

ORDINANCE NO. _____

An ordinance adding Section 43-140.1 to and amending Section 43-141 of CHAPTER 43, "STREETS AND SIDEWALKS," of the Dallas City Code, as amended; providing requirements for performance bonds, letters of credit, and escrow funds before a permit will be issued for construction in a public right-of-way; requiring surface treatments after a pavement cut to an asphalt street surface not more than 60 months old; requiring testing to show compliance with specifications for pavement construction and backfill work; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

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

SECTION 1. That Article VIII, "Certain Uses of Public Right-of-Way," of CHAPTER 43, "STREETS AND SIDEWALKS," of the Dallas City Code, as amended, is amended by adding Section 43-140.1, entitled "Performance Bond; Letter of Credit; Escrow Fund," to read as follows:

"SEC. 43-140.1. PERFORMANCE BOND; LETTER OF CREDIT; ESCROW FUND.

(a) General. As an express precondition to being granted a permit to perform construction within a public right-of-way, the permittee shall furnish the director a performance bond, letter of credit, or escrow fund, complying with this section, for any project that involves pavement excavation or boring for the installation of a new facility or for a significant facility relocation other than an excavation or boring for a localized new service line installation or facility repair. Without exception, the city's forms must be used, and exclusive venue for any lawsuit is specified as Dallas County. A performance bond will automatically be increased by the amount of any change order, which increases the contract price with or without notice to the surety, but in no event may a change, which reduced the contract amount, reduce the penal sum of the bond.

(b) Amount. A good and sufficient bond, letter of credit, or escrow fund in an amount not less than 100 percent of the total cost, as determined by the director, of those items of work associated with the temporary and permanent repair of the city's infrastructure, including, but not limited to backfill, pavement base, street pavement, curb and gutter, drive approaches, sidewalk, sod, irrigation, landscape, traffic control devices, signs, and pavement markings, guaranteeing the full and faithful execution of the work and performance of the contract in accordance with the plans, specifications, and contract documents, including any extensions thereof, for the protection of the city. The bond, letter of credit, or escrow fund must provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the work by the city. The permittee may choose to have the amount determined on a per project basis or an aggregate basis. If on an aggregate basis, the amount of a single bond, letter of credit, or escrow fund must be sufficient to cover all of permittee's projects outstanding at any one time. If the amount of the permittee's outstanding projects exceeds an existing bond, letter of credit, or escrow fund, the permittee shall immediately increase it or post a new bond, letter of credit, or escrow fund to cover the project that has caused the deficiency.

(c) Sureties. No surety may be accepted by the city who is in default or delinquent on any bonds or who is interested in any litigation against the city. All bonds must be made on the forms furnished by the city and must be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the city. Each surety must be listed in the most current Federal Register Treasury List. The permittee and the surety shall execute each bond. The surety shall designate a resident agent in the city of Dallas acceptable to the city to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. The city reserves the right to reject any and all sureties.

(d) Additional or substitute bonds. If at any time the city is or becomes dissatisfied with any surety on a performance bond, the permittee shall, within five days after notice from the city to do so, substitute an acceptable bond, or provide an additional bond, in such form and sum signed by such other surety as may be satisfactory to the city. The premiums on the bonds must be paid by the permittee without recourse to the city.

(e) Letter of credit. In lieu of a performance bond, a permittee may provide an irrevocable letter of credit. Each letter of credit must be made on a form furnished by the city.

(f) Escrow fund. In lieu of a performance bond, a permittee may establish an escrow fund, for the benefit of the city, pursuant to an agreement in a form acceptable to the city attorney."

SECTION 2. That Section 43-141, “Miscellaneous Requirements for Street Excavation and Installations and Trench Safety,” of Article VIII, “Certain Uses of Public Right-of-Way,” of CHAPTER 43, “STREETS AND SIDEWALKS,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 43-141. MISCELLANEOUS REQUIREMENTS FOR STREET EXCAVATION AND INSTALLATIONS AND TRENCH SAFETY.

(a) In addition to the other requirements of this article, a pavement cut, excavation, or repair necessitated by or as a result of construction inside or outside of the public right-of-way must comply with all of the requirements contained in this section.

(b) General.

(1) A pavement cut in the public right-of-way may be made prior to obtaining a permit only if a valid need to perform emergency activity exists. Immediate notice, including the reasons for the emergency activity, must be given to the director. Whenever an emergency activity cut is made, application for a permit must be made not later than the second business day following commencement of the emergency activity.

