

ORDINANCE NO. O-2023-022

AN ORDINANCE AMENDING THE CITY OF SHAVANO PARK'S CODE OF ORDINANCE CHAPTER 34, ARTICLE V. PUBLIC RIGHT-OF-WAY MANAGEMENT TO PROVIDE STANDARDS FOR STREET CUTS, UNDERGROUND BORING AND MICRO-TRENCHING IN THE PUBLIC RIGHT-OF-WAY AND ESTABLISHING A PENALTY FOR DAMAGE TO SHAVANO PARK WATER UTILITY INFRASTRUCTURE IN THE RIGHT-OF-WAY; PROVIDING FOR A CUMULATIVE & CONFLICTS CLAUSE; A FINDINGS CLAUSE; A SEVERABILITY CLAUSE; CODIFICATION; AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Shavano Park recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

WHEREAS, City Council of the City of Shavano Park desires to preserve the physical integrity of City streets; and

WHEREAS, City Council of the City of Shavano Park desires to conserve the limited physical capacity of the public rights-of-way held in public trust by the city; and

WHEREAS, the City Council of the City of Shavano Park desires to keep track of the different entities using the right-of-way to prevent interference between them; and

WHEREAS, Chapter 552 of the Texas Local Government Code authorizes municipalities to protect the public health and safety of their citizens in the proper use and operation of utilities; and

WHEREAS, the City Council of the City of Shavano Park desires to govern the use and occupancy of the public right-of-way to protect public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHAVANO PARK, TEXAS:

**I
CODE AMENDMENT**

Chapter 34, Article V. PUBLIC RIGHT-OF-WAY MANAGEMENT of the City of Shavano Park Code of Ordinances' is hereby amended to read as follows:

Sec. 34-225. Purpose.

The purpose of this article is to:

- (1) Assist in the management of facilities placed in, on or over the public right-of-way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of facilities within the public rights-of-way;
- (2) Govern the use and occupancy of the public right-of-way;
- (3) Assist the City in its efforts to protect the public health, safety and welfare;
- (4) Conserve the limited physical capacity of the public rights-of-way held in public trust by the City;
- (5) Preserve the physical integrity of the City streets;
- (6) Control the orderly flow of vehicles and pedestrians;
- (7) Keep track of the different entities using the rights-of-way to prevent interference between them;
- (8) Assist on scheduling common trenching and street cuts; and
- (9) Protect the safety, security, appearance, and condition of the public rights-of-way.

Sec. 34-226. Authority.

This article applies to all applicants that place facilities in, on or over a public right-of-way.

Sec. 34-227. Administration.

The provisions of this article shall be administered by the City Manager, or the City Manager's authorized designee. Hereby referred to as the director within this article.

Sec. 34-228. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, statutorily created utility, government-owned utility, joint venture, joint stock company or association, and any other such entity that seeks to perform work, to perform construction, or to modify or to install facilities within the public right-of-way.

City means the City of Shavano Park, Texas. As used throughout, the term "City" also includes the designated agent of the City.

City Engineer means the City Engineer of the City of Shavano Park.

Director means the City Manager of the City of Shavano Park or the City Manager's designee.

Facilities means any and all of the pipes, wires, cables, fibers, duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, and all associated physical equipment and associated appurtenances, placed in, on or under the public rights-of-way.

Life of the street means until such time as a certain street or right-of-way is repaved by the City or another, in the same location as the permitted work, or until the PCI of the street or right-of-way drops below 50.

Micro-trenching means an excavation of the paved surface of the street that is less than 2 inches in width.

PCI means pavement condition index.

Public easement means the right of the general public to use certain streets, highways, paths or airspace.

Public rights-of-way means the same as in the Local Government Code § 283.002(6), 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 "public rights-of-way" does not include the airwaves above a public right-of-way with regard to wireless telecommunications.

Street Cut means an excavation of the curb or the paved surface of the street that is greater than 2 inches in width.

TMUTCD means Texas Manual on Uniform Traffic Control Devices.

Sec. 34-229. Right-of-way construction.

