



AGENDA MEMORANDUM

First Reading Ordinance for the City Council Meeting April 20, 2021
Second Reading Ordinance for the City Council Meeting April 27, 2021

DATE: April 20, 2021

TO: Peter Zanoni, City Manager

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<p style="text-align: center;">Amending Chapter 49 of the Code of Ordinances to add Article VIII – Management of Rights-of-Way</p>

CAPTION:

Ordinance amending the Code of Ordinances, Chapter 49, to promote better management of the public rights-of-way for Bond and other infrastructure projects, adding Article VIII - Management of Rights-of-Way to clarify responsibilities for all types of utilities within a public right-of-way, and establishing a penalty.

SUMMARY:

This item amends the Code of Ordinances to establish procedures for the management of public rights-of-way and clarifies the responsibilities of franchise utilities to accommodate City infrastructure projects. The ordinance also removes the expired Telephone Ordinance to ensure there are no conflicts within the City Code.

BACKGROUND AND FINDINGS:

The City spends significant amounts of funding annually on public works design and construction contracts. These projects typically have a 3- to 5-year execution period once approved in the Capital Improvement Program (CIP). The CIP is updated and published annually and is available on the City's website. Additionally, the City makes significant efforts to coordinate with private utility owners to de-conflict proposed improvements from their infrastructure located within the public right-of-way. The City distributes plans and specifications to private utility companies during the design phase and hosts monthly utility coordination meetings to discuss upcoming projects with private utility companies. The City also spends significant amounts to accurately locate third party utilities so that conflicts can be addressed during design.

Despite these significant coordination efforts by the City, projects still encounter avoidable

construction delays and cost escalation due to unanticipated utility conflicts. For example, the reconstruction of Ayers Street, Rodd Field Road, Holly Road (Ennis Joslin to Rodd Field), Holly Road (Greenwood to Crosstown Expressway), Park Road 22 Bridge, Flato Road, Williams Drive, Morgan Street, Slough Road and Corona Drive were delayed due to utility conflicts discovered during construction.

The purpose of this ordinance is to promote better management of the public rights-of-way. It establishes reasonable expectations for utility operators whereby they are required to submit a schedule and relocate their facilities within an established timeframe and keep their contact information current with the City and formalizes potential penalties for causing unnecessary consequences to City projects. Pursuant to state law, private utility companies are required to relocate their facilities located in a public right-of-way to accommodate City infrastructure projects. The City should not experience construction delays or additional construction cost due to conflicts with franchise utility infrastructure. Those should be easily avoidable if all parties are appropriately engaged in the process and responsive to relocation needs when conflicts are unavoidable.

The current City Code, Section 49-43, requires private utility owners to relocate their facilities in a timely manner and notify the City Engineer of their schedule for relocation. If the City discovers a utility conflict during the design phase, the proposed City Code, Article VIII of Chapter 49, requires private utility owners to submit their schedule within 45 days of being notified of the utility conflict and complete the relocation within 120 days of the date agreed to in the schedule. If the utility conflict is discovered during construction, the schedule must be submitted within 5 days of being notified by the City, and the relocation must be completed within 30 days unless the City Engineer extends the performance by an additional 30 days. Most Texas cities that have a Right-of-Way Management ordinance require the relocation schedule to be submitted within 5 days if the conflict is discovered during construction, and the relocation to be completed within an approved timeframe.

The party responsible for paying for the relocation is determined by state law and City Code. The City has exclusive jurisdiction of its public rights-of-way. Private utility companies that locate their facilities within the public rights-of-way do so with the permission of the City and must relocate their facilities at their own expense, which means they pay their own costs. If the utility is located in an easement that existed before the public right-of-way, the city must pay the costs of relocation because the utility has a property interest that pre-dates the City's property interest. In that case, the City would typically reimburse the utility's expense after the relocation has been completed.

For electric utilities, Section 37.101(c) of the Texas Utilities Code requires electric utilities to relocate at their own expense to permit the widening or straightening of public rights-of-way. The City is required to pay the relocation costs for electric utilities not required due to widening or straightening.

The penalty for violation of Chapter 49 of the City Code did not change and per Section 1-6 of the City Code, the private utility can be fined a maximum of \$500 per day for every day that they fail to submit a schedule or fail to relocate their facilities.

This ordinance also removes Chapter 55, Article XIV – Telephone Ordinance Agreement which expired in 1992.

In December 2020, the Engineering Services Department hosted a meeting with private utility owners and presented the ordinance and the changes to Chapter 49 regarding management of public rights of way. The City received comments from only one interested party, AEP, and made

minor revisions to the ordinance. Most of AEP's comments concerned the existing Franchise Agreement and Section 37.101 of the Texas Utilities Code regarding paying for relocation costs. AEP also requested an extended timeframe to relocate their utilities. It was explained to AEP that state law determines who pays the cost of the relocation, and Engineering Services rejected adding an extended timeline to the ordinance. A final version of the ordinance was distributed to the private utility owners in March 2021. No further comments have been received.

ALTERNATIVES:

1. Authorize amending the Code of Ordinances.
2. Do not authorize amending the Code of Ordinances. (Not Recommended)

FISCAL IMPACT:

There is no fiscal impact for amending the Code of Ordinances, Chapter 49 to include Article VIII – Management of Rights-of-Way.

RECOMMENDATION:

City staff recommends amending Chapter 40 of the Code of Ordinances to add Article VIII – Management of Rights-of-Way to establish procedures for the relocation of privately-owned facilities within a public right-of-way to accommodate City infrastructure projects and remove the expired Telephone Ordinance Agreement.

LIST OF SUPPORTING DOCUMENTS:

Ordinance