

ORDINANCE NO. 098- 037

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ADDISON, TEXAS DIRECTING THE CITY MANAGER TO CONDUCT AND CONTINUE CONDUCTING A DETAILED STUDY OF THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY FOR UTILITY USE, INCLUDING TELECOMMUNICATIONS, CABLE TELEVISION, ELECTRICAL, AND GAS, AND TO CONTINUE THE DEVELOPMENT OF A COMPREHENSIVE PLAN REGARDING THE USE OF SUCH RIGHTS-OF-WAY BY UTILITY PROVIDERS; ESTABLISHING A MORATORIUM DURING SUCH PERIOD OF STUDY, NOT TO EXCEED ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF ADOPTION HEREOF, ON THE ACCEPTANCE AND REVIEW OF APPLICATIONS AND THE ISSUANCE OF FRANCHISES, LICENSES, AND PERMITS WHICH WOULD PERMIT THE APPLICANT TO UTILIZE THE PUBLIC RIGHTS-OF-WAY FOR UTILITY PURPOSES; PROVIDING EXCEPTIONS TO THE MORATORIUM; PROVIDING A PUBLIC HEARING PROCESS TO CONSIDER EXTRAORDINARY HARDSHIPS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (the "City"), on or about September 9, 1997 enacted Ordinance No. 097-039, which Ordinance, for the public purposes recited therein, established and created a moratorium on the filing, acceptance, processing, or approval of any application or other request seeking a franchise agreement, street rental agreement, or other agreement, permit or license from the City which would allow the applicant or any person or entity to use the public rights-of-way (including the streets and alleys) within the City for the installation, repair and maintenance of utility lines; and

WHEREAS, in Ordinance No. 097-039 the City Council made certain of the findings set forth below, and the City Council hereby makes the following findings:

1. The City has the exclusive control over and under the public roadways, streets and alleys of the City, pursuant to (i) Article 11, Section 5, Texas Constitution, (ii) Section 311.001, Tex. Transp. Code, and (iii) its Home Rule Charter.
2. From time to time, in order to allow the providers of certain utility services (including electric, gas, telecommunications, and cable television) to provide service to their customers, the City has granted a franchise agreement or street rental agreement (together, the "agreements") to such providers which authorizes such providers to use the public rights-of-way within the City for utility purposes. Those

agreements generally permit, and in some instances require, that utility lines, pipes or other facilities be placed underground. The City has a number of such agreements, including agreements with Texas Utilities Electric Company, Lone Star Gas Company, Southwestern Bell Telephone Company, Marcus Cable, TCI Cablevision, Explorer Pipeline Company, Con-Dor Pipeline Company, MCI Metro Access Transmission Services, Inc., and Teleport Communication Dallas, Inc.

3. The capacity within the City's rights-of-way for the placement of underground and above-ground utility lines, pipes or other facilities is limited. Availability of space within the rights-of-way for underground and above-ground utilities has been significantly reduced over the years due to increased demand for utility services and an increase in the number of utility providers, particularly in the telecommunications industry.

4. Recent legislation has encouraged an increase in telecommunications competition. In 1995, the Texas Legislature enacted article 1446-0, the Public Utility Regulatory Act of 1995 (the "PURA") which has, as one of its purposes, to "promote diversity of [telecommunications] providers and interconnectivity and to encourage a fully competitive telecommunications marketplace...". Several months later, Congress enacted the Federal Telecommunications Act of 1996 (the "1996 Telecommunications Act"). The Act was also designed to remove regulatory barriers and encourage competition in the telecommunications industry. As a result of the enactment of the PURA and the 1996 Telecommunications Act, the City has seen a significant increase in the number of entities requesting use of the public rights-of-way for telecommunications purposes, and anticipates such requests to continue at an increased rate.

5. The increase in the number of utilities using the underground and above-ground public rights-of-way for utility services creates certain safety hazards, particularly at times of installation, maintenance and repair of the utility lines, pipes or other facilities. Because utility lines, pipes or other facilities are within a close proximity of one another, it is common for one utility provider installing or attempting to maintain or repair a utility line to damage the utility line of another utility provider. Such damage results in interruption of service to utility customers and carries with it the potential for serious personal injury and property damage as a result of fire or explosion. Additionally, utility work within the public rights-of-way tends to disrupt traffic flow on already congested streets within the City and may interfere with the use of public sidewalks by pedestrians.

