

ORDINANCE # 181004

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES RIGHT-OF-WAY CONSTRUCTION

WHEREAS, the State of Texas has delegated to cities, the fiduciary duty, as a trustee to manage the public right-of-way for health, safety, and welfare of the public.

WHEREAS, the City of China Grove seeks to manage construction in right-of-way for utilities, telecommunications providers and other construction projects;

NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHINA GROVE, TEXAS.

SECTION 1. Compliance with construction standards.

No person shall commence or continue with the construction, installation or operation of facilities within the right-of-way in the city except as provided by the ordinances of the city and the directives of the city administrator or designee. All construction activity in the city right-of-way will be in accordance with this article.

SECTION 2. Registration and construction permits.

(a) **Registration.** In order to protect the public health, safety and welfare, all users of the right-of-way will register with the city. Registration and permits will be issued in the name of the person who will own the facilities. Registration must be renewed every five years. For utilities with a current franchise or license, the franchise or license will be evidence of renewal. If a registration is not renewed and subject to 60-day notification to the owner, the facilities of the user will be deemed to have been abandoned. When any information provided for the registration changes, the user will inform the city of the change no more than 30 days after the date the change is made. Registration shall include:

- (1) The name of the user of the right-of-way;
- (2) The name, address and telephone number of people who will be contact persons for the user;
- (3) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the user;
- (4) The name and telephone number of an emergency contact who shall be available 24 hours a day;
- (5) Proof of insurance and bonds.
 - a. An applicant must provide acceptable proof of liability insurance in the total amount of \$6,000,000.00; \$1,000,000.00 primary plus \$5,000,000.00 umbrella if requested by the owner of the facilities, or other provisions as acceptable to the city administrator or his/her designee.

b. 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.

c. Each policy must include a cancellation provision in which the insurance company is required to notify the city in writing not fewer than 30 days before canceling, failing to renew, or reducing policy limits.

d. The applicant shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state:

1. The policy number;
2. Name of the insurance company;
3. Name and address of the agent or authorized representative of the insurance company;
4. Name, address and telephone number of insured;
5. Policy expiration date; and
6. Specific coverage amounts.

e. Applicant shall file an annual surety bond which will be valid each year construction will occur through one full year after the completion of the construction from a surety company authorized to do business in the state in the amount of 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 applicant leaves a job site in the right-of-way unfinished, incomplete or unsafe or other provisions as acceptable to the city administrator or designee.

f. The requirements in subsections (a)(5)a through e of this section may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the city.

(b) Construction permits.

(1) No person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.

a. Emergency responses related to the existing facilities may be undertaken without first obtaining a permit; however, the city administrator or designee should be notified in writing within two business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the right-of-way and an updated map of the facilities that were relocated, if applicable.

b. phrase "construction or installation of facilities" does not include the installation of facilities necessary to initiate service to a customer's property, or repair or maintenance of existing facilities unless such repair or maintenance requires:

1. The breaking of pavement;
2. The closure of a nonresidential traffic lane;
3. Excavation or boring.

(2) 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 conditions set out by the city administrator or designee.

(3) The person requesting a permit will provide the city administrator or designee with documentation in the format specified by the city council describing:

- a. The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction.
- b. Engineering plans which will be on a scale of one (1) inch equals 50 feet unless otherwise approved by city administrator or designee.
- c. Detail of the location of all right-of-way and utility easements which applicant plans to use.
- d. Detail of all existing city utilities in relationship to applicant's proposed route.
- e. Detail of what applicant proposes to install, such as pipe size, number of interducts, valves, etc.
- f. Detail of plans to remove and replace, asphalt or concrete in streets (include city standard construction details).
- g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc., including depth located in public right-of-way.
- h. Handhole and/or manhole typical of type of manholes and/or handholes applicant plans to use or access.
- i. Complete legend of drawings submitted by applicant.
- j. Five sets of engineering plans must be submitted with permit application.
- k. 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.
- l. The construction and installation 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 administrator or designee.
- m. A statement that the requirements of subsection (a)(5) of this section are met.

(4) All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The city administrator or designee shall be provided access to the work, and to such further information as he may reasonable require, to ensure compliance with the permit.

(5) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the city administrator or designee at all times when construction or installation work is occurring.

(6) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the city administrator or designee. The city administrator or designee will use his best efforts to approve or disapprove a request for permit as soon as possible.

(7) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the city, if requested by the city administrator or designee.

(8) A request for permit must be submitted at least ten working days before the proposed commencement of work in the request, unless waived by the city administrator or designee.

(9) Requests for permits will be approved or disapproved by the city administrator or designee within a reasonable time or receiving all the necessary information. The city administrator or designee will use his best efforts to approve or disapprove a request for permit as soon as possible.

(10) The city administrator or designee or the applicant can request a pre-construction meeting with the permittee and their construction contractor.

(11) Permit applications are required for construction on new, replacement or upgrading of the company's facilities in the right-of-way either aerial or underground.

SECTION 3. Construction standards.

(a) city administrator or designee must be notified 24 hours in advance that construction is ready to proceed by either: the right-of-way user, their contractor or representative. At the time of notification, the right-of-way user will inform the city administrator or designee of the number (or other information) assigned from the one-call system.

(b) All construction shall be in conformance with all city codes and applicable local, state and federal laws.

(c) Three by three feet information signs stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur 48 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. An informational sign will be posted on public right-of-way 100 feet before the construction location commences and each 100 feet thereafter, unless other posting arrangements are approved or required by the city administrator or designee.

(d) Erosion control measures (i.e., silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.

(e) closures on major thoroughfares will be limited after 8:30 a.m. and before 4:00 p.m. unless the city administrator or designee grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and 36-inch reflector cones placed according to the specifications of the city administrator or designee.

(f) Permittees are responsible for the workmanship and any damages by a contractors or subcontractors. A responsible representative of the permittee will be available to city administrator or designee at all times during construction.

(g) The permittee shall be responsible for stormwater management erosion control that complies with city, state and federal guidelines. Requirements shall include, but not be limited to, silt 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 permittee may be required to furnish documentation submitted or received from federal or state government.

(h) The permittee or contractor or subcontractor will notify the city administrator or designee 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, when a street or sidewalk cut is required, prior approval must be obtained by the city administrator or designee and all requirements of the city administrator or designee shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

(j) Installation of facilities must not interfere with city utilities

(k) New facilities must be installed to a depth approved by the city administrator or designee

(l) All directional boring shall have locator place bore marks and depths while bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem.

(m) The working hours in the rights-of-way are 7:00 a.m. to 6:00 p.m. Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved in advance. Any work performed on Saturday must be approved 24 hours in advance by the city administrator or designee. Directional boring is permitted only Monday through Friday 7:00 a.m. to 6:00 p.m., unless approved in advance. No work will be done, except for emergencies, on city holidays.

(n) People 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 the geographic information system or the plans of records does not satisfy this requirement.

(o) The permittee will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by city administrator or designee, the permittee shall verify locations by pot holing, hand- digging or other method approved by the city administrator or designee prior to any excavation or boring except for work involving lane closures, as discussed herein.

(p) Placement of all manholes and/or hand holes must be approved in advance by city administrator or designee. Handholes or manholes will not be in sidewalks, unless approved by the city administrator or designee.

(q) Locate flags shall not be removed from a location while facilities are being constructed.

(r) Construction which requires pumping of water or mud shall be contained in accordance city ordinances and federal and state law and the directives of the city administrator or designee.

SECTION 4. Plans of record.

(a) Right-of way users will provide the city administrator or designee with "plans of record" within 90 days of completion of facilities in the right-of-way. Users which have facilities in the right-of-way existing as of the date of the ordinance from which this article is derived who have not provided plans of record shall provide one quarter of the information concerning facilities in city right-of-way within one year after the passage of the ordinance from which this article is derived and one quarter each six months thereafter. The plans shall be provided to the city with as much detail and accuracy as required by the city administrator or designee. All the requirements specified for the plans submitted for the initial permit, as set forth in **Section 2**, shall be submitted and updated in the plans of record. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. The detail will not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of plans of record shall be in digital format.

(b) This requirement, or portions of this requirement, may be waived by the city administrator or designee for good cause

SECTION 5. Conformance with public improvements.

Whenever by reasons of widening or straightening of streets, water or sewer line projects, or any other public works projects (e.g., install or improve storm drains, water lines, sewer lines, etc.) it shall be deemed necessary by the governing body of the city to remove, alter, change, adapt, or conform the underground or overhead facilities of a right-of-way user to another part of the right-of-way, such alterations shall be made by the owner of the facilities at their expense (unless provided otherwise by state law or a franchise in effect on **September 2017**, until that franchise expires or is otherwise terminated) within the time limits set by the city administrator or designee working in conjunction with the owner of the facilities, or, if no time frame can be agreed upon, within 90 days from the day the notice was sent to make the alterations, unless a different schedule has been approved by the city administrator or designee. Facilities not moved after 90 days or within the approved schedule, as same may be extended from time to time, shall be deemed abandoned after 30 days' notice.

SECTION 6. Improperly installed facilities.

(a) Any person doing work in the city right-of-way shall properly install, repair, upgrade and maintain facilities.

(b) Facilities shall be considered improperly installed, repaired, upgraded or maintained if:

1. The installation, repairs, upgrade or maintenance endangers people;
2. The facilities do not meet the applicable city codes;
3. The facilities are not capable of being located using standard 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 administrator or designee.

SECTION 7. Restoration of property

(a) Users of the right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the city administrator or designee.

(b) Restoration must be to the reasonable satisfaction of the city administrator or designee and the property owner. The restoration shall include, but not be limited to:

- (1) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding as directed by city administrator or designee;
- (2) Installation of all manholes and handholes, as required;
- (3) Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by city administrator or designee;
- (4) Leveling of all trenches and backhoe lines;
- (5) Restoration of excavation site to city specifications;
- (6) Restoration of all landscaping, ground cover, and sprinkler systems.

(c) All locate flags shall be removed during the clean-up progress by the permittee or his contractor at the completion of the work.

(d) Restoration must be made in a timely manner as specified by approved city administrator or designee schedules and to the satisfaction of city administrator or designee. If restoration is not satisfactory and performed in a timely manner 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 permits not approved until all restoration is complete

SECTION 8. Revocation or denial of permit.

If any of the provisions of this article are not followed, a permit may be revoked by the city administrator or designee. If a person has not followed the terms and conditions of this article in work done pursuant to a prior permit, new permits may be denied, or additional terms required.

SECTION 9. Appeal from denial or revocation of permit.

Appeal from denial or revocation of permit or from the decision of the city administrator or designee shall be to the city council. Appeal shall be filed with the city secretary within 15 days from the date of the decision being appealed.

PRESENTED AND PASSED on this the 4th day of October, 2018, at a regular meeting of the City Council of The City of China Grove.



Mary Ann Hajek, Mayor

Attest:



Susan Conaway, City Secretary/Admin