

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, ESTABLISHING FEES FOR THE PURPOSE OF ENABLING THE CITY TO BURY UTILITY LINES; ESTABLISHING UTILITY ZONES WITHIN THE CITY; ESTABLISHING PROCEDURES TO ALLOCATE FEES COLLECTED; ESTABLISHING PROCEDURES FOR VARIANCES AND APPEALS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("Frisco") to establish fees for the burying of utility lines; and

WHEREAS, the City Council has determined that it is safer for citizens and visitors to Frisco for utility lines to be buried instead of being located on above-ground utility poles; and

WHEREAS, the City Council has determined that there is less interference with utility service, such as from inclement weather or motor vehicle accidents, when utility lines are located underground; and

WHEREAS, the City Council has determined that property values are improved when there are no over-head utility poles existing on a property or on a near-by property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Definitions. For purposes of this Ordinance, the following terms are defined as follows:

*Civil Engineering Plans*—The construction plans for improvements required by Subdivision Regulation Ordinance No. 94-08-19, as it presently exists or may be amended, and other applicable ordinances, that are reviewed by the City Engineering Department.

*Final Acceptance*—Acceptance by the City of Frisco of all improvements, franchise utilities, grading and erosion control following the inspections required by Section 7.13 of the Subdivision Regulation Ordinance No. 94-08-19, as it presently exists or may be amended.

*Property*—Any real property that is the subject of any development activity, subdivision or permit application.

*Utility Fee*—The fee established by Section 3., below.

*Utility Line*—Any line, wire, cable, fiber, etc., regardless of the material made of, used to provide utility services, including but not limited to electric, telephone, voice, gas, television, cable, telecommunication, data and internet, but excluding electrical distribution lines greater than sixty thousand (60,000) volts.

*Utility Zone*—The areas designated as Utility Zones by Section 4, below.

SECTION 3: Utility Fee Established/Amount of Assessment. The Property owner shall pay a fee equal as follows (“Utility Fee”):

Zone 1 – Three thousand, seventy-five dollars (\$3075.00) per net acre as set forth in the final plat approved for the Property by the City.

Zone 2 – Three thousand, one hundred sixty-four (\$3164.00) per net acre as set forth in the final plat approved for the Property by the City.

Zone 3 – Four thousand, one hundred twenty-five dollars (\$4125.00) per net acre as set forth in the final plat approved for the Property by the City.

Zone 4 – Three thousand, five hundred eighteen dollars (\$3518.00) per net acre as set forth in the final plat approved for the Property by the City.

SECTION 4: Utility Zones Established. The City is hereby divided into Utility Zones as set forth on the map attached hereto as Exhibit “A” and incorporated as if fully set forth herein.

SECTION 5: Accounts to be Established for Each Utility Zone and Expenditures. All Utility Fees collected from each Utility Zone shall be placed in an account clearly identifying the Utility Zone from which the Utility Fee was collected. Funds contained in a Utility Zone account may only be expended within the Utility Zone for which the account was established.

Funds contained in a Utility Zone account shall be used to pay for the burying of Utility Lines and costs related to the burying of Utility Lines, including but

not limited to design, engineering, construction, and obtaining construction easements and right-of-way, located within the Utility Zone from which the Utility Fees were collected. The City shall determine the order in which Utility Lines will be buried and when they will be buried based upon factors such as, the amount of development that has occurred in the Utility Zone, the amount of and timing of development still expected to occur in the Utility Zone, the location of existing underground conduits, information received from utility companies regarding future plans for additional Utility Lines, including network lines, and/or the amount of boring necessary to bury a section of Utility Line.

SECTION 6: Payment of Utility Fee. The Utility Fee assessed in accordance with Section 3 must be paid prior to the Final Acceptance by the City of the improvements made to the Property in accordance with the Civil Engineering Plans.

SECTION 7: Waiver of Utility Fee. If at the time of Final Acceptance of the improvements made in accordance with the Civil Engineering Plans for the Property all Utility Lines required to be included in the quote or estimate to bury have been placed underground, the assessed Utility Fee will be waived and not collected.

SECTION 8: Variance/Appeal Procedures.

1. Applicability. A request for a variance from the amount of Utility Fee owed or the application of this Ordinance may be filed pursuant to this Section. However, the appeal process provided by this Section shall not be available for criminal violations of this Ordinance.
2. Variance Request/Appeal to City Manager. A Property owner may appeal decisions made by the City staff pursuant to this Ordinance by filing a written appeal with the City Manager within ten (10) business days of being notified of the decision of the City staff. A Property owner may request a variance in regards to the requirements of this Ordinance by filing a written request for a variance with the City Manager within ten (10) business days of being notified of the amount of Utility Fee assessed pursuant to this Ordinance. An appeal filed pursuant to this Section shall specifically state the basis for the aggrieved party's challenge to the City's authority under this Ordinance and the basis for such assertion. A request for variance filed pursuant to this Section shall specifically state the nature of the variance to the Utility Fee requested and the basis thereof. All information that the requestor desires to be considered by the City Manager, or his/her designee, in reviewing the appeal or request for variance should be submitted with the written appeal or request for variance.