6. As a result of the problems and difficulties which have resulted, and potentially dangerous conditions which may result, from the increased use of the underground and above-ground public rights-of-way by utility providers, the City Council herein directs the City Staff, within the time period set forth herein, to conduct (and to continue to conduct) a study of the underground and above-ground public rights-of-way to determine, among other things: (i) the reasonable capacity of such rights-of-way for utility purposes, (ii) the proper arrangement or grouping of utility lines, pipes or other facilities within the rights-of-way in order to allow for the most convenient access to such lines, pipes or other facilities; (iii) the most efficient

procedure, manner and means to reduce damage to utility lines, pipes or other facilities, and to reduce the risk of danger to the public health, safety and welfare, at times of installation, repair and maintenance of such lines, pipes or other facilities; and (iv) the existence of alternative methods to convey utility services within the City.

7. The City Council anticipates that the City will receive additional applications for new franchise agreements or street rental agreements or other requests to install utility lines, pipes or other facilities within the public rights-of-way prior to the completion of the right-of-way study. Such applications, if approved, would further increase the number of utility providers providing utility service within the public rights-of-way and frustrate the purposes of the study.

8. It is essential in order to: (i) allow the study to be conducted, (ii) preserve the ability of the City Council to implement any recommendations relative to the undergrounding of utilities or the placing of utilities above-ground contained within the study, (iii) protect the public health, safety and welfare of the citizens of the City, and (iv) encourage and promote competition to protect and benefit the public interest, that the filing and processing of applications for franchise agreements, street rental agreements or other requests to install underground or above-ground utility lines, pipes or other facilities within the public rights-of-way within the City be deferred for a period of time as set forth herein;

and

WHEREAS, in order to conduct and implement the study described in Ordinance No. 097-039, Ordinance No. 097-039 established a 180 day moratorium period from and after the effective date of the Ordinance, which moratorium period was extended for an additional 180 day period by Ordinance No. 098-011 adopted on March 24, 1998; and

WHEREAS, the City Staff, in accordance with Ordinance No. 097-039, has undertaken a study of the public rights-of-way to determine, among other things: (i) the reasonable capacity of such rights-of-way, (ii) the proper arrangement or grouping of utility lines, pipes or other facilities within the rights-of-way in order to allow for the most convenient access to such lines, pipes or other facilities; (iii) the most efficient procedure, manner and means to reduce damage to utility lines, pipes or other facilities, and to reduce the risk of danger to the public health, safety and welfare, at times of installation, repair and maintenance of such lines, pipes or other facilities; and (iv) the existence of alternative methods to convey utility services within the City; and

WHEREAS, it is anticipated that the study will be completed, and that appropriate action will be taken or direction will be given by the City Council as a result of the study, on or before 180 days from and after the date of adoption of this Ordinance; and

WHEREAS, in order to: (i) allow the study to be continued and completed, (ii) preserve the ability of the City Council to implement any recommendations relative to the undergrounding of utilities or the placing of any utilities above-ground contained within the study, (iii) protect the public health, safety and welfare of the citizens of the City, and (iv)

encourage and promote competition to protect and benefit the public interest, that the moratorium period established in Ordinance No. 097-039 and extended by Ordinance No. 098-___ be reestablished and imposed for a period of 180 days from and after the date of adoption of this Ordinance.

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

Section 1. Incorporation of premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Purpose.

A. The purpose of this Ordinance is to enable the City to maintain the status quo relative to the number of utility providers providing utility service and utilizing the public rights-of-way within the City in providing such service for a reasonable period of time within the public rights-of-way (including all public street and alleys), pending the institution, completion, and evaluation of a study of the public rights-of-way (the "Utility Study") to determine, among other things: (i) the reasonable capacity of such rights-of-way, (ii) the proper arrangement or grouping of utility lines, pipes or other facilities within the rights-of-way in order to allow for the most convenient access to such lines, pipes or other facilities; (iii) the most efficient procedure, manner and means to reduce damage to utility lines, pipes or other facilities, and to reduce the risk of danger to the public health, safety and welfare, at times of installation, repair and maintenance of such lines; and (iv) the existence of alternative methods to convey utility services within the City.

B. It is the further purpose of this Ordinance to fulfill the City's constitutional, charter and statutory obligations to protect and preserve the health, safety, and welfare of the citizens of the City.

