



ORDINANCE NO. 135

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PATTISON, TEXAS, ESTABLISHING REGULATIONS AND PROVISIONS RELATING TO THE USE OF RIGHT OF WAY BY THOSE AUTHORIZED UNDER FEDERAL, STATE OR LOCAL LAW.

WHEREAS, the City Council of the City of Pattison finds and determines that it is in the best interest of the health, safety and welfare of the residents, citizens and inhabitants of the City of Pattison for there to be a comprehensive set of guidelines and procedures relating to acts as to public street rights of way; and

WHEREAS, the City Council finds and determines that such regulations are reasonably necessary to promote the health, safety and well-being of the residents, citizens and inhabitants of the City;

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

Section 1. That regulations and provisions for the City of Pattison relating to streets, sidewalks, and other public places be established by this Article I, entitled, "Public Street Right of Way Management", which shall provide as follows:

ARTICLE I. PUBLIC STREET RIGHT OF WAY MANAGEMENT

Section 1 - Scope.

The provisions of this article shall be effective within the city limits and including all areas that from time to time may be subsequently annexed or added to the City. However, the provisions of this article shall not apply to any person with a current, unexpired consent, franchise, agreement or other authorization from the City to use the public rights of way that is in effect at the time of this article shall take effect to the extent that there be any conflict in this article with the terms and provisions of the prior grant, and such prior grant shall remain superior to any provisions as herein set out until the same shall terminate or otherwise expire. The provisions of this article shall control where no conflict exists; however, in the event of conflict or uncertainty as to any prior document, this agreement shall control.

Section 2 – Definitions.

"Public right of way" or "public street right of way" as used herein shall mean that areas on, below or above a public roadway, highway, street, public sidewalk, alley,

waterway or utility easement in which the municipality has an interest. The term does not include airwaves above a right of way with regard to wireless communications.

"Entity" as used herein shall be understood to mean a corporate organization consisting of one or more persons. The term "entity" shall mean one or more persons and shall have the same legal effect as the word "person".

Section 3 – Notice and penalties.

a) In the event of any violation of the provisions of this article, the City shall first provide notice of the violation and a reasonable opportunity shall be provided to the person in violation to cure such violation. An entity so notified shall have ten (10) days upon receipt of the notice to cure the same. If, however, the conditions and circumstances require a longer period, the person or entity so notified shall file a written response within the ten (10) day period and in such response shall identify the time period necessary to cure the circumstances or condition. The response shall further identify when the necessary work will be completed and shall provide for completion within a timely manner.

b) In the event the Mayor or his or her designee deems the existing circumstances and conditions to constitute or may constitute a hazard to the health, safety and well-being of the residents, citizens and inhabitants of the City or may endanger property, the Mayor shall be authorized to take immediate action. This action shall include, but not be limited to prohibiting further work and/or requiring the construction and/or implementation of new devices or materials to eliminate the hazardous conditions found to exist.

c) This notice as herein specified shall be delivered by the City to any designated representative of any entity who might be in violation.

d) After notification as herein provided and in accordance with the procedures as herein set out, any violation of this article that has failed to cease and be in full compliance may be punished as otherwise provided in this ordinance for violations.

e) In addition to the remedies as herein provided, any person violating any provisions of this ordinance shall be deemed guilty of a misdemeanor upon conviction and shall be subject to a penalty in an amount not to exceed \$500.00.

f) Each day upon which there exists a violation of this ordinance or a failure to abide by, or comply with, any provision or requirement of this ordinance shall constitute a separate occurrence and may subject the offender to separate criminal penalties.

g) Prosecution for violations hereunder does not constitute an irrevocable election of remedies by the City and shall neither be the exclusive remedy nor waive the right of the City to proceed under all other applicable laws and rules.