No person shall commence or continue with the construction of facilities above, upon, or beneath right-of-way in the City except as provided by this article and pursuant to the directives of the director issued pursuant to this article.

Sec. 34-230. Right-of-way permits.

- (a) No person or entity shall perform any construction of facilities in the right-of-way without first obtaining a right-of-way permit, except as otherwise provided by this article. The permit shall be in the name of the person who owns or will subsequently own the facilities to be constructed. The permit application shall be completed and signed by the person as permittee.
- (b) Construction considered an emergency relating to existing facilities may be undertaken without first obtaining a permit from the City. However, a contractor shall notify the director's office as promptly as possible after beginning the emergency construction, but in any event no later than the next City-business day, of any emergency construction, and shall also provide within two business days a

reasonably detailed description of the construction performed in the right-of-way, and shall further provide within 90 days from the date any facilities are reconstructed or relocated an updated map of any facilities that were affected by such emergency construction.

- (c) An applicant shall submit the following information in their application to obtain a right-of-way permit:
 - (1) To whom the permit is issued;
 - (2) A description of the location of construction and facilities;
 - (3) A description of the route of all facilities to be constructed on or about the designated right-of-way;
 - (4) Location of all right-of-way easements which the permittee plans to use;
 - (5) Location of existing City and third-party facilities;
 - (6) Drawings of any bores, trenches, hand holes, manholes, switch gear, transformers, pedestals, poles, and the such-like, including any applicable depths and heights;
 - (7) The construction methods and materials to be employed by the permittee for the protection of existing facilities within, above, beneath, or adjacent to the right-of-way, all of which methods and materials are subject to approval by the director;
 - (8) Estimated dates and times that construction is scheduled to be performed;
 - (9) The base material to be used;
 - (10) Restoration of property pursuant to section 34-234 of this article;
 - (11) Detailed description of what the permittee proposes to construct, including but not limited to, if applicable, pipe sizes, the number of interducts, and valves;
 - (12) A written statement that proof of insurance, bond, or other financial information required under this article is current and on file with the City; and,
 - (13) A traffic control plan in accordance with the TMUTCD.
- (d) All construction in the right-of-way shall be in accordance with the right-of-way permit for the facilities.
- (e) A copy of the right-of-way permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the director at all times when construction is occurring.
- (f) All construction authorized by permit shall be completed in the time specified in the right-of-way permit. If the construction cannot be completed in the specified time period, a contractor may request an extension of time from the director.

- (g) Requests for right-of-way permits shall be promptly processed and approved or disapproved by the director but in any event no later than ten City business days after receiving all the permit information required under this article.
- (h) The director may require a pre-construction meeting with the permittee and/or the contractor.
- (i) Construction of mailboxes are exempt from ROW permitting and fees. Construction and maintenance of all mailboxes shall comply with section 6-98.

Sec. 34-231. Performance of work by applicant; responsibility for damage; specifications.

- (a) *General.* All work shall be performed by the applicant at the expense of the applicant, in accordance with specifications set out in this section. The applicant shall be responsible for all damage to water mains, water service connections, sanitary sewers and storm sewers or pipes or conduits of other utilities, caused by the construction or the work of installing the mains or any part of the distribution system, and shall pay for the cost of repairing the same.
- (b) *Shavano Park Water Utility.* All damages to Shavano Park Water Utility water mains, water service connections, water meters, hydrants, valves and other water distribution infrastructure within the right-of-way shall be repaired by the City. The applicant, or any person performing unpermitted work in right-of-way, who committed the damage shall be billed for labor, equipment and materials costs necessary for the repair(s) as well as for the water loss. The director shall have authority to waive the repair cost in instances where the Shavano Park Water Utility failed to locate utilities.
- (c) *Construction standards specified.* All work shall be performed by the applicant at the expense of the applicant, in accordance with the following:
 - (1) All gas, oil, water, sewer, electric, telephone and public utility mains, feeders and conduits laid in the streets, alleys and public property in the City shall be laid with the top of the pipe at least two feet below the surface of the ground and all gas service pipes from such mains to the property lines shall be laid with the top of such pipe at least 16 inches below the surface of the ground. All such pipes shall be so laid as not to interfere in any manner with water pipes or mains, sanitary sewers or storm sewers or pipes, cables or conduits of other utilities already installed. At street intersections, street and alley intersections or other place where it is likely that the street grade will be lowered, the mains, service pipes, etc. shall be laid at a greater depth than two feet, as specified in the permit.
 - (2) Paving shall be saw cut to at least one foot on each side of trench.
 - (3) A clean, vertical wall excavation in line with and no larger in plan than the surface cut to a depth of three feet is reached is required. Below the three-foot depth, the excavation may be widened as the depth increases. Adequate shoring must

