

ORDINANCE No. 2016-20

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AMENDING CHAPTER 38 ARTICLE I OF THE CITY CODE OF ORDINANCES ENTITLED “STREETS, SIDEWALKS AND OTHER PUBLIC PLACES / IN GENERAL”, PROVIDING FOR REGULATIONS REQUIRING A MAINTENANCE OF TRAFFIC (M.O.T.) PERMIT FOR WORK THAT OBSTRUCTS OR CLOSES A STREET, SIDEWALK OR IMPEDES TRAFFIC; PROVIDING FOR FEES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR INCORPORATION INTO THE CITY CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the “City”) recognizes that unregulated obstructions or closures of streets and sidewalks adversely impacts the residents, businesses and visitors of the city; and

WHEREAS, the City recognizes that these obstructions, closures, or impediments of the public right-of-way have been steadily increasing and are currently regulated by Miami-Dade County; and

WHEREAS, the City Public Works Department, Police Department and Code Compliance Department recommends these policies in order to ensure the safe and efficient flow of traffic, and to protect the health, safety and welfare of the community; and

WHEREAS, the Mayor and City Council, through the adoption of this ordinance, seeks to ensure the safe and efficient flow of traffic, and to protect the public health, safety, and welfare for the community; and

WHEREAS, the Mayor and the City Council find that the policies contained herein are in the best interest of the community.

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**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

Section 1. Recitals. The above Recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Code Amended. The Code of Ordinances of the City of Doral is hereby amended as follows:

CHAPTER 38. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. IN GENERAL

* * *

Sec. 38-1. - Definitions.

The following words, terms and phrases, when used herein, shall have the meanings ascribed to them in this Code, except where the context clearly indicates a different meaning:

Governmental applicants means the City of Doral or its agents or agencies or Instrumentality thereof, or as identified by the city manager or designee.

Law means all duly enacted and applicable federal, state, county and city laws, ordinances, codes, rules, regulations and orders.

Maintenance means the upkeep or preservation and acts of repair and other acts to prevent a decline, lapse or cessation from an existing state or condition; to keep from falling, declining or ceasing; to keep in good order; keep in proper condition; keep in repair, as it pertains to the private property and public right-of-way, as applicable, and as are encompassed by the provisions of this chapter.

Non-governmental applicants means any applicant who is not a governmental applicant as defined by this section.

Person means any individual, corporation, partnership, limited liability company, association, joint venture, for-profit organization, contractor, subcontractor, affiliate, agent, representative, governmental institution, not-for-profit organization, or other legal entity of any kind, any lawful trustee, successor, assignee, transferee, heir, or personal representative thereof, but shall not mean the city.

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Public right-of-way as used in this article shall mean any dedicated or undedicated public street, highway, sidewalk, parkway or alley, public ways, public space(s) and other public places within the city.

Street or streets means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the city holds any kinds of property interest or over which the city exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to a permit for construction in or excavation of or use of the public right-of-way, but shall not include city-owned buildings or city private property.

Sec. 38-2. - Intent and purpose.

The city recognizes that the unregulated obstruction or closure of streets and sidewalks adversely impacts the residents, businesses and visitors of the city. Therefore, it is the intent of the City to ensure the efficient and safe flow of traffic, and to promote the public health, safety and general welfare by: requiring a Maintenance of Traffic (M.O.T.) permit, inspections and providing enforcement for all work being performed or conducted within the public right-of-way which impedes the general movement of vehicular or pedestrian traffic within the city; establishing, adopting and administering reasonable rules and regulations necessary to manage public right-of-way work and vehicular lane and pedestrian sidewalk closures; and minimizing the disruption to the public right-of-way.

Sec. 38-3. – Maintenance of Traffic (M.O.T.) Permit required for work that obstructs or closes a street, or sidewalk or impedes traffic; fees; waiver of fees.

- (a) Scope. No person shall perform or conduct work in the public right-of-way, such as, without limitation, digging, drilling, excavating, paving, and/or repaving , which obstructs, closes, or causes to be obstructed or closed, any street, sidewalk, or any other part of the public right-of-way in this city, or which impedes the general movement of vehicular or pedestrian traffic, without first having obtained a permit approved by the public works department. After permit approval is obtained from the public works department, a copy of the permit shall be provided to the police department, code compliance department and the city manager’s office. No person shall apply for a permit to perform or conduct work in the public right-of-way without disclosing in writing on the permit application form the person(s) on whose behalf such work in the public right-of-way is being performed or conducted. If such work is being performed by one or more person(s) on

behalf of any other person(s) for using, constructing in, excavation of, maintenance of, owning and/or operating any type or manner of system, equipment, or device within the public rights-of-way, then all persons must comply with all application and permitting requirements of the city. Failure of any person(s) to fully disclose his/her/their interest/participation/representation in the permit application and/or to fulfill all city requirements for issuance of the permit shall result in (1) immediate revocation by the city, without the necessity of any further action, hearing, or proceeding, of any permit previously granted resulting in such permit becoming null and void, or (2) issuance by the city of a written notice that such permit will not be granted, as the case may be, due to violation of this provision by the person(s) who applied for such permit. The city shall have the right to take all legal measures and seek all available remedies to enforce this disclosure provision.

