

ZTA-22-10 (Ord. 2022-17)  
Exhibit "A"  
Date: June 1, 2022

Revised:



**DEVELOPMENT REVIEW COMMITTEE STAFF REPORT AND RECOMMENDATION**

**Subject/Agenda Item:**

**Ordinance 2022-17: ZTA-22-10 – Right-of-Way Permit**

**First Reading:** A City-initiated text amendment to the Zoning Code to Chapter 11 (Streets, Sidewalks and Other Public Places) Article I (In General). The intent of the City initiated zoning text amendment proposes adding Section 11-6 to create a right-of-way permit process.

☒ Recommendation to APPROVE

☐ Recommendation to DENY

☐ Quasi-Judicial

☒ Legislative

☐ Public Hearing

**Originating Department:**

**Planning & Engineering**

Project Manager

\_\_\_\_\_  
Caryn Gardner-Young

**Reviewed By:**

Director of Planning & Engineering

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Kara L. Irwin-Ferris, AICP

**Approved By:**

**City Manager**

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Andrea McCue

**Public Notice:**

☐ Required

☒ Not Required

PC Dates: 6/30/22

Papers LWH

**Mailing:**

☐ Required

☒ Not Required

Notice Distance: \_\_\_\_\_

**Attachments:**

- Ordinance 2022-17

**City Council Action:**

☐ Approval

☐ Approve with conditions

☐ Denial

☐ Continued to: \_\_\_\_\_

## **I. Executive Summary**

The proposed zoning text amendment is a city-initiated request to add Section 11-6 to create a right-of-way permit process. City staff initiated this code change to address the need for strengthening code regulations for issues that were occurring within the city relative to live entertainment and businesses acting outside of their definitions. After reviewing the City's current standards, staff determined that there was a need to add supplemental regulations to include live entertainment, outdoor storage, outdoor sales, outdoor seating, and finally performance standards.

## **II. Background**

Sometimes called a driveway permit, culvert permit or utility permit, a right-of-way permit is required to disturb, excavate, block, obstruct, tamper with, or place any construction or other material on or in a city road, right of way or easement. So, any work performed within the City's right-of-way requires an approval from the City to ensure that the work is performed properly and safely, and the site restored to its original or better condition.

Although the City has been authorizing right-of-way work, it has done so under a general building permit. The proposed amendment intent is to clarify the process including the requirements, documentation and approvals needed to obtain a specific right-of-way permit.

## **III. Proposed Zoning Code Amendments:**

The following Zoning Code regulations are impacted by the proposed Zoning Text Amendments. Text shown in strikethrough is to be deleted. Text shown in underline is to be added.

### **Proposed Change #1**

#### **Sec. 11-6 Right-of-Way Use Permit**

##### **(a) Intent and Purpose**

It is the intent and purpose of this section to provide a safe, efficient, and economical method of approving of construction activity; temporary use or closure of the right-of-way; and the removal, placement, installation, or location of structures, facilities, or landscaping in or above city owned rights-of-way.

The Right-of-Way Use Permit is used to:

- (1) Evaluate in detail the proposed plans for use of the right-of-way;

(2) Ensure that, if approved, use of the right-of-way is performed in a safe manner that is consistent with the requirements of this Code and the health, safety, and welfare of the city and its citizens; and

(3) Ensure that the right-of-way is restored after use.

(b) Applicability

This section shall apply to all construction activity; temporary use or closure of the right-of-way, such as for a sporting event; and the removal, placement, installation, or location of structures, facilities, or landscaping in or above (overhead facilities or structures) city owned rights-of-way.

(c) Exemptions

The following activities, structures, facilities, and landscaping are exempt from the requirements of a Right-of-Way Use Permit:

(1) Mailboxes installed in accordance with United States Postal Service regulations and Florida Department of Transportation (FDOT) design standards, including those published in the “Manual on Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways.”

(2) Sod ground covering installed in right of way in front of residential dwelling units. Stones, boulders, pavers, mulch, astro turf, faux landscape or other materials that are not considered acceptable sod are not permitted within the city’s right of way.

(3) Use of the right-of-way for temporary moving oversize or overweight loads

(4) Approved driveway building permits where there are alterations or modifications to the driveway apron in the right of way.

(5) Routine maintenance where the subject area is being restored to its current condition.

