

BY THE CITY COMMISSION

ORDINANCE NO.: 2005-0869

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF DADE CITY, FLORIDA SUBSTANTIALLY REWRITING AND AMENDING CHAPTER 78, SECTIONS 78-121 THROUGH 78-128 OF THE CODE OF ORDINANCES REGARDING USE OF THE RIGHT-OF-WAY; PROVIDING FOR DEFINITIONS AND ISSUANCE OF PERMITS; PROVIDING FOR LIABILITY FOR IMPROVEMENTS, PENALTIES AND EMERGENCY WORK; PROVIDING FOR PRESERVATION OF MONUMENTS; REVISING DETERMINATION OF THE CLEAR SIGHT TRIANGLE; PROVIDING FOR SEVERABILITY, MODIFICATION, CODIFICATION, REPEALER AND AN EFFECTIVE DATE.

WHEREAS, the Citizens Advisory Board for the Land Development Code has reviewed Sections 78-121 through 78-128 of the Dade City Code of Ordinances to update provisions regarding the use of public right-of-way; and

WHEREAS, the Committee has recommended the following revisions to the existing Code provisions to allow limited use of the right-of-way while preserving the right-of-way for the aesthetic benefit of the City and to protect the public health, safety and welfare of the traveling public.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Dade City, Florida, as follows:

**Section 1.** Sections 78-121 through 78-128 of the Dade City Code of Ordinances is substantially amended and reworded as follows:

**A. Definitions.**

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. The word "shall" is always mandatory and not merely directory.

*AASHTO* means the American Association of State Highway and Transportation Officials.

*Applicant* means any person who is applying for a right-of-way use and easement permit.

*Arterial road* means the primary function of arterial corridors is to move moderate to large volumes of traffic relatively long distances. Arterials often connect widely separated rural and urban communities. Requirements for speed and level of service are usually quite high. Access should be well-controlled, and where possible, limited to other arterial and collector roads. Arterials are used to move traffic around neighborhoods, and should form a continuous network designed for a free flow of through traffic.

*As-built* means site plans and other descriptions and drawings that are produced after the permitted improvement has been installed, placed, replaced or constructed, and detail the improvement's exact location within a right-of-way or easement.

*ASTM* means the American Society for Testing and Materials.

*Business day* means every day except Saturday, Sunday and legal holidays of the City, the State and/or the United States of America.

*City* means the City of Dade City, the city manager or his designee.

*Collector roads* means roads that are intended to serve as the connecting link between local streets and arterials to provide intra-neighborhood access. Traffic characteristics generally consist of relatively short trip lengths, moderate speeds and volumes. Access is of secondary significance, and should be limited to local streets, other collectors and major traffic generators.

*Damage* means, but is not limited to, any displacement, disturbance, or destruction, that injures, breaks, impairs or causes harm in any way to city property or other improvements that shall require repair or replacement to create a condition equal to or greater than the condition prior to the occurrence of the damage.

*DEP* means the Florida Department of Environmental Protection.

*Design plan* means site plans and related descriptions and drawings that are produced before an improvement is installed, placed, replaced or constructed within a right-of-way or easement.

*Developed area* means an area maintained and occupied by a commercial or private entity or person.

*Easement* means an interest in land granted, conveyed, dedicated, acquired for or devoted to ingress and egress of vehicular and pedestrian traffic.

*Emergency* means any condition constituting an imminent or existing danger to life or property caused by nature, accident or wear and tear that results in an interruption of any public service, i.e., electrical, telecommunications, water, sewer, etc., or that impedes the use of roads, streets, or other public rights-of-way and easements.

*Excavation* and *excavate* mean any operation in which earth, rock or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives; and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, driving in, auguring, tunneling, scraping, tree and root removal, cable or pipe plowing, pile-driving, wrecking, razing, moving, or removing any improvement or mass of material, but does not include the tilling of the soil for agricultural purposes.

*FDOT* means the Florida Department of Transportation.

*Franchise* means an initial authorization, or contracts, or renewal thereof issued by the city, whether designated as a franchise, permit, license, resolution, ordinance contract, certificate, agreement or otherwise, that authorizes any person to use any right-of-way or easement.

