

ORDINANCE NO. 18- 01

AN ORDINANCE OF THE COUNTY OF PINELLAS AMENDING SECTION 170-269 OF THE PINELLAS COUNTY CODE RELATING TO INSURANCE AND SURETIES; AMENDING SECTION 170-270 OF THE PINELLAS COUNTY CODE RELATING TO CONSTRUCTION AND RESTORATION TO ADDRESS UNDERGROUNDING; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Pinellas County (hereafter County) is authorized by Section 2.04 of the Pinellas County Charter and Sec. 336.02, Florida Statutes, to construct, maintain, and control county roads and rights-of-way; and

WHEREAS, County is authorized under Sec. 337.401, et seq., Florida Statutes, to prescribe reasonable rules and regulations to control the placement and maintenance of utilities and related structures within the roads and rights-of-way under its jurisdiction; and

WHEREAS, Sec. 337.401, Florida Statutes, prohibits the installation, location, or relocation of utilities unless authorized by a written permit from County; and

WHEREAS, County intends to update the requirements for commercial general liability insurance, workers compensation insurance, automobile liability coverage, and pollution liability coverage, which will govern the issuance of permits for the placement, maintenance, location, relocation and removal of such utilities; and

WHEREAS, County intends to clarify the standards and procedures for the underground installation of all new public utilities which will govern the issuance of permits.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY FLORIDA, that:

SECTION 1. Section 170-269 of the Pinellas County Code is hereby amended to read as follows:

Sec. 170-269. - Insurance and sureties.

- (a) Prior to permit approval, the permittee shall deliver proof of insurance as described below to Pinellas County. Such proof of evidence is to be evidenced by a certificate of insurance executed by the insurer(s) or their representative, listing coverages and limits, expiration dates, terms of the policy, and all endorsements required to meet the insurance requirements listed below. A physical copy of the additional insured

endorsement listed in h(1) below shall be attached to the certificate of insurance. Existing permittees maintaining facilities in the right-of-way shall provide such proof within 60 days of the effective date of the ordinance from which this article derives. If requested by risk management, a certified copy of each policy, including all endorsements, shall be provided.

- (b) Required insurance shall remain in effect throughout the term of any permitted use of the right-of-way.
- (c) The permittee shall furnish commercial general liability insurance, including but not limited to independent contractor, contractual, premises/operations, products/completed operations and personal injury covering the liability assumed by the permittee. Limits of liability for personal injury, bodily injury, including death, and property damage shall be a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate; coverage shall be on an "occurrence" basis. There shall be no "underground" exclusion. Completed operations coverage shall be maintained for 2 years after the term of the permitted use of the right-of-way.
- (d) The permittee shall also maintain workers compensation insurance if statutorily required by Florida Law. Coverage shall include employers' liability limits of \$500,000.00.
- (e) If permittee operates commercial vehicles on or around the right-of-way, permittee shall maintain business automobile liability coverage with a limit of no less than \$1,000,000.00 per accident.
- (f) If permittee will be digging in right-of-way, permittee shall carry contractors' pollution liability coverage with minimum limits of \$1,000,000.00 per occurrence or claim and \$1,000,000.00 annual aggregate.
- (g) If the permittee is self-insured or maintains a policy deductible of \$100,000.00 or more, it shall provide a current certified financial statement for the county's review and acceptance as a substitute. Any questions regarding insurance issued should be directed to risk management.
- (h) Additional requirements:
 - (1) Pinellas county board of county commissioners shall be endorsed as an additional insured to all policies above except Workers Compensation
 - (2) Each policy shall contain a waiver of subrogation in favor of the County
 - (3) Each policy shall require that 30 days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be furnished by certified mail as to material change in coverage or limits to risk management at the address in the first paragraph of this section.
 - (4) Permittee shall also notify risk management within 24 hours after the receipt of any notices of expiration, cancellation, non-renewal or material change in coverage received by the permittee from its insurer and immediately send a copy of that notice to risk management.

- (5) Companies issuing the insurance policies shall have no recourse against the county for payment or premiums or assessments or for any deductibles which are the sole responsibility and risk of the permittee.
 - (6) All policies shall be primary and non-contributory to any insurance or self-insurance of County. The policy clause "other insurance" shall not apply to any insurance coverage currently held by the county, to any such future coverage, or to the county's self-insured retentions of whatever nature.
- (i) Sureties may be in the form of surety bonds, letters of credit, or third-party escrow agreements, acceptable to the county. The following sureties are required:
- (1) Completion sureties, in the amount of 110 percent of the engineer's estimated cost of the installation. The duration of this surety shall coincide with the permitted activity.
 - (2) Maintenance sureties shall be a minimum 20 percent of the amount of the completion surety; a higher percentage may be required if special circumstances dictate. This surety shall be effective for a minimum of 18 months from completion of permitted activity.
 - (3) Removal sureties shall be required for installation of temporary facilities, intended to remain in place for no more than five years. The amount shall be based on the estimated cost of removal of the facility, or a minimum of \$5,000.00 whichever is greater.
 - (4) Companies regulated by the public service commission, companies with a current franchise agreement with the county, and governmental entities are exempt from this surety requirement.

