

Ordinance No. 2001.16  
Village of Salado  
County of Bell  
State of Texas  
June 21, 2001

**AN ORDINANCE TO ESTABLISH RULES AND REGULATIONS GOVERNING THE CONSTRUCTION AND USE OF VILLAGE PUBLIC RIGHTS-OF-WAY, AND MAY BE KNOWN AS THE "CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE."**

**WHEREAS**, the Village of Salado (the "Village") seeks to facilitate an orderly use of the Public Rights-of-Way in a non-discriminatory and competitively neutral basis; and

**WHEREAS**, in accordance with applicable federal, including, but not limited to, 47 U.S.C. § 253(c) and state laws, including, but not limited to, Tex. Util. Code § 14.008; and § 54.205, and Tex. Civ. Statutes, Art. 1175(2); the Village seeks to exercise its historical rights to control and manage its Public Rights-of-Way in a competitively neutral and nondiscriminatory basis; and implement certain police power regulations in the use of those Public Rights-of-Way, in accordance with Local Gov. Code § 283.056.

**NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS**

**SECTION 1 – FINDINGS AND PURPOSE.**

The purpose of this Ordinance is to:

- (A) Define "Rights-of-Way" as – Public Rights-of-Way means the same as in the Texas 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 does not include the airwaves above a Public Right-of-Way with regard to wireless telecommunications.]
- (B) Assist in the management of Facilities placed in, on or over the Public Rights-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;
- (C) Govern the use and occupancy of the Public Rights-of-Way;
- (D) Assist the Village in its efforts to protect the public health, safety and welfare;
- (E) Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the Village;
- (F) To preserve the physical integrity of the streets and highways;
- (G) To control the orderly flow of vehicles and pedestrians;
- (H) Keep track of the different entities using the rights-of-way to prevent interference between them;

- (I) Assist on scheduling common trenching and street cuts; and
- (J) Protect the safety, security, appearance, and condition of the Public Rights-of-Way.

This Ordinance may be referred to as the "Construction in the Public Rights-of-Way Ordinance."

## **SECTION 2 – AUTHORITY; SCOPE**

This Ordinance applies to all Persons who place Facilities in, on or over Public Rights-of-Way.

## **SECTION 3 – DEFINITIONS**

In this Chapter:

- (A) Affiliate means a Person who controls, is controlled by, or is under common control with a Provider.
- (B) Certificated Telecommunications Provider means the same as in Local Government Code Section 283.002(2) [any entity that has been granted a certificate from the Texas Public Utility Commission under Chapter 54 of Tex. Utility Code authorizing that entity to provide local exchange telephone service].
- (C) Village means The Village of Salado, Texas. As used throughout, the term Village also includes the designated agent of the Village.
- (D) Mayor means the Mayor of the Village or the Mayor's designee.
- (E) Direction of the Village means all Ordinances, laws, rules, resolutions, and regulations of the Village that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.
- (F) Facilities means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated physical equipment placed in, on or under the Public Rights-of-Way.
- (G) Person means a natural Person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

## **SECTION 4 – MUNICIPAL AUTHORIZATION REQUIRED.**

- (A) Any Person seeking to place Facilities on, in or over the Public Rights-of-Way, shall first file an application for a building permit with the Village and shall abide by the terms and provisions of this Ordinance pertaining to use of the Public Rights-of-Way.
- (B) Any Person, except a Certificated Telecommunications Provider, prior to placing, reconstructing, or altering Facilities in, on or over the Public Rights-of-Way, must obtain separate municipal authorization from the Village.
- (C) Any Person with a current, unexpired consent, franchise, agreement or other authorization from the Village ("Grant") to use the Public Rights-of-Way that is in effect at the time this Ordinance takes effect shall continue to operate under and comply with that Grant until the Grant expires or until it is terminated by mutual agreement of the Village and the person, or terminated as otherwise provided for in law.

## **SECTION 5 – ADMINISTRATION AND ENFORCEMENT**

- (A) The Mayor shall administer and enforce compliance with this Ordinance.
- (B) A Person shall report information related to the use of the Public Rights-of-Way that the Mayor requires in the form and manner reasonably prescribed by the Mayor.
- (C) The Mayor shall report to the Village Board of Aldermen upon the determination that a Person has failed to comply with this Chapter.

