

1-27-16

ORDINANCE NO. 29993

An ordinance amending Chapter 43, "Streets and Sidewalks," of the Dallas City Code by amending Sections 43-137, 43-139, 43-140.2 and 43-141; amending the registration requirements; modifying the permit application requirements; providing additional trench backfill requirements; providing additional signage and display material requirements; requiring additional notice for phases of construction; making conforming changes; providing a penalty not to exceed \$500; providing a savings clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 43-137, "Registration; Other Requirements," of Article VIII, "Certain Uses of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to read as follows:

"SEC. 43-137. REGISTRATION; OTHER REQUIREMENTS.

(a) Nothing in this section relieves any person [~~a public service provider~~] from obtaining a permit under this article to perform work in the public right-of-way.

(b) In order to protect the public health, safety, and welfare, a public service provider maintaining or operating existing facilities in the public right-of-way, and any other person working in the public right-of-way, must register with the director in accordance with the following requirements:

(1) The registration must be on a form furnished by the director and made in the name of the public service provider that owns the facilities or the person working in the public right-of-way.

(2) Registration expires March 1 of every [~~other~~] year after the calendar year in which the first registration occurs. If a registration is not renewed by the expiration date, the

director shall furnish written notice to the public service provider or person that the registration has expired. If a ~~the~~ public service provider or person fails to renew registration within 30 calendar days after the director gives notice of the expiration, the facilities of the public service provider or person will be deemed to have been legally abandoned.

(3) If information provided as part of the registration changes, the public service provider or person must inform the director in writing not more than 30 days after the date the change occurs.

(4) The public service provider or person shall also include the following with the registration:

(A) The name of the public service provider or person using the public right-of-way, including any business name, assumed name, or trade name the public service provider operates under or has operated under within the past five years.

(B) If the public service provider is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission.

(C) The ordinance number of any franchise or license issued by the city of Dallas that authorizes the public service provider or person to use the public right-of-way.

(D) The names, mailing addresses, e-mail addresses, and telephone numbers of at least two persons who will be general, day-to-day contacts for the public service provider or person. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.

(E) The name, ~~and~~ mailing address, and e-mail address of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider or person.

(F) The name, mailing address, e-mail addresses, and telephone number of any contractor or subcontractor, if known, who will be working in the public right-of-way on behalf of the public service provider or person.

(G) The names, ~~and~~ telephone numbers, and e-mail addresses of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the city having to pay a long distance telephone or toll charge.

(H) Proof of existing insurance that complies with the following requirements:

(i) The minimum insurance coverage for a public service provider must be commercial general liability insurance, or any combination of general liability and umbrella/excess insurance, (including, but not limited to, premises operations, personal and

advertising injury, products/completed operations, and independent contractors and contractual liability) with a minimum combined bodily injury (including death) and property damage limit of \$25,000,000 per occurrence, \$25,000,000 products/completed operations aggregate, and \$25,000,000 general aggregate, except that public service providers or persons conducting pavement cuts or excavations not more than 18 inches in depth from the top of the pavement must provide a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence \$500,000 products/completed operations aggregate, and \$500,000 general aggregate. The liability insurance policy must also include coverage for explosion, collapse, and underground hazards. The insurance coverage must be written by a company or companies approved to conduct business in the State of Texas. The city must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.

(ii) The insurance filed by a public service provider or person working in the public right-of-way must also meet the same requirements as insurance filed by a permittee under Section 43-140(a)(3) through (a)(7). A public service provider or person registered under this section has the same duties, obligations, and liabilities as a permittee under Section 43-140(a)(3) through (a)(7), except that a public service provider or person registered under this section does not have to file separate proof of insurance every time it obtains a permit to perform work in the public right-of-way.

(iii) If the public service provider or person is an entity that has a tangible net worth ratio of 3 to 1 (assets to liabilities) with a minimum tangible net worth of at least \$100,000,000, proof of self-insurance sufficient to meet the coverage required in this subparagraph is sufficient to satisfy the insurance requirements of this subparagraph.

(5) The insurance requirements of Subsection (b)(4)(H) of this section do not apply to:

(A) construction or other activity performed by the city's own departments [förees] or by contractors hired by the city and working on city-owned facilities within the public right-of-way; or

(B) a public service provider or person operating facilities or performing construction pursuant to a valid existing franchise or license approved by the city council."

SECTION 2. That Subsection (c) of Section 43-139, "Permit Required; Exceptions; Conditions; Denial and Revocation," of Article VIII, "Certain Uses of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to read as follows:

"(c) The following procedures and requirements govern the application for and issuance of a permit required under Subsection (a) of this section:

(1) A permit application must be made in writing on a form approved by the director. The application must be signed and submitted by the owner of the facility for which the permit is requested or, if the work does not involve a facility, by the owner of the improvement for which the permit is requested.