be used to prevent collapse during the work. Where any dispute exists as to shoring requirement, it shall be resolved by the decision of the City Engineer.

- (4) The excavator, while the excavation is open, must have it barricaded and protected with flares until the excavation has been approved for backfilling and until the same is backfilled. Nothing herein shall be construed as limiting the responsibility of the excavator in seeing that the excavation is made safe for traffic and pedestrians who may use the street, alley and other public property.
- (5) All trenches shall be backfilled promptly but only after the lines have been placed, tested, inspected and the City certifies that it is in accordance with the City ordinances, regulations and specifications.
- (6) Backfilling shall be done in six-inch layers and pneumatic hand-tamped or otherwise compacted to insure adequate density. The required density shall be equivalent to a 90 percent Proctor Density and shall be approved before base or other topping is applied.
- (7) For asphalt paving, a six-inch concrete base shall be poured. The concrete shall be of 2,000 psi specification and contain no reinforcing.
- (8) The concrete shall be covered after inspection with asphalt the same thickness and equivalent specifications as the original asphalt.

Sec. 34-232. Street cuts and underground boring.

- (a) If an applicant proposes a street cut an existing curb or the paved surface of any public street, the applicant shall state reasons why the work cannot be accomplished through means of horizontal directional boring. The Director may require that horizontal directional boring be done instead of open street cut on any right-of-way permit. Street cuts for emergency repairs of utilities under the curb or paved surface of any public street are allowable. All street cut repairs and pavement restoration shall be done in accordance with Sec. 34-234.
- (b) Street cuts of any public street above PCI 86 shall be prohibited, outside of emergency repairs. The Director, upon agreement from the City Engineer, may approve street cut of a street above PCI 86 if circumstances make horizontal directional boring impossible.
- (c) Missile boring is prohibited as a boring technique when boring under any public street.

- (d) Prior to commencing excavation or boring, unless otherwise excepted by this article, a contractor shall verify location of existing city and third-party facilities. Horizontal locates are required within 25' of contractors proposed construction. Horizontal and vertical locates are required within 5' of proposed construction.
- (e) Any facility constructed by a contractor shall maintain a minimum of six (6) inches vertical separation when crossing any existing facility.
- (f) Facilities constructed by the contractor shall be constructed at a minimum depth of twenty-four (24) inches, except the director may require a lesser or greater depth if it is deemed necessary for the health, safety, or general welfare of the public.
- (g) All bores shall be a minimum of twenty-four (24) inches below the street gutter or edge of pavement.
- (h) All directional boring shall have a locator place bore marks and depths while the bore is in operation. Locator shall place a mark at each stem with a paint dot and shall mark the depth at least at every other stem.

Sec. 34-233. Micro-trenching.

- (a) If an applicant proposes micro-trenching the paved surface of any public street, the applicant shall state reasons why the work cannot be accomplished through means of horizontal directional boring. The Director may require that horizontal directional boring be done instead of micro-trenching on any right-of-way permit.
- (b) All micro-trenching of public streets shall be done at a depth between nine (9) and twelve (12) inches. After utility installation and backfilling of the micro-trench, the City may require a crack seal be applied over the micro-trench.
- (c) The applicant shall agree to warranty the repair backfill and crack seal for 24 months after application and shall, in event of a repair failure, the applicant shall be responsible to repair. Any failures resulting from any work authorized by this article shall be immediately repaired upon notification by the City and are subject to inspection and approval by the City.

Sec. 34-234. Restoration of property and pavement.