SECTION 2. Section 170-270 of the Pinellas County Code is hereby amended to read as follows:

Sec. 170-270. - Construction and restoration.

- (a) *County projects.* For work done in advance of or as part of a county project, it is required that prior to the placement or maintenance of facilities in the right-of-way, a permittee shall conduct a subsurface utility engineering (SUE) study on the proposed route of construction or expansion, all at permittee's expense. A SUE study consists of, at minimum, completion of the following tasks:
- (1) Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all underground facilities along the proposed construction route.
 - (2) Visibly survey and record the location and dimensions of any aboveground features of all underground facilities along the proposed construction route, including but not limited to manholes, valve boxes, utility boxes, posts and visible street cut repairs.

- (3) Plot and incorporate the data obtained from completion of the tasks described above on the permittee's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files, or in such other electronic format as maintained by the permittee which is acceptable to the director.
 - (4) Determine and record the presence and approximate horizontal location of all underground facilities in the right-of-way along the proposed system route utilizing surface geophysical designating techniques such as electromagnetic, magnetic and elastic wave locating methods.
 - (5) Where system design and the location of underground facilities appear to conflict on the updated system route maps, plans and CADD (or acceptable alternate) files, utilize non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities. A permittee shall not excavate more than a 200 millimeter by 200 millimeter (eight inches x eight inches) hole in the right-of-way to complete this task.
 - (6) Plot, incorporate and reconcile the data obtained by completion of these tasks with the updated route maps, system plans and CADD (or acceptable alternate) files.
 - (7) Based on all of the data collected upon completion of these tasks, adjust the proposed system design elevations, horizontal and vertical locations to avoid the need to relocate other underground facilities.
 - (8) Copy to county. Upon completion of the SUE, the permittee shall record all of the data collected into a CADD file, or acceptable alternate, compatible with that used by the department and deliver a copy to the department.
 - (9) Qualified firm. All subsurface utility engineering studies conducted pursuant to this section shall be performed by a firm specializing in SUE work that is approved by the director, or his designee, or may be performed by the permittee's agents or employees, if qualified.
- (b) *Utility projects.* The director, or his designee, shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of permittee to occupy and use the right-of-way. In making such decisions, the director, or his designee, shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public health, safety, and welfare, the protection of existing facilities in the right-of-way, and future county plans for public improvements and development projects which are in the public interest.
- (1) Coordination of work. Upon request of the county, permittee may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way, and permittee may be required to reasonably alter its placement or maintenance

schedule as necessary so as to minimize disruptions and disturbances in the public rights-of-way.

- (2) Protection of facilities. A permittee shall not place or maintain its facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the county or any other person's facilities lawfully occupying the rights-of-way.
- (3) Least disruptive technology and undergrounding. All construction or maintenance of facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the right-of-way subject to economic and technical feasibility. Underground installation of all new public utility facilities including lines, wires and related appurtenances is required, with the exception of major transmission lines. Where public utility companies can show that underground service creates an unnecessary hardship, a variance to permit overhead installation may be granted by the county administrator.
- (4) Upon completion of each permitted construction activity, the permittee shall provide the county with accurate "as-built" drawings of the facilities as installed, or a statement that no deviation from the plans exceed 12 inches. If the permittee uses exempt surveyors and engineers pursuant to Florida Statutes, or is subject to a franchise agreement with the county, drawings or statements shall be signed by an authorized agent of the company. Otherwise, such drawings or statements shall be signed by a registered professional. Where tolerances are critical, the director may require professionally certified as-builts.
- (5) Right-of-way restoration.
 - a. In addition to its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same or better condition that existed before the commencement of the work and must maintain the same condition for a minimum of 18 months thereafter.
 - b. In approving an application for a right-of-way utilization permit, the permittee must restore the right-of-way as provided by F.S. § 337.401 et seq.
 - c. Failure of the permittee to promptly restore the right-of-way shall constitute consent for the county to perform such restoration at the permittee's expense.
- (6) The permittee is responsible for any damage resulting from placement or maintenance of its facilities. This responsibility covers not only county property, but facilities lawfully placed or maintained by other permittees, and includes damage caused by service interruptions or failure of the permittee's facilities to function properly.

SECTION 3. Severability. If any Section, Subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 4. Areas Embraced. Pursuant to Pinellas County Code, Section 170-266(d), the areas embraced by this ordinance shall be all county rights-of-way, whether or not within municipal boundaries.

SECTION 5. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code and that the sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to section, article or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. Filing of Ordinance; Effective Date. Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the ordinance with the Department of State.

APPROVED AS TO FORM

By: 

Office of the County Attorney