

ORDINANCE NO. _____

An ordinance amending Chapter 43, “Streets and Sidewalks,” of the Dallas City Code by amending Sections 43-46, 43-94, 43-95, 43-136, 43-139, 43-141, and 43-144; providing an updated description of cement used in sidewalks, curbs, driveways, gutters, and pavements; providing new requirements for residential and commercial driveway radiuses; establishing an offense for failing to return right-of-way to public use; providing a barricade permit defense to prosecution for failing to return right-of-way to public use; providing updated requirements for steel plates used for covering pavement cuts; requiring permittee and emergency contact information to be affixed to steel plates used for covering pavement cuts and visible at all times; reducing the limits required of a permittee to perform slurry seal treatment work; requiring a utility clearance letter identifying facilities requiring schedule adjustments; allowing the city to recover costs for expenses incurred as a result of delays caused by a public service provider’s failure to conform facilities; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date. Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 43-46, “Standards for Raw Materials Used in Construction,” of Subdivision I, “In General,” of Division 1, “Generally,” of Article III, “Construction and Repair of Sidewalks, Curbs and Driveway Approaches,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“SEC. 43-46. STANDARDS FOR RAW MATERIALS USED IN CONSTRUCTION.

Materials used in sidewalks, curbs, driveways, gutters, and pavements shall be in accordance with the following standards:

CEMENT. Portland cement shall conform to the Standard Specifications for Portland Cement (Serial Designation C150/C150M-24 [~~C-150-56~~]) of the A.S.T.M. High Early Strength [~~High Early Strength~~] Portland ~~c~~[C]ement shall conform to the S[s]tandard S[s]pecifications for [~~High Early Strength~~] Portland Cement (Serial Designation C150/C150M-24 [~~C-150-56~~]) of the A.S.T.M. Portland-limestone cement Type IL shall conform to the Standard Specifications for Blended Hydraulic Cements (Serial Designation C595/C595M-24) of the A.S.T.M. Portland-pozzolan cement shall conform to the Standard Specifications for Blended Hydraulic Cements (Serial Designation C595/C595M-24) of the A.S.T.M.

FINE AGGREGATE. Fine aggregate shall consist of a natural sand or a combination of natural sand and not more than 50 percent of stone screenings. Sand shall be uniformly graded, composed of clean, hard, durable particles of natural materials free from adherent coatings. It shall contain no lumps, soft or flaky particles, clay, loam, foreign, organic, or other deleterious matter. Stone screenings shall consist of the clean, dustless product resulting from the crushing of stone or gravel, meeting all the requirements for coarse aggregate except for grading. Fine aggregate containing more than five per cent by weight of deleterious substances shall not be used. Fine aggregate shall be well graded in size from coarse to fine, and shall conform to the city of Dallas Addendum to the Public Works Construction Standards – North Central Texas as Published by the North Central Texas Council of Governments, current edition.

All tests for fine aggregate shall be made in accordance with the current applicable methods of tests of the A.S.T.M.

COARSE AGGREGATE. Coarse aggregate shall consist of the uniformly graded, clean, hard, durable, uncoated particles of natural gravel or crushed stone or gravel, free from adhering coatings. Coarse aggregate shall not contain more than five per cent by weight of deleterious substances. Coarse aggregate shall be well graded in size from coarse to fine, and shall conform to the city of Dallas Addendum to the Public Works Construction Standards – North Central Texas as Published by the North Central Texas Council of Governments, current edition.

All tests for coarse aggregate shall be made in accordance with the current applicable methods of tests of the A.S.T.M.

PIT-RUN AGGREGATE. Pit-run aggregate will be permitted provided that portion passing the No. 4 sieve shall conform to these specifications for fine aggregate, and that portion retained on the No. 4 sieve shall conform to these specifications for coarse aggregate.

WATER. Water used in mixing and curing concrete and mortar shall be clean and free from oil, acid, alkali, foreign organic matter, or other deleterious substances.”

SECTION 2. That Subsection (b), “Radius,” of Section 43-94, “Residential Driveway Approaches,” of Subdivision II, “Driveway Approaches,” of Division 2, “Material Specifications and Construction Methods,” of Article III, “Construction and Repair of Sidewalks, Curbs and

Driveway Approaches,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“(b) Radius. A residential driveway approach shall be constructed in a dustpan style as shown in the Public Works Standard Construction Details, unless the alternate ~~[with the return curbs having a rolled face disappearing at the sidewalk and joining the street]~~ curb ~~[with a five foot minimum]~~ radius is required or needed and is approved by the director~~[, except that on an arterial the minimum radius is 10 feet].~~”

SECTION 3. That Subsection (b), “Radius,” of Section 43-95, “Commercial Driveway Approaches,” of Subdivision II, “Driveway Approaches,” of Division 2, “Material Specifications and Construction Methods,” of Article III, “Construction and Repair of Sidewalks, Curbs and Driveway Approaches,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“(b) Radius. A ~~c[€]~~ommercial driveway approach~~[es]~~ shall be constructed in a dustpan style as shown in the Public Works Standard Construction Details, unless the alternate ~~[with the return curbs having a roll face disappearing at the sidewalk and joining the street]~~ curb ~~[with a 10 foot minimum]~~ radius style is required or needed and is approved by the director.”

SECTION 4. That Section 43-136, “Director’s Authority; Enforcement; Offenses,” of Article VIII, “Certain Uses of Public Right-of-Way,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“SEC. 43-136. DIRECTOR’S AUTHORITY; ENFORCEMENT; OFFENSES.

(a) The director is authorized to administer and enforce the provisions of this article, and to promulgate regulations, including but not limited to engineering, technical, and other special criteria and standards, to aid in the administration and enforcement of this article that are not in conflict with this article, this code, or state or federal law. To further aid in the administration and enforcement of this article, the director is also authorized to promulgate regulations and operational standards governing the shared use of the public right-of-way by transportation uses (including but not limited to streetcars) and public service providers, so long as those regulations and standards are not in conflict with this article, this code, or state or federal law.

(b) The director is authorized to enter upon a construction site for which a permit is granted under this article or, where necessary, upon private property adjacent to the construction site, for purposes of inspection to determine compliance with the permit or this article.

(c) A person commits an offense if he:

(1) performs, authorizes, directs, or supervises construction without a valid permit issued under this article;

(2) violates any other provision of this article;

(3) fails to comply with restrictions or requirements of a permit issued under this article; or

(4) fails to comply with an order or regulation of the director issued pursuant to this article.

(d) A person commits an offense if, in connection with the performance of construction in the public right-of-way, he:

(1) damages the public right-of-way beyond what is incidental or necessary to the performance of the construction;

(2) damages public or private facilities within the public right-of-way; ~~or~~

(3) knowingly fails to clear debris associated with the construction from a public right-of-way after construction is completed; or

(4) fails to return the public right-of-way to public use outside of permitted work hours, except for permitted emergency work.

(e) It is a defense to prosecution under Paragraph ~~[Subsection]~~ (d)(2) if the person complied with all of the requirements of this article and state law and caused the damage because the facilities in question:

(1) were not shown or indicated in a plan document, plan of record, record construction drawing, or field survey, staking, or marking; and

(2) could not otherwise be discovered in the public right-of-way through the use of due diligence.

(f) It is a defense to prosecution under Paragraph (d)(4) if the person has obtained a barricade permit for the closure of public right-of-way and has paid the applicable barricade fees in accordance with Section 303.5.3 of Chapter 52 of this code.

(g) A person commits an offense if, while performing any construction or other activity along a public right-of-way (whether or not a building or other permit is required for the activity), the person:

(1) damages the public right-of-way or public or private facilities located within the public right-of-way; or

(2) fails to clear debris associated with the construction or other activity from a public right-of-way.

(h[g]) It is a defense to prosecution under Paragraphs [Subsections] (g[f])(1) and (g[f])(2) that the person was performing all of the construction or other activity along the public right-of-way in compliance with any permit issued for the construction or activity.

(i[h]) A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized, directed, or permitted. An offense under Paragraphs [Subsections] (d)(3) or (g[f])(2) is punishable by a fine of not less than \$500 or more than \$2,000. Any other offense under this article is punishable by a fine of \$500. The culpable mental state required for the commission of an offense under this article is governed by Section 1-5.1 of this code.

(j[i]) This article may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the city has for a violation of this article.

(k[j]) Prior to initiation of civil enforcement litigation, the permittee or any other person who has violated a provision of this article must be given the opportunity to correct the violation within the time frame specified by the director. This subsection does not prohibit the director or the city from taking enforcement action as to past or present violations of this article, notwithstanding their correction.”

SECTION 5. That Subsection (d) of Section 43-139, “Permit Required; Exceptions; Conditions; Denial and Revocation,” of Article VIII, “Certain Uses of Public Right-of-Way,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“(d) The following additional procedures apply if it is necessary to close, in whole or in part, a public right- of-way for purposes of making a pavement cut or an excavation:

(1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting one day or less, the permittee shall conspicuously mark its vehicles with the permittee’s name and telephone number.

(2) Any closure of a traffic lane or blocking of a sidewalk or alley lasting longer than one day must be identified by a sign that is clearly legible to the traveling public. The sign must be posted at or in close proximity to the worksite and must contain:

(A) the name of the permittee;

(B) the name of the person performing the construction on behalf of the permittee, if any; and

(C) a local 24-hour contact number that can be used in case of emergency or to answer any questions.

(3) The requirements of Paragraphs (1) and (2) of this subsection are in addition to any other signage, barricades, or warning devices required by law or ordinance. The sign information required by Paragraph (2) of this subsection may be included on barricades or warning devices.

(4) When permitted construction will last longer than two weeks, the permittee shall give written notification to all adjacent property occupants by conspicuously posting the notification on each adjacent property at least 72 hours before commencement of construction, unless the director determines that an emergency exists.

(5) If a street or alley must be totally closed for any duration, the permittee shall provide for reasonable alternative access to the adjacent property by the property's occupants and invitees, which access must include but is not limited to deliveries to the property.

(6) If construction on a partially closed thoroughfare stops for the day, all thoroughfare lanes must be reopened to traffic, unless an extended time of closure is expressly granted by the permit.

