

ORDINANCE NO. 088-031

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING CHAPTER 16, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES, TOWN OF ADDISON, TEXAS, REQUIRING LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY; PROVIDING FOR APPLICATION FOR LICENSE; PROVIDING FOR GRANT BY CITY COUNCIL; PROVIDING FOR TERMS AND CONDITIONS, DURATION; PROVIDING FOR RIGHT OF TERMINATION RESERVED BY CITY; PROVIDING FOR ANNUAL FEE FOR USE OF PUBLIC RIGHT-OF-WAY; PROVIDING FOR CONSTRUCTION AND MAINTENANCE; PROVIDING FOR ADDITIONAL OBLIGATIONS OF LICENSEE; PROVIDING FOR LICENSEE TO INDEMNIFY CITY; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; AND DECLARING AN EMERGENCY.

WHEREAS, The State of Texas has granted to the City the right to protect the health, safety and welfare of the public and to preserve and enforce the good government, order and security of the City and its inhabitants; and

WHEREAS, State delegation of the power to regulate includes the power to impose conditions upon the grant of licenses and to exact fees for the award or renewal of licenses; and

WHEREAS, the City Council of the Town of Addison hereby finds and determines that the conditions and fees imposed by this ordinance are reasonable;

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS:

SECTION 1. That Chapter 16 of the Code of Ordinances, Town of Addison, Texas, is hereby amended to add Secs. 16-39 through 16-46 to read as follows:

Sec. 16-39. License for Use of Public Right-of-Way Required.

It shall be unlawful for any Person or governmental entity operating a utility to use any portion of the surface of, and the space above or below, any public street, road, highway, freeway lane, alley, sidewalk, other public place, or any other area under the control of the City now or hereafter existing, for a private or governmental utility use unless such Person shall first have obtained from the City a license to use such right-of-way.

Sec. 16-40. Application for License.

Persons desiring a license as provided in Sec. 16-39 shall apply in writing to the Director of Streets. The application must be accompanied by plans or drawings showing the area to be used, certified survey notes showing elevations of the area and a statement of the purpose for which the right-of-way is to be used.

Sec. 16-41. Grant By City Council.

If, in the sole judgment of the City Council, the requested use is not inconsistent with and does not unreasonably impair the public use of the right-of-way, the Council may by ordinance grant the license.

Sec. 16-42. Terms and Condition; Duration; Right of Termination Reserved By City.

(a) The ordinance provided for in Sec. 16-41 shall contain the terms and conditions of the license and shall state the time for which the license exists. Whether or not stated in the ordinance the City Council retains the right to terminate a license whenever in its judgment the purpose or use of the license is inconsistent with the public use of the right-of-way or whenever the purpose or use of the license is likely to become a nuisance.

(b) If a private license does not state the time for expiration, it will expire 10 years from the date of the passage of the ordinance granting the license.

(c) If a license to place and maintain the facilities of a utility operated by a governmental entity on public right-of-way does not state the time for expiration, it will expire upon expiration of the governmental entity's contract with the City providing for mutual granting of rights-of-way.

Sec. 16-43. Annual Fee for Use of Public Right-of-Way. The annual fee for a license to use a public right-of-way is Two and no/100 Dollars (\$2.00) per linear foot of right-of-way traversed and One Thousand and no/100 Dollars (\$1,000.00) per public street crossing. All fees are payable in advance for each upcoming year until the license is terminated. The Person to whom the license is granted, or licensee, shall bear the entire cost of constructing, reconstructing, maintaining and operating any structure constructed on the public right-of-way, and will not allow any mechanic's or materialman's liens to be enforced against the right-of-way by reason of any such work.

Sec. 16-44. Construction and Maintenance.

Any utility structure installed or constructed in the public right-of-way shall be constructed, reconstructed and maintained in accordance with plans approved by the City. Approval by the City of the license shall not constitute a warranty that such plans conform with federal, state and/or local codes and regulations applicable thereto. Licensee shall comply with all applicable laws or ordinances of the City, including, but not limited to, building and excavation permits. All work upon or in connection with said structure shall be done to the City's satisfaction at such times and in such manner as not to interfere with the use of the roadway. In construction, reconstruction and maintenance of the structure, licensee shall keep the right-of-way in a neat and safe condition and in good order and operating condition, failing which, the City may do so at licensee's expense. If required by the City, licensee, at its sole cost, shall reconstruct, relocate or alter the structure. Except in an emergency, licensee shall give the City five (5) days' written notice of the day and hour it proposes to do any work on the structure. Licensee shall bear responsibility for timely and complete repairs in the event of damage to the structure from any cause whatsoever.

Licensee shall cooperate with the City in making any test the City requires of any installation or condition which, in its judgment, may have adverse effect on any of the City facilities. All cost incurred by the test, or any corrections thereof, shall be borne by Licensee.

No change shall be made by licensee in the wires or cables being contained in said the structure without the City's prior written approval.

Sec. 16-45. Additional Obligations of Licensee.

(a) Licensee shall maintain a complete set of "as built" plans of any structure constructed in the public right-of-way and shall furnish copies of the same to the Director of Streets.

(b) Licensee shall maintain a local agent who is familiar with any structure so constructed and whose name and address shall be furnished annually to the Director of Streets. Said local agent shall be responsible for satisfying all information needs of the City.

Sec. 16-46. Licensee to Indemnify City.

Licensee shall release and indemnify the City from and against all liability, cost and expense for loss of or damage to the public right-of-way, and for injury to or death of persons when arising or resulting from:

(a) use of the premises by licensee, its agents, employees, or invitees; or

(b) the construction, reconstruction, maintenance, presence, use or removal of any structure constructed on the premises; or

(c) Licensee's violation of this ordinance or any ordinance granting a license to licensee, whether or not caused or contributed to by any act or omission, negligence or otherwise, of any employee of the City, except for intentional or gross negligent acts of the City's employee.

If required by the City, licensee shall provide evidence of insurance coverage in a form and amount satisfactory to the City.

SECTION 2. That all ordinances of the City in conflict with

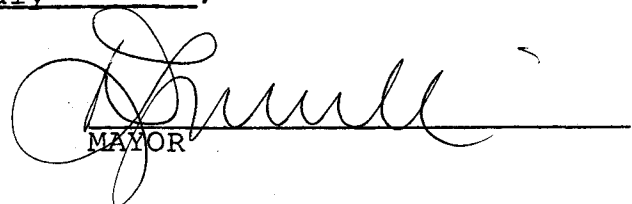
the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof other than the part so decided to be invalid, illegal, or unconstitutional.

SECTION 4. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a penalty of fine only not to exceed the sum of Four Hundred and no/100 Dollars (\$400.00) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 5. The fact that the present code of Ordinances does not provide for licensing for use of public right-of-way and therefore, is inadequate to properly safeguard the general public health and safety, creates an emergency and an imperative public necessity, and the ordinance shall take effect and be in force from and after its adoption.

DULY PASSED by the City Council of the Town of Addison, Texas, this the 12th day of July, 1988.


MAYOR


CITY SECRETARY

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