

THE FOLLOWING ORDINANCE WAS MOVED FOR INTRODUCTION BY COUNCIL MEMBER DANIELSON; SECONDED FOR INTRODUCTION BY COUNCIL MEMBER BUSH.

ORDINANCE NO. 22-28

AN ORDINANCE FOR THE CITY OF MANDEVILLE ADOPTING SECTION 13-6 THROUGH SECTION 13-9 OF THE CODE OF ORDINANCES, FORMERLY RESERVED, FOR THE LOCATION/PLACEMENT OF PUBLIC AND PRIVATE UTILITIES IN CITY RIGHTS-OF-WAY AND THE PROCEDURE

WHEREAS, Public and private utilities desire to expand their infrastructure within the municipal boundaries of the City of Mandeville through access and utilization of the City's public rights-of-way;

WHEREAS, the City of Mandeville agrees that the expansion of certain public and private utilities within the municipal boundaries of the City will provide a public benefit and assist in the economic development of the area, and the City has a reasonable expectation of receiving these benefits;

WHEREAS, the City of Mandeville desires to allow for the access and use of the municipal rights-of-ways, subject to a procedure that ensures notice to the City, safeguards existing uses and utilities provided to avoid disruption, and to protections to the City and its citizens in the event of any disruption of services, damage to property or other obstruction as a result of the use of its rights-of-ways by public or private utilities;

WHEREAS, the City of Mandeville desires to adopt Section 13-6 through Section 13-9 to prescribe the procedure for use of municipal rights-of-ways by public and private utilities and to allow for enforcement of any violation of the procedure prescribed herein.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Mandeville, that Code of Ordinance, City of Mandeville Sec. 13-6 be adopted to read as follows:

Section 13-6. Procedure for placement of public and private utilities in City rights-of-way

A. Purpose

1. The purpose of this section and section 13-7, 13-8, and 13-9 shall be to establish the procedure for placement of public and private utilities within City rights-of-way and proposed City rights-of-way, as well as the notification process for same. The term "utility" shall be generally defined and considered in its most common sense definition as any business enterprise, service or related activity which affects the public interest. It is further understood that for the purpose of this section, the following list is merely illustrative and not intended to be exhaustive: cable TV, video services, information services, data services, internet services and

technological services shall be considered a utility and, as such, shall be bound by the guidelines of these sections, together with any other applicable provisions of this Code.

2. The City, through its appropriate departments, may establish additional procedures and guidelines necessary to place into effect the purpose of this chapter.
 3. The City may establish an application process for requests to enter rights-of-way to include, but not limited to: proposals for installation of towers, equipment, cable, fiber and such related equipment or materials; schematic drawings; surveys; title examination/proof of insurance/ownership information; as-built drawings; site plans; wetland determinations; environmental assessments.
 4. The application may include, but is not limited to, the following information: a written request for permission to enter the right-of-way, including the purpose of the request; ownership information; right-of-way dedication; wetlands determination and/or wetlands permit from the U.S. Corps of Engineers and other respective environmental agencies; a site plan of applicant's property with relationship to the proposed structure or structures and the City road right-of-way and any other servitudes, both public and private.
 5. The City is also empowered to impose and assess certain requirements, including, but not limited to, additional right-of-way dedication or donation; creation of additional servitudes; hold harmless/indemnity agreements; proof of liability insurance; proof of the City named as an additional-named insured; letters of credit; proof of performance bonding; maintenance agreements; responsibility for costs of relocation of utilities; engineering services; permits; and the like.
 6. The City shall have the right to review, approve and/or reject any plan submitted to the City.
 7. Should any provision of this section conflict with a valid franchise agreement between the utility and the City government, the franchise agreement shall prevail.
 8. Notwithstanding the fact that a utility shall comply with the provisions of this section, utilities providing services to City residents shall enter into a franchise agreement with the City for the use of the rights-of-way for the provision of services, unless directly prohibited by law.
- B. Notice to City officials*
1. All utility companies shall be required to notify the Department of Public Works, in writing, 48 hours prior to entering any City right-of-way for the purpose of installing and/or repairing any utility.
 2. Written notification requirements. Written notification shall include, but not be limited to, the following information:
 - a. Company name;
 - b. Subcontractor, if applicable;
 - c. City street name;
 - d. Location of work;
 - e. Date work to be done;
 - f. Description of work to be done;

- g. Estimated completion date, if requested; and
 - h. Emergency contact in the event of disruption of existing services or property damage.
3. In the event of any emergency, it shall be the responsibility of the utility company to notify the Department of Public Works within twenty-four hours after such emergency. Notification of emergency work shall include all information listed above.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Mandeville, that Code of Ordinance, City of Mandeville Sec. 13-7 be adopted to read as follows:

Section 13-7. Location and placement

A. *Collection and Distribution lines.* Except as otherwise provided in subsection (c) of this section, all public and private utility equipment and collection and/or distribution lines shall be located in accordance with the requirements listed below:

1. It shall be unlawful to cut any City roadway for the purpose of installing any utility. When crossing lanes, utilities shall be bored or jacked and installed through a casing in accordance with the most current LDOTD (Louisiana Department of Transportation and Development) specifications, as follows:

a. High pressure transmission lines shall be a minimum of 72 inches below road crown or as determined by DPW. DPW may require the proposed utility to be bored deep below all utilities .

b. All other lanes shall be a minimum of 36 inches below the road crown, or a minimum of 24 inches below the ditch bottom, whichever is deeper or as determined by DPW. DPW may require the proposed utility to be bored deep below all utilities.

2. All underground utilities paralleling lanes shall be a minimum of 24 inches below the surface or invert of ditch, whichever is deeper. Exception: Telecommunication and cable TV service lines may be buried a minimum of eight inches below the back side of the ditch only so long as said burial is not within 3 to 4 feet of the ditch invert, nor within 10 feet (or max available) of the ditch slopes/banks. This exception is conditioned upon and shall apply to a utility company only if the City receives a hold harmless agreement from that utility company and that same is approved by the Department of Public Works. Said agreement shall hold the City, its employees, as well as any person performing work for the City, harmless for any damage caused to these lines, as well as, any cost incurred for same.

3. All utilities paralleling lanes shall be placed on the back side of the ditch.

4. Trenches shall be backfilled and tamped or compacted with acceptable materials in accordance with LDOTD standards and shall be maintained as required.

5. Except as otherwise provided hereinbelow, with the exception of utility poles, placement of new above ground utility housing structures larger than three cubic feet is prohibited within the City rights-of-way.

- B. *Utility structures less than three cubic feet.* Above ground structures less than three cubic feet in size shall be no more than two feet from the rights-of-way line and shall not obstruct rights-of-way maintenance, ingress and egress to property or traffic. The proposed placement of structures less than three cubic feet in size in the right-of-way of a tacit dedication or in any right-of-way less than 50 feet wide shall be submitted to the Department of Public Works and shall be subject to the review and approval by the director of the Department of Public Works.
- C. *Structures three cubic feet to 45 cubic feet.* The location and placement of utility structures in the City right-of-way that are more than three cubic feet, but less than 45 cubic feet in size may require the approval of the planning commission, following a public hearing for that purpose, and in all cases shall be subject to the following requirements. Individual structures greater than 45 cubic feet are prohibited. For purposes of this chapter, the term "utility structure" means the utility cabinet housing the equipment.
- D. *Permit.* The procedure and standards for granting permission to enter City right-of-way for gaining access to property shall be applicable to the extent that such procedures and standards are not inconsistent with the provisions of this section, which shall be controlling. The applicant shall file an application and the following documents with the Department of Public Works. The Department of Public Works shall promptly submit a copy thereof for review and recommendations by the department of planning and department of engineering. Application and construction work drawings are also required to be submitted to the department of permits for the issuance of a building permit, which may be done at the same time that the below required documents are filed with the department of Public Works. However, a building permit shall not be issued until the application has received administrative approval from each department.
 - 1. A site plan and profile drawn to scale showing the location of placement of the proposed installation, including depth, and its relationship to existing property lines, ROW, utilities, structures and objects, including elevation and inverts;
 - 2. An inventory of all equipment, structures, and facilities to be contained in the proposed installation, and its relationship to existing property lines, ROW, utilities, structures and objects, including elevation and inverts;
 - 3. An inventory of all equipment, structures, and facilities to be contained in the proposed installation;

4. A photograph of a prototype of the utility structure to be installed, a photograph of the proposed site on the right-of-way that also depicts any intersecting road or right-of-way within 200 feet, and a photograph of the abutting property, when applicable.
5. A description of all anticipated maintenance for the proposed installation; and
6. The name and appropriate contact information for any contractor who shall perform the proposed installation or other work on behalf of applicant.

E. *Criteria.* The following criteria shall be applicable to the review and approval required by this section for installation of a utility equipment structure:

1. The extent of the City's right-of-way must be of sufficient width behind any existing roadside drainage ditch to allow for the installation of the utility equipment structure in accordance with the below criteria and in consideration of the relocation requirements of subsection (c)(4) of this section;

2. The installation and placement of the utility equipment structure shall not obstruct or impede drainage in any roadside ditch or other drainage feature and shall not interfere with the City's maintenance thereof or conflict with any future projects. If the event of a conflict with future projects, Utility Company will be responsible for relocating the utility prior to construction and pay all costs associated therewith. Should the utility not be relocated prior to the project starting, the City will remove and charge the utility company;