Section 3. Direction to Conduct Utility Study. The City Manager is hereby directed to cause a study of the public rights-of-way (the "Utility Study") to be conducted (and to continue to be conducted) to determine, among other things: (i) the reasonable capacity of such rights-of-way, (ii) the proper arrangement or grouping of utility lines, pipes or other facilities within the rights-of-way in order to allow for the most convenient access to such lines, pipes or other facilities; (iii) the most efficient procedure, manner and means to reduce damage to utility lines, pipes or other facilities, and to reduce the risk of danger to the public health, safety and welfare, at times of installation, repair and maintenance of such lines, pipes or other facilities; and (iv) the existence of alternative methods to convey utility services within the City. The City Manager is further directed, based on the Utility Study, to develop a comprehensive plan for the use of the public rights-of-way by utility providers.

Section 4. Imposition of Moratorium. For a period of 180 days from and after the date of adoption of this Ordinance, no application or other request seeking a franchise agreement, street rental agreement, or other agreement, permit or license which would allow or require the applicant to use the public rights-of-way (including the streets and

alleys) within the City for the installation, repair or maintenance of underground or above-ground utility lines, pipes or other facilities, shall be (i) filed or accepted, or (ii) processed, or (iii) approved by the City.

Section 5. Exceptions. Notwithstanding the provisions of Section 4 of this Ordinance, the moratorium imposed by Section 4 shall not apply:

A. To the issuance of building, excavation or other permits necessary for the construction, installation, maintenance or repair of any utility lines, pipes or other facilities within the public rights-of-way by utility providers which have as of the effective date of this Ordinance, a franchise agreement, street rental agreement, or other agreement or permit with or from the City which authorizes or permits the performance of such work; and

B. To applications, and the processing thereof, submitted by utility providers which have on the effective date hereof a franchise agreement or street rental or other agreement and which are seeking to renew such agreements in accordance with law; and

C. When, pursuant to Section 6 of this Ordinance, the City Council has determined that refusal to accept or process, or deferral of action on, an application or other request seeking a franchise agreement, street rental agreement, or other agreement, permit or license which would allow the applicant to use the public rights-of-way (including the streets and alleys) within the City for the installation, repair and maintenance of utility lines, pipes or other facilities would impose an extraordinary hardship on the applicant.

Section 6. Alleviation of Hardship.

A. *Exceptions.* The City Council may authorize exceptions to the moratorium imposed by this Ordinance when it finds, based upon evidence presented to it, that refusal to accept or process, or deferral of action on, an application or other request seeking a franchise agreement, street rental agreement, or other agreement, permit or license which would allow the applicant to use the public rights-of-way (including the streets and alleys) within the City for the installation, repair and maintenance of utility lines, pipes or other facilities, would, for the duration of the moratorium period imposed by this Ordinance, impose an extraordinary hardship on an applicant.

B. *Request for exception.* A request for an exception based upon extraordinary hardship shall be filed by an applicant, shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship, and shall contain such other information as the City Manager shall prescribe as necessary for the City Council to be fully informed with respect to the application.

C. *Application for exception.* In reviewing an application for an exception based upon a claim of extraordinary hardship, the City Council shall consider, among other things, the extent to which the proposed use of the public rights-of-way would impact the public health, safety and welfare, including the number of public rights-of-way which would be impacted by the application and the location thereof.

D. *Public hearing on exception.*
OFFICE OF THE CITY SECRETARY

ORDINANCE NO. 098-037

1. A public hearing on any request for an exception for extraordinary hardship shall be held by the City Council at the first regular meeting of the City Council that occurs after the expiration of the period for publication of notice of the request for an exception.
2. Notice of the filing of a request for an exception, and the date, time, and place of the hearing thereon shall be published once not less than ten (10) days prior to said hearing in a newspaper of general circulation that is circulated within the city limits of the City. The applicant shall pay to the City a fee of \$50.00 to cover the cost of publication of notice.
3. The City Council shall act upon the request for an extraordinary hardship exemption at the same meeting at which the public hearing or at its next regular Council meeting.

Section 7. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 8. Effective date. This Ordinance shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 8th day of September, 1998.


Rich Becker, Mayor

ATTEST:


Carmen Moran, City Secretary

PUBLISHED ON: 9/18/98

OFFICE OF THE CITY SECRETARY

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