

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF MESQUITE BY ADDING ARTICLE III ENTITLED RIGHTS-OF-WAY RULES AND REGULATIONS THEREBY ESTABLISHING RULES AND REGULATIONS GOVERNING THE USE AND OCCUPANCY OF THE CITY'S RIGHTS-OF-WAY BY PROVIDERS OF UTILITY, TELECOMMUNICATIONS AND CABLE SERVICES; PROVIDING FOR CONSTRUCTION WORK REGULATION BY CITY; PROVIDING FOR INSURANCE; REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 15 of the Code of the City of Mesquite is hereby amended by adding Article III to read as follows, in all other respects said Code and Chapter to remain in full force and effect.

STREETS AND SIDEWALKS

ARTICLE III. RIGHTS-OF-WAY RULES AND REGULATIONS

Sec. 15-191. Definitions.

Whenever used in this Article, the following terms shall have the following definitions and meanings, unless the context of the sentence in which they are used clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the single number include the plural number. The word "shall" is always mandatory and not merely directory.

Applicant means the owner of Facilities to be constructed in the Rights-Of-Way who makes application for a construction permit hereunder.

City means the City of Mesquite, Texas.

Department means the Public Services Department of the City of Mesquite.

Director means the Director of the Public Services Department of the City of Mesquite, or his/her designee.

Emergency means a reasonably unforeseen situation presenting an imminent hazard to personal or public health, safety or property, and the work necessary to address a service interruption. Upgrading of Facilities, new service installation and neighborhood improvement projects are not emergencies under this Article.

Facilities means personal property, owned by a provider of utility, telecommunications or cable television services including but not limited to pipe, conduit, ducts, cables, wires, lines, towers, wave guides, optic fiber, microwave, any associated converters and all equipment located in the Rights-Of-Way.

Permitee means a Person to whom a construction permit has been granted hereunder.

Person means natural persons (individuals), corporations, companies, associations, partnerships, firms, limited liability companies, joint ventures, joint stock companies or associations, and other such entities, and includes their lessors, trustees and receivers.

Public Nuisance means a condition dangerous to the health, safety or welfare of the general public.

Registered User means a Person who has complied with the registration provisions of this Article.

Rights-of-Way means all present and future public streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges and other such similar passageways, thoroughfares and public ways under the jurisdiction and control of the City.

Use and Occupancy means the acquisition, installation, construction, reconstruction, maintenance or repair of any Facilities within the Rights-Of-Way for any purpose whatsoever.

Sec. 15-192. General provisions.

(a) No Person shall use or occupy Rights-Of-Way within the City for the purpose of providing utility, telecommunications or cable television services except in compliance with the provisions of this Article. All construction activities in, on and under the Rights-Of-Way shall be undertaken in compliance with the provisions of this Article.

(b) The provisions of this Article shall apply to the use and/or occupancy of the Rights-Of-Way by a Person under the authority granted by a franchise agreement or ordinance as if fully set forth in the franchise agreement or ordinance. The express terms of this Article will prevail over conflicting or inconsistent provisions in a franchise agreement or ordinance unless such franchise agreement or ordinance expresses an explicit intent to waive a requirement of this Article.

(c) The provisions of this Article shall be liberally construed in favor of the City in order to effectuate the purposes and objectives of this Article and to promote the public interest.

Sec. 15-193. Registration of users and occupants of rights-of-way.

(a) *Registration Required.* All users and occupants of the Rights-of-Way shall register with the City pursuant to this Section. For existing users and occupants, such registration shall be accomplished within thirty (30) days following the date of final adoption of this Article. For Persons using and occupying the Rights-of-Way under a franchise, permit or license that is valid on the effective date of this Article, such existing valid franchise, permit or license shall be considered such Person's initial registration hereunder. Persons seeking to use or occupy the Rights-of-Way after adoption of this Article shall register with the City prior to initiating any such use or occupancy. All registrations must be renewed annually on or before January 31 of each calendar year using forms developed by and available from the City. For Persons with a current franchise from the City, the franchise will be evidence of renewal. If a registration is not renewed, the Facilities will be deemed to have been abandoned ninety (90) days after the date of written notice was sent to the facility owner by the City. Persons that are not certificated telecommunications providers providing access lines, as defined in Chapter 283, Texas Local Government Code, are also required to obtain a franchise or license from the City in accordance with City Charter or ordinance in addition to registering under the provisions of this Article prior to entering into the Rights-of-Way.