(7) If a pavement cut is to be covered, the permittee shall use temporary paving, steel plates, or equivalent plates, of sufficient strength and thickness to support all traffic for no more than 14 calendar days in accordance with Subsection (f). Plate use layout must be submitted at time of permit application. A standard plate dimension is defined as four feet by eight feet surface area or smaller, and plates larger than standard are counted based on plate area equivalent units, rounded up. A permittee shall pay a base usage fee of \$250 per plate unit, per lane, per day. A person commits an offense for each plate, per lane, for each day he allows a plate to remain in place for more than 14 calendar days after initial placement. Alternatively, a permittee may apply for a barricade permit at time of permit application to extend usage beyond 14 calendar days, and pay a barricade fee in accordance with Section 303.5.3 of Chapter 52 of this code for permission to use plates for a duration exceeding 14 calendar days. For the purpose of calculating a barricading fee, the effective closure area of each plate is calculated as a barricaded obstruction of 2,500 square feet per impacted lane.

(8) Plates must be sufficiently secured in place so as not to become dislodged or in any way cause a hazard to any traffic or cause any loud and disturbing noises and vibrations through the use of materials such as asphalt, flexible plastic gaskets, wedges, or other non-asphaltic devices. Transitions must be placed as required with a minimum 2:1 slope to provide a reasonably smooth riding surface.

(9) Plates must be marked with the permittee name [of the person performing the construction] and with a local 24-hour contact number that can be used in case of an emergency. This information must be affixed to each plate and visible at all times. This requirement is in addition to the [,-unless-a] sign complying with Paragraph (2) of this subsection that is posted at or in close proximity to the worksite."

SECTION 6. That Paragraph (3) of Subsection (b), “General,” of Section 43-141, “Miscellaneous Requirements for Street Excavation and Installations, Trench Safety, and Above Ground Utility Structures,” of Article VIII, “Certain Uses of Public Right-of-Way,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“(3) A pavement cut that is made in an asphalt street that has a paving condition index of 70 or higher as shown on the City of Dallas Paving Management Database will require that, in addition to repairs made in compliance with the *Pavement Cut and Repair Standards Manual*, a surface treatment must be applied that consists of slurry seal or micro-surfacing, or an equivalent method approved by the director, for the purposes of sealing the repair edges of the cut and maintaining uniformity in appearance with the surrounding street surfaces. No surface treatment is required if the repairs are made to match pavement color and are approved by the director. The application of slurry seal or micro-surfacing must be made extending 250 feet past the end of the cut each way or to the next intersection for a minimum length of 500 feet, or to the entire block of the street in which a cut is made, whichever length is shorter. For an undivided street, the application must be made from curb to curb, and for a divided street, from median curb to outside curb. The *City of Dallas Slurry Seal and Micro-surfacing Specifications*, as amended, [with] governs design, material, testing, and construction of surface treatments.”

SECTION 7. That Paragraph (1) of Subsection (f), “Tests,” of Section 43-141, “Miscellaneous Requirements for Street Excavation and Installations, Trench Safety, and Above Ground Utility Structures,” of Article VIII, “Certain Uses of Public Right-of-Way,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“(1) The permittee will be required to provide and identify a certified construction materials testing lab at the time of permit application, or use a testing method approved by the director, to perform the appropriate tests, at the permittee's expense, to ensure quality control for the backfill and pavement construction phases. Concrete strength test results must be submitted to the director for any placement greater than five cubic yards.”

SECTION 8. That Section 43-144, “Conformance with Public Improvements,” of Article VIII, “Certain Uses of Public Right-of-Way,” of Chapter 43, “Streets and Sidewalks,” of the Dallas City Code is amended to read as follows:

“SEC. 43-144. CONFORMANCE WITH PUBLIC IMPROVEMENTS.

(a) Whenever the city or the director deems it necessary to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way due to the city’s reconstruction, widening, or straightening of streets; replacement of water or wastewater facilities; installation of traffic signals, traffic signs, and markings; or

construction of any other city public improvement project, the public service provider that owns the facilities shall conform its facilities with the project as prescribed by the director.

(b) The facilities must be conformed, at the public service provider's expense, within 90 days after the director issues notice to the public service provider, unless a different schedule for the work is approved by the director. The public service provider shall submit a utility clearance letter, which identifies facilities to be adjusted and provides reasonable conformance dates for all necessary facility adjustments.

(c) The [Facilities of a] public service provider's facilities that fail to [are not] conform[ed] within the 90-day notice period or within the approved schedule will be deemed abandoned.[, and t]The city will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the city described in this section. The public service provider is responsible for reimbursing the city for expenses incurred as a result of delays caused by the public service provider's failure to conform their facilities. These expenses shall reflect the actual costs incurred by the city, but in no case be less than \$50 per day to cover the cost for the daily inspection. The public service provider is exempt if able to reasonably demonstrate delay due to circumstances beyond its control."

SECTION 9. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 10. That Chapter 43 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 11. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 12. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 13. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

TAMMY L. PALOMINO, City Attorney

By _____
Assistant City Attorney

Passed _____