3. Issuance of Decision by City Manager. Decisions of the City Manager shall be issued within fourteen (14) business days of receipt of the written appeal or request for variance.
4. Appeal to City Council. A Property owner may appeal a decision regarding an appeal or request for variance of the City Manager to the City Council by filing a written appeal within ten (10) business days of the date of the City Manager's decision is issued. If reasonably possible, and to the extent allowed by law, an appeal to the City Council will be placed on the City Council's next regularly scheduled meeting for determination. A decision made by the City Council is final.
5. Factors to be Considered by City Manager and City Council. The following factors, among others, may be considered by the City Manager, or his/her designee, and the City Council in hearing an appeal or request for variance:
  - A. Variances:
    - i. Whether the topography or sub-surface of the Property affects the ability to bury utility lines;
    - ii. Whether a utility company has future plans to install an overhead system line(s) 60,000 volts or greater;
    - iii. Whether literal enforcement of this Ordinance would result in materially different treatment of the Property owner compared to similarly situated property owners in the City or extreme hardship;
    - iv. Information considered by the City staff in making an assessment of the amount of Utility Fee;
    - v. Whether the Property owner is a political subdivision of the State of Texas funded by tax dollars; and/or
    - vi. Any other information deemed relevant to the request or necessary to make a decision by the City Manager, or his/her designee, or the City Council.
  - B. Appeals:
    - i. Whether the topography or sub-surface of the Property affects the ability to bury utility lines;
    - ii. Whether a utility company has future plans to install an overhead system line(s) 60,000 volts or greater;
    - iii. Whether literal enforcement of this Ordinance would result in materially different treatment of the Property owner compared to similarly situated property owners in the City or extreme hardship;
    - iv. Information considered by the City staff in making an assessment of the amount of Utility Fee;
    - v. Whether the Property owner is a political subdivision of the State of Texas funded by tax dollars; and/or

- vi. Any other information deemed relevant to the request or necessary to make a decision by the City Manager, or his/her designee, or the City Council.

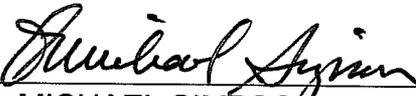
SECTION 9: Penalty Provision. Any person, firm, corporation, or business entity violating this Ordinance, as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500.00), unless the violation relates to fire safety, zoning or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal right and remedies available to it pursuant to local, state, and federal law.

SECTION 10: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed; but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 11: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 12: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 3rd day of October, 2005.

  
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E. MICHAEL SIMPSON, Mayor

ATTESTED TO

APPROVED AS TO FORM:

AND CORRECTLY RECORDED:

