



UTILITY RIGHT-OF-WAY ORDINANCE

ARTICLE 1. - GENERALLY

Sec. 1-1. – Purpose

The purpose of this ordinance is to provide for the proper management of the public rights-of-way to preserve the health, safety, and welfare of the citizens of the city. Specifically, this article is intended to provide for the reasonable regulation of the owners of public and private utility facilities located in the public rights-of-way, and the time, place and manner in which such utility facilities are located and worked upon.

Sec. 1-2. – Definitions.

Utility means a company that owns and provides services to customers through utility facilities located in the right-of-way. This definition shall include the city for purposes of the city's ownership of streets, waste water, and stormwater utility facilities.

Utility facility means a pole, tower, water main or line, sanitary sewer pipe or line, stormwater pipe or structure, gas pipe or gas line, telecommunications line or equipment power line, conduit, or any like structure.

ARTICLE 2. – STANDARDS AND PERMITS

Sec. 2-1. – Utility right-of-way permit required.

- (a) It shall be unlawful to own any utility facility located in, on, under, or above the right-of-way without a valid and un-expired utility right-of-way permit issued by the city. A utility right-of-way permit shall among other things:
 - (1) Grant to the holder of the permit the general right to have utility facilities in the right-of-way provided, however, that the master permit does not constitute a permit for any installation, maintenance, repair, or removal of a utility facility.
 - (2) Specify the term of the permit (which term shall typically be for the one-year period, or portion of a one-year period, that expires on June 30);
 - (3) Provide for the removal of abandoned utility facilities.
 - (4) Acknowledge the city's right to require the removal or relocation of utility facilities when necessitated by a public need;
 - (5) Require proof of suitable levels of insurance coverage;
 - (6) State the rights, if any, to assign or transfer rights or obligations without the prior consent of the city;

- (7) Acknowledge the city's full retention of its police power;
 - (8) Provide for the registration of all contractors who work in the right-of-way on behalf of the owner; and
 - (9) Provide for the preparation, maintenance and maps of utility facilities located within the city.
- (b) Exceptions. The holder of an unrevoked and unexpired franchise issued by the city shall not be required to obtain a utility right-of-way permit for purposes of the utility facilities located in the rights-of-way that are used for the purpose authorized by the franchise. This section shall not apply to the city.

Sec. 2-2. - Powers reserved.

A utility right-of-way permit does not constitute a grant of all governmental approval necessary for the use and enjoyment of utility facilities located in the rights-of-way. A utility right-of-way permit is not a franchise. With respect to the holder of a utility right-of-way permit, the city fully retains its franchising and police power authority and the holder of a utility right-of-way permit is not relieved of its obligation to obtain all necessary franchises and permits and to comply with all other legal requirements.

Sec. 2-3 - Utility facility installation, maintenance, repair, and removal.

(a) The City Manager or Utility Director is authorized to adopt, amend, and repeal standards and provisions governing the installation, maintenance, repair, and removal of utility facilities in, on, under, and over the rights-of-way. The standards and provisions shall, among other things, specify those types of activities that:

- (1) Require a utility work permit.
- (2) Do not require a utility work permit but must be done in accordance with the standards set forth in the standards and provisions of this ordinance; and
- (3) Are exempt.

The standards and provisions shall also address emergency situations and activities.

- (b) It shall be unlawful to install, maintain, repair, or remove any utility facility in the right-of-way in violation of the standards and provisions adopted pursuant to subsection.
- (c) It shall be unlawful to install, maintain, repair, or remove any utility facility in the right-of-way without a utility work permit if the standards and provisions adopted pursuant to subsection require a utility work permit for such activities.
- (d) Any owner of utility facilities located in the right-of-way shall maintain a map of such facilities.

Sec. 2-4. – Utility pavement/sidewalk cuts.

- (a) The Utility Director is authorized to adopt, amend, and repeal standards and provisions governing the making, excavation, filling, repair, and closing of a utility pavement/sidewalk cut. The standards and provisions may provide that certain activities may be undertaken only in accordance with a utility work permit issued pursuant to such standards and provisions. The standards and provisions shall also address emergency situations and activities.
- (b) It shall be unlawful to make, excavate, fill, repair, or close a utility pavement cut in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful to make, excavate, fill, repair, or close a utility pavement cut without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a permit for such activities.

Sec. 2-5. – Lane closure/traffic control.

- (a) The Utility Director is authorized to adopt, amend, and repeal standards and provisions governing the closing of any portion of the right-of-way to vehicular, pedestrian or other traffic, including standards and requirements for warning and controlling traffic including, but not limited to, development and enforcement of a Work Area Traffic Control Handbook (WATCH). The standards and provisions may provide that certain closings or traffic warning and control activities may be undertaken only in accordance with a utility work permit issued pursuant to such standards and provisions. The standards and provisions shall also address emergency situations and activities.
- (b) It shall be unlawful for any person to close any portion of the right-of-way to vehicular, pedestrian, or other traffic in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful for any person to close any portion of the right-of-way to vehicular, pedestrian, or other traffic without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a utility permit for such closing.

Sec. 2-6. – New Street Designs

- (a) Minimum pavement width of new city streets is 22 feet. If curb and gutter is required, then minimum width is 26'.
- (b) Minimum thickness of roads in a residential subdivision is 8" aggregate base course and 2" asphalt pavement surface.
- (c) Minimum thickness of roads in a non-residential subdivision is 12" aggregate base course and 3" asphalt pavement surface.
- (d) All other aspects of street designs shall meet minimum NCDOT standards.

Sec. 2-7. – Curb and Gutter

- (a) Curb and gutter is required in these scenarios.
 - a. Impervious percentage of development is greater than 24%.
 - b. Property being developed is zoned RM (Residential Mixed) or RM-U (Residential Mixed-Urban).
 - c. Average lot width is less than 70 feet.
 - d. If required by Stormwater Administrator or Engineer.
- (b) Mountable curb is the type of curb preferred by the City of Trinity.

Sec. 2-8. – Minimum Distance between Light Poles in New Subdivisions

- (a) A new light pole should be located at every intersection and at the end of every road.
- (b) If a road is greater than 400 feet long without an intersection or dead end, then a light pole should be located at the mid-point.
- (c) Customized light poles shall be maintained by the Home Owners Association.

Sec. 2-9. – Application for Support Structures/Poles

- (a) *Application Required:* An Application must be filed with the Planning Department for any work other than normal maintenance on any pole or other support structure, including modification, change or replacement of equipment that would be different in size, weight or appearance than the existing equipment.
- (b) An Application to Modify or replace a Facility shall contain a copy of the last
- (c) *False or Misleading Statements.* During the application process, or in an application, an Applicant may not make statements verbally or in writing that are fraudulent, misleading or that cause or are intended to cause a reasonable probability of confusion or misunderstanding as to the legal rights, obligations, or options of the City, nor fail to inform the City of a relevant fact material to the application that is known or should be known by the Applicant, the omission of which is deceptive or misleading and was intended to be relied upon by the City.
- (d) *Urgency of work.* An Applicant shall not misrepresent the urgency of the work represented in an Application, including any asserted deadline by which action by the City on the Application is needed.
- (e) *Processing Urgent Requests.* The City shall attempt to process urgent requests sooner than the required maximum time allowed by State or federal law. Notwithstanding the preceding, because of having to re-allocate human resources to accommodate such requests, an Applicant shall not misrepresent the urgency of the situation to have a Facility(s) permitted or authorized. It shall be a condition of all Authorizations for an application requesting urgent treatment that

the work shall be completed within ninety (90) calendar days of the issuance of the Authorization or pay a penalty of \$100 per day per Facility until the final inspection is requested, force majeure situations and situations not reasonably within the control of the Applicant excepted.

- (f) *Warehousing of Authorizations and permit(s) not allowed.* To prevent Warehousing of Authorizations and/or permit(s) for new structures in the severely limited and scarce space of the right-of-way, thereby preventing another person or entity from using a given location(s) and space because the proposed structure at the location was not built expeditiously, an application shall contain a proposed date for the completion of the construction or Modification of any structure, including the placement of equipment attached to or associated with the structure. The completion date shall not be more than one-hundred-eighty (180) days after the issuance of a building permit to occupy a given location and space.
- (g) *Site Visit:* Prior to the submittal of an application and following payment of any required expert assistance fee(s), a site visit to each Facility proposed to be Modified or proposed location of a new Facility, shall be conducted to determine i) the physical condition of the Facility or proposed location; and ii) to identify issues of concern, non-compliance with applicable laws, rules and regulations, including but not limited to any safety-related issues or concerns and other matters contained in this Ordinance.
- (h) *Number of Facilities Applied for by a given person or entity:* To prevent forced de facto pro-forma rubber-stamping approval of an application without meaningful review for compliance with applicable federal, State and local regulations, and to prevent inadvertent non-compliance by the City with any federal or state-imposed time requirements for reviewing an application, no person or entity may make application for more than ten (10) Facilities or locations under this Ordinance within any thirty (30) consecutive calendar day period.
- (i) *Facilitating Applications and Mitigating Applicant Costs:*
 - (1) To facilitate the preparation and submittal of an application in compliance with this Ordinance, and thereby expedite the review and permitting of an application, a pre-application meeting shall be held, the City's costs for such being paid for by the Applicant.
 - (2) To facilitate the application process and to mitigate application-related costs for Applicants, depending upon the scope of the proposed work and its impact, both visual and physical as determined by the Department, applications not involving new support structures may be submitted in groups of up to three (3) Facilities in a single consolidated application and be subject to only one (1) application fee. Notwithstanding this, no Application for a new or replacement pole or other support structure shall contain more than a single location or Facility.
- (j) *No Unidentified Facilities:* No Authorization shall be granted for new support structures, new equipment or a new Facility that is not expressly and individually identified at the time the application is filed, including the specific location and design characteristics of each Facility.

- (k) *No Taxpayer Subsidization*: Subscriber rates for services provided using the right-of-way are assumed to reflect permitting costs. Therefore, City funds shall not directly or indirectly be used subsidize an Applicant's reasonable application-related review and permitting costs.
- (l) *Application Fee*: To prevent taxpayer subsidization of application-related costs, an Application Fee shall be required of all applications involving i) a new or replacement pole(s) or support structure(s); or ii) any modification or change of existing equipment attached to an existing pole(s) or support structure(s) that is visually discernable, changes the appearance of the Facility, changes the structural loading on the support structure or involves compliance with an aspect of the National Electrical Safety Code (NESC), the National Electrical Code (NEC) or TIA ANSI 222 not previously applicable to that Facility. The amount of the appropriate Application Fee shall be as set forth in the City's Schedule of Fees.
- (m) *Payment for Legal and/or Expert Assistance*: To prevent taxpayer subsidization of application-related costs as determined to be appropriate and necessary by the Department, Applicants may be required to place on deposit with the City an amount estimated to be sufficient to pay for reasonable legal and/or expert assistance costs of the City attributable to the Application. The minimum amount(s) required shall be as set forth in the City's Schedule of Fees.
- (n) *Maximum Permitted Height*: Absent a showing by clear and convincing technical or safety-related evidence of the need for a greater specific height for reasons of technical necessity, technical impracticability, or compliance with applicable safety codes; the maximum permitted height for new or replacement poles or other support structures in the right-of-way, including any increases in height of existing structures and poles, shall be forty feet (40') above pre-construction ground level. Forty feet is not as-of-right, but is the maximum permitted height, and shorter, minimally impactful and intrusive poles and support structures shall be preferred.
- (o) *Minimum Distance Between Poles or other support structures*: Absent a showing by clear and convincing technical evidence of the technical Need for a greater distance between poles or other support structures in the right-of-way, the minimum distance between poles or other support structures on the same side of a street as measured in any direction shall be one hundred feet (100'). This minimum distance shall not be applicable for poles or support structures that support lines or cables crossing a street or other man-made or natural barrier.
- (p) *Least Visual Impact*. Any equipment attached to a utility pole or other support structure shall be of a size and be located and constructed to create the least visual impact on the immediate surrounding area and the least physical intrusion and impact on the limited space in the right-of-way, including occupying both the least amount of vertical and/or horizontal space reasonably possible. Absent the demonstration by verifiable clear and convincing technical evidence of the inability for smaller equipment to be used, no equipment attached to a utility pole or other support structure of a size large enough to require an Environmental Assessment Analysis and Report under any federal or State law or rule shall be allowed in the right-of-way.
- (1) Excluding cables used to distribute wireline communications service(s) under Title II or Title IV of 47 U.S.C, unless technologically impracticable, or unless doing so would prevent compliance with applicable safety codes, any pole-mounted communications

equipment shall be placed inside the pole or support structure, unless such equipment is able to be attached mid-span to the transmission cable.

- (2) If placement inside a pole is physically or technologically impracticable, then, as determined most appropriate under the facts and circumstances by the Department, the pole shall i) be replaced in compliance with Section 2-7 of this Section, or ii) the equipment shall be stealthed or camouflaged to the reasonable satisfaction of the Department. If a pole is to be attached to, replacement of poles in compliance with (q) of this Section shall be preferred to stealthing or camouflaging.
- (3) New equipment being attached to an existing, otherwise grandfathered pole by a third party, such shall require the replacement of the pole with an approved type of structure/pole as set forth in Section 2 of this Ordinance.
- (4) Excluding cable, the maximum size of any piece of equipment, such as but not limited to electric transformers, amplifiers, antennas or other transceivers attached to a pole or other support structure, shall not exceed three (3) cubic feet in total cumulative volume, measured as if all components of the equipment were grouped tightly together with no space between the components.
- (5) *New & Replacement Poles or Support Structures:* An application for a new or replacement pole or support structure, in addition to all other information required, must include detailed design characteristics, including material composition, aesthetic appearance, a detailed site plan and a structural analysis with calculations which must be certified by a Professional Engineer licensed in the State and be able to be independently verified using the information submitted by the Applicant. Depending upon the situation and circumstances involved, to scale photo simulations showing the Facility as it will appear upon completion showing the Facility from four (4) directions, each with ninety degrees (90°) azimuth separations may be required.
- (6) *Lateral Extensions:* No lateral equipment extensions parallel to the right-of-way from a pole or other support structure in the right-of-way, such as but not limited to equipment standoffs, shall exceed three (3) feet in length.
- (7) *Riser Cable:* All exterior riser or other vertically run cable attached to the exterior of a pole or other support structure shall be protected with non-conductive, non-degradable material and shall be of a color that matches the color of the pole or other support structure as closely as is reasonably possible.
- (8) *Ground-mounted Equipment and Equipment Enclosures:* Absent a showing by clear and convincing technical evidence of the technical Need for a greater size, nothing larger in size than seventeen (17) cubic foot enclosure may be placed above-ground in the right-of-way.
- (9) *Compliance with NESC and NEC:* All attachments to poles or other structures in the right-of-way, and all underground work and Facilities placed underground, shall at all times be in compliance with the edition of the National Electrical Safety Code (NESC), the National

Electrical Code (NEC), the State Building Code and the Office of Safety Administration (OSHA) regulations in effect at the later of i) the time the Facility was constructed; ii) the time of the last modification of equipment on the pole or other support structure; or the edition in effect at the time of the current application.

(q) New and Replacement Pole Standards:

- a. New and replacement poles shall be of a type and style consistent throughout the City limits, unless, in a given instance, such is demonstrated to be technologically or Commercially Impracticable by verifiable clear and convincing evidence;
- b. When feasible, and in lieu of installing new poles, new installations of equipment shall precipitate replacing an existing distribution pole, secondary pole or streetlight with a pole that meets the standards set forth in this §(s) as follow;
- c. Installations shall be on non-conductive poles;
- d. All antennas must be inside a hollow pole or camouflaged to be indiscernible as antennas by the average person from 250 feet away;
- e. Unless technologically impracticable, equipment attached to poles or other support structures should utilize a “concealed” design with components and cabling inside a hollow pole;
- f. All radios, network equipment and batteries shall be i) enclosed in a pedestal cabinet near the pole; ii) in a pole-mounted cabinet; or iii) under a pole-mounted shroud, all of which must be acceptable to the Department;
- g. When feasible and in lieu of installing new poles, new installations shall precipitate replacing an existing distribution pole, secondary pole or streetlight with a pole that meets the standards set forth in this Section
- h. Equipment installations shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of the latest edition of TIA 222;
- i. Any new poles installed should be “green” and not leach any volatile organic compounds or toxic materials into the ground; and
- j. To avoid unsightly and unsafe rust and corrosion, any new pole installed shall not be metal or reinforced concrete.
- k. The color of replacement poles throughout the City shall be of a color determined appropriate by the Department and consistent throughout the City.

Sec 2-10. – Required Design Characteristics within Right-Of-Way

- (a) New and replacement installations of a given type shall be consistent throughout the City limits, and any extraterritorial jurisdiction (ETJ) where this ordinance is of effect;
- (b) All new or replacement poles shall be of non-wooden, non-conductive and non-corrodable materials;
- (c) New antennas shall be of a type that disguises the fact that they are antennas, unless for reasons of proven by verifiable clear and convincing evidence that to do so is technologically impracticable, in which case a Best-Case type of camouflaging shall be used;
- (d) Where not Commercially Impracticable, equipment attached to poles in the PROW shall utilize a "concealed" design, including all cabling being inside a hollow pole;
- (e) Any ground-mounted enclosures shall be i) no larger than is technologically Necessary, but in no case larger than eighteen(18) cubic feet in volume; ii) of a color determined by the Department to be harmonious with the particular area; iii) located as near the pole as applicable safety codes allow; and v) screened with evergreen shrubbery of sufficient size to hide the equipment shelter and, if the PROW is landscaped with decorative vegetation, of the same species, color, size and shape as is used to landscape the PROW in the neighborhood of the pole;
- (f) pole-mounted cabinets shall be as small as possible, but no larger than is technologically Necessary and reasonably possible, and shall be shielded from view in both directions parallel to the PROW by decorative, non-commercial banners or under a pole-mounted shroud;
- (g) Unless proven unfeasible or commercially impracticable by clear and convincing evidence, any proposed new attachment to an existing wooden distribution pole, secondary electrical pole or streetlight in the PROW shall, instead, replace the existing pole with a pole as described in this subsection;
- (h) All new poles shall meet or exceed current NESC standards and wind and ice loading requirements of the latest version of ANSI 222 Version G;
- (i) Any new poles installed shall be "green", not of wood, and not leach any volatile organic compounds or toxic materials into the ground; and
- (j) To avoid unsightly rust and corrosion, any new pole installed shall not be metal or reinforced concrete.

Sec. 2-11. – Additional violations.

- (a) Except in an emergency, it shall be unlawful to authorize a contractor to perform work regulated by this article without first registering such contractor with the city.
- (b) If a contractor is performing work on a utility facility in the right-of-way, it shall be unlawful for the contractor to fail or refuse to properly identify the Utility on whose behalf the contractor is performing the work when requested to do so by the director/engineer.

- (c) If a subcontractor is performing work on a utility facility in the right-of-way, it shall be unlawful for the subcontractor to fail or refuse to properly identify the contractor on whose behalf the subcontractor is performing the work when requested to do so by the director/engineer.

Sec. 2-12. – Restoration of Surrounding Areas.

- (a) **Obligation to restore disturbed areas.** A person or User that conducts excavation or other activities that disturb the right-of-way or Facilities within the right-of-way, shall restore the right-of-way to a condition equivalent to that prior to the disturbance. The restoration shall include, but is not limited to, installation of pavement, resurfacing nearby or adjacent areas, grading any disturbed unpaved surface areas, restoring below ground Facilities, planting and landscaping, replacing curb ramps to current standards, and repairing improvements and Facilities. Restoration shall meet the standards set by the Utility Department. To maintain the nature and character of the area prior to the person's or User's work, the Utility Department may also require restoration of areas that have not been disturbed if it is necessary to restore the disturbed areas to a similar condition and appearance as existed prior to the person's or User's work.
- (b) *Timetable for Restoration.* The Utility Department shall determine the time period during which restoration must be accomplished on an individual case-by-case basis and such time period shall take into account the extent of the restoration work required.
- (c) *Reimbursement to City of costs of restoration.* If a User or other person responsible for damage to the right-of-way does not complete required restoration during the period required by the Utility Department, the City may complete the restoration. The costs shall be promptly reimbursed by the User or the person directing the original work that required restoration of the right-of-way.

Sec. 2-13. – Fees and deposits.

Permit and other regulatory and nonregulatory use fees, including but not limited to utility right-of-way permit fee, utility work permit fees, street cut patch fees, and pavement degradation fees, to be charged for the governmental activities undertaken pursuant to this division shall be established and revised in accordance with section 2-1.

A cash deposit, letter of credit or warranty bond may be required in an amount prescribed by the city to guarantee the completion of work in accordance with all rules and regulations.

ARTICLE 3. – ENFORCEMENT AND APPEALS

Sec. 3-1. – Administration and enforcement.

- (a) This article shall be administered and enforced by the director/engineer.
- (b) A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in G.S. 160A-175. Notwithstanding the foregoing, the violation of a stop work order issued pursuant to section 19-338 shall constitute a misdemeanor punishable under G.S. 14-4.

Sec. 3-2. – Civil penalties.

The following civil penalties are established:

- (1) Violation of subsection 2-3(b).... \$ 100.00
- (2) Violation of subsection 2-3(c).... \$ 1,000.00
- (3) Violation of subsection 2-4(b).... \$ 100.00
- (4) Violation of subsection 2-4(c).... \$ 1000.00
- (5) Violation of subsection 2-5(b).... \$ 100.00
- (6) Violation of subsection 2-5(c).... \$ 1,000.00

Civil penalties authorized by this section may be assessed against the utility on whose behalf work is being performed and against the contractor or subcontractor who is performing a such work.

Billings not paid within 30 days will be assessed a late fee of one percent of the unpaid balance Per month.

Sec. 3-3. – Administrative enforcement.

- (a) Stop work orders. A stop work order shall be in writing, state the work to be stopped, state the reasons therefore, and state the conditions under which the work may be resumed. A stop work order may be issued for:
 - (1) Working in the right-of-way without a valid and unexpired utility right-of-way master permit or unrevoked and unexpired franchise issued by the city as required by section 2-1;
 - (2) Use of a contractor that has not been registered with the city other than in an emergency;
 - (3) Violation of Section 2-4 through 2-11.
 - (5) Failure to comply with subsection 2-3(b) within a reasonable period after notification of such non-compliance;
 - (6) Failure to comply with subsection 2-5(b) within a reasonable period after notification of such non-compliance;
- (b) Permit denials. The city may refuse to issue utility work permits required by this article to a utility that does not possess a valid and unexpired utility right-of-way permit or unrevoked and unexpired franchise as required by ARTICLE 2 or to a utility that is in violation of the terms and conditions of a utility right-of-way permit or franchise.

The city may refuse to issue utility work permits required by this article in a utility that has not paid civil penalties within 45 days after the date the penalties were assessed if the company has not appealed the assessment, or within 45 days of a final decision on appeal.

The city may refuse to issue utility work permits required by this article to a utility that has not paid costs assessed pursuant to subsection (c) within 45 days of the assessment.

- (c) Cost of remediation. In the event that a utility fails to properly repair and restore the right-of-way as required by this article, the city may provide of the repair and restoration and charge the cost to the utility.

Sec. 3-4 - Appeals.

- (a) Any person whose utility work permit application has been denied or who has been assessed a civil penalty may appeal such decision within ten days after notice of such denial or civil penalty assessment. A utility that has been charged repair and restoration costs pursuant to subsection 2-3(c) may appeal such decision within ten days after the city invoices such charge. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the utility department. The appellant shall have the right to present evidence at said hearing.
- (b) Any person may appeal the decision by the City Manager to the City of Trinity City Council. The appellant shall have the right to present evidence at said hearing
- (c) A ruling on appeal is subject to review in the Superior Court of Randolph County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filled with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.