(2) Except in the case of a major project, a permit application must be submitted to the director not less than three [~~two~~] business days before commencement of the proposed construction unless emergency activity is required, in which case immediate notice, including the reasons for the emergency activity, must be given to the director. The proposed construction on the project may commence upon issuance of the permit by the director.

(3) A permit application for a major project must be submitted enough time in advance of the commencement of the proposed construction to allow the director at least 30 business days for review. During this project submission review period, schedules, alternatives to cutting the street, utility assignments, special repair requirements, and all other questions will be resolved. Adjustments to time limits specified in the Pavement Cut and Repair Standards Manual may be granted by the director for major project work. The proposed construction on the project may commence upon issuance of the permit by the director.

(4) A permit application must include a statement by the applicant that the applicant has collected all available plans for existing city of Dallas underground facilities and other public and private utilities and has included those facilities and utilities in the applicant's design, showing no apparent conflict. The statement must also affirm that the applicant will perform field verifications as necessary during construction to locate all city and other existing underground facilities.

(5) A permit application for an above ground utility structure in or outside of a public right-of-way must include identification of appropriate locations for the structure that are consistent with the placement criteria set forth in the AGUS Placement Guidelines.

(6) The permit application on any project must include submittal of plans to 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. The plans must include the horizontal and vertical alignments of all proposed facilities in relation to all existing public and private facilities in plan view. The plans must clearly show the proposed locations of all above ground utility structures and include a detail view showing the height, width, and depth dimensions of each type of above ground utility structure (including any supporting pad) to be installed. If the project is a major project that is located within the central business district, crosses street intersections, or involves crossing proposed facilities over or under existing facilities, the plans must also include a representation of the vertical alignment of the facilities in profile view. Each sheet of the plans must have a note instructing the contractor to verify the location of underground utilities at least 100 feet in advance of all proposed utility crossings, and also at locations where the proposed facilities are shown to be running parallel to existing facilities within five feet. The plans must be half size (11" X 17") at a scale no smaller than 1" = 40' in plan view and 1" = 6' in profile view. Each project must be assigned a project number, which must appear on each sheet. Plans must be readable with a minimum lettering size of 1/8".

(7) A permit is required even if other authority has been granted by the director to make a pavement cut or excavation in a public right-of-way as part of a city construction project.

(8) The director shall state on the permit the activity for which the permit is issued and include any additional restrictions or requirements determined necessary by the director.

(9) The permittee has the exclusive responsibility to coordinate with other public service providers to protect all existing facilities in the public right-of-way in which the construction occurs.

(10) The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the Pavement Cut and Repair Standards Manual and with all other city ordinances and state or federal laws or regulations affecting the permitted activity.

(11) The director shall notify persons who [~~public service providers that~~] registered under Section 43-137 during the previous calendar year of pavement surfaces to be reconstructed or resurfaced by the city during the next calendar year.

(12) A person or public service provider planning construction within the public right-of-way shall notify the director by March 1 of each year of all then-known facility expansion or replacement projects planned for the next fiscal year that may require pavement cuts or excavations.

(13) The director may require any permittee to use trenchless technology or boring, instead of disturbing a public right-of-way surface, if it is:

- (A) in the best interest of the city;
- (B) technically, commercially, and economically feasible; and
- (C) not in violation of federal or state regulations or industry safety standards.

(14) Directional drilling or boring may not be used in the central business district, unless otherwise approved by the director as being in the best interest of the public health, safety, welfare, and convenience.

(15) In using trenchless technology or boring, whether or not required under Paragraph (13) of this subsection, the permittee must:

- (A) obtain and have at the construction site recent plans from the city's water utilities department, and, where available, plans from owners of all other underground

facilities, showing the horizontal and vertical placement of the underground facilities, if the permittee's proposed facilities will:

- (i) cross other existing facilities; or
- (ii) be located within five feet of existing facilities at any point;

(B) locate all water main lines by potholing, if the permittee's proposed facilities will:

- (i) cross other existing facilities; or
- (ii) be located within five feet of existing facilities at any point;

and

(C) be able to locate the bore head at all times in accordance with the latest technologies and provide the location of the bore to the director upon request.

(16) The permittee shall maintain the construction area in a public right-of-way in a manner that avoids dust, other health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way is permanently repaired.

(17) When making a pavement cut or excavation, or placing spoils or excavated material in or along a public right-of-way, the permittee shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the cut, excavation, spoils, or excavated material in compliance with the latest [1980] Edition of the Texas Manual on Uniform Traffic Control Devices, as amended, published by the Texas Department of Transportation and City of Dallas requirements. Excavated material and debris must be removed from the right-of-way on a daily basis.