- (a) An applicant shall restore property damaged or destroyed by construction on or adjacent to the right-of-way to a condition that is as good as or better than the pre-existing condition of the right-of-way or adjacent property, as determined by the director. Streets shall be restored based on their Pavement Condition Index (PCI)

prior to construction, as determined by the director during the application process, as follows:

- (1) *PCI of 0—50.* Excavations in streets and/or rights-of-way with PCI values of 50 or less shall be deemed to be excavations in streets with nominal loss of pavement life. The contractor shall promptly repair the trench envelope and surface in accordance with specifications set forth by the director.
 - (2) *PCI of 51—85.* In the event of an excavation in a street or right-of-way having a PCI of 51—85, the contractor shall promptly repair the trench envelope and surface, including pavement and foundation, to the same condition, or better, than existed before the commencement of the work. Curb to curb mill and overlay of existing pavement to 25' on both sides of the excavation limits will be required. In the event of failure of the repair within one year, the contractor shall reimburse the City for its pavement restoration cost.
 - (3) *PCI of 86—100.* Excavations in streets and/or right-of-way with PCI values of 86 or greater shall be deemed 100 percent loss of pavement life. These excavations require block to block and curb to curb pavement reconstruction. Use of a hot mix asphalt repaving process is an option with approval of the director. In the event of any trench failure in the street or right-of-way within one year, the contractor shall reimburse the City for its costs to repair the failure. Additionally, in the event of such failure, the contractor shall within 48 hours repair the subject trench envelope if required by the director.
- (b) Restoration shall be completed in a timely manner as specified by schedules prepared and provided by the director. Applicants shall be fully responsible for the performance of all trenches or other restorative work for a period not to exceed 24 months from the completion of the work and/or inspection by the director. Any trench or other restorative failures resulting from any work authorized by this article shall be immediately repaired upon notification by the City and are subject to inspection and approval by the City.
- (c) All repairs to right-of-way of any PCI are guaranteed by the contractor making the repair and the permittee causing the repair to be made for the life of the street. The life of the street for these purposes is defined to be until such time as that certain street or right-of-way is repaved by the City or another, in the same location as the excavation, or until such time as the PCI Index of such street or right-of-way drops to below 50.

Sec. 34-235. Inspections required.

Required inspections to verify full compliance with the right-of-way permit and all applicable codes and ordinances include, but are not limited to, the following:

- (1) Backfill (prior to surface patch);
- (2) Final.

The initial inspection is included in the permit application fee. Any failed inspection that requires a re-inspection will be assessed a re-inspection fee as established in the City of Shavano Park Code of Ordinances.

Sec. 34-236. Insurance requirements.

All applicants shall carry, and provide documentation upon request, the following:

- (1) General liability insurance of at least \$500,000.00 for personal injury and \$100,000.00 for property damage; and
- (2) Umbrella coverage of at least \$1,000,000.00 on an occurrence basis and must include coverage for personal injury or death, contractual liability, premises liability, medical damages, and explosion and collapse hazards.

Sec. 34-237. Requirement to relocate equipment for City public works projects.

Any user of the City right-of-way shall be required to relocate and bear the cost of relocating their equipment to accommodate City public works projects. Such relocation shall be completed within 30 days upon notice by the City of the requirement for such relocation.

Sec. 34-238. Authorized hours of right-of-way construction.

Unless approved in writing by the director, any work activity governed by this article is restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, except for City holidays.

Sec. 34-239. Right-of-way permit fees.

Right-of-way permit fees shall be established in the fee schedule of the City of Shavano Park Code Ordinances. No right-of-way permit shall be issued without complete payment of required fees. All fees and penalties collected shall be dedicated to the street maintenance fund of the City of Shavano Park.

Sec. 34-240. Right-of-way permit and fee exemptions.

The director shall have the authority to waive fees provided for in the fee schedule of the City of Shavano Park Code of Ordinances for public agencies, licensees, franchisees, certificated telecommunications providers and contractors providing the City with construction or other permitted services. When deemed appropriate, the director shall also have the authority to waive the requirement for an applicant to acquire a right-of-way permit.

