

ORDINANCE NO. 11-08-05A

AN ORDINANCE OF THE CITY OF RIO VISTA, TEXAS, ESTABLISHING A RIGHT-OF-WAY MANAGEMENT ORDINANCE OF THE CITY OF RIO VISTA BY ESTABLISHING A NEW SECTION TO BE ENTITLED "RIGHT-OF-WAY USE" PROVIDING REGULATIONS FOR ALL CONSTRUCTION, DEVELOPMENT, AND USE OF THE PUBLIC RIGHTS-OF-WAY AND UTILITY EASEMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rio Vista, Texas, is charged with and has lawful authority to maintain control of and access to the rights-of-way and utility easements in the City in order to protect the health, safety and welfare of its citizens; and,

WHEREAS, in accordance with law, the City seeks to exercise its right and obligation to control and manage its public rights-of-way in a competitively neutral and nondiscriminatory basis and implement certain police power regulations in the use of those public rights-of-way; and,

WHEREAS, regulation of the public rights-of-way and utility easements is necessary to protect and preserve the safety, security, appearance, and condition of the public rights-of-way and the valuable investment of the City's taxpayers in the construction and maintenance of the rights-of-way; to minimize the impact of construction on neighborhood residents and businesses by enforcing cleanliness, safety and minimum construction standards; to conserve the limited physical capacity of the public rights-of-way held in public trust by the City; and to reduce disruption of and interference with public use of the streets and easements, Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIO VISTA, TEXAS:

"RIGHT-OF-WAY USE

1.01 Definitions

For the purposes of this article, the following terms shall have the following meaning:

City means the City of Rio Vista, Texas, or its City Administrator or his designee.

Construction or *construction work* 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 boundaries of the public right-of-way.
- C. Performance, restoration, or repair of pavement cuts or excavations.
- D. Reconstruction of any of the work described in this definition.
- E. Other similar construction work.

Emergency means a condition that (1) poses a clear and immediate danger to life or health, or an immediate and significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Facility or *facilities* shall include, but not be limited to, any and all plant, equipment, buildings, fixtures, cables, pipelines, splice boxes, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, used, or licensed by any person, that are located or are proposed to be located in any public right-of-way for the purpose of the provision of any utility service to any customer.

Owner means any person who owns any facility or facilities that are or are proposed to be installed or maintained in a public right-of-way. The term shall include an agent or authorized representative of the owner.

Person means a natural person, a corporation, a 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.

Project means any construction or placement of any structure or thing within any public right-of-way.

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

Restore or *Restoration* means the process by which a public right-of-way is returned to a condition that is at least equal to the condition that existed before construction.

Sec. 1.02. Municipal Authorization Required.

- A. Any person prior to constructing facilities in, on or over the public rights-of-way must first obtain a permit from the City.

- B. This article does not constitute or create authority to place, reconstruct, or alter facilities in, on or over the rights-of-way nor to engage in construction, excavation, encroachments, or work activity within or upon any public right-of-way, and said authority must be obtained in accordance with the terms of this article.
- C. Any person with a current, unexpired franchise, license, right-of-way use agreement or other authorization from the City or State to use the public right-of-way that is in effect on the effective date of this article may continue to operate under and comply with that authorization, and in the event this article conflicts with existing authorization, the more restrictive provision shall apply.

Sec. 1.03. Registration.

- A. In order to protect the public health, safety and welfare, all persons owning, installing, maintaining, repairing, or using facilities in a right-of-way will register with the City. Registrations and permits will be issued in the name of the person who owns the facilities. Registration must be renewed on or before January 31 of every even-numbered year. The City shall provide written notification of this renewal requirement. When any information provided for the registration changes, the registrant shall inform the City of the change upon renewal of the registration, or the submission of a notice of work or permit application. Registration shall be on a form provided by the City and must contain, at a minimum, the following information:
 - 1. The name, address(es) and telephone number(s) of the owner;
 - 2. The names, address(es) and telephone number(s) of the contact person(s) for the owner;
 - 3. The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the right-of-way on behalf of the owner. If the names of contractors and subcontractors are not available at the time of permit application, they must be submitted to the City prior to permit issuance;
 - 4. The name(s) and telephone number(s) of an emergency contact who shall be available twenty-four (24) hours a day;
 - 5. The source of the owner's municipal authorization (e.g., franchise, state law, etc.). If the owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission;

6. The owner shall submit two year projections of their plans for the construction of facilities in the City at the time of registration renewal; and
7. Registration shall be a prerequisite to issuance of a construction permit. Each owner shall update and keep current its registration with the City at all times.

Sec. 1.04. Construction Permits.

A. General

1. No owner or person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. Permit applications are required for construction of new, replacement or upgrades of facilities in the right-of-way whether aerial or underground.
2. Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the City shall be notified in writing within two (2) business days of any emergency-related construction; including a reasonably detailed description of the work performed in the right-of-way. An updated map of any facilities that were relocated, if applicable, shall be provided within 90 days.
3. A permit is not required under this section if the activity in the public right-of-way consists exclusively of:
 - a. a residential service connection on the same side of the public right-of-way, or the opposite side of a right-of-way if the connection is aerial only, and if the connection does not require a pavement cut;
 - b. the replacement of a single damaged above-ground pole for aerial wires;
 - c. routine maintenance and does not involve any excavation, pavement cut, or traffic lane closures on a major thoroughfare; or
 - d. work that constitutes a minor construction project involving:
 - 1) a project of less than 500 lineal feet, no more than 2 street or creek crossings, and will be completed within less than four (4) hours), or

- 2) a project that involves no excavations, curb cuts, or traffic lane closures on any major thoroughfare, and will be completed within less than four (4) hours.

Where no permit is required in accordance with the foregoing, the owner shall, prior to the commencement of any work, submit to the City a written notice of work that specifies the location and scope of work to be performed. Notwithstanding, an owner shall submit a written notice of work to the City, prior to the commencement of any work or activity, in all instances where the owner or its contractor, subcontractor, agent, or representative will be engaging in any activity in a City right-of-way that involves boring, excavation, pavement cut, or traffic lane closures.

4. Unless approved by the City Engineer, the owner and any person acting by, for or through the owner shall not close any traffic lanes or otherwise impede rush hour traffic on major thoroughfares on weekdays during the hours of 7:00 a.m. to 8:00 a.m. or 3:30 p.m. to 6:30 p.m. Any closure of a traffic lane for more than four hours during any non-peak traffic period shall also require a permit, unless waived by the City. All traffic lane closures shall comply with the Texas Uniform Manual for Traffic Control Devices.
5. All construction and installation in the right-of-way shall be in accordance with the permit. The City shall be provided access to the work and to such further information as it may reasonably require to ensure compliance with the permit.
6. A copy of the permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the City at all times when construction work is occurring.
7. All construction work authorized by permit must be completed in the time specified in the permit. If the work cannot be commenced or completed in the specified time periods, the owner may request an extension of the time period from the City. The City will make every reasonable effort to approve or disapprove a request for permit so as not to delay or unduly burden an owner in the timely conduct of its business and shall promptly process a valid and administratively complete permit application. If the request for the extension is made prior to the expiration of the permit, work may continue while the request is pending.
8. Construction, Excavation, or Work Area. No owner or any person acting by, for or through the owner shall perform construction, excavation, or work in an area larger or at a location different than that specified in the permit, permit application, or notice of work. If, after construction, excavation, or work is commenced under an approved permit, it becomes

necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application, the owner shall notify the City immediately and, within 24 hours, shall file a supplementary application for the additional construction, excavation, or work.

9. A copy of any permit or approval issued by federal or state authorities for work in a federal or state right-of-way located in the City shall be provided if requested by the City.

B. Permit Application

1. The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other reasonable conditions set out by the City that are rationally related to public health, safety or welfare considerations. If the owner fails to act upon any permit and begin construction within 90 calendar days of issuance, the permit shall become invalid, and the owner will be required to obtain another permit. No permit shall be transferable.
2. The permit will be in the name of the person who will own the facilities to be constructed. The permit application must be completed and signed by an authorized representative of the owner of the facilities to be constructed.
3. Any person requesting a permit will provide the City with documentation preferably in the format specified by the City, at the time of permit submittal, describing:
 - a. The proposed location and route of all facilities to be constructed or installed and the owner's plan for right-of-way construction.
 - b. Three (3) sets of engineering plans, including record drawings, which will be on a reasonable scale, acceptable to the City, unless waived by the City. When required by the Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas.
 - c. Description of the location of all right-of-way and utility easements that owner plans to use.
 - d. Description of existing utilities located in the right-of-way, including the City's utilities, in relationship to owner's proposed route.

- e. Description of what owner proposes to construct including size of facilities, materials used, such as pipe size, number of ducts, valves, etc.
 - f. Description of plans to remove and replace asphalt or concrete in streets, alleys, sidewalks or other rights-of-way.
 - g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth located in public rights-of-way.
 - h. Location of manholes and/or handholes owner plans to use or access.
 - i. Complete legend of drawings submitted by owner, which may be provided by reference to previously submitted documents acceptable to the City.
 - j. The construction 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 City.
 - k. Proof of Insurance and Bonds as required in this article.
 - l. the name, address, telephone number and contact person of any contractor or subcontractor that will be performing construction work in the City.
4. A request for a permit must be submitted at least fifteen (15) business days before the proposed commencement of work identified in the request, unless waived by the City.
 5. The City will promptly process a valid and administratively complete permit application and will make every reasonable effort to approve or disapprove a permit application so as not to delay or unduly burden an owner in the timely conduct of its business. The City will consider all information submitted by the applicant including a review of the availability of space in the right-of-way based on the applicant's proposed route and location. The City will provide a written notification of denial for rejected permits.
 6. The City or the owner can request a pre-construction meeting with the construction contractor.

Sec. 1.05. Construction Standards.

- A. All construction shall be in conformance with all City codes and applicable local, state and federal laws.
- B. The City must be notified two (2) business days in advance that construction is ready to proceed by either the Owner, its contractor or representative. The name, address and phone numbers of the contractor or subcontractor 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. Such information shall be required prior to the commencement of any work.
- C. Public Notification of Work to be Performed.
 - 1. For any closure of a traffic lane or blocking of a sidewalk or alley lasting six days or less, all vehicles used in the construction work shall be conspicuously marked with the name of the owner or contractor.
 - 2. For projects scheduled to last more than seven (7) calendar days, a three feet by three feet (3' x 3') informational sign stating the identity of the person doing the work, a local telephone number and owner's identity shall be placed at the location where construction is to occur twenty-four (24) 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. The informational sign will be posted on public right-of-way one hundred (100) feet before the construction location commences, unless other posting arrangements are approved or required by the City.
 - 3. When projects last more than seven (7) calendar days, the owner shall also provide written notification to all adjacent property occupants at least forty-eight (48) hours prior to the beginning of construction. Informational fliers shall include the person doing the work, a local telephone number, owner's identity, and proposed schedule.
- D. Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.
- E. Lane closures on major thoroughfares will be limited to one lane between 8:00 a.m. and 3:30 p.m. unless the City grants prior approval. Arrow boards will be required for lane closures on all arterials and collectors, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices.
- F. Without affecting the legal relationship between the owner and its contractor, owners are responsible for the workmanship of, and any damages by, their contractors or subcontractors. A responsible representative of the owner will be available to the City at all times during construction.

- G. Owner shall be responsible for storm water management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not be limited to, construction 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. Upon request owner may be required to furnish documentation submitted or received from federal or state government.
- H. Owner or contractor or subcontractor will notify the City immediately of any damage to other utilities, either city or privately owned.
- I. It is the City's policy not to cut streets or sidewalks; however, except in case of emergency when a street or sidewalk cut is required, prior approval must be obtained from the City and all requirements of the City shall be followed in all street and sidewalk cuts. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic, and shall be in accordance with any guidelines, standards or rules adopted by the City.
- J. Installation of facilities must not interfere with City utilities, in particular gravity dependent facilities. Facilities shall not be located over or within three (3) feet, horizontally or vertically, of any water or sanitary sewer mains unless approved by the City.
- K. New facilities must be installed to a minimum depth required by state and federal codes and standards.
- L. All directional boring shall have a locator place bore marks and depths while the bore is in progress. The locator shall place a mark at each stem with a paint dot and depth at least every other stem.
- M. No directional boring zones. In the City, the public infrastructure must be maintained and protected by all owners and contractors. The public health, safety and welfare is at risk when damages to water and sewer mains occur. To protect the water and sewer system, no person, agency, or contractor will be allowed to directionally bore longitudinally with water mains that are larger than 12" and sewer mains that are 12" or larger, unless there is a separation of at least five (5) feet between facilities or this requirement is waived in writing by the City. The installation of facilities in the public rights-of-way or easements will be installed by open excavation to assure the protection of the City's water and sewer system. The City has available mapping that identifies such mains. The owner is responsible for obtaining and using this information in the design of new facilities. However, the City cannot guaranty the accuracy of its utility location maps or the maps of any other owner of other facilities and the person performing or conducting any construction assumes all risk of interference or damage to preexisting facilities.

- N. The working hours in the rights-of-way are 7:00 a.m. to 8:00 p.m., Monday through Friday, except in an emergency or unless otherwise approved by the City. Any work performed on Saturday must be approved by the City by 9:00 a.m. on the Thursday prior to the proposed Saturday. No work will be done, except for emergencies, on Sundays or City holidays.
- O. Persons working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of a Geographic Information System or the plans of records does not satisfy this requirement. All persons working in the rights-of-way shall comply with the Underground Facilities Damage Prevention and Safety Act, Chapter 251, Texas Utilities Code, as amended.
- P. Owner will be responsible for verifying the location, both horizontal and vertical, of all City facilities. When required by the City, the owner shall verify locations by pot holing, hand digging or other method approved by the City prior to any excavation or boring.
- Q. Placement of all manholes and/or handholes must be approved in advance by the City. Handholes or manholes will not be located in sidewalks, unless approved by the City.
- R. Locate flags shall not be removed from a location while facilities are being constructed.
- S. When construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the City.
- T. A person shall perform excavations and Construction in the public rights-of-way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public right-of-way. The City shall waive the requirements of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the City by the applicant. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. All persons shall follow all reasonable construction directions given by the City in order to minimize any such interference.
- U. Excavation Safety. On construction projects in which excavation will exceed a depth of five (5) feet, the owner must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with State law and Occupational Safety and Health Administration (OSHA) standards and regulations.

Sec. 1.05. Record Drawings.

- A. Right-of-way users will provide the City with record drawings within ninety (90) days of completion of facilities in the right-of-way. The drawings shall be provided to the City with as much detail and accuracy as required by the City. All the requirements specified for the plans submitted for the initial permit, as set forth in this section shall be submitted and updated in the record drawings. Users which have facilities in the right-of-way existing as of the date of this ordinance who have not provided record drawings shall provide one (1) quarter of the information concerning facilities in City right-of-way within one (1) year after the passage of the ordinance and one (1) quarter each six (6) months thereafter. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. Submittal of record drawings shall preferably be in the format specified by the City. Owner shall include at least one set of drawings in a paper format.
- B. If record drawings under this section include information expressly designated by the owner as a trade secret or other confidential information protected from disclosure by state law, the City may not disclose that information to the public without the consent of the owner, unless otherwise compelled by law or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an owner to designate all matters in its record drawings as confidential or as trade secrets.
- C. This requirement, or portions of this requirement, may be waived by the City for good cause.

Sec. 1.07. Conformance with Public Improvements.

- A. Whenever by reasons of widening or straightening of streets, alleys or side walks, it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform an owner's underground or overhead facilities within the right-of-way to another part of the right-of-way, such alterations shall be made by the owner of the facilities at the owner's expense (unless provided otherwise by state law, a franchise, a license or a municipal authorization until that grant expires or is otherwise terminated). The City shall provide the owner with at least thirty (30) days' written notice, at the address set forth in the owner's registration, of the owner's duty to conform its facilities. The owner shall be responsible for conforming its facilities within mutually agreed upon time limits. If no time limits can be agreed upon, the time limit shall be ninety (90) days from the day the City secures any additional right-of-way and transmits final plans and notice to make the alterations. Upon a finding by the City that a delay is the fault of an owner, the owner of facilities shall be responsible for any direct costs associated with project delays associated with failure to conform facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this paragraph shall be made within sixty (60) calendar days.

- B. An owner may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and the International Society of Arboriculture. Should the owner, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, or should the placement of the trimmings by the owner or its contractor create a traffic hazard, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days. During emergency weather conditions, an owner shall remove such trimmings within five (5) to ten (10) days of service restoration activities within the City. If not removed within this time, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the owner shall promptly reimburse the City for all costs incurred within thirty (30) calendar days.

- C. An owner shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

Sec. 1.08. Improperly Installed Facilities.

- A. Any owner 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, repair, upgrade or maintenance endangers people or property;
 - 2. The facilities do not meet the applicable City codes;
 - 3. The facilities are not capable of being located using standard industry practices;
 - 4. The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the City or the plans approved by the City.

Sec. 1.09. Location of Utility Structures.

[Reserved]

Sec. 1.10. Restoration of Property.

- A. Owners shall restore property affected by construction of facilities to a condition that is at least equal to the condition of the property prior to the performance of the work. Restoration must be approved by the City.
- B. Restoration must be made within ten (10) business days of completion of trench backfill for a length of three hundred (300) feet, or within the limits of one city block, unless otherwise approved by the City. If restoration is not satisfactory and performed in a timely manner, then after written notice sent by certified mail, all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any future permits until all restoration is complete.
- C. Upon failure of an owner to perform such restoration, and five (5) days after written notice has been received by the owner, and in the event restoration has not been initiated during such five day period, the City may repair such portion of the public rights-of-way as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the City, the owner will reimburse the City for the costs so incurred within sixty (60) calendar days from the date of the City invoice.
- D. If the City determines that the failure of an owner to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the City, the owner shall promptly reimburse the City for the costs incurred by the City within sixty (60) calendar days from the date of the City invoice. If payment is not received within the sixty (60) calendar days, the City shall initiate a claim for compensation with the appropriate bonding company.
- E. Should the City reasonably determine, within one (1) year from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet the standards of this section, an owner shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies as provided herein.
- F. Restoration must be to the reasonable satisfaction of the City. The restoration shall include, but not be limited to:
 - 1. Replacing all ground cover with the type of ground cover damaged during work to a condition at least equal to its previous condition either by sodding or seeding, or as directed by the City;
 - 2. Adjusting of all manholes and handholes, as required;

3. Backfilling all bore pits, potholes, trenches or any other holes shall be completed daily, unless other safety requirements are approved by the City. Holes with only vertical walls shall be covered and secured to prevent entry. If bore pits, trenches or other holes are left open for the continuation of work, they shall be fenced and barricaded to secure the work site as approved by the City;
 4. Leveling of all trenches and backhoe lines;
 5. Restoration of excavation site to City specifications;
 6. Restoration of all paving, sidewalks, landscaping, ground cover, trees, shrubs and irrigation systems.
- G. Removal of all locate flags during the clean up process by the owner or his/her contractor at the completion of the work.

Sec. 1.11. Revocation or Denial of Permit.

If any of the provisions of this ordinance are not followed, a permit may be revoked by the City. If a person has not followed the terms and conditions of this ordinance in work done pursuant to a prior permit, new permits may be denied or additional terms required. Revocation shall be effective upon the expiration of fifteen days after written notice of the violation(s), unless cured during that period, except for violations which pose a threat to public safety or health, for which the revocation will be immediate upon delivery of written notice.

Sec. 1.12. Appeals.

- A. Applicability. Appeals may be filed pursuant to this section for decisions of the City related to the denial, suspension, or revocation of a permit. However, the appeal process provided by this section shall not be available for criminal violations of this article.
- B. Appeal to City Administrator. A permittee may appeal decisions referred to in this section by filing a written appeal with the City Administrator within seven (7) working days of receipt of denial, suspension, or revocation of the permit. An appeal filed pursuant to this section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this article.
- C. Issuance of Decision by City Administrator. Decisions of the City Administrator shall be issued within five (5) working days of receipt of the written appeal. Decisions of the City Administrator shall be final.

Sec. 1.13. Penalty for Violation.

Any person, firm or corporation violating any of the provisions or terms of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not exceeding two thousand dollars (\$2,000) for each violation, and each day that such violation shall continue to exist constitutes a separate offense.

Sec. 1.14. Indemnity.

- A. Unless otherwise provided by state law, each owner shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the owner, any agent, officer, director, representative, employee, affiliate, or subcontractor of the owner, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If an owner and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state law.
- B. An owner or the City shall promptly advise the other in writing of any known claim or demand against the owner or the City related to or arising out of the owner's activities in a public right-of-way.
- C. The provisions of this section are solely for the benefit of the City and owners and is not intended to create or grant any rights, contractual or otherwise, to any other owner or entity.

Sec. 1.15. Insurance Requirements.

- A. General
 - 1. An owner must provide acceptable proof of insurance in the total amount required by this section for permits for construction within public rights-of-way, or make other provisions acceptable to the City.
 - 2. The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.

3. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
4. The owner shall file the required original certificate of insurance prior to the issuance of a permit. The certificate of insurance 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.
5. Owner shall file an annual surety bond, which will be valid for one full year, from a surety company authorized to do business in the State of Texas in the amount equal to the estimated amount of the cost to restore the right-of-way for the work anticipated to be done in that year, in the event the owner leaves a job site in the right-of-way unfinished, incomplete or unsafe. Owner may make other provisions, in lieu of a bond, as acceptable to the City. The City may waive the requirement if the owner submits documentation, in a form acceptable to the City Attorney that demonstrates the owner has assets in excess of 10 million dollars.
6. Owner shall file a Maintenance Bond for twenty-five (25%) percent of the cost of restoring the right-of-way for the preceding year. Said bond shall be in force for two (2) years. Owner may make other provisions, in lieu of a bond, as acceptable to the City. The City may waive the requirement if the owner submits documentation, in a form acceptable to the City Attorney that demonstrates the owner has assets in excess of 10 million dollars.
7. The above requirements may be met by utilities with a current franchise, license or municipal authorization if their current franchise, license or municipal authorization adequately provides for insurance or bonds or provides an indemnity in favor of the City.
8. The City will accept certificates of self-insurance issued by the State of Texas or letters written by the agency in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City.
9. An insurer has no right of recovery against the City. The required certificates of insurance shall protect the owner or contractor and include the City as an additional insured. The insurance shall be primary coverage for losses covered by the policies.

10. Each certificate of insurance must include a provision that requires the insurance company to notify the City in writing at least 30 days before canceling or failing to renew the policy or before reducing policy limits or coverages.

B. Insurance Requirements.

Owners. Each owner applying for a permit shall obtain, maintain, and provide proof of the each of the following types of insurance and coverage limits:

1. Commercial General liability on an occurrence form with minimum limits of \$5,000,000 per occurrence and \$10,000,000 aggregate. This coverage shall include the following:
 - a. Products/Completed Operations to be maintained for one year.
 - b. Personal and advertising injury.
 - c. Owners and contractors protective liability.
 - d. Explosion, Collapse, or Underground (XCU) hazards.
2. Automobile liability coverage with a minimum policy limits of \$1,000,000 combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
3. Workers Compensation and Employers Liability Coverage. Statutory coverage limits for Coverage A and \$500,000 Coverage B Employers Liability is required.

Contractors and Subcontractors. Each Contractor and sub-contractor applying for a permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in this section 1 above; however, the policy limits under the General Liability insurance shall be \$1,000,000 per occurrence and \$2,000,000 aggregate. All other coverages provisions outlined in this section shall apply.

- C. An owner or contractor that has registered and filed proof of insurance under this article is not required to furnish separate proof of insurance under this section when obtaining a permit but must comply with all other requirement of this section.”

SECTION 2 That all provisions of the Code of Ordinances of the City of Rio Vista, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

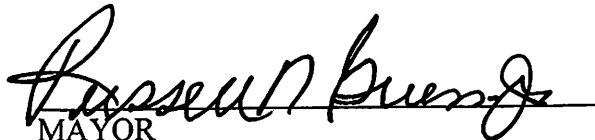
SECTION 3. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed the sum of Two Thousand (\$2,000.00) Dollars for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or 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 hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. This Ordinance shall take effect immediately from and after its passage as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Rio Vista, Texas, on the 8TH day of NOVEMBER, 2005.

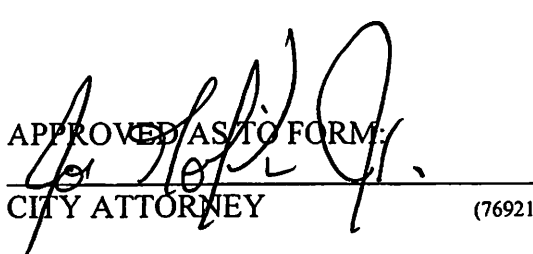
APPROVED:


MAYOR

ATTEST:


CITY SECRETARY

APPROVED AS TO FORM:


CITY ATTORNEY

(76921)

ORDINANCE NO. 11-08-05A

AN ORDINANCE OF THE CITY OF RIO VISTA TEXAS, ESTABLISHING A RIGHT-OF-WAY ORDINANCE OF THE CITY OF RIO VISTA BY ESTABLISHING A NEW SECTION ("RIGHT-OF-WAY") ENTITLED "RIGHT-OF-WAY USE" PROVIDING REGULATIONS FOR ALL CONSTRUCTION, DEVELOPMENT, AND USE OF THE PUBLIC RIGHTS-OF-WAY AND UTILITY EASEMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

DULY PASSED AND APPROVED by the City Council of the City of Rio Vista, Texas, on the 8TH day of NOVEMBER, 2005.

APPROVED:


MAYOR

ATTEST:


CITY SECRETARY

Cleburne Times-Review
108 South Anglin
P.O. Box 1569
Cleburne, Texas, 76033
#817-645-2441

PUBLISHER'S AFFIDAVIT

STATE OF TEXAS
COUNTY OF JOHNSON

Before me on this day personally appeared Kay Helms the Publisher of the Cleburne Times-Review, which is a newspaper in the town of Cleburne, Johnson County, Texas. The said ad or notice was printed and published 2 time(s) in the Cleburne Times-Review on the following date(s): 10/26/05, 11/02/05 Charge: \$99.50

NOTICE OF RIGHT OF WAY ORDINANCE
Take notice that the City of Rio Vista shall convene at 7:00 p.m. on the 8th day of Nov. at City Hall, 201 Highway 174 South, Rio Vista, Texas to consider adopting an ordinance of the City of Rio Vista, Texas, establishing a right-of-way management ordinance of the City Of Rio Vista by establishing a new section to be entitled "Right-Of-Way Use" providing regulation for all construction, development, and use of the public rights-of-way and utility easements; providing a repealing clause; providing a penalty of fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense; providing a severability clause; and providing an effective date.
Darryl VanZandt
City Secretary
City of Rio Vista

on is \$10.50 per inch per publication date, which classified rate for the Cleburne Times-Review.

Kay Helms

Subscribed and sworn to before me on this 7 day of November, 2005

Lynn Coplin

Notary Public in and for
Johnson County, Texas

