

ORDINANCE NO. 00-02

AN ORDINANCE OF THE CITY OF COMMERCE, COMMERCE, TEXAS, ESTABLISHING THE TERMS AND CONDITIONS FOR MANAGEMENT OF RIGHTS-OF-WAY WITHIN THE CITY; PROVIDING FOR CRIMINAL AND CIVIL PENALTIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

SECTION 1. Title. This Ordinance may be known and cited as the Right-of-Way Management Ordinance for the City of Commerce, Texas.

SECTION 2. Construction; governing law; venue. This Ordinance shall be construed under and in accordance with the laws of the State of Texas and the City Charter and City Code, to the extent that such Charter and City Code are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Hunt County, Texas.

SECTION 3. Scope. This Ordinance shall be effective within the geographical limits of the City, including any areas subsequently annexed by the City.

SECTION 4. Definitions.

- A. *Street or public way or public right-of-way or public rights-of-way or rights-of-way or right-of-way* means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way, or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by or under the control of the City, to which the City holds the property rights in regard to the use for utilities.
- B. *U.S.C.* means United States Code.

SECTION 5. Criminal penalties.

- A. Any violation or failure to abide by, and comply with, any provision or requirement of this Ordinance shall be a violation of City Ordinance, and shall be punished as a Class C Misdemeanor, subject to a fine up to five hundred dollars (\$500.00) per occurrence, unless otherwise provided by state law.
- B. 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.

- C. Prosecution pursuant to this section is in addition to and does not supplant other remedies.
- D. With the exception of any actions requiring authorization, franchises, licenses or permits (including permits issued before actual use of the right-of-way), it shall be an affirmative defense that notice of the violation of this Ordinance and forty-five (45) days to correct the violation was not given to the offender.

SECTION 6. Civil penalties.

- A. Civil penalties may be imposed for the violation of any provision of this Ordinance, 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. If applicable, default and revocation of any or all permits granted to allow work in the rights-of-way, subject to the procedural guidelines noted in this Ordinance and any agreement which applies to the right-of-way user, and further subject to any limitations imposed by federal or state law.
 - 3. In imposing the penalties and the amount, the City may weigh all applicable factors, such as damages caused by the violation, reasons for the violation, the seriousness of the violation, and all other factors.
 - 4. Monetary civil penalties may be imposed in the manner prescribed by either local or state law.
 - 5. In addition, the City Council may order specific performance of any actions required by this Ordinance 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 7. Right-of-way Construction. No person shall commence or continue with the construction, installation or operation of facilities within the right-of-way in the City except as provided by the Ordinances of the City and the Director of the Public Works Department. The holder of a franchise from the City shall not be subject to the provisions hereof.

SECTION 8. Registration and Construction Permits.

- A. *Registration.* In order to protect the public health, safety and welfare, all users of the right-of-way shall make application with the City of Commerce for permits. Permits will only be issued in the name of the person who will own the facilities. The application shall include:
 - 1. the name of the user of the right-of-way;

2. the name, address and telephone number of people who will be contact person(s) for the user;
3. the name, address and telephone number of any contractor or subcontractor who will be working in the right-of-way on behalf of the user;
4. the name(s) and telephone number of an emergency contact who shall be available 24 hours a day.
5. all vehicles shall have identification on vehicle indicating the name of contractor and all personnel shall have identification readily available to the Public.

B. *Construction Permits.*

1. No person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of who will own the facilities to be constructed.
 - a. Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the Public Works Department should be notified in writing by the next business day of any construction related to an emergency response, including a reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities that were moved.
 - b. The phrase construction or installation of facilities includes repair or maintenance of existing facilities, repair or maintenance that requires the breaking of pavement or the closure of a traffic lane, and the installation of facilities necessary to initiate service to a customer's property.
2. The permit shall state to whom it is issued, location of work, location of facilities, dates and times of work to take place, and any other conditions set out by the Director of Public Works or his designee.
3. The person requesting a permit will provide the Director of Public Works or his designee with documentation describing:
 - a. The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction;

- b. Engineering plans which will be on a scale of one inch (1") equals fifty feet (50') unless otherwise approved by the Public Works Department;
 - c. Detail of the location of all right-of-way and utility easements which applicant plans to use;
 - d. Detail of all existing City utilities in relationship to applicant's proposed route;
 - e. Detail of what applicant proposes to install, such as pipe size, number of interducts, valves, etc.;
 - f. Detail of plans to remove and replace asphalt, concrete in street (include City of Commerce standard construction details);
 - g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc., including depth;
 - h. Handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access;
 - i. Complete legend of drawings submitted by applicant;
 - j. Four sets of engineering plans must be submitted with permit application;
 - k. 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;
 - l. The construction and installation 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 of Public Works or his designee; and
 - m. Proof of insurance or net worth as required.
4. All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The Director of Public Works or his designee shall be provided access to the work and to such further information as he may reasonably require to ensure compliance with the permit.
5. 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 of Public Works or his designee at all times when construction or installation work is occurring.

6. All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the Director of Public Works or his designee.
7. *Insurance and Bonds.*
 - a. An applicant must provide proof of liability insurance in the amount of one million dollars (\$1,000,000.00), as approved by the Director of Public Works or his designee. Such requirements may be waived by the Director of Public Works or his designee, if the applicant provides acceptable evidence of self-insurance backed by assets equal to but not less than a net worth in the amount of at least five million dollars (\$5,000,000.00) as approved by the Director of Public Works or his designee and the Director of Administrative Services or his designee.
 - b. 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.
 - c. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than sixty (60) days before canceling, failing to renew or reducing policy limits.
 - d. 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.
 - e. Applicant shall file a surety bond from a surety company authorized to do business in the State of Texas in the amount of \$15,000.00 to guarantee the restoration of the right-of-way in the event the applicant leaves a job site in the right-of-way unfinished, incomplete or unsafe.
8. A request for a permit must be submitted at least ten (10) working days before the commencement of work proposed in the request, unless waived by the Director of Public Works or his designee.
9. Requests for permits will be approved or disapproved by the Director of Public Works or his designee within a reasonable time of receiving all the necessary information. The Director of Public Works or his designee will use his best efforts to approve or disapprove a request for permit as soon as possible.

10. The Public Works Department can request a pre-construction meeting with the permittee and his construction contractor.
11. Permit applications are required for construction on new, replacement or upgrading of the company's network in the right-of-way either aerial or underground.

SECTION 9. Construction standards.

- A. Department of Public Works must be notified twenty-four (24) hours in advance that construction is ready to proceed by either the right-of-way user, his contractor or representative.
- B. All construction shall be in conformance with all City Codes and applicable local, state and federal laws.
- C. Three-by-three information signs, 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 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.
- D. Traffic control devices shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, also known as T.M.U.T.C.D.
- E. Permittee can be required to show proof of EPA approved plans relating to storm water and erosion, when applicable, or a letter stating they are not required to obtain such plans.
- F. Lane closures on all streets and alleys will be limited after 8:30 a.m. and before 4:00 p.m., unless the Public Works Department grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and 36-inch reflector cones placed according to the specifications of the Public Works Department.
- G. Permittees are responsible for the workmanship and any damages by a contractor or subcontractor. A responsible representative of the permittee will be available to Public Works at all times during construction.
- H. Permittee shall be responsible for storm water management erosion control that complies with city, state and federal guidelines. Requirements shall include, but not be limited to, silt 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.