(b) *Purpose of Registration.* The purpose of registration under this Section is to:

- (1) Provide the City with accurate and current information concerning the users and occupants of the Rights-of-Way;
- (2) Assist the City in enforcement of this Article; and
- (3) Assist the City in monitoring compliance with applicable laws.

(c) *Contents of Registration.* The registration shall include:

- (1) The name of the user and occupant of the Rights-of-Way;
- (2) The name, address and telephone number of people who will be contact Person(s) for the user and occupant;
- (3) Proof of insurance as required in Section 15-198 hereof; and
- (4) A description of the type of Facilities in the Rights-of-Way, for example, electric conduit, fiber-optic cables, wire cables, coaxial cables and the like. This description shall include a statement of whether the user and occupant is a certificated telecommunications provider as defined in §283.002(2) Texas Local Government Code, and if so, whether the user and occupant is providing access lines as defined in §283.002(1) Texas Local Government Code.

Sec. 15-194. Use and occupancy – regulation by City.

(a) *Temporary Rearrangement or Removal of Aerial Facilities.* Upon written request a Registered User shall remove, raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the Person requesting them, and the Registered User may require payment in advance. The Registered User shall make such temporary arrangement or removal as soon as practicable, but in all events such rearrangement or removal shall be accomplished within forty-five (45) calendar days after notification by moving permit holder.

(b) *Right to Trim Trees.* The Registered User, its contractors and agents have the right, permission and license to trim trees upon and overhanging the Rights-of-Way to prevent trees from coming in contact with the Registered User's Facilities. All trimming shall be done in consideration of the health of the trees and shall be limited to the minimum amount necessary to eliminate the interference with the Facilities. When directed by the City, tree trimming shall be done under the supervision and direction of the Parks Department of the City or under the supervision of the City's delegated representative. Under normal circumstances Registered Users shall notify adjacent residents and occupants at least forty-eight (48) hours in advance of any trimming. Any tree trimmings generated by the Registered User, its contractors or agents shall be removed within twenty-four (24) hours. Should the Registered User, its contractors or agents fail to timely remove such trimmings, the City may remove same or have them removed and shall bill Registered User for all costs incurred, which costs shall be promptly paid by the Registered User. Nothing herein shall be construed to grant a Registered User the right of access to private property.

(c) *City Work.* The City shall have the right at all times to lay, and to permit to be laid, sewer, gas, water and other pipelines or cable and conduits, as well as drainage pipes and channels and streets and to do and permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any Rights-of-Way occupied by a Registered User, and to change any curb or sidewalk or the grade of any street and to maintain all of the City's Facilities.

(d) *Removal of Facilities.* Whenever it shall be necessary to require a Registered User to relocate its Facilities to permit the widening or straightening of a street or construction of any water, sewer or stormwater facilities by the City associated with widening or straightening of a street, the City shall give the Registered User ninety (90) calendar days notice of such requirement. Such relocation shall be made by the Registered User promptly with consideration given to the magnitude of such alterations or changes without claim for reimbursement or damages against the City. If any such requirements impose a financial hardship upon the Registered User, the Registered User shall have the right to promptly present alternative proposals to the City, and the City shall give due consideration to any such alternative proposals. If the City determines that the preservation and protection of the public health and safety require removal of Facilities from the Rights-of-Way that are being abandoned, the City shall require Registered User to remove its Facilities entirely from the abandoned Rights-of-Way at no cost to the City.

(e) *Public Safety.* The City retains the right to move any Facilities within the Rights-of-Way to cure or otherwise address a public health or safety emergency. The City shall cooperate to the extent possible with the Registered User in such instances to assure continuity of service and to afford to the Registered User the opportunity to make such relocation itself.

(f) *Abandonment of Facilities.* Whenever a Registered User intends to abandon any of its Facilities within the Rights-of-Way, it shall submit to the Director written notification of such intent, describing the facility to be abandoned and the date of the proposed abandonment. Such notification shall include a statement of waiver of claims against the City for subsequent damages to abandoned Facilities. City may require the Registered User, at the Registered User's expense:

- (1) To remove the Facility from the Rights-of-Way; or
- (2) To modify the Facility in order to protect the public health and safety or otherwise serve the public interest.