*Franchisee* means a person or entity that has been granted a franchise by the governing body of the City.

*Improvement* means any physical changes made to land or construction within right-of-ways and easements including, but not limited to, streets, sidewalks, bicycle facilities, roadbeds, culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, guardrails, bridges, parks, squares, plazas, curbs, gutters, manholes, vaults, buried cables, conduit, wires, ground-watering systems, water mains, sanitary sewer facilities, traffic-control devices, street name signs, signs of any kind, security lights, streetlights, landscaping, permanent control points (PCP), permanent reference markers (PRM), concrete monument reference markers, or any similar property or structures. It shall also include but not be limited to any aerial lines and underground lines that are designed to transport electric current, telecommunications, community antenna television or any other service lines; and all appurtenances, pole lines, poles, railways, ditches, sewers, water, heat or gas mains, liquid transmission lines, pipelines, fences, gasoline tanks and pumps, duck banks, or conduit of any kind or other structures, referred to in this Chapter as the improvement.

*Local street.* The primary function of a local street is to serve the adjacent property by providing initial access to the highway network. These facilities are characterized by short trip lengths, low speeds and small traffic volumes. Through

traffic on these facilities should be discouraged. In addition to the above classifications, streets and highways may also be classified as major or minor, depending upon traffic volumes.

*Maintenance* means activities that require a work effort to keep or maintain components of existing improvements in a safe and serviceable condition.

*OSHA* means the Occupational Safety Health Act.

*Permit* means the same as right-of-way and easement use permit.

*Permittee* means any person having been granted a right-of-way and easement use permit by the City. The word "permittee" shall include all persons acting on behalf of the person to whom a permit has been issued.

*Person* means any individual, franchise, firm, joint venture, partnership, corporation, association, organization, business trust, municipality or other political subdivision, governmental unit, department, or agency, and shall include any trustee, receiver, assignee, or personal representative thereof.

*Public works department* means the public works department of the City and all of its divisions; also the Public Works Director and his designees.

*Right-of-way and easement use permit* means the document issued by the Department of the City that authorizes the permittee to install and construct improvements as described in this Ordinance within rights-of-way and easements.

*Undeveloped area* means an area not maintained or occupied by a commercial or private entity or individual.

**B. Exemptions.**

(a) This Ordinance is not intended to repeal, abrogate, annul or in any way impede or interfere with existing provisions of other agreements and contracts, i.e., franchises. Where this Ordinance imposes greater restrictions than is imposed or required by such existing provisions of such agreements or contracts, the provisions existing on the date they were entered into shall prevail.

(b) Any person with an active franchise in full force at the time of adoption of this Chapter shall be exempt from the right-of-way use permit fees.

**C. Use of Right-of-Way.**

In order to protect the health, safety and welfare of its citizens, the City expressly reiterates and reinforces its authority to control and limit the use of the public rights-of-way and easements. No improvement may be made within the

public right of way unless in the public interest and in compliance with this ordinance. Consequently, certain uses may be allowed within the public right-of-way upon issuance of a right-of-way use permit by the City which shall be subject to review and approval by the City Engineer. This is a permissive use only and may be revoked at any time.

**D. Liability for Improvements.**

This Ordinance shall not be construed to create liability or hold the City responsible or liable for any damage to persons or property by reason of any inspection or reinspection of any lawful improvements in the right-of-way or public easement. Neither the issuance of a permit nor the approval or disapproval of any installation authorized in this Ordinance shall constitute any representation, guarantee or warranty by the City of any kind; nor shall the issuance of a permit or approval or inspection of any improvement create liability of any kind upon the City or any official, agent, representative or employee thereof. Additionally, the permittee shall be required to maintain such improvements regardless of who installed, constructed, replaced, maintained or altered such improvements until such time as the improvement may be accepted by a governmental agency. By applying for a permit, the permittee acknowledges that he, and his subcontractors will hold the City harmless from any liability arising from failing to install, construct, replace, maintain or alter, or from altering the improvement until such time as the City may accept full maintenance responsibility for the improvement.