(2) A pavement cut that is made in a newly constructed, reconstructed, or resurfaced asphalt street that is not more than ~~[may not be made for]~~ 60 months old will require that, in addition to ~~[after the substantial completion of the work, unless]~~ repairs ~~[are]~~ 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 to the entire block of the street in which a cut is made. 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, will govern design, material, testing, and construction of surface treatments.

(3) The permittee and any person responsible for construction shall protect the public right-of-way surface, drainage facilities, and all other existing facilities and improvements from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature. Adequate provisions must be made to ensure that traffic and adjacent property owners experience a minimum of inconvenience.

(c) Five-year maintenance period.

(1) All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this article, other city ordinances, and regulations promulgated by the director relating to construction within the public right-of-way.

(2) All construction performed under any permit granted to a permittee by the city under this article must be maintained to the satisfaction of the director for five years after the date of completion of the construction or repair.

(3) Any damage to, or any defect or other problem in, the permitted construction occurring at any time within five years after the completion of work under the permit must be corrected to the satisfaction of the director within 10 days after the director gives notice to the permittee to correct the damage, defect, or other problem.

(4) The opinion of the director as to the necessity of correcting any damage, defect, or other problem is binding on all parties.

(d) Repairs.

(1) All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the pavement cut or excavation area will be regarded as a part of the pavement cut or excavation and must be included in the total area repaired. If repaired by the city, the permittee shall reimburse the city for the actual direct and indirect costs of the repair.

(2) The director shall notify the permittee if the backfill on a permitted construction settles at any time during the five-year maintenance period required in Subsection (c) of this section, causing subsidence in the pavement of one-half inch or more, vertically measured in any three-foot horizontal direction. Upon notification, the permittee shall schedule appropriate repair work and promptly notify the director of the anticipated dates of commencement and completion of the repair work. If the repair work is not commenced or completed

within the agreed-upon time schedule, or if no response is received by the director within 24 hours after notification to the permittee, the repair work may be performed by the city. The permittee shall reimburse the city for the actual direct and indirect costs of any repair work performed by the city.

(3) The permittee shall notify the director at least 24 hours before commencing any repair operations under Paragraph (2) of this subsection.

(e) Trench safety.

(1) Trench safety systems that meet U.S. Occupational Safety and Health Administration standards are required for construction in which trench excavation will exceed a depth of five feet.

(2) Paragraph (1) of this subsection does not apply to a construction contract entered into by a permittee that is subject to the safety standards adopted under Chapter 121, Texas Utilities Code, as amended.

(f) Tests.

(1) The permittee will be required to provide a certified construction materials testing lab, 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.

(2) Unless another method is approved by the director, tests must be made in accordance with the latest methods of the American Society of Testing and Materials. The results from tests for backfill compaction must be supplied to the city within three days of the backfill work completion and before pavement construction begins. The results from tests for pavement construction must be submitted within one week of completion of the project. Retesting after failure to pass the required tests will be at the expense of the permittee.

(3) Compaction testing is not required when flowable type backfill material is used and accepted.

(4) If the materials used for the street repairs do not meet the minimum requirements of the *Pavement Cut and Repair Standards Manual*, they may be considered unacceptable and may be ordered to be removed and replaced at the permittee's expense. In cases where the repairs are unacceptable and the permittee refuses to make them acceptable, the work may be accomplished by the city, and all of the direct and indirect costs will be charged back to the permittee responsible for the work.

(5) The city at its expense may perform, or have performed, any material tests it deems necessary to verify conformance with the specifications set forth in Paragraph (6) of this subsection. If tests performed at the city's expense show cause for additional work or rework by the permittee, then further testing required to show conformance with the specifications will be at the expense of the permittee, including the cost of the original testing that showed the need for additional work or rework.

(6) Specifications for backfill compaction must meet the requirements contained in the *Pavement Cut and Repair Standards Manual*. Specifications for pavement testing must meet the requirements contained in the applicable provisions of the *Standard Specifications for Public Works Construction – North Central Texas*.”

SECTION 3. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 4. That CHAPTER 43 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 5. 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 6. That this ordinance will 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:

MADELEINE B. JOHNSON, City Attorney

By _____
Assistant City Attorney

Passed _____