

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF JOHNSON CITY, TEXAS AMENDING CHAPTER 3 "BUILDING REGULATIONS" BY ADDING ARTICLE 3.12 "CONSTRUCTION IN CITY RIGHTS-OF-WAY" TO THE CITY CODE OF ORDINANCES; REGULATING CONSTRUCTION IN CITY RIGHTS-OF-WAY; PROVIDING FOR ENACTMENT, REPEALER, AND SEVERABILITY CLAUSES; PROVIDING FOR EFFECTIVE DATE AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, the City of Johnson City is a Type A General Law City in the State of Texas; and

**WHEREAS**, pursuant to Texas Local Government Code Section 51.012, the City has general authority to adopt an ordinance not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality; and

**WHEREAS**, the City Council finds that it is in the best interest of the health, safety and welfare of the City to regulate construction in City rights-of-way within the City's boundaries.

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

**PART 1.** Chapter 3 "Buildings Regulations" is hereby amended by adding Article 3.12 "Construction in City Rights-of-Way" as set forth in the attached Exhibit A.

**PART 2.** That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**PART 3.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

**PART 4.** The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

**PART 5.** The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

**PART 6.** That it is officially found, determined and declared that the meeting at which

this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

**PART 7.** This ordinance shall take effect immediately from and after passage and publication as may be required by governing law.

**INTRODUCED, READ and PASSED, by the affirmative vote of the City Council of the City of Johnson City this the 15<sup>th</sup> day of October, 2024.**

**ATTEST:**

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Stephanie Fisher, Mayor

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Whitney Walston, City Secretary

**ORDINANCE**  
**CONSTRUCTION IN CITY RIGHTS-OF-WAY**

**Sec. 3.12.001. Compliance required.**

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. All construction activity in the city right-of-way will be in accordance with this article.

**Sec. 3.12.002. Registration of users; construction permit required.**

(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, street address, mailing address and telephone number of people who will be the 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 names 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) to the city or other levels as acceptable to the city. The applicant's contractors must maintain \$2,000,000.00 of liability insurance.
- b. The coverage must be on an occurrence basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, and 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 must file the required original certificate of insurance before commencing work. The certificate must state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.

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- e. The applicant must file an annual surety bond that 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 in accordance with this Code 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.
  - f. The above requirements 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 permit.*

- (1) No person may perform any construction, installation or maintenance 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 existing facilities may be undertaken without first obtaining a permit; however, the city must be notified orally within two hours and in writing within 24 hours 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 any facilities that were relocated, if applicable. After regular business hours, the oral notification must be provided to the city police department.
  - b. The phrase "construction or installation of facilities" does not include:
    - 1. Installation of facilities on a customer's property that is necessary to initiate service to that customer's property; or
    - 2. Repair or maintenance of existing facilities, unless such repair or maintenance requires the breaking of pavement, the closure of a traffic lane, excavation, or boring.
- (2) The permit will 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 his designee.
- (3) The person requesting a permit must provide the city administrator or his designee with documentation in the format specified by the city 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 on a scale of "one inch equals 100 feet" in both hard copy and computer format, unless otherwise approved by city.
  - c. Detail of the location of all right-of-way and utility easements which the applicant plans to use.

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- d. Detail of all existing city utilities, based upon information provided by the city (to the extent such information is available), in relationship to the applicant's proposed route.
  - e. Detail of what the 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 or other standard construction details approved by the city's engineer).
  - g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc., including depth located in the public right-of-way at the time construction was completed.
  - h. Handhole or manhole typicals of type of manholes or handholes the applicant plans to use or access.
  - i. Complete legend of drawings submitted by the applicant.
  - j. Five sets of engineering plans must be submitted with the permit application.
  - k. The name, address and telephone numbers of the construction supervisor, contractor or subcontractor who will coordinate or perform the actual construction, including the name and telephone numbers, including office, cell phone and pager numbers, of an individual who will be available at all times during construction. Such information is required before any work commences.
  - 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 his designee.
  - m. A statement that the requirements of subsection (a)(5) of this section or the applicant's franchise, if applicable, are met.
  - n. Any other information required by the city.
- (4) All construction and installation in the right-of-way must be in accordance with the permit for the facilities. The city administrator or his designee must be provided access to the work and to such further information as he may reasonably require to ensure compliance with the permit.
  - (5) A copy of the construction permit and approved engineering plans must be maintained at the construction site and made available for inspection by the city administrator or his 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 his designee. The city administrator or his 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 must be provided to the city.
  - (8) A request for a permit must be submitted at least five working days before the proposed commencement of work in the request, unless waived by the city administrator or his designee.