**E. Penalty for Violation.**

(a) Any person violating any provisions of this Ordinance, shall be prosecuted in accordance with Chapters 162 and 166, Florida Statutes .

(b) In addition, any person damaging any City road or City improvements within any right-of-way or public easement shall be required to either restore the damaged area to its condition prior to the damage, or shall pay the City the sum of money necessary to restore the damaged area to its condition prior to the damage. Any permittee who has previously failed to restore the damage as required by this Ordinance shall not be issued further permits from the City until such damage is restored and accepted by the City Manager or his designee, or the entire cost of restoration incurred by the City to make such restoration has been paid in full by the applicant. If discrepancies arise as to the responsibility for damage, interpretations shall be made by the City Engineer and the burden of proof in all cases shall be that of the person or permittee.

**F. Emergency work.**

Nothing in this Ordinance shall be construed to prevent any action deemed necessary for the preservation of life or property, or for the immediate location of trouble in an improvement for the purpose of making emergency repairs.

**G.                   Preservation of monuments.**

It shall be unlawful for any person to remove, alter or destroy, cause to be damaged, removed, altered or destroyed, any monument, stake or other distinctive mark placed or made to establish boundaries of section corners, quarter-section corners, quarter-quarter-section corners or points marking street or property lines.

**H.                   Clear Sight Triangle.**

In order to provide a clear view of intersecting streets to the motorist, there shall be a triangular area of clear visibility formed by two intersecting streets or the intersection of a driveway and a street. Nothing in excess of 3.5 feet in height including but not limited to fences, buildings, walls, and vegetation, shall be erected, placed, parked, planted or allowed to grow in such a manner as to materially impede vision within the clear site triangle area. The following standards shall be met:

On the intersection of local streets with speed limits not exceeding 30 mph with stop-sign control on all approaches, the clear site triangle shall be determined as beginning at the intersection of street rights-of-way (edge of pavement), projected where rounded, then in each direction along adjoining property for a distance of 15 feet, and then in a straight line across the property. For approaches at intersections without stop-sign control on all approaches, the minimum required site distance is 200 feet.

On the intersection of streets with speed limits exceeding 30 mph, the site distance requirement established in the Florida Department of Transportation's (FDOT) *Manual of Minimum Standards for Design, Construction and Maintenance for Streets and Highways* (2002), as amended.

The above provisions shall not apply to the intersection of an alley and a street. At each intersection of an alley and street, each landowner must maintain a setback of no less than 10 feet from right-of-way of streets and alleys. The setback area must be maintained free from sight obstruction by vehicles, walls, fences, plants, landscaping materials, or other opaque objects in excess of 3.5 feet above the abutting roadway.

**Section 2.           Repealer**

All provisions of the Dade City Code of Ordinances, as amended, and ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any conflict.

**Section 3.           Modification.**

It is the intent of the City Commission that the provisions of this ordinance may be modified as a result of considerations that may arise during public hearings. Such modifications shall be incorporated into the final version of the ordinance adopted by the Commission.

**Section 4. Severability.**

It is declared to be the intent of the City Commission of the City of Dade City, Florida, that if any section, subsection, sentence, clause, or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause, or provisions and shall not be affected by such holding.

**Section 5. Inclusion in Code.**

It is the intent of the City Commission that the provisions of this Ordinance shall become and be made a part of the Dade City Land Development Code, and that the sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 6. Effective Date.**

This Ordinance shall take effect upon adoption.

The above ordinance was read and approved upon first reading this 14<sup>th</sup> day of December, 2004.

ATTEST:

CITY OF DADE CITY, FLORIDA

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James D. Class, City Clerk

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P. Hutchison Brock, II, Mayor

The above ordinance was read and public hearings held on the 11th day of January, 2005 and the 25th day of January, 2005, and adopted on the 8th day of February, 2005.

ATTEST:

CITY OF DADE CITY, FLORIDA

\_\_\_\_\_  
James D. Class, City Clerk

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P. Hutchison Brock, II, Mayor

Approved as to Legal Form and Content

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Karla S. Owens, City Attorney