

City of Philadelphia



(Bill No. 030715)

AN ORDINANCE

Granting permission to Saint Joseph's University, a Pennsylvania non-profit corporation (educational), its successors and assigns to construct, maintain and operate, replace, and remove conduits for electrical power supply and telecommunications purposes under 53rd and 54th Streets south of City Avenue and on a pedestrian bridge over City Avenue between 54th Street and Cardinal Avenue, and electrical and telecommunications cables for private electrical and telecommunications systems in such conduits; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. (a) Permission is hereby granted to Saint Joseph's University, 5600 City Avenue, Philadelphia, PA 19131 and its successors, assigns, and agents (collectively "Saint Joseph's"), to construct, maintain, operate, replace, and remove:

1) a conduit for electrical power supply purposes under 53rd Street immediately south of City Avenue consisting of two five-inch (5") HVAC power ducts, one five-inch (5") fire pump duct, one four-inch (4") generator power duct, and two two-inch (2") control/spare ducts,

2) conduits for telecommunications purposes under 53rd and 54th Streets south of City Avenue, consisting of eight four-inch (4") ducts,

3) a conduit for electrical power purposes above City Avenue on a pedestrian bridge erected between the Lower Merion and Philadelphia Campuses of Saint Joseph's between 54th Street and Cardinal Avenue, consisting of four four-inch (4") ducts,

4) a conduit for telecommunications purposes above City Avenue on a pedestrian bridge erected between the Lower Merion and Philadelphia Campuses of Saint Joseph's between 54th Street and Cardinal Avenue, consisting of four four-inch (4") ducts, and

5) cables for St. Joseph's private electrical power and telecommunications systems in the aforementioned conduits.

(b) The conduits described in Section 1(a) above shall be constructed in accordance with the requirements and under the supervision of the Department of Streets, without interference with any existing surface or subsurface structures, and shall be used

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by Saint Joseph's exclusively for the purposes set forth in this Section and in accordance with all ordinances and regulations of the City governing the construction, maintenance, and operation of underground structures and aerial facilities and the equipment, facilities and/or appurtenances placed therein.

(c) Saint Joseph's shall reserve one of the ducts of each of the conduits described in Section 1(a) for the use of the City for whatever purpose the City, in its sole discretion, may determine, without conditions and at no cost or expense to the City for the construction, maintenance and/or use of the reserved ducts.

(d) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of the conduit at any location along the route and is not a guaranty that the conduit can be placed at any particular location along the route. In the event that it is impossible or infeasible to construct and install any portion of the conduit along the route listed in this Ordinance, Saint Joseph's may propose and the Department of Streets may approve an alternative route for the location of such portion of the conduit; such alternative route as may be approved by the Department of Streets is hereby authorized. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval that Saint Joseph's must by law obtain prior to construction of conduit or a conduit, or occupancy of existing conduit or conduit(s), in the public right-of-way.

(e) All facilities constructed pursuant to this Ordinance that include an alteration to a rail/highway crossing, which includes such crossings as they are defined under state law, must have, in addition to the approvals set forth in this Ordinance, the appropriate approval of the Pennsylvania Public Utility Commission. Saint Joseph's has the sole responsibility to obtain any required Pennsylvania Public Utility Commission approval(s).

(f) Prior to the installation or operation in the conduit authorized by this Ordinance, or of any telecommunications or other facilities or appurtenances thereto, including but not limited to fiber optic and other cables and facilities for the provision of telecommunications service as defined at 47 U.S.C. § 153(46), the owner of the facilities and/or appurtenances must have obtained, by Ordinance of City Council and agreements executed by the Commissioners of the City Departments of Streets and Public Property, the City's permission to occupy such right-of-way. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval for occupancy of the conduit to any entity seeking to install telecommunications or other facilities or appurtenances in the conduit.

SECTION 2. In the event that any portion of the conduit or the aerial facilities authorized in Section 1 must be relocated to accommodate a public improvement or public facility, whether such improvement or facility is constructed by the City or by another governmental entity, or by contract with the City or with any governmental

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entity, the Department of Streets shall provide Saint Joseph's with written notice at least one hundred eighty (180) days prior to the date any action would be required by Saint Joseph's to relocate said portion of the conduit. Within one hundred eighty (180) days of service of said notice upon Saint Joseph's, Saint Joseph's shall relocate said portion of the conduit or aerial facilities and restore any portions of the roadway or footway disturbed by the relocation to the condition it was in prior to the relocation, without cost or expense to the City. In the event that Saint Joseph's is required to remove any portion of the conduit at the request of the City, the Department of Streets shall cooperate with Saint Joseph's in order to identify a replacement and alternative right-of-way for the relocation of said portion of the conduit or aerial facilities which may be utilized without unreasonable inconvenience; such alternative location as may be approved by the Streets Department is hereby authorized.