Section 4 – Other penalties.

a) In addition, after the required notice procedure as herein previously set out is completed, the City may impose civil penalties for the violation of any provisions of this article as follows:

1. Up to one thousand dollars (\$1,000.00) for each violation and each day of a continuing violation may be considered a new violation; and/or
2. Subject to the procedural guidelines hereinafter set out, the City may exercise its rights to default and revoke any and all permits granted to allow work in the rights of way.

b) If the City elects to impose civil penalties, the City Attorney of the City is hereby authorized to proceed in any court of competent jurisdiction upon authorization by the City Council to recover such civil penalties under applicable law. In addition, the City Attorney may be authorized in a specific case to seek specific performance of any actions required by this article or required by a franchise, license or permit, including the permit authorizing work to be performed in the right of way or any other agreement or authorization.

Section 5 – Right of way construction.

a) No person shall commence or continue with the construction, installation or operation of facilities within the right of way in the City except as may be from time to time permitted by applicable law, as approved by the City and providing applicable authority to proceed. However, the addition of new service or changed service shall not constitute construction of the type necessary to require registration and the issuance of a permit.

b) Aerial work and/or the stringing of lines, wires or the setting of replacement poles in holes or excavations used for other poles or poles being replaced for aerial installation, or the installation or change out of any facilities without disturbing the ground, excavating or entering into the ground by any trenching or digging shall not require registration as otherwise provided herein.

Section 6 – Registration and construction permits.

a) *Registration.* In order to protect the public health, safety and welfare, all users of right of way, except those not subject to registration as set out herein in Section 5, shall register under the procedures as herein set out and permits will be issued in the name of the person who will own the facilities. Registration shall include:

1. The name of the user of the right of way;

2. The name, address, email and telephone number of people who will be contact person(s) for the user;
3. The name, address, email and telephone number of any contractor or subcontractor who will be working in the right of way on behalf of the user; and
4. The name(s) and telephone number of any emergency contact who shall be available 24 hours a day.

b) *Construction permits.*

1. Except as provided herein, no person, required to register, shall perform any construction or installation of facilities in the right of way without first obtaining a construction permit. The permit will be in the name of the person who will own the facilities to be constructed and must be completed and signed by a representative of the entity who will own the facilities to be constructed.
 - i. Emergency responses related to existing facilities may be undertaken without first obtaining a permit or complying with the time and day limitations otherwise applicable. The City should be notified in writing as promptly as practicable, but in any event, not later than within ten (10) business days after any construction related to an emergency response. A reasonable detailed description of the work performed in the right of way must be included. An updated map of any facilities that were moved or reconstructed shall be provided as soon as practicable, but in no case later than ninety (90) days from the date the work was completed.
 - ii. The phrase "construction or installation of facilities" does not include repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement or the closure of a lane of traffic. In addition, the phrase "construction or installation of facilities" does not mean the installation of facilities necessary only to initiate service to an individual customer's property.
2. The permit shall state to whom it is issued, location of work, location of facilities, facilities including pole locations, if any, estimated dates and times the work is to take place and any other conditions as shall be determined by the City.

3. The person requesting a permit will provide the City with documentation describing:
 - i. The proposed location and route of all facilities to be constructed or installed and the applicant's plan for right of way construction.
 - ii. Location of all right of way and utility easements which applicant plans to use.
 - iii. Adequate and appropriate description of what applicant proposes to install, including when necessary appropriate engineered drawings and such copies as may be required by the City based upon the nature and type of proposed project.
 - iv. Description of plans to remove and replace asphalt and/or concrete streets when all work to be completed sufficient for the City to determine the nature and extent of the work to be completed and the disturbance of any part of the right of way.
 - v. The construction and installation methods to be employed for the protection of existing structures, facilities, fixtures within or adjacent to right of way, and the estimated dates and times work will occur, subject to the City's approval which shall not be unreasonably withheld.
4. All construction and installation in the right of way shall be in accordance with the permit for the facilities. After permit issuance, the City shall be provided access to the construction site and to such other information as the City may reasonably require to ensure compliance with the permit.
5. A copy of the construction permit shall be maintained at the construction site and made available for inspection by the Mayor or his designee at all times when construction or installation work is occurring.
6. All construction of installation work authorized by the permit must be completed within a reasonable time, without delay and unnecessary inconvenience. If the work cannot be completed within a reasonable period of time or the work is delayed or no progress is evident or the work is abandoned and does not progress during ordinary work days, when the work shall not have been impeded or delayed because of weather or acts of God, the permittee shall notify the Mayor of the delay and request a reasonable extension.
7. Insurance and bonds.