A Registered User shall remove all abandoned above-ground Facilities and equipment upon receipt of written notice from the City and shall restore any affected Rights-of-Way to their former state at the time such Facilities and equipment were installed so as not to impair their usefulness. In removing its plant, structures and equipment a Registered User shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Article shall continue in full force and effect during the period of removal and until full compliance by a Registered User with the terms and conditions of this Section. Notwithstanding anything to the contrary set forth in this Article, a Registered User may abandon any underground Facilities in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Registered Users.

(g) *Public Nuisance Abatement.* The City may require the removal or abatement of any Facility determined by the City to cause a Public Nuisance. The City shall give Registered User written notice of the required removal or abatement. No later than thirty (30) calendar days after the Registered User receives such written notice, the Registered User shall remove such Facility or abate the Public Nuisance to the satisfaction of the City. If the Registered User notifies the Director in writing within such thirty (30) day period requesting additional time for such removal or abatement, or that the Registered User is unable to remove or abate such Facility for specified reasons, the Director may, but is not required to, grant additional time to the Registered User or negotiate alternate arrangements with the Registered User. If the Registered User does not so notify the City and fails or refuses to act, the City may remove or abate the Facility, at the sole cost and expense of the Registered User, all without compensation or liability for damages to the Registered User.

Sec. 15-195. Construction permits.

(a) *Permit Required.* No Person shall perform any construction, repairs, maintenance or installation of Facilities in the Rights-of-Way without obtaining a construction permit from the City hereunder. 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 a representative of the owner of the Facilities to be constructed. During the term of the Permit the Permittee shall be liable for the acts or omissions of any entity used by the Permittee when such entity is involved directly or indirectly in the construction and installation of the Permittee's Facilities to the same extent as if the acts or omissions of such entity were the acts or omissions of the Permittee. The provisions of this Section are solely for the benefit of the City and the Registered User and are not intended to create, grant or affect any rights, contractual or otherwise, to or of any other Person.

(b) *Emergency Exception.* Emergency responses related to existing Facilities may be undertaken without first obtaining a permit; however, the Department shall be notified within two (2) business days of any construction related to an Emergency response including the provision of a reasonably detailed description of the work performed in the Rights-of-Way. An updated map of any Facilities that were relocated, if applicable, shall be provided within ninety (90) calendar days.

(c) *Other Exceptions.* The phrase "construction or installation of Facilities" does not include the repair or maintenance of existing Facilities or the installation of Facilities necessary to initiate services to a customer's property unless such repair, maintenance or installation requires the breaking of pavement, or boring, or the closure of a non-residential traffic lane. If the closure of a non-residential traffic lane does not require breaking of pavement, excavation or boring, then such closure is not included in the phrase "construction or installation of Facilities" if such closure is for no longer than six (6) consecutive hours.

(d) *Application Required.*

- (1) A written application shall be filed with the City for a permit pursuant to this Article. An Applicant shall assert in its application that it is in compliance with all requirements of this Article and with all applicable laws.
- (2) To be acceptable for filing, a signed original of the application shall be submitted to the appropriate City official and contain all required information. The permit fee shall be submitted with the application. All applications shall include the names and addresses of Persons authorized to act on behalf of the Applicant with respect to the application.
- (3) All applications accepted for filing shall be made available by the City for public inspection. However, if plans of record submitted in an application include information expressly designated by the Applicant as a trade secret or other confidential information protected from disclosure by state law,

the Director may not disclose that information to the public without the consent of the Applicant, unless otherwise compelled by an opinion of the Attorney General of the State of Texas pursuant to the Texas Open Records Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an Applicant to designate all matters in its application as confidential or as trade secrets. If the City receives a request pursuant to the Texas Open Records Act for information designated as a trade secret or confidential information by the Applicant, the City will promptly notify the Applicant of such request. If deemed appropriate and necessary by the City, the City will request an opinion from the Texas Attorney General as to whether the requested information may be withheld. The Applicant shall be responsible for supporting its claim of confidentiality.