(6) Emergency – None of the above permit procedures shall apply to emergency repair work. Emergency repair work is work which must be done immediately upon discovery, in order to safeguard the public from immediate danger to life or limb, to safeguard public health, safety or welfare, to repair or replace traffic signals or to restore interrupted utility

services. In the event of an emergency as defined above, repair work may be started without a permit upon verbal notification being given to the development and neighborhood services department. If the development and neighborhood services offices are closed, then notification must be given as early as possible on the next regular workday. After the emergency repair is completed, a record drawing must be submitted to the development and neighborhood services department, unless otherwise provided hereinafter, within ten (10) working days. Work that can be scheduled ahead of time will not be considered emergency work.

In addition to the above, in the event that an emergency does arise, the owner/registrant shall provide the following:

1. A public relations/customer service representative shall be contacted immediately for all emergencies and shall be available to handle all homeowner questions and issues as well as media information. Such activities shall be coordinated with the city's public information officer.
2. The name, address and telephone number of the company retained, if any, by the owner/registrant to handle all emergency matters, including but not limited to, immediate repair of any of the facilities and/or property affected by the emergency situation.

(d) Application Requirements

Applications for Rights-of-Way Use Permits shall include:

(1) Applicant Information

- (i) Name, Address, E-mail of Applicant
- (ii) Engineer of Record If Any
- (iii) Application Fee

(2) General Information

- (i) Road Name
- (ii) Road Location
- (iii) Publicly or Privately Maintained Road
- (iv) Road Type: Collector, Arterial, Residential

(3) Narrative. A description of the overall proposed activities including the scope, the location, and the nature of the proposed work. The narrative shall include an estimated duration of any construction activity during which the right-of-way will be affected.

(4) Detailed Drawing(s): The application shall include a detailed drawing(s) showing the details and location of the proposed use,including:

(i) Location map. An aerial or survey shall be required for proposed uses involving the installation or removal of structures.

(ii) Proposed work to be done in the right-of-way (to scale or accurately dimensioned).

(iii) Location of any proposed open cuts shall be clearly marked onthe plans.

(iv) Evidence of a Sunshine 8-1-1 completed underground utility locate ticket and photographs of any markings found on-site.

(v) Location of any tree(s) five (5) inches dbh that is/are proposed for removal from the right-of-way and if permittee shall be responsible for any damages occurring to the asphalt and/or concrete surfaces caused by roots and/or branches that may impeded or cause a hazard to pedestrians, cyclists, motorists, and overhead powerlines.

(vi) Traffic Signing and Marking Plans where applicable

(1) Signing and marking plans shall be prepared in accordance with the current versions of the Federal Manual on Uniform Traffic Control Devices and FDOT standards.

(2) Signing and marking plans shall be provided on separate sheets of the plan set.

(3) Signing and marking notes shall comply with the M.U.T.C.D. (latest edition), the City of Greenacres Code of Ordinances, and Palm Beach County Typicals (latest edition) and FDOT standards, if applicable.

(4) Plans shall be scaled at no less than one (1) inch to twenty (20) or thirty (30) feet.

(5) Centerline curve radius data for all turns and curves

shall be placed on the signing and marking plans to verify proper warning signs.

- (6) A quantity sheet or tabulation of quantities shall be included
- (7) All signs shall be identified by the Federal Manual on Uniform Traffic Control Devices designation number; for example, a stop sign is R1-1. A graphic of the sign shall be included.
- (8) All pavement markings shall be identified by size and color.
- (9) All street names shall be shown on the plans by size and colors.
- (10) If the streets are a combination of publicly and privately maintained, each street shall be identified as publicly or privately maintained.

#### (5) Other Required Approvals

The following approvals also may be required to be obtained in addition to a Right-of-Way Use Permit:

- (i) Uses where dewatering into the right-of-way is proposed must be accompanied by a plan to insure there is no sediment transfer and that pumped water is uncontaminated, and which is approved by the city manager or designee.
- (ii) Any proposed work requiring interruption of vehicular or pedestrian traffic shall require a maintenance of traffic plan approved through the building permit process.
- (iii) Proposed work requiring a road closure shall approval through the building permit process with notices sent to the PBSO District 16 Captain, Fire Department Chief, Public Information Officer, Public Works Director and the Development and Neighborhood Services Director.
- (iv) License and Maintenance Agreements in an approved form may be required for installation of signage, landscaping, irrigation or other facilities or structures within the right-of-way.
- (v) Tree location survey and tree plan for projects larger than one single-family dwelling where trees are located within the right of way.

(vi) Traffic Impact Study and substandard Roadway Analysis or, if completed, the applicable approval statement.

(vii) An indemnity agreement in an approved form may be required.

(viii) An insurance policy in an approved form may be required.

(e) Application Processing

(1) An application for a Right-of-Way Use Permit shall be reviewed by all appropriate review agencies as determined by the city manager or designee.

(2) The city manager or designee shall evaluate the request for a Right-of-Way Use Permit and shall:

(i) Approve the application as proposed;

(ii) Approve the application with conditions; or

(iii) Deny the application.

The approval of a Right-of-Way Use Permit may be subject to specific conditions deemed necessary by the city manager or designee and appropriate for the fulfillment of the purposes of this Code. The Conditions of Approval shall be stated on the face of the permit or may be incorporated by reference into any document which shall be attached to the permit.

(f) Terms of Permit and Effect of Permit Approval

(1) The permittee is liable for any damage that results from the permit holder's operations and the city shall be relieved of all responsibility from damage of any nature arising from the permit.

(2) The permit is a license for permissive use only and use of or installation of facilities in the right-of-way pursuant to the permit does not operate to create or to vest any property right in the permittee.

(3) Whenever the city decides to further utilize or perform maintenance in the right-of-way or when an approved route or bus stop is deleted by the county, any installations authorized by the permit shall be removed from the right-of-way or relocated within the right-of-way upon notice by the city manager or designee. Removal or relocation shall be at the expense of the holder of the permit, unless one of the specific exceptions in Section 337.403, Florida Statutes applies. Failure to timely relocate the installations will

relieve the city of all liability for damage to the facilities, and/or the city may remove or relocate the installations and charge the holder of the permit for all costs incurred in removing or relocating the installations.

If maintenance of the drainage system is involved then the permit holder must relocate underground installations within fifteen (15) days of notification by the city manager or designee.

(4) The permittee shall have up to 180 days to complete the work authorized by the permit and to complete all required restoration, unless a different time period is authorized by the city on the face of the permit or an extension has been requested for good cause shown. Upon expiration of a permit, the permit is void and further use of the right-of-way requires a new Right-of-Way Use Permit application.

(5) In the event the proposed use and the restoration of the right-of-way is not completed upon the expiration date of the permit, the city may remove or complete such work and charge the holder of the permit for all costs incurred in removing or completing the work.

(g) Prior to Construction Activity

(1) Permittee shall notify all other utility and underground users in the area covered by the permit, so that those users may safeguard their interests through the 8-1-1 Sunshine One Call System.

(2) Permittee shall notify the building division at least forty-eight (48) hours prior to the start of any construction activity.

(3) Permittees shall observe all State "One Call - Call Before You Dig" requirements.

(h) Activity Pursuant to Permit

(1) Construction and Operations

(i) A copy of the permit and all incorporated conditions shall be kept readily available at the site of the work at all times.

(ii) All work shall be done in keeping with the standards of the city through the building permit process.

(iii) Permittee shall notify the building division within forty-eight (48) hours after concluding all activities required by or authorized by the permit.

(iv) Permittee shall allow inspection of all materials and equipment by the city at any time. Permittee and agents/employees,



including field personnel on site, shall provide all information and identification requested by the city.

(v) During construction, all applicable governing safety regulations shall be observed. The permittee may take such safety measures, including the placing and display of caution signs, as it deems necessary to observe all required safety regulations in the conduct of activities under the permit.

(vi) Permittee shall perform all testing through the building permit process. Testing shall adhere to the most current version of the Florida Department of Transportation and Palm Beach County Engineering Department design standards and testing specifications for the construction of roads, storm drainage, and utilities.

(vii) All underground cable or phone lines shall be installed or located at least thirty (30) inches below grade. All lines, cable, or phone lines, under the roadway shall be installed or located at least thirty-six (36) inches deep, unless a different depth is approved through the building permit process.

(viii) All underground utility installations other than cable or phone lines shall be installed or located at the depth specified or approved by through the building permit process.

(ix) All other underground crossing installations not mentioned hereinabove shall be laid at such depth as may be approved through the building permit process.

(x) All activity performed in the city right-of-way pursuant to a Right-of-Way Use Permit shall conform to the approved permit, the approved drawings, and the conditions, if any, of the permit. Deviations from approved drawing or other aspects of the permit or conditions that are required as a result of physical site conditions discovered after the start of the work shall be described in writing to the city within twenty-four (24) hours after discovery of the condition and, to the extent possible, before further activity is performed under the permit. Upon written submission of a description of the circumstances requiring a deviation from the approved drawings/permit/conditions, is submitted to the building division, the development and neighborhood services director or designee may amend the permit to authorize the deviation if the deviation otherwise meets the standards of this Code.

(xii) No track type equipment will be allowed on any asphalt or concrete surface. If this cannot be avoided, it must be stated in the

building permit application and contractor shall be responsible for full restoration of impacted/damaged surface if it occurs.

(xiii) Required erosion and sediment control devices shall be in place at all times during construction and shall be removed only after final stabilization has been established. Photographic evidence of the erosion and sediment control devices shall be submitted to the building division at weekly intervals to ensure compliance.

(xiv) No illicit discharge shall occur as a result of activity performed pursuant to the permit.

(xv) No dewatering into a city right-of-way shall occur without prior written approval from the Public Works Director, or designee as a part of the approved permit. Where dewatering has been approved, no sediment transfer may occur during any dewatering into the city's right-of-way, and pumped water must be uncontaminated. No direct pumping into inlets is allowed, and there must be a visible zone of at least five (5) feet from the dewatering discharge hose to the structure receiving the water. There shall be no dewatering into the city's right-of-way from any petroleum site, whether contaminated or not.

(xvi) Interruption of vehicular or pedestrian traffic or obstruction of a traffic lane shall not occur, except pursuant to the terms of an approved maintenance of traffic plan approved through the building permit process.

(xvii) Roads shall not be closed without an approved MOT by the city, notification, and acceptance of the closure to the city's emergency responders and city to the surrounding residents.

(xviii) Provision for safe pedestrian traffic must be maintained at all times.

(xix) Open cuts shall not be performed without prior written approval through the building permit process.

(xx) Work pursuant to a permit must be performed in accordance with the city's noise ordinance as stated in Chapter 7-56 of the city's Code of Ordinances unless specifically authorized otherwise through the building permit process.

(2) Restoration and Maintenance Standards

(i) The city right-of-way, including sidewalks, curbs and gutters, landscaping, and any aesthetic enhancement thereto, and any adjacent

private property affected during activity performed pursuant to a Right-of-Way Use Permit, or for which a Right-of-Way Use Permit was required, must be restored within fifteen (15) days of the completion of activity authorized by the permit, unless a different time period is specified in writing through the building permit process. Any sidewalks removed or damaged must be replaced within three (3) days after the removal or damage.

(ii) The city right-of-way, including sidewalks, curbs and gutters, landscaping, and any aesthetic enhancement thereto, and any adjacent private property affected during activity performed pursuant to a Right-of-Way Use Permit, or for which a Right-of-Way Use Permit was required, must be restored to current code requirements, unless a different standard for restoration is specified in writing through the building permit process.

(1) Restorations shall adhere to the most current version of the Palm Beach County Engineering design standards and testing specifications for the construction of roads, storm drainage, and utilities.

(2) Disturbed areas must be properly stabilized, including grading, compacting, and sodding.

(3) Roadway connections that have been replaced must meet current Florida Department of Transportation regulations including Americans with Disabilities Act standards

(4) All open cut restoration work shall include an additional twenty feet (20') on both sides of milling and resurfacing

(iii) Permittee shall inform the building division within forty-eight (48) hours after completion of required restorations.

(iv) Restorations shall be maintained for one (1) year after completion unless a longer time period is required by this Code.