- i. The Mayor or his designee or any other person employed or directed by the City to review such documentation shall be authorized to determine whether or not an applicant is a self-insured entity. If self-insured, the applicant shall file a designation of self-insured status with the City Secretary. This shall be accepted in lieu of required insurance when it shall be determined that the self-insured entity has met all other applicable requirements of the law.
 - ii. If an applicant is not self-insured, the applicant must then provide proof of liability insurance in an amount of two million dollars (\$2,000,000) issued by an insurance carrier on such form and meeting such requirements as shall be from time to time required by the City.
 - iii. The coverage provided must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.
 - iv. The applicant shall file the required original certificate of insurance prior to any commencement of work. 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.
 - v. Applicant shall file a surety bond from a surety company authorized to do business in the State of Texas in the amount of twenty-five thousand dollars (\$25,000) to guarantee the restoration of the right of way in the event the applicant leaves a job site in the right of way unsafe, incomplete or unfinished.
- 8. A request for a permit must be submitted at least five (5) working days before the commencement of work proposed in the request unless waived by the City.
- 9. Requests for permits will be acted on by the Mayor or his designee promptly after receiving all of the information specified in this article. The Mayor will use his/her best efforts to act on a request upon receipt of the application.
- 10. The Mayor may require or a permittee may request a pre-construction meeting with the Mayor or his designee and the construction contractor.

11. The above financial and insurance requirements shall be applicable unless other or differing requirements are provided under applicable state or federal law or otherwise provided in a valid, non-expired franchise agreement in effect between the City and the applicable franchisee.

Section 7 – Construction standards.

a) The Mayor or his designee must be notified in advance that construction is ready to proceed by either the right of way user, their contractor or representative. The notice must include the name, address and phone numbers of the contractor 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. The notification as herein required shall be made at least twenty-four (24) hours before the construction is to commence; however, the permit holder shall provide notification as soon as it is determined that the work is to commence.

b) All construction shall be in accordance with all City ordinance and applicable local, state and federal laws.

c) A three foot (3') by three foot (3') 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. Such sign shall continue to be posted at the location during the entire time the work is occurring. This provision shall be dispensed with if the work is an emergency in nature and necessary to ensure the continuation of utility service.

d) Barricades and signage must be installed in accordance with the Texas Manual on Uniform Traffic Control Devices for all lane closures and the Mayor shall be notified in advance of such closures. Notification shall be deemed adequate if given two (2) hours before the anticipated closure; however, no advance notification shall be required if such closure shall be necessary to complete emergency work or work necessary to maintain utility service.

e) Without affecting the legal relationship between the permittee and its contractors, permittees are responsible for the workmanship and any damage by its contractors. The responsible representative of the permittee will be available to the Mayor or his designee at all times.

f) Permittee shall be responsible for storm water management and erosion control and complies with City, state and federal guidelines.

g) Permittee, or its contractor or subcontractor, will immediately notify the City and the affected utility of any damage to any other utilities, either City or privately owned.

h) When a street or sidewalk cut is required, the permittee must obtain prior approval and all requirements of the Mayor or his designee shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

i) Newly installed facilities must not interfere with City facilities in any way.

j) Underground or buried utilities must be installed at a minimum depth as may be from time to time required by state or federal law and which may be indicated by proximity to other facilities. In no case shall underground or buried utilities be installed or buried in such a way as to constitute a safety or health hazard.

k) All directional boring shall have locator place bore marks and depths while the bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem.

l) The working hours for permitted activities shall be at any hours except in the case of work being performed within five hundred (500) feet of any residential structure, in which case work shall be limited to 6:00 a.m. to 10:00 p.m. Any permitted work performed outside of the above working hours must be approved in advance by the City. Directional boring is permitted only Monday through Friday from 8:00 a.m. to 5:00 p.m. unless approved in advance by the Mayor or his designee.

m) Contractors working for permittee are responsible for obtaining line locates from all affected utilities prior to any excavation.

Section 8 – Plans of record.