(e) *Information in Application.* An application for a construction permit shall contain the following information:

- (1) The proposed, approximate location and route of all Facilities to be constructed or installed and the Applicant's plan for Rights-of-Way construction.
- (2) Engineering plans on a scale of not to exceed one (1) inch equals one hundred (100) feet unless otherwise approved by the Department. In all events plans shall be legible when reduced to one-half (1/2) scale of original sheet size on sheets measuring eleven (11) inches by seventeen (17) inches.
- (3) Detail of the location of all Rights-of-Way and utility easements that Applicant plans to use.
- (4) Detail of all existing City utilities in relationship to Applicant's proposed route.
- (5) Detail of what Applicant proposes to install such as pipe size, number of interducts, valves and similar information.
- (6) Detail of plans to remove and replace asphalt or concrete in streets (include standard construction details).
- (7) Drawings of any bores, trenches, handholes, manholes, switch gears, transformers, pedestals, etc., including depth.
- (8) Handhole and/or manhole typicals of type of manholes and/or handholes Applicant plans to use or access.

- (9) A description of trench safety measures to be utilized in all excavations over five (5) feet in depth.
- (10) Complete legend of drawings submitted by Applicant which may be provided by reference to previously submitted documents provided such documents are current and up-to-date.
- (11) Three (3) sets of engineering plans must be submitted with permit application.
- (12) If known, 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 the construction.
- (13) A description of the construction and installation methods to be employed for the protection of existing structures, fixtures and Facilities within or adjacent to the Rights-of-Way and the estimated dates and times work will occur, all of which (methods, dates, times, etc.) are subject to the approval of the Director.
- (14) A statement that the insurance and bonding requirements contained herein are met.

(f) *Permit Fee.* To be acceptable for filing, an application shall be accompanied by a permit fee in the following amount as appropriate:

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|---|--------|
| (1) For certificated telecommunications providers providing access lines (as defined in Chapter 283 Local Government Code): | no fee |
| (2) For Persons occupying the Rights-of-Way of the City under a franchise ordinance or agreement: | no fee |
| (3) For all other Applicants: | no fee |

(g) *Processing of Application.* Within five (5) working days after receipt of a complete application and permit fee, if applicable, the City shall issue a construction permit.

(h) *Applicant in Non-Compliance.* The City may refuse to issue a permit to Applicant if City determines that the Applicant is presently in a state of non-compliance with this Article or if Applicant has failed to adequately respond to any notice or request for action from the City under this Article. The City may continue to refuse to issue a permit until Applicant has

corrected its non-compliance or has otherwise adequately responded to such notice or request for action from the City.

Sec. 15-196. Construction work – regulation by City.

(a) *Existing Facilities.* Before initiating construction on Rights-of-Way a Permittee will make all reasonable efforts to attach its Facilities to existing poles and to share existing conduit space as appropriate. Nothing contained in this Article shall be construed to require or permit the attachment on or placement in a Permittee's Facilities of any electric light or power wires, or Facilities or other systems not owned by the Permittee. If the City desires to attach or place electric light or power wires, communications Facilities or other similar systems or Facilities in or on the Permittee's Facilities, then a further separate, noncontingent agreement with the Permittee shall be required. Nothing contained in this Article shall obligate the Permittee to exercise, or restrict the Permittee from exercising, its right to enter voluntarily into pole attachment, pole usage, joint ownership or other wire space or Facilities agreements with any Person authorized to operate in the Rights-of-Way of the City.

(b) *Traffic Disruptions.* The Permittee shall endeavor to minimize disruptions to the efficient use of the Rights-of-Way by pedestrian and vehicular traffic, and Rights-of-Way shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. All lane closures must comply with the Texas Manual on Uniform Traffic Control Devices.

(c) *Pole Placement.* All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber and cables placed and constructed by the Permittee in the construction and maintenance of its Facilities in the City shall be subject to the lawful, reasonable and proper control, direction and/or approval of the City.

(d) *Work in Accordance with Permit.* All construction and installation in the Rights-of-Way shall be in accordance with the permit for the Facilities. The Director shall be provided access to the work and to such further information as he/she may reasonably require to ensure compliance with the permit. 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 at all times when construction or installation work is occurring.

(e) *Time for Completion.* 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 in writing an extension from the Director. So long as the written extension request is made before the permit has expired, work may continue pending a decision by the Director on the extension request.

(f) *Prior Notification.* The Department must be notified twenty-four (24) hours in advance that construction is ready to proceed by either the Permittee, its contractor or other representative. If not previously provided, such notice shall include information required in

Section 15-195(e)(12). All construction shall be in conformance with all City codes and applicable local, state and federal laws.

(g) *Signage.* Legible 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 at least twenty-four (24) hours prior to the beginning of work in the Rights-of-Way and shall continue to be posted at the location during the entire time the work is occurring. An information sign will be posted at both ends of the construction area unless other posting arrangements are approved or required by the Director.

(h) *Erosion and Storm Water Controls.* Erosion control measures (e.g., silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. Permittee shall be responsible for storm water management erosion control that complies with City, state and federal guidelines. Upon request Permittee may be required to furnish documentation submitted or received from federal or state governments.

(i) *Lane Closures.* Except in the event of an Emergency lane closures on major thoroughfares will be limited to after 8:30 a.m. and before 4:00 p.m. unless the Department grants prior approval. Arrow boards will be required on lane closures with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the specifications of the Department. All barricading must comply with the Texas Manual on Uniform Traffic Control Devices.

(j) *Responsibility of Permittee.* Permittees are responsible for the workmanship and any damages by contractors or subcontractors. A responsible representative of the Permittee shall be available to the Department at all times during construction. The provisions of this Section are solely for the benefit of the City and the Registered User and are not intended to create, grant or affect any rights, contractual or otherwise, to or of any other Person.

(k) *Damage to Utilities.* Permittee, contractor or subcontractor shall notify the Department immediately of any damage to other utilities either City or privately owned.

(l) *Cuts.* Except in the event of an Emergency when a street or sidewalk cut is required, prior approval must be obtained from the Department and all requirements of the Department shall be followed. Repair of all street and sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

(m) *City Utilities.* Installation of Facilities must not interfere with City utilities in particular gravity dependent Facilities.

(n) *Installed Depth.* New non-municipal Facilities must be installed to a depth approved by the Department.

(o) *Boring.* All directional boring shall have a locator place bore marks and depths while bore is in progress. The locator shall place a mark at each stem with a paint dot and shall mark the depth of at least every other stem.

(p) *Working Hours.* Except in emergencies the working hours in the Rights-of-Way are the time period between one (1) hour after sunrise and until sunset Monday through Friday. Non-emergency work that needs to be performed outside these hours must be approved in advance. Any non-emergency work performed on Saturday must be approved forty-eight (48) hours in advance by the Department. Directional boring is permitted only Monday through Friday from 7:00 a.m. to 6:00 p.m. unless approved in advance. No work will be done except for emergencies on Sundays or City holidays.

(q) *Line Locations.* Permittees working in the Rights-of-Way are responsible for obtaining line locates from all affected utilities or others with Facilities in the Rights-of-Way prior to any excavation. Use of Geographic Information System or the plan of record does not satisfy this requirement. Permittee shall be responsible for verifying the location, both horizontal and vertical, of all affected Facilities prior to any excavation or boring with the exception of work involving lane closures as set forth above. Permittee shall provide location data of its Facilities to all other utilities when requested to do so by other utilities preparing to work in the area of such Facilities. Requested for location of City-owned utilities shall be made no later than forty-eight (48) hours in advance of construction. The Permittee shall properly mark the proposed location of its Facilities in order that City locators can appropriately mark City-owned utilities.

(r) *Manholes.* Placement of all manholes and/or handholes must be approved in advance by the Department. Handholes or manholes will not be located in sidewalks unless approved by the Director.

(s) *Pumping.* Construction that requires pumping of water or mud shall be contained in accordance with City ordinances, federal and state law, and the directives of the Department.

(t) *Restoration.*

- (1) Restoration of Rights-of-Way shall be to the reasonable satisfaction of the Department. Restoration shall be made in a timely manner as specified by approved Department schedules and to the satisfaction of the Director.
- (2) If restoration is not satisfactory or is not 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 as required herein is complete. If restoration work is not completed in a timely manner, the Registered User is subject to the criminal penalties described in Section 15-202, and the additional following procedures shall be followed:
 - a. The City shall provide the Permittee with reasonable notice of failure to act and request restoration.

- b. If the Permittee continues to delay the Director and the Permittee will jointly review the restoration request in an expeditious manner to establish a mutually acceptable completion date for the restoration.
 - c. If the Permittee continues to delay or does not meet the revised completion date, the Director shall provide not less than five (5) calendar days written notice to the Permittee advising of the City's intent to perform the restoration.
 - d. If after expiration of the written notice required by the preceding sentence the Permittee continues to delay, the City shall have the right to perform the restoration. The City shall not be liable to the Permittee for any damage to any of its Facilities and shall not be liable in any event for any consequential damages relating to service interruptions. If the restoration performed by the City involves the construction or improvement of base or pavement of Rights-of-Way, Permittee shall not thereafter disturb such Rights-of-Way for a period of three (3) years after completion of such improvements except when necessary in the event of an Emergency.
- (3) Permittee shall warrant all pavement repairs for a period of two (2) years after restoration has been complete. The restoration shall include but not be limited to:
- a. Replacing all ground cover with the type of ground cover damaged during work, or better, by sodding as directed by the Department;
 - b. Installation of all manholes and handholes as appropriate;
 - c. All bore pits, potholes, trenches or any other holes shall be filled in or covered daily unless other safety procedures are approved by the Department;
 - d. Leveling of all trenches and backhoe lines (all trench backfill must comply with density requirements per the City standards and the City must be provided with a copy of all density reports); and
 - e. Restoration of all landscaping, ground cover and sprinkler systems to the original condition.

Sec. 15-197. Indemnification.

- (a) *General Provisions.*

- (1) Registered Users who are not certificated telecommunications providers as defined in Chapter 283 of the Texas Local Government Code shall indemnify and hold the City, its officers and employees harmless from all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorneys' fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or caused by the Registered User's negligent act, error or omission of the Registered User, any agent, officer, director, representative, employee or subcontractor of the Registered User, and their respective officers, agents, employees, directors and representatives while in the exercise of or performance of the rights or duties under this Article. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the City, its officers or employees in instances where such negligence causes personal or bodily injury, death or property damage. In the event the Registered User and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other Person or entity.
- (2) Registered Users who are certificated telecommunications providers as defined in Chapter 283 of the Texas Local Government Code, as amended, shall indemnify the City as provided in Section 283.057, Texas Local Government Code, as amended.

(b) *Notice.* The City shall give the Registered User written notice of any claim for which the City seeks indemnification. The Registered User shall have the right to investigate, defend and compromise any such claim. The Registered User shall promptly advise the City in writing of any claim or demand against the City or the Registered User known to the Registered User related to or arising out of the Registered User's activities under this Article.

(c) In the event the Director determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, or the health and safety of the public, then the Director may require a Registered User to post financial security in an amount not to exceed one hundred thousand dollars (\$100,000.00). The Director shall consult with the City's Finance Director prior to imposing the financial security requirement on a Registered User. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this Article, a general pattern of substandard adherence to the provisions of this Article, a failure to provide prompt resolution of claims, or the failure to comply with this Article. If three (3) years pass from the date that the Director requires financial security from a Registered User and it has not been necessary for the City to seek performance under the

financial security, then financial security will no longer be required pursuant to this section, unless the Director makes an additional determination that such security is required. The form of financial security shall be, at the Registered User's option, one of the following:

- (1) A surety bond from a surety company authorized to do business in the State of Texas with a registered agent for service in Dallas County, Texas. All bonds shall be on City approved forms;
- (2) An unconditional and irrevocable letter of credit issued to the City by a bank with a location in Dallas County, Texas; or
- (3) A cash deposit.

(d) Security provided by a cash deposit shall be made to an interest bearing accounting during the term of the deposit. At the end of the deposit period, all unused amounts, plus interest, shall be refunded to the Registered User.

(e) Failure of the Registered User to comply with its obligations under this Article or the Permit as determined by the City shall entitle the City to draw against the financial security required by this Section. The rights reserved to the City with respect to the financial security are in addition to all other rights of the City whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right with respect to such financial security shall affect any other rights the City may have.