*Estela Barrera for Nan Parker*

NAN PARKER  
City Secretary



*Julie H. Fort*

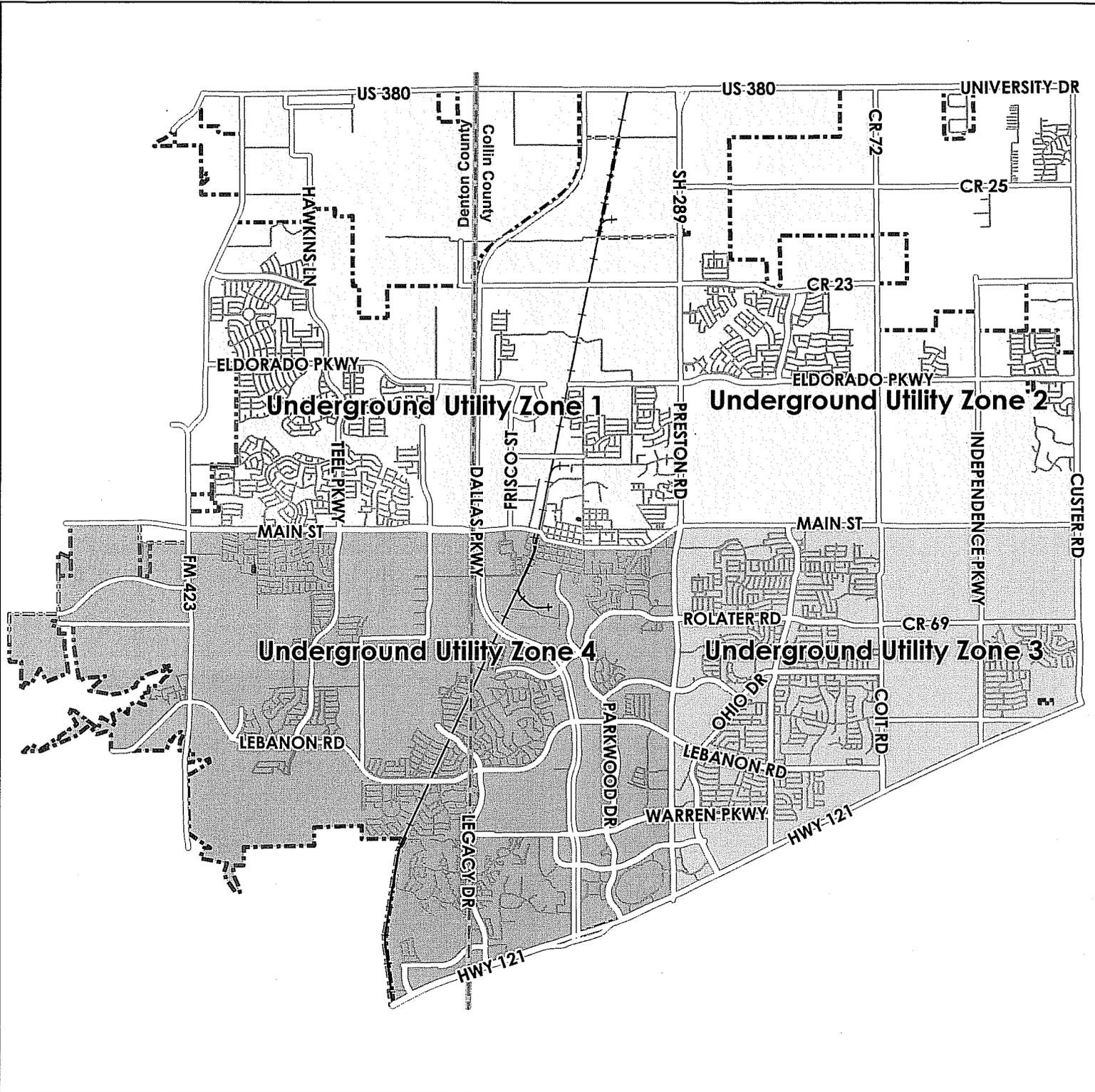
ABERNATHY, ROEDER, BOYD  
& JOPLIN, P.C.  
City Attorneys

Date(s) of Publication November 3<sup>rd</sup>, 2006, Frisco Enterprise

# Attachment A

## Underground Utility Zones

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**CITY OF FRISCO**  
 Source: City of Frisco, GIS  
 Date: April 6, 2005  
 1 inch equals 7,500 feet  
 0 3,750 7,500 11,250  
 Feet



Legend	
	Railroad
	Major Roads
	Minor Roads
	City Limits
	County Line
	Underground Utility Zone 1
	Underground Utility Zone 2
	Underground Utility Zone 3
	Underground Utility Zone 4

<b>Zone 1</b>	<b>Area (sq ft)</b>	<b>Area (Acres)</b>	<b>T-Fare Linear Feet</b>	<b>LF Cost</b>	<b>\$/Net Acre</b>
100 year floodplain	82,142,414.00	1,885.73			
Not in Floodplain	530,443,223.96	12,177.30			
<b>Total Area</b>	<b>619,242,098.08</b>	<b>14,215.84</b>	<b>249,605.7</b>	<b>\$ 150</b>	<b>3,075</b>

<b>Zone 2</b>	<b>Area (sq ft)</b>	<b>Area (Acres)</b>	<b>T-Fare Linear Feet</b>	<b>LF Cost</b>	<b>\$/Net Acre</b>
100 year floodplain	13,681,077.99	314.07			
Not in Floodplain	375,768,010.06	8,626.45			
<b>Total Area</b>	<b>390,427,077.82</b>	<b>8,962.97</b>	<b>181,960.5</b>	<b>\$ 150</b>	<b>3,164</b>

<b>Zone 3</b>	<b>Area (sq ft)</b>	<b>Area (Acres)</b>	<b>T-Fare Linear Feet</b>	<b>LF Cost</b>	<b>\$/Net Acre</b>
100 year floodplain	13,899,774.94	319.09			
Not in Floodplain	309,478,001.60	7,104.64			
<b>Total Area</b>	<b>326,380,498.59</b>	<b>7,492.67</b>	<b>195,384.5</b>	<b>\$ 150</b>	<b>4,125</b>

<b>Zone 4</b>	<b>Area (sq ft)</b>	<b>Area (Acres)</b>	<b>T-Fare Linear Feet</b>	<b>LF Cost</b>	<b>\$/Net Acre</b>
100 year floodplain	49,841,545.75	1,144.20			
Not in Floodplain	563,159,546.45	12,928.36			
<b>Total Area</b>	<b>618,644,815.81</b>	<b>14,202.13</b>	<b>303,242.3</b>	<b>\$ 150</b>	<b>3,518</b>