

ORDINANCE N^o 10-62

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING TOWN CODE § 92.18; PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR REPEAL OF ANY ORDINANCE OR PART OF ORDINANCES OR CODE PROVISIONS IN CONFLICT THEREWITH.

Whereas, the Town's right-of-way are held by the Town in trust for the benefit of its citizens;

Whereas, the Town owns and maintains miles of streets and public rights-of-way. These streets and rights-of-way are, pursuant to state and federal law as well as grant of franchise, subject to excavation with trench cuts for the purpose of installing, repairing and replacing subsurface facilities and utilities, such as water, sewer, gas, electric, communication, or video signal service. The Town is not always able to control when or where such excavation occurs;

Whereas, experience in other cities and towns in Arizona, as well as cities in other states, has demonstrated that excavations in paved streets degrade and shorten the life of the surface of the streets, and this degradation increases the frequency and cost to the public of necessary resurfacing, maintenance and repair. Additionally, studies in Chandler, Sacramento, and Cincinnati concluded that pavement degradation occurs regardless of the quality of the workmanship in filling the excavation and restoring the pavement;

Whereas, the Town staff has concluded that the foregoing studies are applicable to and valid in light of conditions in the Town. The Town staff has determined that even if pavement restoration in the trench itself is structurally adequate, excavations damage the strength and life of the pavement located adjacent to the trench where the excavation occurs. The potential for damage to the pavement is magnified when a street is subject to multiple excavations after the street is surfaced or resurfaced and before the next scheduled resurfacing. Additional asphalt coating is often needed to reconstruct a street if it has been subjected to excavations in order to return it to its original, strength and quality;

Whereas, utilities provide significant benefits to the Town's citizens and significant burdens on the Town's rights-of-way;

Whereas, this Ordinance balances those benefits and burdens by clarifying Town requirements with respect to utility facilities in Town rights-of way, and that regulating excavations in Town streets will help reduce disruption of and interference with public use of the streets, help prevent premature degradation, and maintain the safe condition of the streets and protects the public health, safety and welfare. This Ordinance is necessary to establish the Town's authority to impose certain fees that will reduce the adverse effects that street excavations have upon the economic and useful life of streets of the Town. The public health, safety and welfare of the Town require the enactment of this Ordinance as a municipal affair, and as a valid and appropriate exercise of the Town's police power; and

Whereas, this Ordinance is adopted for the purpose of promoting the health, safety and general welfare of the residents of the Town by: implementing the Town's General Plan;

facilitating beneficial or necessary utility services to the community; and setting forth standards and procedures for maintaining the Town's rights-of-way in such cases.

Now, Therefore, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona:

1. Amendment. Town Code § 92.18 is hereby amended and replaced in its entirety by the following:

§ 92.18 UTILITIES; SPECIAL PROVISIONS.

(A) All utilities (including any "utility undertaking" as defined by A.R.S. § 9-521) placing facilities in a right of way must install such facilities a minimum of 36 inches below the finished surface. In the event there are special public safety concerns in the opinion of the Public Works department, three-dimensional, as-built drawings may be required upon completion of construction. The Town shall not be liable for damages caused to utilities installed at a depth of less than 36 inches.

(B) In the event a utility facility within the roadway prism becomes exposed or prevents roadway maintenance, the Public Works department may require that the line be lowered or moved without expense to the Town.

(C) Pursuant to A.R.S. Title 9, Chapter 5, the requirements in this § 92.18 supersede the provisions of any utility franchise.

(D) Where a utility facility has more than one service provider, each service provider is fully responsible for ensuring that all requirements of this section are satisfied. Facilities shall be installed, constructed and maintained so that no additional costs are imposed upon the Town, and so that the facility does not interfere with other uses or users of the public rights-of-way. Without limiting the requirement of any other provision of the adopted codes, subdivision regulations, guidelines and standards, or the provisions of any permit issued by the Town, this shall require, at a minimum, compliance with the provisions of any license or franchise.

(E) Whenever a utility service provider shall cause any opening or alteration whatever to be made for any purpose in any rights-of-way, the work shall be completed within a reasonable time, and the utility service provider shall, without expense to the Town and upon the completion of such work, restore the property disturbed in a manner consistent with the Town's duly adopted standards, or as required by its permits, revocable permits, or its licenses or franchises.