The Mayor or his designee shall have the right at any time to require any utility or entity having lines within the City to provide the City plans of record showing the location of all lines previously installed within the City rights of way or easements in such format as shall be deemed necessary by the City. The City shall not unreasonably request such information but when requested by the City, the same shall promptly be provided and in no case in excess of thirty (30) days from the date of request.

Section 9 – Conformance with public improvements.

Whenever by reasons of widening or straightening of streets, water or sewer line projects or any other public works projects (i.e. install or improve storm drains, water lines, sewer lines) it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt or conform the underground or overhead facilities of a right of way user, such alterations shall be made by the owner of the facilities at their expense within one hundred twenty (120) days from receipt of notice to make the alterations unless a

different schedule has been approved by the Mayor or his/her designee. The provisions of this section shall be applicable to all entities covered under this article, except as may be modified or limited by applicable state or federal law.

Section 10 – Improperly installed facilities.

a) Any person doing any work in the City right of way shall properly install, repair, upgrade and maintain facilities.

b) Facilities installed after the effective date of this ordinance shall be considered to be improperly installed, repaired, upgraded or maintained if:

1. the installation, repairs, upgrade or maintenance of the facilities endangers people;
2. the facilities do not meet the applicable federal, state or City ordinances;
3. the facilities are not capable of being located using the standard practices;
4. the facilities are not located in the proper place in accordance with the directions provided by the Mayor or his designee; or
5. the facilities are placed in an area that interferes with City owned facilities, such as water or sewer lines or streets.

Section 11 – Type of facilities.

The Mayor or his designee may require or approve the location of facilities underground or on the specific type of pole consistent with applicable laws and regulations.

Section 12 – Restoration of property.

a) Users of the right of way affected by construction of facilities shall restore property to a condition that is equal to or better than the condition of the property prior to the performance of the work.

b) Restoration must be to the reasonable satisfaction of the City and the property owner. The restoration shall include, but not be limited to:

1. replacing all ground cover equal to or better than the type of ground cover damaged during the work, either by sodding or seeding, or natural growth;

2. installation of all manholes and handholes as required;
3. backfilling all bore pits, potholes, trenches or any other holes shall be filled in or covered daily, unless other safety requirements are approved by the Mayor or his designee;
4. leveling of all trenches and backhoe lines;
5. restoration of excavation site to City specifications; and
6. restoration of all landscaping and other affected structures such as sprinkler systems and mailboxes.

c) All locator flags shall be removed during the cleanup process by the permittee or his/her contractor at the completion of the work.

d) Restoration must be made in a timely manner as specified by approved public works schedules and to the satisfaction of the Mayor or his/her designee. If restoration is not satisfactory and performed in a timely manner, all work previously permitted but not completed may be halted by order of the Mayor, except the work related to the problem may continue and a hold placed on any permits not yet approved until all restoration is completed.

Section 13 – Markings and signs to locate existing facilities.

a) All pipelines, cables, wiring or other underground facilities that are beneath the surface of the right of way must be identified by a sign or a marker or by other notification procedures to the appropriate entities, so that all persons in the area design to excavate may locate the underground facility. Such signs, markers and other notification devices must contain all necessary information so that all persons desiring to excavate may comply with the provisions of the Underground Facility Prevention and Safety Act (Section 251.001 et seq. of the Texas Utility Codes and Amendment). Where applicable, such signs and markers shall be in place in accordance with state and federal requirements. The markers and signs must be maintained by the utility in a manner that is not unsightly or in a state of disrepair.

b) Any person installing, maintaining or locating any facilities within any right of way of the City must ascertain that there are facilities in the area and must comply with the provisions of the Underground Facility Prevention and Safety Act prior to commencing any work under a permit issued by the City.

c) If any of the provisions of this ordinance are not followed, the Mayor may revoke a permit. If a person has not followed the terms and conditions of this ordinance or of any permits issued and work done pursuant to a prior permit, new permits may be denied or additional new terms required, even though not otherwise specified herein.

PASSED AND APPROVED and Effective on this the 1st day of December 2020.

ATTEST:



City Secretary, Lorene Hartfiel

APPROVED:



Mayor Joe Garcia