

ORDINANCE 12-123

2008 SEP 26 A 9:45

An Ordinance requiring a permit for use of municipal property for business operations in the Town of Chatham; requiring the provision of certain information prior to issuance of such permit; and otherwise providing with respect thereto. *Dale Hampton*
DEPUTY CLERK

WHEREAS, pursuant to the provisions of LSA-R.S. 33:4401, LSA-RS. 45:1361 et seq, this municipality's police powers, and in order to protect the health, safety, and welfare of the public, the Town of Chatham (herein referred to as "the Town") recognizes its right, duty, and obligation to regulate and maintain the integrity and safety of the Town's property and rights-of-way;

WHEREAS, there are persons or entities which utilize and desire to utilize the Town's property and rights-of-way to conduct business operations, including but not limited to the provision of telecommunication, internet, electrical, cable, water, gas or other services or products (hereinafter referred to as "Business Operations");

WHEREAS, the Town makes and adopts the following findings and purposes:

- (1) The Town recognizes that it holds its property and the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The Town and other public entities have invested millions of dollars in public funds to acquire, build, and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the rights-of-way and charging the citizens of the Town for goods and services delivered thereby, are profiting from their use of this property held by the Town for the public good;
- (2) The Town's rights-of-way are owned or held by the Town primarily for the purpose of pedestrian and vehicular passage and for the Town's provision of essential public safety services, including police, fire, and emergency medical response services; and public health services, including sanitary sewer, water, and storm drainage services (together, "Public Uses");
- (3) Public Uses should in all cases be considered and treated as the dominant and preeminent uses of public property and rights-of-way;
- (4) All other uses of public rights-of-way, including use for the provision of Business Operations, must be subordinate to Public Uses;
- (5) In order to provide for the health, safety and well-being of its citizens, as well as to ensure the structural integrity of its rights-of-way and the Town owned facilities located therein, the Town strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances;
- (6) Right-of-way obstructions and deterioration disrupt the flow of vehicular and pedestrian traffic and are a source of frustration for merchants, business owners and the general population;
- (7) The Louisiana legislature enacted Act 433 of 2008, codified as LSA - R.S. 45:1361-1378 as the "Consumer Choice for Television Act," which provides for a state-issued certificate of franchise authority for cable and video services. In LSA - R.S.45:1374, the legislature reserved to local government certain authority to regulate the holder of a state-issued certificate of franchise authority including the Town's lawful exercise of its police powers; and
- (8) In order for the Town to properly protect the health, safety and welfare of its citizens, to enhance the Public Uses, and manage and maintain its property, it is appropriate and necessary that the Town obtain and maintain current, accurate information concerning the location, construction, installation and maintenance of structures,

year period following the next calendar year.

- f) Proof of comprehensive general liability insurance covering and affecting the Applicant's Business Operations occupying Town Property. Applicant shall notify the Town of cancellation of such policy(ies) at least 30 days in advance of such cancellation; and
 - g) Name of all contractors acting or working on behalf of Applicant within Town Property along with the name and home, office, and cell telephone numbers of a person with authority to act on behalf of the contractor in case of emergency.
5. Upon provision of all of the information required by Section (4), the Town shall issue a permit allowing the Applicant/Permittee to enter Town Property to conduct Business Operations in accordance with the specific information provided to the Town by the Applicant/Permittee.
6. Standard provisions of each permit granted pursuant to this Ordinance shall include the following:
- a) Conditions of Occupancy. The System shall be located so as to cause minimum interference with the Public Uses use of Town Property and with the rights and reasonable convenience of property owners who own property that adjoins Town Property.
 - b) Restoration of Public Ways. If, during the course of the Permittee's construction, installation, or maintenance of the System, there occurs a disturbance of any Town Property by the Permittee, the Permittee shall replace and restore such Town Property to a condition reasonably comparable to the condition of the Town Property existing immediately prior to such disturbance.
 - c) Relocation at Request of the Town. If the Town shall lawfully elect to vacate, relocate, abandon, alter, reconstruct or change any Town Property, the Permittee, upon thirty (30) days written notice by the Town via certified mail to the Permittee, shall remove, re-lay and relocate its structure, equipment, and facilities at its own expense. Should the Permittee refuse or fail to remove System within thirty (30) days after written notification, the Town shall have the right to remove the component parts of the System and charge the Permittee for the costs of removal.
 - d) Relocation at Request of Third Party. The Permittee shall, on the request of any person holding a lawful building moving permit, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any Town Property, as necessary, any property of the Permittee provided: (i) the expense of such is paid by said person benefiting from the relocation, including, if required by the Permittee, making such payment in advance; and (ii) the Permittee is given reasonable advance written notice to prepare for such changes. For purposes of this Section, "reasonable advance written notice" shall be no less than thirty (30) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
 - e) Interference with Use of right-of-way. When working within Town Property, Permittee shall not unreasonably interfere with Public Uses of said Town Property and the safety, health, and convenience of the public in the public's use thereof for ordinary travel.
7. No less than three (3) business days prior to commencement of construction,

installation or maintenance activities within Town Property, the Permittee shall notify the Town of the specific locations and beginning and ending dates of said construction, installation, or maintenance project and shall provide current, accurate contact information for both the Permittee and the contractor as outlined in Section (4). Upon receipt of this notification, the Town shall determine whether the proposed construction, installation, or maintenance activities shall pose an unreasonable inference with Public Uses. If the Town determines the proposed activity presents no such unreasonable interference, it shall issue the permittee a notice to proceed. If the permittee receives no written notification from the Town within twenty-four hours of the proposed commencement of activities, the proposed activities may be deemed approved. This Section shall not apply to emergency repair projects or utility service extension projects which the Permittee could not have anticipated.


- 8. The Permittee shall keep all of the information required by Section (4) current at all times by immediately providing the Town written notice of changes.
- 9. Any person or entity (1) whose System occupies Town Property for Business Operations without obtaining the permit required in this Ordinance; (2) who fails to provide the 72-hour notice prior to commencement of construction, installation, or maintenance activities as required in Section 6; or who fails to maintain current, accurate information required by Section (4) concerning any System occupying Town Property may have any permit granted pursuant to this Ordinance revoked and may be denied future authorization for construction, installation, or maintenance activities for a period of two years.
- 10. Any violation of this Ordinance shall afford the Town the full range of remedies available under any applicable law or regulation including the levying of fines. The election of one or more remedies shall not be construed as a waiver of any other legal and/or equitable remedy including, but not limited to the Town's right to seek injunctive relief, damages, and attorney's fees as the law might allow.
- 11. Business Operations specifically authorized by a fully executed, valid franchise agreement or ordinance with the Town shall not be subject to the provisions of this Ordinance and the provisions of said franchise agreement or ordinance shall continue to govern."


BE IT FURTHER RESOLVED, that all ordinances and resolutions in conflict herewith are hereby repealed, except those approving any cable or video franchise agreement in force and effect between the Town and any cable or video service provider.

The above and foregoing ordinance having been offered by Marvin Davis and duly seconded by Frances Womack, said ordinance having been read section by section, was then submitted to an official vote as a whole and adopted by the following vote:

YEAS: 3
NAYS: 0
ABSENT: 2


And said ordinance was declared legally adopted on this 9th day of September, 2008.


Mayor


Clerk

I hereby certify that the within and foregoing is a true and correct copy of the original now on file in my office together, with all of the endorsements thereon.

Witness my official signature and seal of office on this the 26 day of September A.D., 20 08


Clerk of Court, Jackson Parish, Louisiana