3. The installation of a utility equipment structure cannot be made to fit within a City right-of-way by means of installing a culvert in the roadside drainage ditch and installing the utility structure over any part of the culvert. Such an installation is strictly prohibited;

4. The installation and placement of the utility structure shall not obstruct the sight line of a vehicle attempting to enter or exit a road from an intersecting road or a private driveway and shall not otherwise interfere with the safe movement of traffic on such road or at such intersection;

5. The installation and placement of the utility structure shall not obstruct or interfere with the City's maintenance of the right-of-way. To ensure that the structure does not interfere with the City's maintenance of the right-of-way, and to mitigate the potential for damage to the utility structure by City maintenance equipment, the following criteria shall be applicable:

a. Considering such factors as public safety, drainage, water and sewerage services, and right-of-way maintenance, the extent of the available right-of-way, the necessity for locating the structure next to an existing utility structure or equipment, and the proximity of a less obtrusive, but equally viable alternative site, the utility structure shall be located at a point on the right-of-way nearest to the side lot line of the private property it is located in front of.

b. Considering such factors as public safety and the extent of the available right-of-way in relation to the abutting property line and roadside

drainage ditch, a maintenance perimeter of at least 30 inches, but not more than 60 inches, shall be required around the utility structure's foundation. The maintenance perimeter may be established as a maintenance free perimeter made of concrete, asphalt, other impervious material or such other material that will inhibit plant growth. Such perimeter must be level with the immediately surrounding surface of the right-of-way maintained by the City.

c. When the operation of the utility equipment in the structure that is proposed to be installed necessitates that it be located near another utility structure, the structure to be installed should immediately abut the existing utility structure/equipment and a 30-inch maintenance perimeter provided around both structures as if a single utility structure. If the two structures are separated, an appropriate maintenance perimeter is to be provided around both structures. No placement of any utility shall disrupt water and sewer facilities.

d. In lieu of the maintenance free perimeter referred to hereinabove, a landscaping perimeter may be required upon consideration of the existing landscaping and aesthetics of the surrounding area.

6. Should advances in technology permit the use of utility equipment in a smaller utility cabinet/structure, the larger cabinet/structure is to be replaced with a smaller cabinet/structure whenever the equipment being housed in the larger cabinet/structure is to be replaced with the more advanced equipment that can be housed in a smaller cabinet/structure. If the equipment ceases to be used for the purposes for which it was installed, the equipment and structure, including foundation, shall be promptly removed, and the right-of-way restored to the condition of the surrounding area of the right-of-way, at the expense of the utility company responsible for its installation or its successor. All new utilities shall be installed with the ability to be traced with tracer wire, GPS, or similar technology. All markers shall be placed at 200 feet intervals.

F. *Post installation maintenance of perimeter and documentation.* The utility company owning and/or maintaining the utility equipment following the installation of the structure housing the equipment shall be responsible for maintaining the perimeter area that is established around the structure.

1. Where landscaping is installed in the maintenance perimeter, the utility company shall be responsible for maintaining the landscaped perimeter at regular intervals to avoid an overgrowth of weeds or an unsightly and unkept appearance. Additionally, the utility company shall seek prior approval of any post-installation landscaping from Department of Public Works to ensure least amount of interference with existing utilities while preserving the landscape requirements of the City.

2. The utility company shall provide the name and contact information for the person designated by the utility company to oversee the maintenance of the perimeter areas around the utility structures. The information shall be provided to the Department of Public Works and the utility company shall ensure that the name and contact information is kept current. If a maintenance complaint is received by the

utility contact person, either from an employee of the City or a resident, the utility contact person shall provide a written disposition of the complaint, within 15 days, to the complainant and to the office of code enforcement.

3. Failure to perform the necessary maintenance of this section shall constitute authority for the City to perform any required maintenance and to recover the costs thereof from the utility company plus attorneys fees.

4. After the completion of any installation, maintenance, improvement, restoration or removal of the infrastructure, the utility shall perform and record CCTV footage of sewer and drainage and provide said footage to the City. Any repairs identified through the footage shall be performed by the City at the utility company's cost.

G. Relocation required by road or drainage, water, or sewer improvements. When selecting a site for installation of the utility equipment structure, the utility company should take into consideration the possible need for relocation of the equipment and structure in the event that the City undertakes improvements to an existing road or right-of-way after installation. In this regard, the structure should be located as near as possible to the boundary line of the right-of-way and abutting property. Should an installed structure be determined to interfere with a planned improvement, or would no longer meet the criteria set forth in this section as a result of the improvements, the utility company responsible for the initial installation, or its successors and assigns, shall be responsible to relocate the utility equipment structure at its expense. The utility company shall be given reasonable notice of the proposed improvement and the required relocation. In the event of any conflict with future projects, Utility Company shall be responsible for relocation of the utility prior to construction and pay all associated costs. Should the utility not be relocated prior to the start of future project, the City will remove and charge all costs to Utility Owner.

H. Insurance, indemnification and hold harmless. The utility company shall provide the City with a written indemnification and hold harmless from and for any responsibility and liability for any claims and/or actions for damages arising out of the installation of a utility equipment structure provided for in subsection (c) of this section. Notwithstanding the foregoing, the utility company shall not indemnify the City for any damages, liability or claims resulting from the negligence or willful misconduct of City officers, agents or employees. Unless self-insured, the utility company shall also provide the Department of Finance with proof of current liability insurance, naming the City as an additional insured for any liability arising out of the installation of the utility equipment structure.

I. Staff report: Upon receipt of an application, the departments charged with the responsibility of reviewing and evaluating the application shall conduct a site inspection and submit its report and recommendations for inclusion in the department of development staff report.

J. Public notice to property owners. The applicant shall provide, and submit acceptable proof of, notice of the proposed installation of the utility structure to the owner of the property

abutting the location of the proposed installation and to the property owners in the immediate vicinity of the proposed location. For purposes of this chapter, owners in the immediate vicinity means the owners of the properties within a 150 foot radius of the proposed location of the utility structure. When the property abutting the location of the proposed installation is located at an intersection, owners in the immediate vicinity shall also mean the owners of the properties at that intersection. For example, the owners of the property located on the four corners, or on the corner and on the opposite sides of the streets. The applicant shall make every reasonable effort to work with the hereinabove described property owners to choose a location for the structure which will minimize its impact on the surrounding area.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Mandeville, that Code of Ordinance, City of Mandeville Sec. 13-8 be adopted to read as follows:

13-8. Enforcement.

It shall be the responsibility of the Department of Public Works to review and inspect the site after completion. In the event that damage is caused to the right-of-way through activity of the utility company or their agents, the Department of Public Works shall notify the utility company in writing by certified letter. The cost of repairing the damage shall be the sole responsibility of the utility company. Approval shall be required from the Department of Public Works of all specifications, as well as, contractor who will perform any corrective action required as stated in this section.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Mandeville, that Code of Ordinance, City of Mandeville Sec. 13-9 be adopted to read as follows:

13-9. Violations and Penalties.

- A. Any individual, corporation, their agents and/or contractors not conforming with the provisions of sections 13-6 through 13-8 shall be subject to the penalty provisions as herein contained. Each day's offense shall be construed to be a separate and individual offense.
- B. Violation of these sections shall constitute a misdemeanor punishable as follows:
 - 1. \$500.00 per day, commencing five working days after notification of damage if reasonable efforts have not been made to repair damage, until such time that repairs are completed to the satisfaction of the Department of Public Works.
 - 2. \$250.00 for lack of notification. Each day of violation shall constitute a separate offense. Nothing herein contained shall prevent the City from taking such other lawful actions as necessary to prevent or remedy the violation.
 - 3. \$500.00 per day, commencing on the 31st day following the date of written request, for failing to respond to a written request for a utility company to identify the location and depth of a utility line that has been placed within a City right-of-way.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon the signature of the Mayor; and

BE IT FURTHER ORDAINED that the Clerk of this Council be, and she is hereby authorized and empowered to take any and all actions which she, in the exercise of her discretion, deems necessary to promulgate the provisions of this Ordinance.

The ordinance being submitted to a vote, the vote thereon was as follows:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

and the ordinance was declared and adopted this ____ day of _____, 2022

Kristine Sherer
Clerk of Council

Rick Danielson
Council Chairman

SUBMITTAL TO MAYOR

The foregoing Ordinance was **SUBMITTED** by me to the Mayor of the City of Mandeville this ____ day of _____, 2022 at _____ o'clock a.m.

CLERK OF COUNCIL

APPROVAL OF ORDINANCE

The foregoing Ordinance is by me hereby **APPROVED**, this ____ day of _____, 2022 at _____ o'clock a.m.

CLAY MADDEN, MAYOR

VETO OF ORDINANCE

The foregoing Ordinance is by me hereby **VETOED**, this ____ day of _____, 2022, at _____ o'clock a.m.

CLAY MADDEN, MAYOR

RECEIPT FROM MAYOR

The foregoing Ordinance was **RECEIVED** by me from the Mayor of the City of Mandeville this _____ day of _____ 2022, at _____ o'clock a.m.

CLERK OF COUNCIL

CERTIFICATE

I, THE UNDERSIGNED Clerk of the City Council of the City of Mandeville do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the City Council of the City of Mandeville at a duly noticed, called and convened meeting of said City Council held on the _____ day of _____, 2022 at which a quorum was present and voting. I do further certify that said Ordinance has not thereafter been altered, amended, rescinded, or repealed.

WITNESS MY HAND and the seal of the City of Mandeville this _____ day of _____, 2022.

Kristine Scherer, CLERK OF COUNCIL