## **SECTION 6 – CONSTRUCTION OBLIGATIONS**

A Person is subject to reasonable police power regulation of the Village to manage its Public Rights-of-Way in connection with the construction, expansion, reconstruction, maintenance or repair of Facilities in the Public Rights-of-Way, pursuant to the Village's rights as a custodian of public property, based upon the Village's historic rights under state and federal laws. Such regulations include, but are not limited to the following:

- (1) At the Village's request, a Person shall furnish the Village accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of Facilities performed by the person in the Public Rights-of-Way.
- (2) A Person may be required to place certain Facilities within the public Rights-of-Way underground according to applicable Village requirements absent a compelling demonstration by the Person that, in any specific instance, this requirement is not reasonable or feasible nor is it equally applicable to other similar users of the Public Rights-of-Way.
- (3) A Person shall perform operations, excavations and other construction in the Public Rights-of-Way in accordance with all applicable Village requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Rights-of-Way. The Village shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the Village by the Person. All excavations and other construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all reasonable construction directions given by the Village in order to minimize any such interference.
- (4) A Person must obtain a permit, as reasonably required by applicable Village codes, prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the Person's Facilities. Once a permit is issued, Person shall give to the Village a minimum of forty-eight (48) hours notice (which could be at the time of the issuance of the permit) prior to undertaking any of the above listed activities on its Network in, on or under the Public Rights-of-Way. The failure of the Person to request and obtain a permit from the Village prior to performing any of the above listed activities in, on or over any Public Rights-of-Way, except in an emergency as provided for in Subsection (11) below, will subject the Person to a stop-work order from the Village and enforcement action pursuant to the Village's Code of Ordinances. If the Person fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the Person will be required to obtain another permit.

- (5) When a Person completes construction, expansion, reconstruction, removal, excavation or other work, the Person shall promptly restore the Rights-of-Way in accordance with applicable Village requirements. A Person shall replace and properly relay and repair the surface, base, irrigation system and landscape treatment of any Public Rights-of-Way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Person's Facilities within (30) calendar days after completion of the work in accordance with existing standards of the Village in effect at the time of the work.
- (6) Upon failure of a Person to perform any such repair or replacement work, and five (5) days after written notice has been given by the Village to the Person, the Village may repair such portion of the Public Rights-of-Way as may have been disturbed by the Person, its contractors or agents. Upon receipt of a invoice from the Village, the Person will reimburse the Village for the costs so incurred within thirty (30) calendar days from the date of the Village invoice.
- (7) Should the Village reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the Village, a Person shall perform such additional restoration work to the satisfaction of the Village, subject to all Village remedies as provided herein.
- (8) Notwithstanding the foregoing, if the Village determines that the failure of a Person to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public, the Village may undertake emergency repairs and restoration efforts. A Person shall promptly reimburse the Village for all costs incurred by the Village within thirty (30) calendar days from the date of the Village invoice.
- (9) A Person shall furnish the Village with construction plans and maps showing the location and proposed routing of new construction or reconstruction at least fifteen (15) days before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the Public Rights-of-Way. A Person may not begin construction until the location of new Facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the Village, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the Facilities and routing.
- (10) If the Mayor declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Person shall remove or abate the Person's Facilities by the deadline provided in the Mayor's request. The Person and the Village shall cooperate to the extent possible to assure continuity of service. If the Person, after notice, fails or refuses to act, the Village may remove or abate the facility, at the sole cost and expense of the Person, without paying compensation to the Person and without the Village incurring liability for damages.
- (11) Except in the case of customer service interruptions and imminent harm to property or Person ("Emergency Conditions"), a Person may not excavate the pavement of a street or public Rights-of-Way without first complying with Village requirements. The Mayor or designee shall be notified immediately regarding work performed under such Emergency Conditions, and the Person shall comply with the requirements of Village standards of the restoration of the Public Rights-of-Way.

- (12) Within sixty (60) days of completion of each new permitted section of a Person's Facilities, the Person shall supply the Village with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the Person's Business and as reasonably prescribed by the Village, and as allowed by law.
- (13) The Village may require reasonable bonding requirements of a Person, as are required of other entities that place Facilities in the Public Rights-of-Way.

## **SECTION 7 – CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY**

- (A) In the exercise of governmental functions, the Village has first priority over all other uses of the Public Rights-of-Way. The Village reserves the right to lay sewer, gas, water, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial Facilities in, across, along, over or under a public street, alley or Public Rights-of-Way occupied by a Person, and to change the curb, sidewalks or the grade of streets.
- (B) The Village shall assign the location in or over the Public Rights-of-Way among competing users of the Public Rights-of-Way with due consideration to the public health and safety considerations of each user type, and to the extent the Village can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law.
- (C) If the Village authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the Public Rights-of-Way. If the Village closes or abandons a Public Rights-of-Way that contains a portion of a Person's Facilities, the Village shall close or abandon such Public Rights-of-Way subject to the rights of the Person.
- (D) If the Village gives written notice, a Person shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of Person's Facilities that are in the Public Rights-of-Way within 120 days, except in circumstances that require additional time as reasonably determined by the Village based upon information provided by the Person. For projects expected to take longer than 120 days to remove, change or relocate, the Village will confer with Person before determining the alterations to be required and the timing thereof. The Village shall give notice whenever the Village has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a Village or other governmental public improvement in the Public Rights-of-Way. This section shall not be construed to prevent a Person's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with Person.