- (b) *Conditions.* Such permit shall set forth minimal reasonable conditions, as permitted by Law, necessary for the protection of property and personal safety, the restoration of the public right-of-way to a condition satisfactory to the city, and any on-going maintenance or reparations for un-repaired conditions or damages that may be required of the person(s) under the circumstances and extent of the work to be performed or conducted by such person(s) under such permit. Any violation of the conditions set forth and/or any violations under applicable law shall render such permit null and void, without the necessity of any further action, hearing, or proceeding. Such permit shall cover the length of time necessary and reasonable according to the type of activity involved. Such permit shall also be present on the job site at all times while work is being performed or conducted within the public right-of-way which is impeding the general movement of vehicular or pedestrian traffic within the city.
- (c) *Indemnity, hold harmless and insurance.* It shall be a condition precedent to the issuance of any such permit that the applicant shall assume all civil liability for applicant's acts of omission or commission from all claims, suits or actions of any kind whatsoever arising out of or resulting from the obstruction or closure, the issuance of the permit, or the operations or activities of the permittee and shall, further, hold the city, its officials, and employees harmless for any injuries, losses, or damages arising or resulting from the permitted work including any injuries, losses, or damages resulting from alleged negligent acts or omissions on the part of the city. The permittee shall be solely responsible for all activities and the installation and maintenance of traffic-control devices. The applicant shall ensure that adequate safety precautions are in effect at all times during the term of the permit. It shall be a further condition precedent to the issuance of any such permit for work to be performed in the public right-of-way that the permit holder(s) is/are jointly and severally responsible, at each permit holder's

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expense, for any damages regarding restoring the public right-of-way to its original condition before installation of facilities.

(1) *Non-governmental applicant(s).* Prior to the issuance of any such permit, the non-governmental applicant(s) shall submit to the city a certificate of insurance for each non-governmental applicant in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate, and any endorsements thereto, including, but not limited to, premises and operations liability, contingent and contractual exposures, personal and advertising injury, products and completed operations, and host liquor liability, if applicable. In addition, the applicant hereby agrees to provide additional insurance requirements, including but not limited to umbrella liability, or any additional requirements or endorsements as may be applicable, in connection with the scope of services contemplated by the permit. The certificate must reflect primary and noncontributory language and list the city as an additional insured. The certificate must also include coverage for all owned, hired, and non-owned vehicles with a combined single limit of \$1,000,000.00, also listing the city as an additional insured, and must further afford coverage for worker's compensation as required by Florida statute. The insurance herein required shall remain in full force and effect during the entire term of the permit. Additionally, all such insurance for non-governmental applicant(s) shall be subject to annual review by the city's risk management department and the applicant shall be required to update as necessary to protect the city as set forth in this section.

(2) *Government applicant(s).* Prior to the issuance of any such permit, the governmental applicant(s) shall submit to the city a certificate of insurance or letter of self-insurance for each governmental applicant in accordance with and subject to the limitations as set forth in F.S. § 768.28.

(d) Temporary obstruction of streets and sidewalks.

(1) Any permit issued pursuant to this chapter under this section may be revoked at any time for violation of the terms of the permit. The city manager or his designee may revoke this permit with justification.

(2) The permit holder shall not locate a temporary office, trailer, portable toilets, equipment or storage of materials and supplies within the temporary obstructed right-of-way. Such temporary office, trailer, portable toilets, equipment or storage of materials and supplies may be allowed by the public works department subject to a separate fee subsection (e)(4) in addition to the fee for a permit for the partial or

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full obstruction or closure listed in subsection (e)(3). A violation of this section shall result in a fine of \$250.00 per day for each violation.

- (3) If the dimensions of the obstruction exceeds the dimensions allowed by the permit, the permittee and the property owner shall jointly be assessed a fine equal to \$250.00 per day for each violation, plus any appropriate additional fees for the obstruction.
- (4) The permittee must provide a construction staging plan showing the location of lifting equipment, if applicable, ingress and exit points, and a signed and sealed statement from a registered professional engineer in the state that no suitable onsite alternative exists.