(18) The director may require the permittee to share trench space to minimize the disruption of vehicular and pedestrian traffic or to provide space for needed city facility installations if such sharing is:

- (A) technically, commercially, and economically feasible; and
- (B) not in violation of state or federal regulations or industry safety standards.

(19) A traffic control plan must be submitted with the permit application and must include detailed drawings showing the proposed traffic controls for vehicular and pedestrian traffic for each phase of the proposed work in the public right-of-way. Traffic control plans must be approved by the City of Dallas before commencing work.

(20) The permittee must affirm on the permit application that the permittee has complied with the pre-construction notice requirements in this article."

SECTION 3. That Subsection (k) of Section 43-139, "Permit Required; Exceptions; Conditions; Denial and Revocation," of Article VIII, "Certain Uses of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to read as follows:

"(k) Any variance from the requirements of this article must be approved in advance by the director. The director may grant a variance only if an extreme hardship exists and the public health, safety, welfare, and convenience is not adversely affected by granting the variance. The director may not approve any variance that would give a competitive advantage to one person [~~public service provider~~] over another person [~~public service provider~~] providing the same or similar service. The director may not grant a variance from the indemnity requirements of Section 43-140(d)."

SECTION 4. That Section 43-140.2, "Waiver of Bonding Requirements," of Article VIII, "Certain Uses of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to read as follows:

"SEC. 43-140.2. WAIVER OF BONDING REQUIREMENTS.

(a) A person registered under Section 43-137 [~~public service provider~~] may annually submit to the director a written request for a waiver from the requirement that it provide a performance bond, letter of credit, or cash deposit pursuant to Section 43-140.1.

(b) The waiver request must set forth in detail the basis for the request, including but not limited to:

(1) the person's [~~public service provider's~~] history of performance in completing its projects and complying with restoration obligations in the city's rights-of-way; and

(2) documentation, in a form acceptable to the city, demonstrating that the person [~~public service provider~~] has unencumbered assets or reserves sufficient to cover the amount of the performance bond, letter of credit, or cash deposit that would otherwise be required under Section 43-140.1.

(c) Within 30 calendar days after receiving a written request for a waiver, the director may, for good cause shown, grant a waiver from the requirement that the person [~~public service provider~~] provide a performance bond, letter of credit, or cash deposit pursuant to Section 43-140.1. In making this decision, the director shall consider all of the following:

(1) The person's [~~public service provider's~~] record of performance in the city's rights-of-way.

(2) The person's [~~public service provider's~~] record of compliance with this article.

(3) A showing of financial responsibility by the person [~~public service provider~~] sufficient to guarantee the full and faithful execution of the estimated work to be performed during the year in which the waiver is in effect.

(4) Any other factor relevant to a determination of the financial responsibility of the person [~~public service provider~~] and its ability to safely and fully perform permitted work.

(d) A waiver expires one year after being granted by the director, and the person [~~public service provider~~] must reapply for a waiver each year during which it will perform work in the city's rights-of-way.

(e) Upon determining that a person [~~public service provider~~] is in violation of this article, the director may deny any request for a waiver and may terminate any existing waiver that had been granted under this section. A person [~~public service provider~~] whose waiver is terminated may not reapply for another waiver until two years have elapsed since the date of termination.

(f) If a waiver is denied or terminated by the director, the person [~~public service provider~~] shall immediately take all necessary steps to temporarily restore the right-of-way and then cease all work in the right-of-way until the person [~~public service provider~~] has provided a bond, letter of credit, or cash deposit that has been approved by the director."

SECTION 5. That Subsection (f) "Tests," of Section 43-141, "Miscellaneous Requirements for Street Excavation and Installations, Trench Safety, and Above Ground Utility Structures," of Article VIII, "Certain Uses of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to read as follows:

"(f) Tests.

(1) The permittee will be required to provide a certified construction materials testing lab, or use a testing method approved by the director, to perform the appropriate tests, at the permittee's expense, to ensure quality control for the backfill and pavement construction phases. Concrete strength test results must be submitted to the director for any placement greater than five cubic yards.

(2) Unless another method is approved by the director, tests must be made in accordance with the latest methods of the American Society of Testing and Materials. The certified results from tests for backfill compaction must be supplied to the city within three days of the backfill work completion and before pavement construction begins. The results from tests

for pavement construction must be submitted within one week of completion of the project. Retesting after failure to pass the required tests will be at the expense of the permittee.

(3) Compaction testing is not required when a flowable [type] backfill material that complies with the *Pavement Cut and Repair Standards Manual*, as amended, is used [~~and accepted~~].

(4) If the materials used for the street repairs do not meet the minimum requirements of the *Pavement Cut and Repair Standards Manual*, they may be considered unacceptable and may be ordered to be removed and replaced at the permittee's expense. In cases where the repairs are unacceptable and the permittee refuses to make them acceptable, the work may be accomplished by the city, and all of the direct and indirect costs will be charged back to the permittee responsible for the work.