- I. Permittee or contractor or subcontractor will notify the Public Works Department immediately of any damage to other utilities, either City or privately owned.
- J. When a street or sidewalk cut is required, prior approval must be obtained by the Public Works Department, and all requirements of the Public Works Department shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- K. Installed facilities must not interfere with City utilities, in particular, gravity dependent facilities.
- L. Utilities must be installed at a minimum three (3) foot depth, unless approved by the Public Works Department.
- M. All directional boring shall have locator place bore marks and depths while bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem.
- N. The working hours in the rights-of-way are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved in advance. Any work performed on Saturday or holidays must be approved twenty-four (24) hours in advance by the Public Works Department. Directional boring is permitted only Monday through Friday unless approved in advance.
- O. Contractors working for permittees are responsible for obtaining line locates from all affected utilities prior to any excavation.
- P. Contractor will be responsible for verifying the location, both horizontal and vertical, of all affected facilities, whether by pot holing or hand digging, prior to any excavation or boring.
- Q. Placement of all manholes and/or handholes must be approved in advance by Public Works Department.

SECTION 10. Plans of Record plans. Right-of-way users will provide the Public Works Director or his designee with plans of records within ten (10) days of completion of facilities in the right-of-way and annually thereafter. Users which have facilities in the right-of-way existing as of the date of this Ordinance who have not provided plans of records shall do so not later than thirty (30) days after the passage of this Ordinance. The plans shall be provided to the City in the format specified by the Public Works Director or his designee. Submittal of plans of records should be in digital formatting as well as written or in any other format requested by the Public Works Department.

SECTION 11. Conformance with Public Improvements. Whenever, by reason of construction of streets, water or sewer lines projects, or any other public works projects (i.e., install or improve storm drains, streets, 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 thirty (30) days from receipt of notice to make the alterations, unless a different schedule has been approved by the Public Works Director or his designee.

SECTION 12. Improperly Installed Facilities.

- A. Any person 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, repairs, upgrade or maintenance endangers people;
 - 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 in accordance with the directions provided by the Public Works Department; or
 - 5. the facilities are placed in an area that interferes with City owned facilities, such as water or sewer lines or streets. Privately owned facilities shall be considered to interfere with City owned facilities if the privately owned facility is within three (3) feet horizontally or one (1) foot vertically of City owned facilities.

SECTION 13. Type of facilities.

- A. The Public Works Director may require or approve the location of facilities underground.
- B. When poles are used, the type of poles, location, depth, upgrades, etc., shall be subject to the review of the Public Works Department.
- C. Public Works Director or his designee may approve size of facilities to be installed or require proof of need to install size of system requesting to be permitted.

SECTION 14. Restoration of property.

- A. Users of the right-of-way 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.

- B. This includes, but is not limited to, replacing all ground cover with equal to the type of ground cover damaged during work or better, either by sodding or seeding, as directed by Public Works Department.
- C. Restoration must be to the reasonable satisfaction of the Public Works Department and the property owner. The restoration shall include, but not be limited to:
 - 1. Installation of all manholes and handholes, as required;
 - 2. Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by Public Works;
 - 3. Leveling of all trenches and backhoe lines;
 - 4. Restoration of excavation site to City specifications;
 - 5. Restoration of all landscaping.
- D. All locate flags shall be removed during the clean-up process by the permittee or his contractor at the completion of the work.
- E. Restoration must be made in a timely manner as specified by approved Public Works schedules and to the satisfaction of the Public Works Director or his designee. If restoration is not satisfactory and performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete, will be halted and a hold placed on any permits not approved until all restoration is complete.

SECTION 15. Locating facilities. If any of the provisions of this Ordinance are not followed, a permit may be revoked by the Public Works Director or his designee. If a person has not followed the terms and condition of this Ordinance in work done pursuant to a prior permit, new permits may be denied or additional terms required.

SECTION 16. That if any section, provision, subsection, paragraph, sentence, clause, phrase, or word in this Ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Commerce, Texas, hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 17. All Ordinances or parts of Ordinances other than existing franchise ordinances, in conflict herewith are repealed to the extent of conflict only.