(i) Bond Requirement

The holder shall post cash, or a Surety Performance Guarantee and Maintenance Guarantee, with the City Clerk. The required amounts for each shall be based on cost estimates for each prepared by the permittee's engineer and approved by the city manager or designee. The sums approved through the building permit process shall ensure the proper and necessary restoration and maintenance of any property affected by activities under the permit to

guarantee performance of the terms and conditions of the permittee's obligations, and to guarantee maintenance of property affected by activity performed under the permit for a period of - twelve (12) months following completion of the activity authorized and required by the permit. In the event a Surety Bond is posted, the said Surety Bond shall be made payable to the city and shall obligate the surety to hold the city harmless and pay the city any costs expended by the city in the event the holder of the permit should fail to meet any of its obligations. The Surety Bond shall also indemnify the city for all court costs and reasonable attorney fees in the event legal action is required to collect on the said Surety Bond. Security posted shall not be refunded, terminated, or released until the expiration of the full required maintenance period and completion of all work authorized or required by the permit.

(j) Prohibitions

Unless exempt under this section, no construction activity; temporary use, or closure of the right-of-way; or removal, placement, installation, or location of structures, facilities, or landscaping in city-owned rights-of-way shall be performed except within the scope of an approved Right-of-Way Use Permit.

(k) Suspension, Modification, or Revocation of Permit

Failure to comply with the terms and conditions of the permit, or County, State, or Federal statutes, rules, or regulations governing use of the right of way may constitute grounds for suspension, modification, or revocation of the Right-of-Way Use Permit. Upon a determination of noncompliance, the city manager or designee may take one (1) or more of the following steps:

(1) Order appropriate corrective action.

(2) Modify the existing conditions or impose additional, more stringent conditions on the permit.

(3) Suspend the permit until appropriate, corrective action is taken or additional or modified conditions are complied with. Any Right-of-Way Use Permit shall be subject to suspension or revocation in whole or in part upon a finding of noncompliance with the terms of the said permit, this Code, or applicable statutes, rules, and regulations. While a permit or any part of a permit is suspended, no operations authorized by the suspended portion of the Permit shall be carried out. A suspension may be terminated in whole or in part upon a finding that the noncompliance has been corrected.

(4) Revoke the permit.

(l) Enforcement/Violations

In addition to suspension, modification, or revocation of the Right-of-Way Use Permit, violation of this section may be addressed through any of the enforcement methods in this Code.

Secs. 11-67—11-25. - Reserved.

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### **III. Staff Analysis:**

The proposed amendment intent is to clarify the process including the requirements, documentation and approvals needed to obtain a specific right-of-way permit. By outlining the right-of-way permit process in the City's code, it will make the permit process clearer and more concise and ensure the City is protected when work is done by a third party in the City's right-of-way.

#### ***Development Review Committee Comments:***

The petition was reviewed by the Development Review Committee on May 19, 2022 and recommended for approval.

Planning Department:	No comments
Building Department:	Comments addressed in staff report
Recreation and Parks	No comments
Fire Department:	Comments addressed in staff report
PBSO District #16	Comments addressed in staff report
Public Works Department:	No comments

### **IV. Zoning Text Amendment Criteria:**

#### ***A. The need and justification for these changes:***

The principal intent of these proposed text amendments to the City Code is to clarify and provide in detail the steps in order to obtain a right-of-way permit. Presently, to perform work in the City's right-of-way requires a general building permit which does not outline the requirements, documentation or approvals required to secure such a permit. The intent is to provide better customer service by providing clear and concise steps to obtain a Right-of-Way Permit.

#### ***B. The relationship of the proposed amendments to the purpose and objectives of the City's Comprehensive Plan, and whether the proposed change will further the purposes of the City's Zoning Code regulations and other City codes, regulations and actions designed to implement the Comprehensive Plan.***

The proposed amendments are consistent with the City's Comprehensive Plan and will further the purposes of the City's Zoning Code regulations and other City Codes by adding the specific requirements to obtain a City Right-of-Way Permit.

**V. Staff Recommendation:**

*Approval* of ZTA-22-10 through the adoption of Ordinance 2022-17.

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**PLANNING AND ZONING BOARD OF ADJUSTMENTS RECOMMENDATION –  
June 9, 2022**

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The Planning and Zoning Board of Appeals on a motion made by Board Member Edmundson and seconded by Board Member Jacobs-Robarts, by a vote of four (4) to zero (0) recommended approval of Zoning Text Amendment **ZTA-22-10** as presented by staff.

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**CITY COUNCIL ACTION First Reading –July 18, 2022**

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**CITY COUNCIL ACTION Second Reading –**

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