If the Person fails to relocate Facilities in the time allowed by the Village in this section, the Person may be subject to liability to the Village for such delay and as set forth in the Village Codes or Ordinance, now or hereafter enacted.

Notwithstanding anything in this Subsection (D), the Mayor and a Person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

- (E) During the term of its Municipal Consent, a Person may trim trees in or over the Rights-of-Way for the safe and reliable operation, use and maintenance of its Facilities. All tree trimming shall be performed in accordance with standards promulgated by the Village. Should the Person, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the Village may remove the trimmings or have them removed, and upon receipt of a bill from the Village, the Person shall promptly reimburse the Village for all costs incurred within thirty (30) working days.
- (F) Persons shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures, if the Village gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. Person may require prepayment or prior posting of a bond from the party requesting temporary move.

## **SECTION 8 – INSURANCE REQUIREMENTS**

- (A) A Person shall obtain and maintain insurance in the amounts reasonably prescribed by the Village with an insurance company licensed to do business in the State of Texas acceptable to the Village throughout the term of a Municipal Consent conveyed under this Chapter. A Person shall furnish the Village with proof of insurance at the time of the request for building permits. The Village reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the Mayor determines that changes in statutory law, court decisions, or the claims history of the industry or the Person require adjustment of the coverage. For purposes of this section, the Village will accept certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the Village to accept such letters the Person must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the Village, based on financial information requested by and furnished to the Village. The Village's current insurance requirements are described in Exhibit "A" attached hereto.
- (B) Person shall furnish, at no cost to the Village, copies of certificates of insurance evidencing the coverage required by this Section to the Village. The Village may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusion, unless the policy provisions are established by a law or regulation binding the Village, the person, or the underwriter. If the Village requests a deletion, revision or modification, a Person shall exercise reasonable efforts to pay for and to accomplish the change.
- (C) An insurance certificate shall contain the following required provisions:
  - (1) name of the Village and its officers, employees, board members and elected representatives as additional insured for all applicable coverage;
  - (2) provide for 30 days notice to the Village for cancellation, non-renewal, or material change; and
  - (3) provide that notice of claims shall be provided to the Mayor by certified mail.

- (D) Person shall file and maintain proof of insurance with the Mayor. An insurance certificate obtained in compliance with this section is subject to Village approval. The Village may require the certificate to be changed to reflect changing liability limits. A Person shall immediately advise the acting Village Attorney of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify.
- (E) An insurer has no right of recovery against the Village. The required insurance policies shall protect the Person and the Village. The insurance shall be primary coverage for losses covered by the policies.
- (F) The policy clause "Other Insurance" shall not apply to the Village if the Village is an insured under the policy.
- (G) The Person shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the Village for payment of a premium or assessment. Insurance policies obtained by a Person must provide that the issuing company waives all right of recovery by way of subrogation against the Village in connection with damage covered by the policy.

#### **SECTION 9 – INDEMNITY**

- (A) Except as to Certificated Telecommunications Utilities, each Person placing Facilities in the Public Rights-of-Way shall agree to promptly defend, indemnify and hold the Village harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or restoration of Village's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any Person (including, but not limited to the Person, its agents, officers, employees and subcontractors, Village's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including, but not limited to the agents, officers and employees of the Person, Person's subcontractor and Village, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this Ordinance.
- (B) The indemnity provision shall not apply to any liability resulting from the negligence of the Village, its officers, employees, agents, contractors, or subcontractors.
- (C) The provisions of this indemnity is solely for the benefit of the Village and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity.

#### **SECTION 10 – SEVERABILITY**

The provisions of this Ordinance are severable. However, in the event this Ordinance or any procedure provided in the Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and

lawful provisions shall be of full force and effect and the Village shall promptly promulgate new or revised provisions in compliance with the authority's decision or enactment.

**SECTION 11 – GOVERNING LAW**

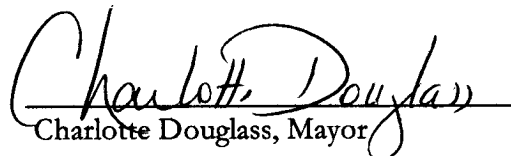
This Ordinance shall be construed in accordance with the Village Code(s) in effect on the date of passage of this Ordinance to the extent that such Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas, subject to the Village's ongoing authority to adopt reasonable regulations to manage its Public Rights-of-Way, pursuant to Sections 6 and 7 or as otherwise provided by law.


**SECTION 12 – UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY**

The Village may institute all appropriate legal action to prohibit any Person from knowingly using the Public Rights-of-Way unless the Person has complied with the terms of this Ordinance.

**SECTION 13 – EFFECTIVE DATE**

Read, passed, and adopted this the 21<sup>st</sup> day of June, 2001.

  
Charlotte Douglass, Mayor

ATTEST:   
Dianna Zulauf, Village Secretary



**CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE  
CONDITIONS FOR USE**

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