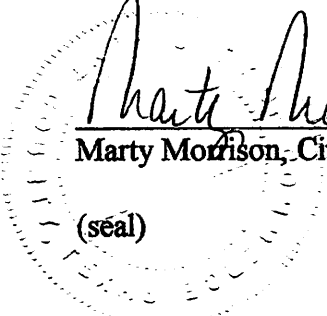
SECTION 18. This ordinance shall take effect and be in force from and after January 18, 2000.

PASSED AND APPROVED on FIRST READING at a regular meeting of the City Council of the City of Commerce, Texas, on this the 4th day of January, 2000.

PASSED AND APPROVED on SECOND READING at a regular meeting of the City Council of the City of Commerce, Texas, on this the 18th day of January, 2000.

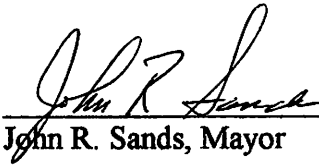
ATTEST:

CITY OF COMMERCE:


Marty Morrison

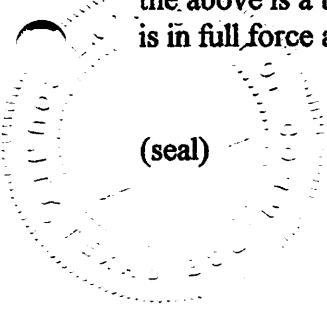
Marty Morrison, City Secretary

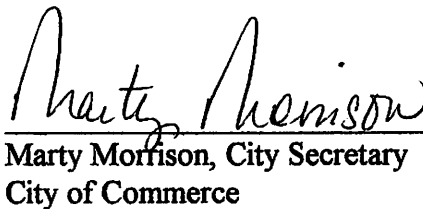
(seal)


John R. Sands

John R. Sands, Mayor

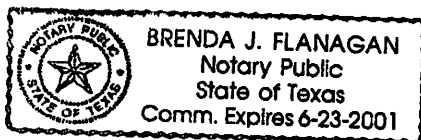
I, Marty Morrison, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

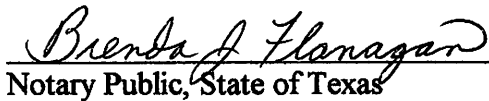

(seal)


Marty Morrison
Marty Morrison, City Secretary
City of Commerce

Sworn to and subscribed before me, on this the 21st day of January, 2000, to certify which witness my hand and seal of office.

(seal)



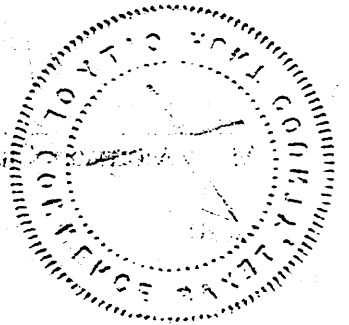

Brenda J. Flanagan
Notary Public, State of Texas

THE CITY OF LOS ANGELES, CALIFORNIA, DO hereby certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the City of Los Angeles, California.

IN WITNESS WHEREOF, the City Clerk has hereunto set her hand and the seal of the City of Los Angeles, California, at the City of Los Angeles, California, this 1st day of January, 1900.

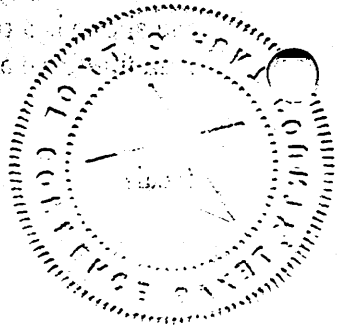
ATTEST

1



Witness my hand and the seal of the City of Los Angeles, California, at the City of Los Angeles, California, this 1st day of January, 1900.

1



IN WITNESS WHEREOF, the City Clerk has hereunto set her hand and the seal of the City of Los Angeles, California, at the City of Los Angeles, California, this 1st day of January, 1900.

ATTEST

IN WITNESS WHEREOF, the City Clerk has hereunto set her hand and the seal of the City of Los Angeles, California, at the City of Los Angeles, California, this 1st day of January, 1900.

(100)

1