SECTION 3. The Philadelphia Code section 11-204(5) does not apply to the conduit authorized by this Ordinance.

SECTION 4. The permission granted to Saint Joseph's by this Ordinance shall be and is subject to the terms and conditions of this Ordinance and other applicable ordinances of the City, including, but not limited to, all ordinances of general application currently in existence or subsequently enacted that are related to the right of occupancy and use of property in, under, over, along and across the streets, sidewalks, alleyways, easements and rights-of-way within the City.

SECTION 5. Nothing in this Ordinance authorizes Saint Joseph's to:

(a) Provide to subscribers within the City "cable service" (as defined at 47 U.S.C. § 522(6)), or "video programming" (as defined at 47 U.S.C. § 522(20)) as an open video system operator pursuant to 47 U.S.C. § 573(a) or otherwise.

(b) Furnish "telecommunications service" to the public as defined at 47 U.S.C. § 153(46).

(c) Permit occupancy of the conduit by any entity that has not obtained permission to occupy such right-of-way in the City by ordinance of City Council and all permits required by the City for such occupancy.

SECTION 6. Before exercising any rights and privileges under this Ordinance, Saint Joseph's shall enter into an agreement ("Agreement") with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that Saint Joseph's shall, *inter alia*:

(a) Furnish the City with a bond with corporate surety in an amount required by the Department of Streets and in form satisfactory to the City Solicitor to ensure the compliance with all the terms and conditions of this Ordinance and the Agreement and to

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protect and to indemnify the City from and against all damages or claims for damages which may arise directly as a result of the construction, maintenance, operation or removal of the Saint Joseph's conduit or aerial facilities authorized by Section 1.

(b) Secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entity as may be required by law.

(c) Assume the costs of all changes and adjustments to, and relocation and abandonment of, all utilities and structures wherever located as may be necessary by reason of the installation of the Saint Joseph's conduit or aerial facilities authorized by Section 1.

(d) Carry insurance protecting against liability for injury to persons or property of others, naming the City as an additional insured party in such amounts as shall be reasonably satisfactory to the City Solicitor.

(e) Pay all charges, rents, franchise fees or other fees that the City may now or in the future impose for a licensee's occupation of City property, streets and rights-of-way.

(f) Remove any or all portions of the conduit and aerial facilities authorized in Section 1 from the public rights-of-way pursuant to applicable City specifications within sixty (60) days when the conduit or a portion of the conduit is no longer used for the purpose authorized by this Ordinance or existing law.

(g) Make necessary adjustments, or reimburse the City for making adjustments, to any manhole constructed as part of the conduit approved in Section 1 when instructed to do so by the Streets Department in preparation of a street paving project.

(h) Mark each manhole constructed as part of the conduit approved in Section 1 with identification of the owner of the manhole in a manner designated by the City.

(i) Provide that Saint Joseph's shall not sell or transfer a conduit or any individual duct within a conduit authorized in Section 1 or a portion of the capacity of an individual duct within the conduit to another entity without the express authorization of the City.

The permission granted by this Ordinance and the rights and privileges provided herein, are strictly conditional on Saint Joseph's entering into such Agreement.

SECTION 7. The City Solicitor shall include in the Agreement such other terms and provisions as shall be deemed necessary to protect the interest of the City.

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SECTION 8. The permission granted to Saint Joseph's to construct, maintain and operate, replace and remove a conduit and aerial facilities for telecommunications use under and in the public rights-of-way and City streets listed in Section 1 of this Ordinance shall expire without any further action by the City if Saint Joseph's has not entered into the Agreement as required by Section 6 within one (1) year after this Ordinance becomes law.

SECTION 9. The permission granted to Saint Joseph's for installation and or construction of the conduit and aerial facilities along the routes identified in this Ordinance shall expire without any further action by the City unless Saint Joseph's has substantially completed the construction of the conduit authorized herein within two (2) years after the date this Ordinance becomes law. A change in ownership of the assets of Saint Joseph's does not, without express written permission of the City, extend the time for substantially completing the construction of the conduit authorized herein.

SECTION 10. The City reserves the right to charge a transfer fee for any agreement transferring the rights-of-way license from one entity to another so as to insure that all costs incurred by the City related to the transfer are reimbursed. The transferee must pay all costs incurred by the City associated with such transfer within thirty (30) days of the date the City submits such costs to the transferee or the transferee's authorized agent.

SECTION 11. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 4, 2003. The Bill was Signed by the Mayor on December 18, 2003.



Patricia Rafferty
Chief Clerk of the City Council