Sec. 34-241. Penalties.

- (a) Pavement degradation recovery penalty: The pavement degradation recovery penalty is due upon failure of an applicant's restoration within one year after completion or upon failure of an applicant to restore the right-of-way. Fees will be assessed on a basis of \$50 per square yard of right-of-way which experienced failure.
- (b) Unpermitted work penalty: With the exception of emergencies, any work done in the public right-of-way without first obtaining a permit will result in a penalty of \$500 per day of unpermitted work, and subject to other penalties as outlined herein.
- (c) Noncompliance with TMUTCD penalty: In the event of non-compliance with the TMUTCD standards the City shall levy a civil penalty of \$1,000 for each observed incidence.
- (d) Failure to relocate facilities in the time allowed will result in a penalty of \$100 per day for each day of delay.
- (e) Damage to Shavano Park Utility Infrastructure: Parties responsible for damage shall be billed based upon emergency response rate of double the current hourly labor cost which includes fringe benefits for City personnel, hourly equipment costs based upon the most recent FEMA schedule and the material costs necessary to perform the repair. The minimum charge will be for five (5) hours. The invoice will also include water loss as calculated by the Public Works Director, with the minimum water loss charged being 250,000 gallons.

Sec. 34-242. Injunctive relief and other remedies for violation.

Any applicant who shall fail to comply with any provision of this article shall be liable to injunctive action prohibiting the violation of this article and shall be subject to being mandatorily enjoined to restore any right-of-way illegally excavated to its original form and function, and shall be liable and responsible for any and all expenses that may be incurred by the City in connection with any such action, omission or other violation, including reasonable attorneys' fees.

Sec. 34-243. Notice of violation.

The director may give notice to any applicant who violates this article, and such applicant who receives such notice shall correct all violations alleged in the notice. Failure to correct any such alleged violations shall cause the applicant to be subject to penalties provided in section 34-239 and section 34-240.

Sec. 34-244. Revocation, suspension or denial of permit.

Notwithstanding other sanctions set forth in this article, if any of the provisions of this article are not complied with, a permit may be revoked or suspended by the director. If an applicant has not followed the terms, conditions or specifications of this article in work done pursuant to a prior permit, new permits may be denied or additional requirements may be imposed.

Sec. 34-245. Non-transferability of permits.

No permit issued under this article shall not be transferable from the applicant receiving the permit to another person or entity without the written approval of the director as permitted by state law.

Sec. 34-246. Effect on City's liability.

No permit or certificate of inspection shall be conclusive as against the City that the work therein referred to has been installed in conformity with the requirements; but the owner of the premises, the contractor and all other persons concerned shall be obligated to see that all matters, things and acts to which this article and such permit or certificate relate shall conform to the regulations of the City. All work installed in this City for any purpose whatever shall be kept in full compliance with this article.

Secs. 34-247—34-300. Reserved.

**II
CODE AMENDMENT**

Chapter 6, Article VIII. of the City of Shavano Park Code of Ordinances' is hereby created and read as follows:

**III
FINDINGS CLAUSE**

The facts and recitals set forth in the preamble of this Ordinance are hereby found to be true and correct.

**IV
CUMULATIVE CLAUSE**

That this ordinance shall be cumulative of all provisions of the City of Shavano Park, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

**V
SEVERABILITY**

That it is hereby declared to be the intention of the City Council of the City of Shavano Park that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

**VI
PROPER NOTICE AND MEETING**

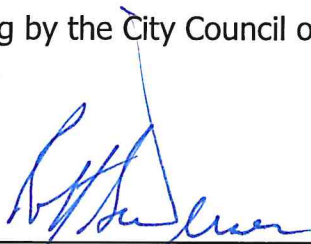
It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government

**VII
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by State and Local law.

PASSED AND APPROVED on the first reading by the City Council of the City of Shavano Park this the 27th day of November, 2023.

PASSED AND APPROVED on the second reading by the City Council of the City of Shavano Park this the 22nd day of January, 2024.



ROBERT WERNER, MAYOR

Attest:



KRISTEN M. HETZEL, CITY SECRETARY