(F) The installation, use, and maintenance of the utility service provider's facilities within the rights-of-way authorized in any license or franchise shall be in such a manner as not to interfere with the Town's placement, construction, use, and maintenance of its rights-of-way, street lighting, water pipes, drains, sewers, traffic signal systems, or other Town systems that have been, or may be, installed, maintained, used or authorized by the Town. Upon the Town's request pursuant to a governmental purpose, a utility service provider's facilities will be relocated at utility service provider's expense (unless state law expressly requires otherwise), upon the Town's request, by a time specified by the Town. If the utility service provider fails to move its facilities, the Town may do so and will bill the utility service provider the costs therefore. Further the utility service provider shall reimburse the Town any additional cost the Town incurs due to the location or relocation of the utility service provider's facilities, including

all design and construction costs. However, any relocation required by the Town as a condition of development shall be the sole responsibility of the party responsible for satisfying such condition of development.

(G) A utility service provider shall not install, maintain, or use any of its facilities in such manner as to damage or interfere with facilities of another utility service provider located within the rights-of-way of the Town.

(H) All installation of facilities shall be installed per plans approved by the Town. A utility service provider may install facilities on existing utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit, and such permission is verified by the Town, except where those same poles are scheduled to be replaced with buried facilities. No new poles, or longer poles, will be permitted in the rights-of-way for any new facilities. If a utility service provider installs facilities on existing poles as provided herein, the utility service provider shall bury its facilities if such poles are removed and not immediately replaced-in-kind for any reason. If the utility service provider makes use of existing conduit of another utility service provider, the utility service provider shall be subject to the provisions of this section in the use of such conduit in the rights-of-way.

(I) A permit shall be obtained from the Town prior to a utility service provider removing, abandoning, relocating, or reconstructing, if necessary, any portion of a utility service provider's facilities. Notwithstanding the foregoing, the Town understands and acknowledges there may be instances when a utility service provider is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. The utility service provider will notify the Town prior to such repairs, if practicable and will obtain the necessary permits in a reasonable time after notification.

(J) A utility service provider must obtain and must prove that it has obtained such insurance, bonding, and security fund requirements as specified by the Town, or if no specific requirements are specified, as are required by the Town for similar facilities. No work shall commence unless these requirements have been satisfied, and the Town may require the utility service provider to remove or stop work on facilities or require a utility service provider to cease using the facility, where insurance, bonding and security fund requirements are not satisfied.

(K) The Town finds and determines that pavement or chip seal cuts cause early deterioration of streets and impose the following surcharge fees to cover damages and early deterioration. These surcharge fees are assessed in addition to the regular permit fees and are over and above any special backfill, compaction and pavement replacement stipulations that may be imposed as a condition of permitting. All surcharge fees shall be used solely for maintenance of the Town's streets. The term "street" as used herein refers to all Town roads or right-of-way having an engineered surface, including, *e.g.*, chip seal, asphalt, concrete, compacted millings, engineered ABC.

- a. Within one year of construction of new streets, renovation or reconstruction of a street:
 - i. For Each Cut:
 1. For 5 sq. yds. or less \$330.00 per sq. yd. of cut