(f) Financial security provided by a surety bond shall not expire or be materially altered without forty-five (45) calendar days written notice and without securing and delivering to the City a substitute, renewal and replacement bond in accordance with this Article, consistent with the replacement and continuous coverage requirements for insurance found in Section 15-198 hereof. In the event the City draws monies against the bond, City shall so notify Registered User. Within ten (10) calendar days after such notification the Registered User shall pay such funds to the bonding company as necessary to bring the bond back to the original or adjusted principal amount where it shall continue to be maintained at all times. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be reduced, altered or canceled by the Registered User or the bonding company without forty-five (45) calendar days written notice by certified mail to the City."

(g) In the event the City draws monies against financial security provided by a letter of credit, the City shall so notify Registered User. Within ten (10) calendar days after such notification the Registered User shall deposit funds in the bank under the letter of credit sufficient to bring the balance available under the letter of credit back to the original or adjusted principal amount where it shall continue to be maintained at all times.

(h) If the City draws monies out of a cash deposit, the City shall so notify Registered User. Within ten (10) calendar days after such notification the Registered User shall deposit additional funds in such account sufficient to bring the balance available back to the original or adjusted principal amount.

Sec. 15-198. Insurance requirements.

(a) *Certificate of Insurance.* In order to comply with the registration requirements of this Article and prior to the issuance of a construction permit, the Applicant shall furnish a completed Certificate of Insurance to the Department which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Neither the registration nor the construction permit shall be issued until such certificate shall have been delivered to the Department, and no officer or employee shall have the authority to waive this requirement.

(b) *Coverage Amounts.* A Registered User and a Permittee shall obtain and maintain in full force and effect for the duration of the Use and Occupancy of the Rights-of-Way or of the work to be performed under the permit, respectively, at the Registered User's or Permittee's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A. M. Best Company and/or otherwise acceptable to the City in the following types and amounts as evidenced by a certificate of insurance filed with the City:

<u>TYPE</u>	<u>AMOUNT</u>
(1) <u>Workers' Compensation/ Employers' Liability</u>	<u>Statutory:</u> \$100,000.00 per occurrence
(2) <u>Commercial (Public) Liability, Including But Not Limited To:</u>	<u>Bodily Injury:</u> \$1,000,000.00 per person \$2,000,000.00 per occurrence and
a. Premises/Operations	<u>Property Damage:</u>
b. Independent Contractors	\$1,000,000.00 per occurrence with
c. Personal Injury	<u>General Aggregate of</u>
d. Products/Completed Operations	\$2,000,000.00
e. Contractual Liability (Insuring Below Indemnity Provisions)	
(3) <u>Automobile Policy:</u>	<u>Combined Single Limit:</u> \$1,000,000.00

(c) *Required Provisions.* All insurance contracts and certificates of insurance will contain the following required provisions:

- (1) A cancellation provision in which the insurance company is unconditionally required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew or reducing policy limits.
- (2) The certificate shall state the policy number, the name of the insurance company, the name and address of the agent or authorized representative of the insurance company, the name, address and telephone number of the insured, the policy expiration date and specific coverage amounts.
- (3) The certificate shall name the City as an additional insured on General Liability.
- (4) A waiver of subrogation in favor of the City on both General Liability and Workers' Compensation.

(d) *Self-Insurance.* With respect to the Registered User's and Permittee's obligations to comply with the requirements for Commercial General (Public) Liability Insurance coverage, the City may allow the Registered User or Permittee to self-insure upon annual production of evidence that is satisfactory to the City. With respect to the Registered User's or Permittee's obligations to comply with the requirements for automobile liability insurance and for workers' compensation insurance, the Registered User or Permittee may self-insure, provided the Registered User or Permittee tender satisfactory evidence of self-insurance as contemplated by the State motor vehicle financial responsibility law, Tex. Transp. Code §601.124, and the Texas Workers' Compensation Act, Tex. Labor Code §407.001, *et. seq.*

(e) Registered Users with franchise agreements or licenses from the City may meet the above insurance and bonding requirements if their current franchise adequately provides for insurance or bonds, or provides an indemnity in favor of the City.

Sec. 15-199. Accounts, records, reports and investigations.

(a) In addition to any requirements that may be contained in a franchise agreement, upon written request, the Registered User shall provide the City information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance and repair of its Facilities performed by the Registered User in the Rights-of-Way within ten (10) calendar days of such request.

(b) *Use by City of Plans.* The City will use the information provided by Permittees and Registered Users pursuant to this Section only for the purposes of protection and management of the public Rights-of-Way.