(5) The city at its expense may perform, or have performed, any material tests it deems necessary to verify conformance with the specifications set forth in Paragraph (6) of this subsection. If tests performed at the city's expense show cause for additional work or rework by the permittee, then further testing required to show conformance with the specifications will be at the expense of the permittee, including the cost of the original testing that showed the need for additional work or rework.

(6) Specifications for backfill compaction must meet the requirements contained in the *Pavement Cut and Repair Standards Manual*. Specifications for pavement testing must meet the requirements [~~contained~~] in the applicable provisions of the *Standard Specifications for Public Works Construction – North Central Texas* and the city's addendum thereto, as amended.

SECTION 6. That Section 43-141, "Miscellaneous Requirements for Street Excavation and Installations, Trench Safety, and Above Ground Utility Structures," of Article VIII, "Certain Uses of Public Right-of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to add Subsection (h) to read as follows:

“(h) Signage and other display materials.

(1) A copy of the approved permit must be displayed by the permittee at the worksite at all times during construction in the public right-of-way.

(2) The permittee must display at least two signs in the permitted area of construction in the right-of-way no smaller than 30" x 24", one facing each direction of traffic. The sign must provide the business name and primary contact information of the permittee and contractor. The sign letters and numbers must be a minimum 2" in height.

(3) Each vehicle and piece of equipment located in the permitted area of construction in the right-of-way must display a sign identifying the business name and primary contact information of the permittee or contractor. The sign letters and numbers must be legible and at least one inch in height.

(4) A copy of the approved traffic control plan required in Section 43-139 must be available at the permitted area of construction at all times when barriers are erected to divert or alter the flow of traffic.

(5) At least one sign labeled "Temporary Paving Repairs" must be displayed in accordance with the *Dallas Pavement Cut and Repair Standards Manual*, as amended, in any location that has temporary paving repairs. If temporary paving repairs exceed 50 feet in length, one "Temporary Paving Repairs" sign must be provided every 50 feet on the perimeter of the permitted area of public right-of-way under construction. Alternatively, a "Temporary Paving Repairs" sign may be stenciled on the temporary paving repairs in accordance with this paragraph. The lettering of the written sign on the temporary paving repairs must be a minimum of three inches using only white paint. If temporary paving repairs exceed 40 feet in length, one painted "Temporary Paving Repairs" sign must be painted on the temporary paving repairs every 30 feet on the perimeter on the perimeter of the permitted area of public right-of-way under construction."

SECTION 7. That Section 43-141, "Miscellaneous Requirements for Street Excavation and Installations, Trench Safety, and Above Ground Utility Structures," of Article VIII, "Certain Uses of Public Right-Of-Way," of Chapter 43, "Streets and Sidewalks," of the Dallas City Code is amended to add Subsection (i) to read as follows:

"(i) Notice requirements.

(1) Notice to the director. After issuance of a permit under this article, the permittee shall provide written notice to the director:

(A) at least one business day before any material or equipment is placed in the permitted area or the commencement of any temporary construction;

(B) within one business day after completing the temporary construction; and

(C) at least one business day before any permanent construction begins.

(2) Notice to the public.

(A) If construction in the public right-of-way will last less than 24 hours, individual notice to property within 500 feet of the construction area is not required.

(B) If construction in the public right-of-way will last at least 24 hours, but less than 72 hours, the permittee must provide individual notice to each property within 500 feet of the construction area at least 24 hours before commencing construction by placing a door hanger or other similar notice.

(C) If construction in the public right-of-way will last more than 72 hours, the permittee must provide individual notice to each property within 500 feet of the construction area at least 72 hours before commencing construction by placing a door hanger or other similar notice.

(D) The individual notice must include the following:

- (i) permittee name and contractor name, if different;
- (ii) primary contact information for the permittee and contractor, if different.
- (iii) location of the construction area; and
- (iv) estimated time of construction as authorized by the permit.”

SECTION 8. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 9. That Chapter 43 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 10. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

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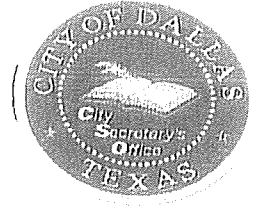
SECTION 11. That this ordinance shall take effect on April 1, 2016, and it is accordingly so ordained.

APPROVED AS TO FORM:

WARREN M.S. ERNST, City Attorney

By *Jachary Nollett*
Assistant City Attorney

Passed JAN 27 2016



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL JAN 27 2016

ORDINANCE NUMBER 29993

DATE PUBLISHED JAN 30 2016

ATTESTED BY: