



ORDINANCE NO. 2003- 37

2003 JUN 30 PM 4:19
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED

AN ORDINANCE OF COLLIER COUNTY, FLORIDA, TO PROTECT AGAINST HAZARDS FROM SUBSTANDARD CONSTRUCTION IN PUBLIC RIGHTS-OF-WAY; PROVIDING PURPOSE AND DEFINITIONS; ADOPTION OF CONSTRUCTION STANDARDS HANDBOOK; REQUIRING PERMITS; REQUIRING REMOVAL OF OFFENDING MATERIAL FROM RIGHT-OF-WAY; REPEALING ORDINANCE NO. 82-91, AS AMENDED BY ORDINANCE 89-26; AS AMENDED BY ORDINANCE 93-64; PROVIDING RULE OF CONSTRUCTION OF THIS ORDINANCE; REPEALING ORDINANCES 89-26 AND 93-64; PROVIDING FOR CONFLICT AND SEVERABILITY, PROVIDING FOR PENALTIES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, In 1977, Collier County first established a set of standards to regulate and require consistency and quality of workmanship and materials for construction activities within County right-of-way, which standards were updated in 1982, 1989, and in 1993; and

WHEREAS, it is appropriate to further revise and up-date the right-of-way construction standards through the adoption of a new edition of the Collier County Construction Standards Handbook.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA that:

SECTION ONE: PURPOSE.

This Ordinance is to protect the public against hazards resulting from private construction in the public right-of-way, and to protect the structural and physical integrity of Collier County-owned or Collier County-controlled public road right-of-way facilities and materials including and not limited to roads, soils, bridges, and/or drainage facilities.

SECTION TWO: DEFINITIONS.

For the purpose of this Ordinance, the following words shall have the prescribed meanings.

County: Means the Transportation Services Division of Collier County, the Collier County Community Development and Environmental Services Division, and any other Division or Department of Collier County needed to assist the said Transportation Services Division and/or the said Community Development and Environmental Services Division in enforcement of this Ordinance.

Existing Facility: Means any construction, excavation, obstruction, hole, or other change to the then existing structure and/or compaction of soil in any public right-of-way commenced prior to the adoption of this Ordinance, for which a Collier County right-of-way construction permit has not been granted.

Offending Material: Means any object placed, constructed, or grown in any public right-of-way with or without a Collier County permit and that may endanger any person, damage the right-of-way, restrict existing or planned drainage, or impair normal maintenance.

Responsible Party: Means the individual, person, firm, private or governmental entity, corporation, association, department or authority under whose control, authorization, or direction any offending material has been placed, constructed or grown in any Collier County right-of-way, including any right-of-way under such control of Collier County. Whenever the true identity of any such responsible party remains unknown after diligent inquiry, "Responsible Party" shall then include all owners of the fee title to the real property upon or over which the offending material has been placed.

SECTION THREE: ADOPTION OF HANDBOOK.

The 2003 version of the "Construction Standards Handbook for Work within the Public right-of-way, Collier County, Florida" (the "Handbook") is incorporated herein by reference and is made a part hereof, and supercedes any prior Handbook in all respects for all right-of-way permits applied for on or after the effective date of this Ordinance. Changes may be made to the Handbook by resolutions adopted by the Board of County Commissioners.

SECTION FOUR: NOTIFICATION OF PROPERTY OWNERS:

A. All utility companies shall contact the property owners within the area of proposed construction for their project at least forty-five (45) days prior to the commencement of construction and shall inform the property owners of the nature of the forthcoming construction activity and its expected duration. This section shall apply to all new construction activity. This construction provision shall not apply to projects exempt from permit requirements under the Construction Standards Handbook.

B. The notifications shall be as follows:

1. Installation of underground facilities: Residents whose properties are directly adjacent to the proposed utility facilities.
2. Installation of overhead facilities on poles less than 45 feet above grade: Residents within 100 feet of the proposed utility facilities.
3. Installation of overhead facilities on poles of 45 feet or more above grade: Residents within 300 feet of the proposed utility facilities.

Utility companies will make their best efforts to resolve concerns of residents with proposed construction, however permits will not be denied to utility companies unless the construction does not conform with standards set out in Section F.

SECTION FIVE: PERMITS.

A. It shall be unlawful for any Responsible Party to dig, excavate, obstruct, or place any construction or other material, or perform any other work which disturbs the existing structure and/or compaction of soil in any right-of-way provided for public use in Collier County, including any public right-of-way maintained by Collier County within the boundaries of any municipal corporation, without first obtaining a permit for such work from the Collier County Transportation Operations Department as specified herein or in the Handbook.

B. Application for each permit shall be made on forms provided by Collier County. Such application shall include, the following information:

1. The precise physical location of the construction.
2. The type of facility to be constructed.
3. The method of construction to be used.
4. The expected time schedule for completion of construction.
5. Sketches and drawings in duplicate to completely depict the nature of the proposed construction.
6. All other information required in the Handbook.
7. Additional information as may reasonably be required by Collier County due to unique conditions of the project or the permit requested, for example, a lane closure permit differs significantly from an overweight or oversize permit.

C. The permittee shall be responsible for all conditions of the permit and to pay the applicable permit fee then established by resolution of the Board of County Commissioners (the Board).

D. The Collier County Transportation Operations Department may take any of the following actions on a Permit Application:

1. Approve the Permit based on the Application as submitted.

2. Deny the Permit based on insufficient information or site-specific information and data inconsistent with the requirements of the Handbook or the Collier County Land Development Code (LDC).
3. Issue a Notice of Intent to Issue a Permit valid for up to one year, based on the Applicant's proposed time frame for construction within the right-of-way. If work will not begin within thirty (30) calendar days of the date on which a permit would otherwise be issued, then such Notice of Intent shall be issued in lieu of the actual Permit. Upon reactivation of the Permit Application by the applicant, the Transportation Operations Department will review the Application to assure that no conditions have changed and either issue the Permit or revise any site-specific stipulations to the Permit prior to issuance.

E. If the Collier County Transportation Operations Department denies the issuance of such a permit, the applicant may appeal the denial by filing a written notice of appeal with the Board (with a copy to the County Clerk), not later than ten (10) working days after the effective date of the notice of denial. The Board will hear the appeal within ninety (90) days from the date of the written notice of appeal at a regularly scheduled Board meeting. The appellant may appear before the Board, the decision of the Board shall be final.

F. No permit shall be issued unless the proposed construction conforms to the then current edition of the following referenced publications. In the case of conflict or inconsistency, the more restrictive rule shall apply.

1. The Handbook.
2. Construction methods or specifications contained in Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction, and the most current FDOT Road Design Standards, Construction, Maintenance and Utility Operations on the State Highway System.
3. The most current FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.
4. Collier County Land Development Code (LDC), unless exempt under the existing LDC or current Florida Statutory law.
5. Collier County Maintenance of Traffic Policy (CMA Instruction 5807, latest revision).

If standards for the proposed construction are not contained in these references, the Collier County Community Development and Environmental Services Division and/or Transportation Operations Department may impose additional conditions and/or stipulations, including as to sidewalks/bikeways, traffic control devices, and roadway improvements as part of the permit for the proposed construction.

G. All work performed under any Collier County Permit shall be at the expense of the permittee and at no expense to Collier County.

H. The Collier County Transportation Operations Department may suspend or revoke a permit whenever any stipulation and/or condition of the permit is not being fully and promptly complied with, or when deemed essential by Collier County to protect the physical safety of the public.

SECTION SIX: REMOVAL OF OFFENDING MATERIAL.

Offending material is a public nuisance and is subject to removal by Collier County as follows:

A. Upon becoming aware of the presence of offending material, Collier County shall attempt to notify any Responsible Party by certified mail, return receipt requested, or other actual notice of the obligation to remove the offending material not more than thirty (30) days after receipt of such notice.

B. After expiration of the thirty (30) day grace period, Collier County may cause any then remaining offending material to be removed and be disposed of in a reasonable manner at the expense of the Responsible Person.

C. If emergency removal is decided to be necessary to protect the physical safety of the traveling public and/or to protect public property, the offending material may be removed without any attempt to provide notice to any Responsible Person or persons.

D. After removing the offending material and after notifying any Responsible Person (by such certified mail or other actual written notice), the Code Enforcement Section of the Collier County Community Development and Environmental Services Division shall certify to the Collier County Finance Director the expense incurred in remedying the condition and thereupon such expense shall be due and payable in full within thirty (30) days, after which a special assessment lien will be made upon the property of the Responsible Person, which shall be due and payable in full with interest at the rate of eleven percent (11%) per annum from the date of such lien certification until paid. Such lien shall be enforceable in the same manner as a tax lien in favor of Collier County and may be satisfied at any time by payment thereof including accrued interest. Notice of such lien shall be filed in the Office of the Clerk of the Circuit Court and shall be recorded in the Public Records of Collier County.

E. If any Responsible Person believes that such expense certified to the Collier County Finance Director for removal of the offending material is excessive, he may appeal the amount assessed by filing a written notice of appeal with the Board, with a copy to the County Clerk, within ten (10) working days after receipt of the notice of the expense. The Board should hear the appeal at its next convenient regularly scheduled meeting. The appellant may appear before the Board. The decision of the Board shall be final.

F. The Collier County Tax Collector should keep complete records relating to the amount payable for liens, as described in Paragraph "D", above, and the amounts of such liens should be included in tax statements thereafter submitted to the owner(s) of lands subject to such liens.

SECTION SEVEN: REPEAL OF ORDINANCE NOS. 82-91, 89-26 and 93-64.

Ordinances 82-91, 89-26, and 93-64 are hereby repealed in their entirety.

SECTION EIGHT: RULE OF CONSTRUCTION OF THIS ORDINANCE.

This Ordinance is cumulative and in addition to any other applicable Collier County ordinance, rule or regulation. When construction is within the boundaries of any municipality, any applicable ordinance, rule or regulation of that municipal corporation shall also apply.

SECTION NINE: CONFLICT AND SEVERABILITY.

In the event this Ordinance should ever conflict with any other ordinance of Collier County, or applicable ordinance of any municipality, or other applicable law, rule or regulation, the more restrictive shall apply. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remainder of this Ordinance.

SECTION TEN: PENALTIES.

A. A violation of this Ordinance is a civil violation. If any person, firm, corporation, or any other entity having legal status, whether public or private, shall fail or refuse to obey or comply with any provision(s) of this Ordinance, upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) in

the discretion of the court. Each day of violation or non-compliance may be considered as a separate and distinct violation. In addition, any person, firm, corporation or other entity convicted of violating any provision of this Ordinance shall pay all costs and expenses involved in the case.

B. Nothing herein contained shall prevent or restrict Collier County from taking such other lawful action in any court or competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief and an action at law for damages.

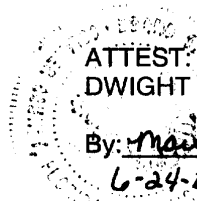
C. Nothing in this Ordinance shall be construed to prohibit Collier County from prosecuting any violation of this Ordinance by means of a Code Enforcement Board established pursuant to the authority of Chapter 162, Florida Statutes.

D. All remedies and penalties provided for in this Ordinance shall be cumulative and independently available to Collier County, which is authorized to pursue any and all remedies set forth in this Ordinance or otherwise lawful.

SECTION ELEVEN: EFFECTIVE DATE.

This Ordinance shall become effective upon receipt of notice that it has been filed with the Secretary of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 24th day of June, 2003.



ATTEST:
DWIGHT E. BROCK, Clerk

By: Marcus D.C.

6-24-03

Attest as to Chairman's signature only.

Approved as to form and legal sufficiency:

Jacqueline Hubbard Robinson
Jacqueline Hubbard Robinson
Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: [Signature]
TOM HENNING, Chairman

This ordinance filed with the Secretary of State's Office the 30th day of June, 2003 and acknowledgement of that filing received this 7th day of July, 2003
By: Patricia S. Morgan, Jr.
Deputy Clerk

STATE OF FLORIDA)

COUNTY OF COLLIER)

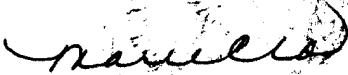
I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true copy of:

ORDINANCE NO. 2003-37

Which was adopted by the Board of County Commissioners on the 24th day of June, 2003, during Regular Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 25th day of June, 2003.

DWIGHT E. BROCK
Clerk of Courts and Clerk
Ex-officio to Board of
County Commissioners


By: Marie Clos,
Deputy Clerk