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

**Sec. 3.12.003. 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.

**Sec. 3.12.004. Appeals.**

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

**Sec. 3.12.005. Construction standards.**

- (a) The city must be notified 24 hours in advance that construction is ready to proceed by either the right-of-way user or their contractor or representative. At the time of notification, the right-of-way user will inform the city of the number (or other information) assigned from the one-call system.
- (b) All construction must be in conformance with all city codes and applicable local, state and federal laws, including all traffic control devices required by the Texas Manual on Uniform Traffic Control Devices.
- (c) Information signs stating the identity of the person doing the work and telephone number, must be placed at the location where construction is to occur 48 hours before the work begins in the right-of-way and must be continually posted at the location during the entire time the work is occurring. An informational sign must 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.
- (d) Erosion control measures (e.g., silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.
- (e) Lane closures on city streets will be limited after 8:30 a.m. and before 4:00 p.m. unless the city grants prior approval.
- (f) Permittees are responsible for the workmanship and any damages by contractors or subcontractors. A responsible representative of the permittee will be available to public works at all times during construction.
- (g) Permittees are responsible for stormwater management erosion control that complies with city, state and federal guidelines. Requirements include, but are not limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable

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vegetation is established, barricade fencing around open holes, and high erosion areas will require wire-backed silt fencing. Upon request, the permittee may be required to furnish documentation submitted or received from federal or state government regarding stormwater management.

- (h) The permittee or contractor or subcontractor will notify the city 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 and no reasonable alternative construction methods are available, prior approval must be obtained by the city council and all requirements of the city must be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic. In addition to replacement and recompaction of base material, sidewalks or curbs to as new condition, repair of any street cuts must include replacement of pavement from curb to curb and corner to corner along the street that is cut, unless otherwise approved in advance by the city council. If additional conduit pipe is available for use, the user may not cut any street, curb or sidewalk, must use the conduit for underground facilities, and must reimburse the installer of that conduit pipe for the pro rata share of actual construction cost to install the conduit. The permittee must provide the city with a two-year maintenance bond in an amount sufficient to protect the city's interests as determined by the city.
- (j) Installation of facilities must not interfere with city utilities, in particular gravity-dependent facilities.
- (k) New facilities must be installed to a depth approved by the city. When new conduit is installed, additional conduit pipes must be installed in the same trench as approved by the city to allow other utilities to utilize the conduit without disturbing the city streets and sidewalks.
- (l) All directional boring shall have a locator place bore marks and depths while the bore is in progress. The locator must place a 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 7:00 p.m., Monday through Friday. Work that needs to be performed after 7:00 p.m. Monday through Friday must be approved in advance by the city. Any work performed on Saturday must be approved at least 24 hours in advance by the city. Directional boring is permitted only Monday through Friday, 7:00 a.m. to 7:00 p.m., unless approved in advance. No work will be done, except for emergencies, on city holidays or Sundays.
- (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 record 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 the city, the permittee must verify locations by pot holing, hand digging or other method approved by the city before any excavation or boring, with the exception of work involving lane closures, as discussed above.
- (p) Placement of all manholes or handholes must be approved in advance by the city. Handholes or manholes may not be located in sidewalks, unless approved by the city.
- (q) Placement of all aboveground facilities in the public right-of-way or public utility easements must be approved in advance by the city. All aboveground facilities must be designed and installed to minimize the visual impact of the facilities on the surrounding property and the possibility of adverse impact to public safety and welfare. In addition, all aboveground

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facilities must be landscaped, bermed or attractively fenced in such a manner as to screen the facilities from view from adjacent streets and property owners. Landscaping, berms and fencing must be approved in advance by the city. For purposes of this subsection, the term "aboveground facilities" means equipment or structures that protrude above the natural grade or surface of the land, without regard to the existence of equipment or structural components below the natural grade or the surface of the land.