Sec. 15-200. Transfer or assignment of Facilities.

(a) Within thirty (30) calendar days after the effective date of a transfer of ownership or control of the Facilities in the Rights-of-Way, the transferee shall register with the City in accordance with the provisions of this Article.

(b) The acceptance by the City of the registration of the transferee does not constitute a waiver or release of any of the rights of the City under this Article whether arising before or after the date of the transfer.

Sec. 15-201. Notices.

All notices required herein shall be in writing and shall be delivered in person to the respective parties or sent by certified mail at the addresses set forth in the registration or the Permit application.

Sec. 15-202. Violations.

(a) Each violation of this Article shall be punishable by a fine up to five hundred dollars (\$500.00) for each violation. Each day upon which there exists a violation of this Article or a failure to abide by or comply with any provision or requirement of this Article shall constitute a separate occurrence, and may subject the offender to additional penalties.

(b) In addition to the criminal penalties set forth herein, the City may seek termination of the Permit and a suit in court to compel compliance in accordance with the following procedures.

(1) If the City has reason to believe that the Registered User/Permittee is in violation of this Article, the City shall notify the Registered User/Permittee in writing of the violation setting forth the nature of such violation. Within thirty (30) calendar days of receipt of such notice the Registered User/Permittee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Registered User/Permittee shall be allowed thirty (30) calendar days to cure violations after written notice is received from the City by taking appropriate steps to comply with the terms of this Article and any lawful regulations. If the nature of the violation is such that it cannot be fully cured within thirty (30) calendar days, the period of time in which the Registered User/Permittee must cure the violation shall be extended for such additional time necessary to complete the cure provided that:

- a. Registered User/Permittee shall have promptly commenced to cure; and
- b. Registered User/Permittee is diligently pursuing its efforts to cure.

- (2) Upon evidence being received by the City that violations of this Article, any City Charter provisions or any ordinances lawfully regulating Registered User/Permittee in the construction and operation of its Facilities have occurred or continue to occur after the thirty (30) calendar day period and any additional time necessary to cure, the City may cause an investigation to be made. If the City finds that such a violation continues to exist or has occurred, then the City may take any action authorized by law including termination of the Permit and a suit in court to compel compliance.

(c) Failure by the City to enforce any rights under this Article does not constitute a waiver of such rights.

(d) If a Registered User is a franchise of the City and such franchise expires or is otherwise terminated, if a Registered User fails after receiving written notice from the City to renew its registration as required in Section 15-193(a), or if for any other reason a Registered User abandons its Facilities in the Rights-of-Way, then to protect the public health and safety and to the extent authorized by law, the City may require the Registered User to remove its Facilities and equipment at the Registered User's expense upon fifteen (15) days written notice. If the Registered User fails to do so within a reasonable period of time, the City may have the removal done at the Registered User's expense.

Sec. 15-203. Miscellaneous.

(a) The obligations and undertakings of the parties in this Article shall be performed at Mesquite, Dallas County, Texas. Venue of any suits arising hereunder shall be Dallas County, Texas.

(b) The Director, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Article. The Director shall be empowered to take all administrative actions on behalf of the City except for those actions specified in this Article that are reserved to the City Council. The Director may recommend that the City Council take certain actions with respect to the Permit.

(c) A Registered User/Permittee shall have the right to appeal to the City Council any decision of the Director relating to such registration or Permit. Such appeal must be made by written request within fifteen (15) calendar days of the Director's decision that the Registered User/Permittee seeks to appeal.

Sec. 15-204. Reservation of rights.

(a) The City reserves the right to amend this Article as it shall find necessary in the lawful exercise of its police powers.

(b) Any additional regulations adopted by the City shall be incorporated into this Article and complied with by all Permittees within thirty (30) calendar days of the date of the adoption of such additional regulations.


SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punishable by a fine not to exceed five hundred (\$500.00) dollars for each offense.

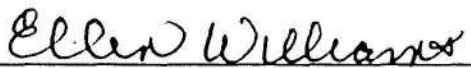
SECTION 5. That the present ordinances of the City of Mesquite are inadequate in providing for rules and regulations concerning the rights-of-ways, creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of March, 2001.




Mike Anderson
Mayor

ATTEST:



Ellen Williams
City Secretary

APPROVED:



B. J. Smith
City Attorney