

ORDINANCE 2021-17

AN ORDINANCE OF THE CITY OF OLDSMAR, FLORIDA, AMENDING CHAPTER 58 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES OF THE CODE OF ORDINANCES TO REPLACE THE TERM "EASEMENT" WITH "RIGHT OF WAY," REPLACE THE TERM "USER OF THE EASEMENT" WITH "PERMITTEE," AND REPLACE THE TERM "RIGHTS-OF-WAYS" WITH "RIGHTS-OF-WAY" THROUGHOUT CHAPTER 58; CHANGE EXCAVATION IN STREETS PERMISSIBILITY FROM COUNCIL TO CITY MANAGER OR DESIGNEE; ADD AUTHORITY OF CITY MANAGER OR DESIGNEE TO REQUIRE ANYTHING NECESSARY TO ENSURE SAFETY AND PROTECTION OF PUBLIC FACILITIES; ADD PARKING MOTORIZED VEHICLES TO IMPROPER USE OF SIDEWALKS; LIMIT PAYMENTS MADE IN LIEU OF SIDEWALK CONSTRUCTION COSTS HELD IN CITY TRUST FUND TO BE USED ONLY FOR CITYWIDE SIDEWALK CONSTRUCTION; REMOVE THE TERM JACKASSES FROM SECTION 58-5; INCREASE FINE FOR FAILURE TO PICK UP ANIMAL FECAL MATTER; CLARIFY LANGUAGE IN SECTION 58-37(7) TO ADDRESS IMPACT OF TRAFFIC AND WEATHER; ADD CHILDREN TO DEFINITION OF PERSON; CHANGE DEFINITION OF PUBLIC UTILITY COMPANY TO EXCLUDE MUNICIPAL PUBLIC UTILITIES OWNED OR OPERATED BY THE CITY; PROVIDE AUTHORITY TO CITY MANAGER OR DESIGNEE FOR DESIGNATION OF PLACEMENT AND USE OF PUBLIC RIGHT OF WAY UTILIZATION BY UTILITIES; PROVIDE THAT ANY HARDSHIP DUE TO BURIED CABLE FOR TELEPHONE LINES BE SHOWN TO CITY MANAGER OR DESIGNEE FOR POSSIBLE EXCEPTIONS; CHANGE THE TITLE OF SECTION 58-40 TO "USE WHERE GREEN SPACE IN RIGHT OF WAY IS INSUFFICIENT;" REMOVE SECTION 58-41 IN ITS ENTIRETY; REPLACE THE WORD UTILITY WITH PERMITTEE IN SECTION 58-84(A); SET THE FEE FOR WORKING WITHOUT A RIGHT-OF-WAY PERMIT; REQUIRE A TEMPORARY TRAFFIC CONTROL PLAN IN APPLICATIONS FOR RIGHTS-OF-WAY UTILIZATION; PROVIDE AUTHORITY TO CITY MANAGER FOR APPEAL PROCESS IN DENYING UTILIZATION AUTHORIZATIONS; ADD REQUIREMENT TO CALL FOR LOCATES IN EMERGENCIES; ADD POSSIBLE REQUIREMENT FOR MORE PERMANENT TRAFFIC CONTROL PLAN IF WORK IN RIGHT OF WAY EXCEEDS TEN WORKING DAYS AND PROVIDE THAT CITY MANAGER OR DESIGNEE HAVE AUTHORITY REGARDING NOTICE REQUIREMENTS FOR CONSTRUCTION IN RIGHTS-OF WAY; ADD PAVEMENT RESTORATION DIRECTION, CLARIFY ROLES, UPDATE EQUIPMENT REFERENCE AND PROVIDE FOR WORK OUTSIDE OF REGULAR BUSINESS HOURS WITH REGARD TO CONSTRUCTION SPECIFICATIONS; PROVIDE THAT CITY MANAGER OR DESIGNEE SHALL DETERMINE IMPRACTICALITY OR UNREASONABLENESS OF RETROSPECTIVE UNDERGROUNDING; CORRECT A TYPOGRAPHICAL ERROR IN SECTION 58-114; CORRECT GRAMMAR AND REFERENCE TO SUBPARAGRAPHS IN SECTION 58-127(B); AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council appointed an Ordinance Review Committee (“ORC”) to review the Code of Ordinances for legality or obsolescence; and

WHEREAS, the ORC completed its work and presented its recommendations to the City Council; and

WHEREAS, the recommendations of the ORC have been found meritorious by the City Council; and

WHEREAS, the City Council has received input from the public at two public hearings.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLDSMAR, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:

Section 1. That Section 58-1 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended to read as follows:

Sec. 58-1. - Excavations in streets.

- (a) *Permit required; repair of damage.* No excavation shall be made in any street except by permission of the City Manager or designee, upon such terms as it may impose. Damages of any kind must be repaired as soon as possible and at the expense of the person causing the condition requiring repair.
- (b) *Barricades, warning lights.* Whenever any street, sidewalk or way is blocked or obstructed by excavations, injury or other cause, it shall be properly barricaded and warning given at night by amber lights properly placed, all at the expense of the person or party creating the condition.
- (c) The City Manager or designee may require anything necessary to reasonably ensure safety and protection of public facilities.

Section 2. That Section 58-3 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

Sec. 58-3. - Improper use of sidewalks.

It shall be unlawful for any person to ride, drive or park motorized vehicles upon or otherwise block, injure or remove any public sidewalk except as duly authorized or sanctioned by or under this Code or other applicable law.

Section 3. That Section 58-4(b) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (b) In circumstances where required, and where the sidewalk segment will be the only sidewalk in the general area or where future construction activities may result in damage to sidewalks built contemporaneously with the improvements on the property, the city manager may require the payment of a sum of money sufficient for the construction of the required sidewalks. Upon the payment of such sum, the property owner shall be relieved of any further obligation to meet the requirements of this section. All funds so paid shall be held by the city as trust funds, and those funds together with all interest thereon shall be used only for the purpose of citywide sidewalk construction.

Section 4. That Sections 58-5(a) and (b) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar are hereby amended and shall read as follows:

- (a) Riding or walking. It shall be unlawful for any person to ride or walk horses, mules, or donkeys upon city streets, sidewalks or rights-of-way.
- (b) Carriages, carts, wagons or buggies. It shall be unlawful for any person to drive carriages, carts, wagons, or buggies drawn by horses, mules, or donkeys upon city streets, sidewalks or rights-of-way.

Section 5. That Section 58-6(b) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (b) Each violation of this section is a civil infraction. Each violation of this section shall constitute a separate offense and be punishable by civil penalty in the amount of \$125.00.

Section 6. That Section 58-37(7) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (7) To manage the dangers associated with the impact of traffic and weather on overhead and above-ground facilities in the rights-of-way;

Section 7. That the definitions of Person and Public Utility in Section 58-38 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar are hereby amended and shall read as follows:

Sec. 58-38. Definitions.

Person shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the city and all other governmental agencies to the extent the city acts as a communications services provider.

Public utility company means and includes all private corporations which provide services commonly referred to as public utilities, but shall not include municipal public utilities owned or operated by the city.

Section 8. That the first paragraph of Section 58-39 and Section 58-39(5) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

The City Manager or designee shall designate the placement and use of public right of way utilization by utilities in accordance with the following principles, so far as possible. Any exception or hardship caused thereby may be presented to the City Manager or designee for determination, and if such hardship is found to exist, City Manager or designee may make such disposition of the matter as is deemed in the public interest.

- (5) All future extensions, modifications or improvements of telephone lines shall be in the form of buried cable, as far as practical, and any undue hardship caused thereby may be shown to the City Manager or designee upon petition and exceptions granted according to the need for such action shown.

Section 9. That Section 58-40 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

Sec. 58-40. - Use where green space in right of way is insufficient.

If a street is paved such as to preclude in part the existence of the distances set forth in section 58-39, the City Manager or designee shall designate the most practical, safe and efficient means of using the remaining right of way not covered by surface pavement or designate use of right of way beneath the pavement.

Section 10. That Section 58-41 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby deleted in its entirety.

Section 11. That Section 58-84 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

Sec. 58-84. - Authorization required for any work in right-of-way.

- (a) Thirty days prior to any construction, except that construction which requires an expedited authorization or is an emergency, the permittee shall proceed with due diligence to obtain all necessary authorizations which are required in the conduct of its business, including, but not limited to, any permittee joint use attachment agreements, conduit use agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the particular type of utility service that the permittee provides. A permittee shall not begin any construction prior to the procurement of the necessary authorizations.
- (b) No person shall begin any construction within a right-of-way without first obtaining a rights-of-way utilization authorization or an expedited permit from the city. Such authorizations are in addition to any other governmental approvals that may be required.
- (c) Construction in the rights-of-way is allowed in the event of an emergency without an authorization or expedited permit providing that the utility permittee complies with the provisions of section 58-88, emergencies.
- (d) Fee. A reasonable fee established by the city council, for filing, engineering, and inspection will accompany each application. The fee shall be triple for work in the right of way initiated without a permit.

Section 12. That Section 58-85(a)(4) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (4) A temporary traffic control plan;

Section 13. That Section 58-86 of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

Sec. 58-86. - Appeal process for denial of utilization authorizations.

The utility may submit a notice of appeal to the city manager no later than 30 days after the denial of the utilization authorization by the public works director or designee. Failure to file an appeal in a timely manner shall render the decision final and shall foreclose further review of the matter. The appeal must state with specificity each fact relevant to the appeal, and each provision of city code or state or federal law the applicant contends would be violated by the denial. The city manager shall render a decision on the appeal in writing within ten days after hearing the appeal. The decision of the city manager shall be final. Appeals from the city manager's decision may be taken in the circuit court by way of a petition for writ of certiorari as provided for by general law and court rules.

Section 14. That Section 58-88(a) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (a) If an emergency arises, a utility may repair any facilities affected without obtaining the usual necessary utilization authorizations however notification is still required to include emergency system locate vendors.

Section 15. That Section 58-89(b) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (b) Nothing in this section shall prevent early completion of construction of facilities. Once commenced, construction within the rights-of-way shall not exceed ten working days, unless otherwise provided for in the utilization authorization. If the right-of-way utilization permit construction exceeds ten working days, a more permanent traffic control plan may be required by the City Manager or designee. On the final day of scheduled construction, an inspection by the city shall take place, and if construction is completed, the utilization authorization shall expire and any further construction shall be a violation of this section. If construction is not completed on the final day of scheduled construction, the utility shall provide reasons for the delay, and if the City Manager or designee determines that there is good cause for the delay, the utilization authorization shall be extended for a reasonable amount of time, as determined by the City Manager or designee.

Section 16. That Sections 58-90(g), (i), (j), (k), (o), (p), (q) and (t) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar are hereby amended and shall read as follows:

- (g) If any underground facilities are to be constructed under pavement in the right-of-way, the utility constructing said facilities shall use a boring technique. If boring is not technically feasible, the utility may seek approval from the City Manager or designee to cut any pavement or excavate in order to construct facilities. Pavement shall not be cut unless no other reasonable construction alternative is available and no alternative exists as to the desired route that will avoid the cutting of the pavement. Restoration of the pavement shall be as directed by the City Manager or designee.
- (i) Pursuant to F.S. § 337.402, any public road, publicly owned rail corridor, or city owned infrastructure to include pavement, sidewalks, driveways, traffic signs, and other facilities damaged or impaired in any way due to the installation, inspection, or repair of a utility located in the rights-of-way will be repaired by the owner of utility to a standard which meets its original condition before damage. If the owner of the installing the utility fails to make such restoration, the authority in charge of the rights-of-way is authorized to make the necessary repairs and charge the cost against the utility owner under the provisions of F.S. § 337.404.
- (j) Temporary restoration associated with utility construction or relocation work may be allowed provided the disturbed areas are within the limits of the proposed improvement project and approved in advance by the City Manager or designee. If temporary restoration is allowed it shall be completed within 24 hours following any excavation. Drainage ditches in disturbed areas shall be graded and sodded/seeded. Roadway surface excavations must be repaired with asphalt (cold patch) at the end of each day. Driveways shall be repaired with compacted limerock or equivalent asphalt base and one inch of type III asphalt. Pedestrian, bicycle, and handicap traffic areas must be safely maintained and traffic must not be directed into the roadway or drainage ditches. When sidewalks are to be removed, alternate means for rerouting this traffic must be constructed and in compliance with the requirements of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (known as the Green Book) and, to the extent they contain additional or conflicting standards, the Florida Accessibility Standards and the American Disabilities Act and associated architectural guidelines. Fences, barricades, gates, security facilities, and temporary repairs shall be maintained at all times during construction and prior to permanent restoration.
- (k) Permanent restoration shall be completed in accordance with FDOT Standards and Specifications as soon as practical following the

installation of the utility but no later than seven days following completion of work within the disturbed area. Damaged sidewalk and driveway panels shall be replaced in their entirety. Ditches disturbed by construction shall be restored to their proper line and grade and sodded.

- (o) A city representative shall be present at various times during construction of facilities in order to assure compliance with any utilization authorizations or approvals issued. The utility and/or its contractor is responsible for safety and is required to meet all federal, state, and local construction standards.
- (p) At all times, at least one individual responsible for performing construction on facilities shall speak English.
- (q) Utilities shall comply in all respects with the requirements of F.S. ch. 556. All utilities, not more than 20 days prior to commencement of construction, shall locate their facilities located in the path of construction. At the city's discretion, the city may require the utility to perform any physical line location. At the discretion of the city, if facilities are impossible or extremely difficult to locate through the customary techniques, the city may require the use of the most precise locational technology available, including, but not limited to, the use of ground penetrating radar (GPR) or more effective or accurate technology.
- (t) All said work shall be done between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday only, holidays excluded unless otherwise authorized by the City Manager or designee.

Section 17. That Section 58-92(d) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (d) Notwithstanding the foregoing provisions concerning retrospective undergrounding, the provisions in section 15.1.3 of the land development code shall continue to govern new developments, and to the extent any new development is constructed within the city limits, utility lines of all kinds, including but not limited to those of franchised utilities, electric power and light, communications infrastructure, cable television, water, sewer, and gas, shall be constructed and installed beneath the surface of the ground unless it is determined by City Manager or designee that soil, topographical, or any other compelling conditions make the installation of such utility lines as prescribed herein unreasonable or impracticable.

Section 18. That Section 58-114(d) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar is hereby amended and shall read as follows:

- (d) A complete application must be reviewed, and either approved or denied, within 60 days after receipt of a complete application. Applications not approved or denied within that period shall be deemed to be approved unless the applicant mutually agrees to extend the review period in writing.

Section 19. That Sections 58-127(a) and (b) of Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar are hereby amended and shall read as follows:

Sec. 58-127. - Involuntary termination of registration.

- (a) The city may terminate a registration if:
 - (1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services; or
 - (2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or
 - (3) The registrant ceases to use all of its communications facilities in public rights-of-way; or
 - (4) Damage to city infrastructure is not repaired or reimbursed within 60 days of invoice.
- (b) Prior to termination, the registrant shall be notified by the city manager with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through (4) above is applicable as the reason therefore, and describing the proposed action of the city with respect thereto. The registrant shall have 60 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the city manager, to accomplish the same. If the plan is rejected, the city manager shall provide written notice of such rejection to the registrant and shall make a recommendation to the city council regarding a decision as to termination of registration. A decision by the city manager to terminate a registration may only be accomplished by an action of the city council. A registrant shall be

notified by written notice of any decision by the city council to terminate its registration. Such written notice shall be sent within seven days after the decision.

Section 20. That the word “easement” be replaced with “right of way,” the words “user of the easement” be replaced with “permittee,” and the words “rights-of-ways” be replaced with “rights-of-way” throughout the entire Chapter 58 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the City of Oldsmar.

Section 21. This Ordinance shall become effective immediately upon its final passage and adoption.

PASSED ON FIRST READING:

June 15, 2021.

PASSED ON SECOND READING AND ADOPTED:

July 20, 2021.

**Eric Seidel, Mayor
City of Oldsmar**

ATTEST:

**Ann Nixon, City Clerk, MMC
City of Oldsmar**

APPROVED AS TO FORM:

**Thomas J. Trask, B.C.S.
City Attorney, City of Oldsmar**