

8/16/17

ORDINANCE NO. 30620

An ordinance amending Chapter 43, "Streets and Sidewalks," of the Dallas City Code by amending Sections 43-135, 43-139, 43-140; adding a new Section 43-139.1; clarifying and adding definitions; granting the director discretion to prohibit street excavation if existing facilities are sufficient; providing a permit process and regulations for network nodes and related infrastructure; designating certain areas of the city as design districts; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

Whereas, S.B. 1004 enacted by the 85th Texas Legislature and effective September 1, 2017, will allow network providers to place network nodes in the public right-of-way;

Whereas, S.B. 1004 provides that compensation must be paid to cities for use of the public right-of-way and that municipalities retain authority to manage the public right-of-way to ensure the health, safety, and welfare of the public; and

Whereas, this ordinance authorizes criteria and standards governing the placement, installation, and repair of network nodes and related infrastructure and provides for compensation for, and permit application fees related to, the use of the public right-of-way in accordance with state law;

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

SECTION 1. That Section 43-135, "Definitions," 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. 43-135. DEFINITIONS.

In this article:

(1) ABOVE GROUND UTILITY STRUCTURE or AGUS means any utility structure that extends higher than the surrounding grade.

(2) AGUS PLACEMENT GUIDELINES means a manual published by the city of Dallas that contains engineering, technical, and other special criteria and standards established by the director for the placement of above ground utility structures.

(3) BACKFILL means:

(A) the placement of new dirt, fill, or other material to refill an excavation; or

(B) the return of excavated dirt, fill, or other material to an excavation.

(4) CITY means the city of Dallas and the city's officers and employees.

(5) CLOSURE means a complete or partial closing of a sidewalk or one or more lanes of traffic of a thoroughfare for any period of time.

(6) CONSTRUCTION means any of the following activities performed by any person within a public right-of-way:

(A) Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.

(B) Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way.

(C) Performance, restoration, or repair of pavement cuts or excavations.

(D) Reconstruction of any of the work described in Paragraphs (6)(A) through (6)(C) of this subsection.

(E) Other similar construction work.

(7) DESIGN DISTRICT means an area the city council has designated as a:

(A) public improvement district pursuant to Chapter 372 of the Texas Local Government Code, as amended;

(B) reinvestment zone pursuant to Chapter 311 of the Texas Tax Code, as amended;

(C) planned development zoning district;

(D) form zoning district subject to Chapter 51A of this code, as amended;

or

(E) conservation district.

(8) DESIGN MANUAL means a manual published by the city that contains engineering, technical, and other special criteria and standards established by the director for the placement, installation, collocation, replacement, and repair of network nodes, as that term is defined in Chapter 284 of the Texas Local Government Code, as amended, and any related infrastructure, including poles, in the public right of way.

(9[7]) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter or the director's designee [~~mobility and street services or any designated representative~~].

(10[8]) EMERGENCY ACTIVITY means circumstances requiring immediate construction or operations by a public service provider to:

(A) prevent imminent damage or injury to the health or safety of any person or to the public right-of-way;

(B) restore service; or

(C) prevent the loss of service.

(11[9]) EXCAVATION means the removal of dirt, fill, or other material in the public right-of-way, including but not limited to the methods of open trenching, boring, tunneling, or jacking.

(12[10]) FACILITIES means the plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, above ground utility structures, and appurtenances of a public service provider and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public service provider.

(13[11]) MAJOR PROJECT means any construction that requires a pavement cut of a length of 300 linear feet or greater within any single street or alley or any construction in an area that the director determines occurs in an area of high vehicular traffic.

(14[12]) PAVEMENT CUT means a cut made into the paved surface of the public right-of-way.

(15[13]) PAVEMENT CUT AND REPAIR STANDARDS MANUAL means a manual published by the city of Dallas that contains engineering, technical, and other special criteria and standards established by the director for pavement cut, excavation, backfill, restoration, and repair activities in the public right-of-way.

(16[14]) PERMITTEE means the person applying for or receiving a permit to perform construction within the city's right-of-way under the terms and conditions of this article. The term includes:

(A) any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the permittee; and

(B) any contractor or subcontractor of the permittee, for purposes of compliance with the *City of Dallas Pavement Cut and Repair Standards Manual* and the traffic control, construction, and maintenance requirements of this article.

(17[15]) PERSON means a natural person, a corporation, a public service provider, a governmental entity or agency (including the city), a limited liability company, a joint venture, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

(18[16]) PUBLIC RIGHT-OF-WAY means any 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 that fall under the exclusive jurisdiction of the United States government.

(19[17]) PUBLIC SERVICE PROVIDER means any wholesale or retail electric utility, gas utility, telecommunications company, cable company, water utility, storm water utility, or wastewater utility, regardless of whether the public service provider is publicly or privately owned or required to operate within the city pursuant to a franchise, including a network provider as that term is defined in Chapter 284 of the Texas Local Government Code, as amended.

(20[18]) SPOILS or EXCAVATED MATERIAL means construction waste, construction supplies, or excavated dirt, fill, or other similar material that is stored or placed upon the surface of a public right-of-way.

(21[19]) SUBDIVISION means “subdivision” as defined in Article VIII, “Plat Regulations,” of the Dallas Development Code, as amended.

(22[20]) THOROUGHFARE means:

(A) a public traffic arterial, as designated in the city’s thoroughfare plan;

(B) a nonresidential collector street, as defined in the *City of Dallas Paving*

Design Manual; and

(C) all streets within the central business district.

(23[24]) UTILITY STRUCTURE:

(A) means any structure, cabinet, or other appurtenance (other than a pole

or a device attached to a pole) that is owned or used by a public service provider to provide service; and

(B) does not include:

(i) a device or structure used to control or direct pedestrian or vehicular traffic on an adjacent roadway; or

(ii) any infrastructure that provides water used for fire suppression.”

SECTION 2. That Paragraph (10) of 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:

“(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, the AGUS Placement Guidelines, and the Design Manual, as applicable; and with all other city ordinances and state or federal laws or regulations affecting the permitted activity.”

SECTION 3. 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 by adding a new Paragraph (21) to read as follows:

“(21) The director may prohibit street excavation when a permittee seeks to install facilities in a design district or in an area that is part of a major project, unless the permittee can show that existing facilities are unavailable to serve the current needs of the permittee or the permittee’s existing customers, whether through facilities owned by the permittee or are otherwise available.”

SECTION 4. That Article VIII, “Certain Uses of Public Right-of-Way,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended by adding a new Section 43-139.1, “Network Nodes and Related Infrastructure,” to read as follows:

“SEC. 43-139.1. NETWORK NODES AND RELATED INFRASTRUCTURE.

(a) The terms used in this section have the meanings ascribed to them in Chapter 284 of the Texas Local Government Code, as amended.

(b) A person shall not construct, place, install, replace, upgrade, repair, or collocate a network node or related infrastructure, including poles, within a public right-of-way without first obtaining a permit from the director.

(c) Permit applications must be accepted and processed as provided in the Design Manual and in accordance with Chapter 284 of the Texas Local Government Code, as amended. A permit application for a network node must be accompanied by a fully executed pole attachment agreement for the proposed location or an approved permit for a node support pole at the proposed location in order for the application to be deemed complete. The director shall deny applications that do not include required materials and information in accordance with state law and the Design Manual.

(d) A person shall not file, or have pending, more than 30 permit applications for the installation or collocation of network nodes at any time.

(e) Permit fees and compensation for use of the right of way and any city infrastructure pursuant to Chapter 284 of the Texas Local Government Code, as amended, shall be as provided by state law and the Design Manual.

(f) The placement, installation, or collocation of a network node or related infrastructure, including poles, in a design district with decorative poles or in a district the city has designated as historic, is subject to additional design, concealment, and aesthetic standards, as set out in the Design Manual.

(g) A network provider shall not install a new node support pole in a public right-of-way if the public right-of-way is:

(1) adjacent to property under the control and jurisdiction of the park board; or

(2) adjacent to a street or thoroughfare that is not more than 50 feet wide and adjacent to property zoned for residential uses, as that term is defined by the Dallas Development Code, or deed restriction.

(h) Designations.

(1) Any area that meets the definition of a design district under this article is hereby designated a design district for purposes of Chapter 284 of the Texas Local Government Code, as amended.

(2) Any area within the city without utility poles is hereby designated as an underground district pursuant to Chapter 284 of the Local Government Code, as amended, and is subject to additional design, concealment, and aesthetic standards as set out in the Design Manual.

(i) A person acting under this section shall do so in accordance with the terms of the permit, the Design Manual, and all applicable city ordinances, state, and federal laws.”

SECTION 5. That Paragraph (1) of Subsection (d) of Section 43-140, “Insurance and Indemnity Requirements; Exceptions,” 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:

“(1) A permittee who is a certificated telecommunications provider as defined in Chapter 283, Texas Local Government Code, as amended, or a network provider as defined by Chapter 284 of the Texas Local Government Code, as amended, agrees to give to the city the indemnity provided in Section 283.057, Texas Local Government Code, as amended.”

SECTION 6. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$500.

SECTION 7. That Chapter 43 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 9. 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.

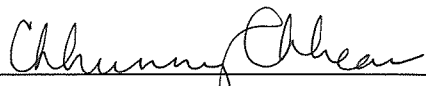
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SECTION 10. That this ordinance shall take effect immediately, and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By 
Assistant City Attorney

Passed AUG 23 2017



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 AUG 23 2017

ORDINANCE NUMBER 30620

DATE PUBLISHED AUG 26 2017

ATTESTED BY: