

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: May 6, 2024
TYPE OF AGENDA ITEM: Ordinance
AGENDA OUTLINE NUMBER: 5.A.

TO: City Council

THRU: Louis Zunguze, Interim City Manager
Kimberly Kopp, City Attorney

FROM: Noell Bell, Chief Building Official

DATE: April 23, 2024

SUBJECT: First reading of Ordinance 24-01-LC, Amending 8.01.00 of the Land Development Code, "Right of Way Protection."

I. BACKGROUND: During the July 17, 2023, City Council meeting, Council directed Staff to bring back suggestions for construction parking plans for residential developments. This is a result of citizen concerns about recent construction sites regarding the storage of materials, equipment, and parking of vehicles in and around these sites, which spill onto to the Rights-of-Ways (ROW), and block sidewalks and roadways.

To address these concerns, the Public Works and Safety Committee was presented with 3 recommended options during the meeting held on Sept. 9, 2023, which included **Construction Parking Exhibit Plans** for revisions to the **Land Development Code, Article 8.01.00, A – Protection of Right-of-Way**. The options were:

OPTION 1: (Refer to Attachment 1)

- Maintain and uphold the current LDC code as written for ROW protection. (Refer to Exhibit Option 1)

OPTION 2: (Refer to Attachment 2)

- Use of part of the ROW is acceptable but must maintain 5' off roadway.
- Do not block any sidewalk.
- No overnight storage in ROW.
- Allow loading and unloading, only in the roadway part of the ROW at the project site but must provide proper FDOT traffic standards.

OPTION 3: (Refer to Attachment 3)

- Allow loading and unloading only in the roadway part of the ROW at the project site but must provide proper FDOT traffic standards.
- No public access is allowed between the roadway and the upland project site. Clearly mark the area as “Construction Zone Ahead” on each end of the ROW construction site.
- Close any adjacent sidewalks within the ROW of the project site and re-route according to FDOT standards.
- Maintain 5’ clearance off of the roadway at all times at the project site, for any materials, equipment, parking, etc.

The Committee's recommendation to the Council was **Option 3** including the **Construction Parking Exhibit Plan**.

On October 2, 2023, Staff brought forth to the City Council the recommended changes to the **Land Development Code (LDC)** pertaining to protection of Rights-of-Ways and Construction Projects, as presented to the **Public Works and Safety Committee** and their recommendation of **Option 3**.

Council moved to approve **Option 3** as recommended by the **Public Works and Safety Committee** and directed Staff to amend the LDC accordingly.

II. DISCUSSION: Option 3 contained the following recommended revisions to the LDC, **Section 8.01.00 A, 3. Right-of -Way (ROW) protection:**

- Allow active loading and unloading only in the roadway part of the ROW at the project site but must provide proper FDOT traffic standards.
- No public access is allowed between the roadway and the upland project site. Clearly mark the area as “**Construction Zone Ahead**” on each end of the ROW construction site.
- Close any adjacent sidewalks within the ROW of the project site and re-route according to FDOT standards.
- Maintain 5’ clearance off of the roadway at all times at the project site, for any materials, equipment, parking, etc.
- A parking/staging plan is required upon submittal of any permit for construction activity.

An exhibit plan (Exhibit A) has been incorporated into the changes proposed which clearly defines the boundaries as stated above and as recommended by the Public Work and Safety Committee and approved by City Council.

The LDC Section 8.01.00 A, 3. Right-of -Way (ROW) protection is slated to be removed from the LDC during the current rewrite and therefore, staff is modifying the current language under **Section 8.01.00 A, 3** slightly and all the above bullet points will be incorporated into the Code of Ordinance under proposed **Ordinance 24-02-CC** and the LDC will be updated to reflect language modification to **Section A, 3** and removal of subsection a.- d. under this proposed **Ordinance 24-01-LC**.

During the LPA meeting held on March 7, 2024, the following were recommended changes to the proposed Ordinance:

- Adjust title to refer to permitted construction activities.
- Clarify 5 foot to be measured from edge of pavement versus roadway.
- Add prohibition of parking on or near immediate adjacent properties.
- Clarify sidewalk closure.
- A staging plan shall be submitted, reviewed, and approved by staff which clearly identifies the area location for parking, staging of construction equipment and materials.
- Add language regarding graduated penalties.

The changes were incorporated in the revised ordinance and brought back to the LPA for their recommendation of approval to Council on April 4, 2023. The LPA preceded with final recommendation to City Council for approval with one additional item, "**portable toilets must be anchored**", which has been incorporated into the Proposed Ordinance.

