect from injury any adjoining property by providing proper safeguards and taking measures adequate for the purpose.
- (c) Routing Traffic. The normal conditions of traffic shall not be disrupted without the approval of the City Engineer. The City Engineer shall prescribe such traffic control as deemed necessary.
- (d) Prompt Completion of Work. The permittee shall proceed with diligence and expedition on all work covered by the permit and shall promptly complete such work and restore the street to an acceptable condition, as soon as practicable and in any event, not later than the date specified in the permit therefor.
- (e) Urgent Work. If, in his judgment, traffic conditions, the safety or convenience of the traveling public or the public interest, require that the work be performed as emergency work, the Director of Public Works shall have full power to order, at the time the permit is granted, that a work crew and adequate facilities be employed by the permittee twenty-four (24) hours a day to the end that such work may be completed as soon as possible.
- (f) Restoration of Surface. The permittee shall restore all pavement damaged as a result of the construction work to their original condition in accordance with the City standard specifications. Acceptance or approval of any work by the City Engineer shall not prevent the City from asserting a claim against the permittee and his or its surety under the required surety bond for incomplete or defective work if discovered within twelve months from the completion of the work. The City Engineer's presence during the performance of any work shall not relieve the permittee of his responsibilities hereunder.
- (g) Protection of Watercourses. The permittee shall provide for the flow of all watercourses, sewer or drains intercepted during the work and shall replace the same in as good condition as they were found, or shall make such provisions for them as the City Engineer may direct. The permittee shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provisions to take care of all surplus water, muck, silt, slicking, or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from his failure to so provide.
- (h) Removal and Protection of Existing Improvements. The permittee shall not interfere with any existing improvements without the written consent of the Director and the person owning the improvements. If it becomes necessary to remove an existing improvement, this shall be done by its owner. No improvements owned by the City shall be removed to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of

ORDINANCE NO. 1444-01

moving privately-owned improvements shall be similarly borne by the permittee unless he makes other arrangements with the person owning the improvement. The permittee shall protect any improvements which may be in any way affected by his work. In case any of said improvements should be damaged, they shall be repaired in conformance with all applicable requirements by the permittee, and his or its bond shall be liable therefor. The Director shall have the authority to cause said necessary labor and materials to be furnished by the City and the cost shall be charged against the permittee, and the permittee shall also be liable on his or its bond therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, oil pipe, gas pipe, electric conduit, telephone conduit, or other utility and his bond shall be liable therefor. The permittee shall inform himself as to the existence and location of all underground utilities and protect the same against drainage.

Sec. 3.1119 Maintenance of Public Rights-of-Way by Property Owners

(a) Maintenance of Public Rights-of-Way.

- (1) Any owner, occupant or tenant of any lot or parcel of land located within the City shall maintain or cause to be maintained the area of land located between the property line of the lot, tract, or parcel and the adjacent curb, and if no curb exists, then to a line ten feet from the edge of the street pavement toward the property line.
- (2) Any owner, occupant, or tenant of any lot or parcel of land located within the City shall maintain or cause to be maintained the area of land located between the property line of the lot, tract, or parcel and the edge of the adjacent alley pavement.
- (3) Any owner of the property abutting on a public street and sidewalk shall clean and maintain in good repair the sidewalk and any driveway approach apron crossing the sidewalk.
- (4) The owner of property which abuts on any public street, sidewalk, or driveway approach apron shall be liable for any injury or damage arising from a defect or defects caused by any act or omission, failure, or negligence relative to the maintenance or repair of such sidewalk or driveway approach apron crossing such sidewalk.

(b) Maintenance of Trees, Shrubs, and Vegetation. It shall be unlawful for any owner, occupant, or person in charge of adjacent property to:

- (1) Allow the branches of any tree to extend over or into a public street or alley at a height less than fourteen and one-half (14 ½) feet.
- (2) Allow the branches of any tree to extend over a sidewalk at a height of less than eight (8) feet.

ORDINANCE NO. 1444-01

- (3) Allow any shrubbery or similar vegetation to extend into or over any sidewalk blocking or hindering pedestrian access.

(c) **Maintenance of Easements.**

- (1) It shall be unlawful to construct or replace any temporary or permanent structure within, on, or over any public utility or drainage easement except for utilities or facilities associated with drainage. The property owner may place removable section-type fencing, asphalt, or concrete paving, or landscaping within any dedicated public utility or drainage easement. The City or franchised utility of the City shall not be required to replace anything that must be removed during the course of maintenance, construction, or reconstruction within any public utility or drainage easement.
- (2) The property owner shall maintain the property containing any easement in the same manner as would be required if the easement did not exist.
- (3) The property owner shall not hinder the ability of the easement owner to fully utilize the area of the easement for the purposes, including construction and maintenance of improvements within the easement, for which the easement was obtained."

SECTION 4. That all provisions of the Ordinances of the City of DeSoto, Texas, in conflict with the provisions of this ordinance be, and the same are hereby amended, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the Code of Ordinances of the City of DeSoto, as previously amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

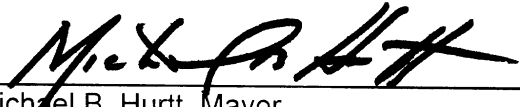
SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of DeSoto, Texas, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Hundred (\$2,000.00) Dollars for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provides; and,

IT IS ACCORDINGLY SO ORDAINED.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
DESOTO, TEXAS, THE 18 DAY OF September, 2001.

APPROVED:



Michael B. Hurtt, Mayor

ATTEST:



Anell Shipman, City Secretary

APPROVED AS TO FORM AND LEGALITY:



Peter G. Smith, City Attorney
(PGS/ev 09/12/01)(42739)