(e) Fees.

- (1) The following fees shall accompany each permit application to the public works department, to be retained by the city regardless of action taken in the grant or denial of the permit.
 - a. \$80.00 for a one-lane closure application.
 - b. \$80.00 for a sidewalk closure application.
 - c. \$120.00 for a two-lane or more closure application.
- (2) An initial inspection fee of \$25.00 shall accompany each permit application to the public works department.
- (3) A non-refundable fee for a permit issued under this article for the partial or full obstruction by construction related activities exceeding five days in duration shall be as follows.
 - a. \$0.20 per linear foot per day of sidewalk/curb usage.
 - b. \$0.30 per linear foot per day of parking lane usage.
 - c. \$0.35 per linear foot per day of lane closure or partial lane closure of traffic and auxiliary lane usage.

The fees shall accompany each permit application to the department of public works for the use of the public right-of-way.

- (4) A non-refundable fee for a temporary office, trailer, portable toilets, equipment or storage of materials or supplies within the partial or full obstruction area shall be as follows:

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- a. \$0.10 per linear foot per day of sidewalk/curb/swale usage.
- b. \$0.15 per linear foot per day of parking lane usage.
- c. \$0.20 per linear foot per day of lane closure or partial lane closure usage.

The fees shall accompany each permit application to the department of public works for the use of the public right-of-way.

- (5) All fees collected by the public works department shall be deposited in a rollover account to be known as the lane closure fund. This account shall be used for the inspection of lane closures and maintenance of the public right-of-way.
- (6) Waiver of fees. The fees described in subsection (e)(3) and (e)(4) shall not apply to the city or their contractors or any other federal, state, county, city, school district entity, or for construction, excavation, and repair within the public right-of-way. The fees described in subsection (e)(1), (e)(3) and (e)(4) herein above may be waived or reduced by the city manager if he/she determines that such a waiver or reduction is in the city's best interest.
- (7) After the fact permit fee. For any public street or alley closure described in section 38-3, performed without the required permits and inspection, quadruple the application and inspection fee shall be assessed.
- (f) Public gatherings. This section shall not prevent any person or persons from assembling on the streets or sidewalks, or in any park, or on private property, for the purpose of making any speech, engaging in spontaneous expression, or conveying any message to the public or government without holding a permit pursuant to this section. In addition, this section shall not apply either to a "demonstration," to a "parade" or to "outdoor events," as they are defined in sections 38-81 and 35-20 of the city code.

Sec. 38-4. - Enforcement.

This article shall be enforced by the code compliance department. Whenever a code compliance officer determines that work has commenced in the public right-of-way without a Maintenance of Traffic (M.O.T.) permit, as described herein, which obstructs or closes or impedes traffic, the code compliance officer is authorized to give, or cause to be given, a stop work order and the issuance of a Notice of Violation pursuant to section 11 of the City Code.

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Sec. 38-5. - Penalties.

For the purposes of this section, each day shall be considered a separate violation. Failure to immediately stop all work and remove an obstruction or closure or impediment of vehicular or pedestrian traffic when issued a stop work order and Notice of Violation, shall be subject to the following penalties:

- (a) Civil violation notice in the amount of \$500.00 for each day that the vehicular or pedestrian traffic obstruction, closure, or impediment continues without the required Maintenance of Traffic (M.O.T.) permit as required in Section 38-3.

* * *

Section 3. Implementation. The City Manager, City Clerk, and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions as may be appropriate by their position to execute the purpose of this Ordinance.

Section 4. Incorporation into the Code. The provisions of this Ordinance, to the extent appropriate, shall become and be made a part of the Code of Ordinances of the City of Doral. The City Clerk is authorized to take all actions necessary to incorporate the provisions of this Ordinance into the Code of Ordinances, including, but not limited to, renumbering or re-lettering sections, and to change, and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention.

Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they

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shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. **Conflicts.** All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 7. **Effective Date.** This Ordinance shall become effective October 1, 2016.

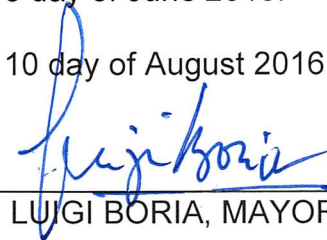
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The foregoing Ordinance was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Councilmember Ruiz and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilwoman Sandra Ruiz	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED on FIRST READING THIS 8 day of June 2016.

PASSED AND ADOPTED on FIRST READING THIS 10 day of August 2016.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMANN, P.L.
CITY ATTORNEY

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