2. For larger than 5, to 100 sq. yds. \$1,650.00 plus \$18.00 per sq. yd. of cut over 5 sq yds.
 3. For larger than 100 sq. yds. \$3,360.00 plus \$14.00 per sq. yd. of cut over 100 sq. yds.
 - ii. For cuts within the first year, the fee is in addition to the requirement for mill and overlay/inlay which may be required by the Town Engineer.
 - iii. Or for cuts within the first year, the applicant may choose to reconstruct the street in accordance with specifications provided by the Town Engineer.
- b. From one to two years after construction of new streets, renovation or reconstruction of a street:
 - i. For Each Cut:
 1. For 5 sq. yds. or less \$330.00 per sq. yd. of cut
 2. For larger than 5, to 100 sq. yds. \$1,650.00 plus \$18.00 per sq. yd. of cut over 5 sq yds.
 3. For larger than 100 sq. yds. \$3,360.00 plus \$14.00 per sq. yd. of cut over 100 sq.yds.
 - ii. For cuts from one to two years after construction of new streets, renovation or reconstruction of a street, the applicant may choose to perform a mill and overlay/inlay, in accordance with specifications provided by the Town Engineer.
- c. From two to four years after construction of new streets or renovation or reconstruction of a street:
 - i. For Each Cut:
 1. For 5 sq. yds. or less \$230.00 per sq. yd. of cut
 2. For larger than 5, to 100 sq. yds. \$1,150.00 plus \$13.00 per sq. yd. of cut over 5 sq. yds.
 3. For larger than 100 sq. yds. \$2,385.00 plus \$10.00 per sq. yd. of cut over 100 sq. yds
- d. From four to six years after construction of new streets or renovation or reconstruction of a street:
 - i. A. For Each Cut:
 1. For 5 sq. yds. or less, \$130.00 per sq. yd. of cut.
 2. For Larger than 5, to 100 sq. yds. \$650.00 plus \$8.00 per sq. yd. of cut over 5 sq. yds.
 3. For larger than 100 sq. yds. \$1,410.00 plus \$5.00 per sq. yd. of cut over 100 sq. yds.
- e. For cuts from two to six years after construction of new streets, renovation or reconstruction of a street, the applicant may choose to perform a mill and overlay/inlay, in accordance with specifications provided by the Town Engineer in lieu of paying the above fee.

- f. The minimum fee shall be based on one square yard. If a pavement cut is so extensive, or the cuts in one area are so numerous that the permittee prefers to perform a renovation (major rehabilitation) of the street in accordance with the Town Engineer's requirements, for the full width of any impacted lane and the full length of any cuts plus fifty feet in both directions from the area of the cut on arterial streets and twenty five feet in both directions from the area of the cut on collector streets, the permittee may choose to do such renovation in lieu of the Pavement Restoration Fee and such reconstruction shall satisfy the fee requirement. Provided, however, this does not apply to pavement cuts in streets within two years of construction, renovation or reconstruction. During the first two years, those who desire to perform reconstruction in lieu of paying the pavement restoration fee will be required to reconstruct the street to the satisfaction of the Town Engineer.
- g. If a pothole cut is done in advance of construction that will remove that portion of the pavement within a reasonable time as specified by the Town Engineer, no fee will be charged.
- h. Pavement Restoration Fee shall not be charged to nor paid by the Town Engineering Division.
- i. The pavement or chip seal cut surcharge fee may be waived by the Town Manager or its designee upon a finding by a preponderance of the evidence that all of the following conditions have been met:
 - i. The pavement or chip seal cut is not the result of improper planning or a lack of diligence on the part of the applicant.
 - ii. The pavement or chip seal cut could not have been made prior to the installation of new paving.
 - iii. The cut can not be avoided by routing the line in a different manner or taking any other action.

(L) For those streets that have been subject to roadway maintenance within the last three years, the utility service provider shall provide the same type of maintenance on the half street where the cut is made for a distance of 100 feet from each end of the roadway cut. For all other streets, the utility service provider shall provide the same type of maintenance on the half street where the cut is made for a distance of 50 feet from each end of the roadway cut.

(M) If a utility service provider has unsatisfactorily repaired one or more pavement cuts in the determination of the Town Engineer or designee, the Town may condition the issuance of a permit to make a pavement cut upon the Town repairing the pavement cut. In the event the Town repairs the pavement cut, the Town will charge the pavement cut surcharge, the Town's estimated repair fee and an administrative charge of 15% of the estimated repair fee. In the event final construction cost is less than the estimated repair fee, the difference of the fee and the difference of the administrative charge shall be refunded.

(N) Costs to the Town for remediating any breach of any license or franchise are in addition to (and not to be paid by) any license or franchise fee.

(O) The Town may terminate any license or franchise in the event the Town shall have found, after notice and hearing, the licensed or franchised utility service provider has failed to comply with any material provisions of the Town Code or has failed to correct any failure after thirty (30) days written notice.

2. Effective Date. That this Ordinance shall be effective at the soonest date after its passage and approval, according to law.

3. Savings Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance.

4. Repeal. All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this 19th day of January 2010.

Len Marinaccio, Mayor

ATTEST:

APPROVED AS TO FORM:

Judy Morgan, Town Clerk

Ethan Wolfinger, Town Attorney

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