- (r) The permittee, his contractors or subcontractors may not remove locate flags. Locate flags may not be removed from a location while facilities are being constructed.
- (s) Construction that requires pumping of water or mud shall be contained in accordance with city ordinances and federal and state law and the directives of the city.

**Sec. 3.12.006. Submission of plans of record.**

- (a) Right-of-way users will provide the city administrator or his 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 effective date of the ordinance from which this article is derived who have not provided plans of record must provide one-half of the information concerning facilities in the city right-of-way within one year after the passage of the ordinance from which this article is derived and the remaining materials six months thereafter. The plans must be provided to the city with as much detail and accuracy as required by the city's engineer. All the requirements specified for the plans submitted for the initial permit, as set forth above, must 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 details need not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of plans of record must be in digital format and hard copy.
- (b) This requirement, or portions of this requirement, may be waived by the city for good cause.

**Sec. 3.12.007. Alteration of facilities due to public works projects.**

Whenever, by reason 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 is deemed necessary by the city council 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 must be made by the owner of the facilities at the owner's expense (unless provided otherwise by state law or a franchise in effect on the date the ordinance from which this article is derived is approved until that franchise expires or is otherwise terminated) within the time limits set by the city administrator and city engineer or their designees working in conjunction with the owner of the facilities, or, if no timeframe 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. Facilities not moved after 90 days or within the approved schedule, as same may be extended from time to time, are deemed abandoned after 30 days' notice.

**Sec. 3.12.008. Improperly installed facilities.**



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- (a) Any person doing work in the city right-of-way must properly install, repair, upgrade and maintain facilities.
  - (b) Facilities will be considered to be 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.

**Sec. 3.12.009. Restoration of property.**

- (a) Notwithstanding any other provisions within this ordinance, users of the right-of-way must properly restore all property affected, damaged, destroyed or otherwise disturbed by construction, maintenance, operation, repair or replacement of facilities to a condition that is equal to or better than the condition of the property before the performance of the work. Restoration must be approved by the city.
- (b) Restoration must be to the reasonable satisfaction of the city and the property owner. The restoration includes, but is not limited to:
  - (1) Replacing all ground cover with the type of ground cover damaged or disturbed during work or better either by sodding or seeding, as directed by the city;
  - (2) Installation of all manholes and handholes, as required;
  - (3) Backfilling all bore pits, potholes, trenches or any other holes daily, unless other safety requirements are approved by the city engineer in advance;
  - (4) Leveling of all trenches and backhoe lines;
  - (5) Restoration of the excavation site to city specifications;
  - (6) Restoration, repair or replacement of all improvements, landscaping, ground cover, and sprinkler systems, including, but not limited to, turf, trees, plantings, shrubbery, walkways, curbs, driveways, drainage systems, mailboxes, lighting, wiring, plumbing, retaining walls, fences, fixtures and other improvements whether similar or dissimilar.
- (c) All locate flags shall be removed during the cleanup process by the permittee or his contractor at the completion of the work.
- (d) Restoration must be made within 15 days of any damage, destruction or disturbance and to the satisfaction of the city and the property owner, unless otherwise extended by the city in writing before construction begins. 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 by the city and a hold may be placed on any permits not approved until all restoration is complete.

**Sec. 3.12.010. Damage to utility or irrigation system.**

Persons doing work in the right-of-way must immediately notify the city and the utility owner of damage to any utility or irrigation system serving any property within the city and must pay all costs incurred by the utility or system owner to repair the damage caused by the person.