- A. **Link to Strategic Goals / Objectives:** II. Enhanced Quality of life and safety for families
- B. **Effect on Budget (EOB):** N/A
- C. **Level of Service (LOS):** N/A
- D. **Legislative Sponsor:**

III. CONCLUSION: The changes to the proposed Ordinances are intended to provide a clear understanding of allowable or non-allowable use of the ROW during construction, and regulatory criteria that can be easily enforced by the **City's Code Compliance Department**. It is the intent that these standards, which outline the parameters of the ROW use during construction and require a parking/staging plan for Staff review for compliance, will serve to protect the Public Health and Welfare of the Community and the Construction Industry.

IV. RECOMMENDED MOTION: I move that the City Council approve **Ordinance 24-01-LC** on first reading and direct the City Clerk to advertise for second reading.

Attachments:

1. Ordinance 24-01-LC ROW Protection . Final

ORDINANCE NO. 24-01-LC

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA; AMENDING SECTION 8.01.00 OF THE LAND DEVELOPMENT CODE “RIGHT-OF-WAY (ROW) PROTECTION”; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. AUTHORITY.

The authority for enactment of this Ordinance is Article 1, Section 1.01 (b) of the City Charter and Section 166.021, Florida Statutes.

SECTION 2. FINDINGS OF FACT.

WHEREAS, the City Council in providing for the health, safety and welfare of its citizens finds that the City should modify the regulations for protection of right-of-way; and

WHEREAS, the City Council desires to simplify and clarify provisions of the existing Code relating to right-of-way protection; and

WHEREAS, City Council has determined that this ordinance is consistent with the adopted comprehensive plan and is in the best interests of the City and its citizens; and

WHEREAS, a public hearing has been conducted after due public notice by the Local Planning Agency and its recommendations reported to the City Council; and

WHEREAS, a public hearing has been conducted by the City Council after due public notice.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA, AS FOLLOWS:

NOTE: Language in all sections of this ordinance that is ~~strike-thru~~ is language proposed to be deleted, underline language is language to be added, language that is not in strike-thru or underlined is not to be changed. The symbol * represents sections of the Land Development Code that have been skipped and remain unchanged.**

SECTION 3. AMENDMENTS TO LAND DEVELOPMENT CODE ARTICLE 11.

Section 8.01.00 of the Land Development Code is hereby amended as follows:

8.01.00. - Right-of-way (ROW) protection.

A. No unauthorized encroachment shall be permitted onto existing rights-of-way. Further, strict adherence to the building setback requirements described in Article 7 of this Code shall serve to protect rights-of-way from encroachment. All activity (e.g. paving, landscaping,

sprinkler system installation, etc.), with the exception of the installation and repair of mailboxes, installation of sod, or installation of streets trees and other streetscape features in compliance with the design standards for the Multimodal Transportation District located in Section 8.09.03 in a public ROW is prohibited unless the applicant submits a plan detailing the proposed activity to the City Engineer's office and obtains a ROW and/or building construction permit, prior to the undertaking of said activity. A copy of said permit shall be available on-site for the duration of the project.

2. The minimum width of the clear zone shall be in accordance with Table 3-12, Minimum width of clear zone of the "Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways" (a.k.a. Florida Green Book – Latest Edition) and shall be measured from the outside edge of each side of all streets (including curb, if any) and shall be located within a public or private ROW.

3. The developer and/or owner of a property abutting a ROW doing work on the ROW shall adhere to all applicable safety standards outlined by the FDOT and shall restore the right-of-way to original or better condition. ~~comply with the following additional requirements:~~

~~a. Restore the ROW to original or better condition.~~

~~b. Prohibit unloading, loading, parking, or storing construction equipment or vehicles on the ROW. Adequate provisions for such activities shall be made on the project property.~~

~~c. Construct the accessways in such a way to minimize sediment tracked or discharged onto the roadways.~~

~~d. Replace existing infrastructure, including, but not limited to, concrete curbing, driveways or sidewalks in the ROW, which are damaged during construction. Such replacement shall be replaced to the nearest joint within ten working days or prior to the completion of construction in the area, whichever is earlier. Damage to road paving or stormwater facilities shall be repaired within five working days of such damage. No pedestrian or vehicle hazard shall be allowed. Maintain open handicapped accessible pedestrian way during construction at all times.~~

SECTION 4. INCORPORATION INTO LAND DEVELOPMENT CODE. This ordinance shall be incorporated into the City of Destin's Land Development Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

SECTION 5. CONFLICTING PROVISIONS. City Ordinances and City Resolutions, or parts,

thereof, in conflict with the provisions of this ordinance are hereby superseded by this ordinance to the extent of such conflict.

SECTION 6. SEVERABILITY. If any section, phase, sentence, 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 remaining portions thereof.

SECTION 7. EFFECTIVE DATE. This ordinance shall become effective upon its adoption by the City Council and signature by the Mayor.

ADOPTED THIS _____ DAY OF _____, 2024.

By: _____
Bobby Wagner, Mayor

ATTEST:

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney, for the City of Destin, only.

Rey Bailey, City Clerk

Kimberly Romano Kopp, City Attorney

First Reading: _____

Second Reading: _____