

6/25/96

ORDINANCE NO. 96-51AN ORDINANCE REQUIRING MUNICIPAL
CONSENT FOR THE USE OF PUBLIC STREETS
IN THE CITY OF VINELAND.

WHEREAS, the Supreme Court of New Jersey has held, in *Althea Contey v. New Jersey Bell Telephone Company, et al*, 136 N.J. 582 (1994) that the responsibility for the safety of motorists should rest with those who own, control and maintain the thoroughfare; that although utility companies have a duty to foresee that motorists will leave the traveled portion of the highway, governmental bodies and highway planners are best suited to determine how the utilities should fulfill that duty; and that those public bodies are in the best position to provide and to enforce standards and regulations governing utilities; and

WHEREAS, N.J.S.A. 48:3-11 et seq., sets forth the procedure for grant of consent by a municipality for the use of any street under the jurisdiction of the municipality, either above, below or on the surface thereof, where required by law; and

WHEREAS, N.J.S.A. 48:17-8 requires telegraph or telephone companies to obtain the consent in writing of the owner of the soil for the erection of poles and through, across or under any of the waters within the State and upon, through or over any other land, subject to the right of the owner to full compensation for the same; and

WHEREAS, it is the desire of the City of Vineland to establish standards and procedures for use of streets and public rights-of-way based on the aforesaid statutes and case law; now, therefore,

BE IT ORDAINED by the Council of the City of Vineland, as follows:

SECTION 1. DEFINITIONS.

"STREET", as used in this article shall mean and include any street, avenue, park, parkway, highway or other public place.

SECTION 2. CONSENT FOR USE OF STREETS REQUIRED.

The City of Vineland reserves for itself, its departments and agencies, the first right for use of any street within the municipality's jurisdiction, either above, below or on the surface thereof. Any person or entity not part of the municipal corporation shall be required to petition the City for its consent to use or occupy any street or public right-of-way under the jurisdiction of the municipality in the manner provided in this ordinance.

SECTION 3. PROCEDURE FOR CONSENT.

A. No consent shall be granted by the City until a petition shall have been filed with the City Clerk by the person desiring same. The petition shall specify the period for which the consent is asked, and the uses in detail for which the street or public right-of-way is desired, and whether above, below or on the surface thereof. In the case of street railway or traction companies, the petition shall further specify the character of the road proposed to be constructed, operated and maintained, the motive power to be used thereon and the streets through which the same shall extend.

B. The petition shall not be considered by the City Council of the City of Vineland until public notice shall be given by publication once a week for at least

two weeks in the newspaper designated by City Council as the official newspaper of the City and by posting the notice in five of the most public places in the City for at least fourteen days before the meeting of the City Council at which the application shall be considered.

C. The notice shall specify the name of the person or corporation presenting the petition, the date and hour when the same will be considered by City Council, the date of filing the same, the character of the use to which the street or public right-of-way is to be put, and the time for which permission or consent is sought. In the case of street railway or traction companies, the notice shall further specify the character of the road proposed to be constructed, operated and maintained, the motive power to be used thereon and the street in the municipality through which the same shall extend.

D. Upon the date fixed by the notice, or upon such subsequent date as the hearing of the petition may be adjourned, City Council may, by ordinance and not otherwise, grant for a period not exceeding twenty years, the right to use the street petitioned for. The ordinance shall not be acted upon by City Council at the meeting at which the same is introduced but shall be laid over for not less than fourteen days and not passed until a subsequent regular meeting of City Council or an adjourned meeting thereof.

E. The consent granted by the ordinance shall not become effective unless an acceptance in writing of the ordinance shall be filed by the person applying for consent with the City Clerk within thirty days after receiving notice of the passage of the ordinance and upon approval of said ordinance by the Board of Public Utility Commissioners of the State of New Jersey.

SECTION 4. CONDITIONS OF CONSENT.

As conditions to the granting of consent for use of municipal streets and public rights-of-way by the City of Vineland, the petitioner shall:

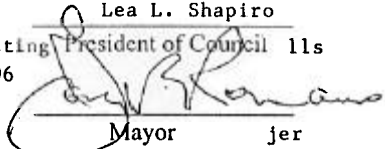
- (1) indemnify and hold the City harmless against all claims arising from or relating to its use or occupancy of the street or public right-of-way;
- (2) maintain insurance in such forms and in such amounts as may be deemed by City Council to be reasonable or appropriate, and the policies for which shall name the City as an additional insured;
- (3) remove existing lines, systems or facilities which the user or its predecessors have abandoned.


Any replacement of infrastructure within the public right-of-way for which consent has been granted for initial installation shall be in accordance with the original approved plan or the pre-existing utility construction procedures of the City Engineer with respect to utilization of the public right-of-way.

SECTION 5. THAT all ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Passed first reading: June 11, 1996
Passed final reading: June 25, 1996

Approved by the Mayor: June 26, 1996

Lea L. Shapiro
Acting President of Council 11s

Mayor jer


City Clerk kp

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