

1ST READING 12-15-09
2ND READING 1-5-10
INDEX NO.

ORDINANCE NO. 12337

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 32, ARTICLE III, SECTIONS 32-61 THROUGH 32-85, RELATIVE TO EXCAVATION AND RESTORATION OF PAVING.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 32, Article III, Sections 32-61 through 32-85, be and is hereby amended by deleting said sections in their entirety and substituting in lieu thereof the following:

Sec. 32-61. Definitions.

Building Official - The person who shall serve as the supervisor for the Inspection Section of the Land Development Office or in his or her absence, the subordinate assigned or delegated direct responsibility for the administration of this Article.

City Engineer - The person holding the position referred to in Chattanooga City Code, Part I, Section 3.76 and 3.80, or such assistant engineers assigned or delegated direct responsibility for the administration of this Article.

City Inspector - A person employed by the City to physically inspect any excavation for conformity with the permit and other provisions of this Article.

Emergency - A sudden or unexpected occurrence or condition calling for immediate action. The repair of a broken or malfunctioning utility line or services shall be deemed an emergency if a repair is reasonably warranted under existing circumstances prior to the next working day.

Excavation - Any excavation or tunneling of any public street right-of-way including, but not limited to, excavation in, cutting of, or tunneling of any street, sidewalk or curb for purposes of constructing or maintaining pipes, lines, driveways, private streets, poles, guy wires, signs, or other utilities, private structures, or facilities.

Traffic Engineer - The person holding the position referred to in Chattanooga City Code, Part II, Section 24-97, or such assistant engineer as shall be assigned or delegated direct responsibility for the administration of this Article.

Working Day - Any day when the City Engineer's office is open for the transaction of normal business.

Sec. 32-62. Permit required.

It shall be unlawful for any person to make any excavation in or to tunnel under any street, curb, alley, or public right-of-way in the City without first having obtained a permit from the Building Official and complying with the provisions of this Article. It shall be unlawful to violate or to vary from the terms of any such permit; provided, however, any person maintaining pipes, lines, driveways, or other facilities in or under the surface of any public right-of-way may proceed with an excavation without a permit when emergency circumstances demand the work to be done immediately, and provided further that the person shall apply for a permit on the next working day.

Sec. 32-63. Applications.

Applications for such permits shall be made to the Building Official and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the name of the person doing the actual excavating, and the name of the person for whom the work is being done. The applicant shall disclose any foreseeable lane or sidewalk closures or detours during excavation. As a condition of issuing a permit, all applicants must agree in writing as part of the application to comply with all ordinances and laws relating to the work to be done. The Building Official or his designee shall consider each application for a permit filed under this Article, under all facts and circumstances, shall grant or refuse the permit within five (5) working days and shall endorse his action on the application. The Building Official shall refer such application to the City Engineer or Traffic Engineer for review and comment when a professional opinion on the propriety of issuing a permit or conditions to attach thereto is needed. The action of the Building Official in granting or refusing a permit shall be final, except as it may be subject to review at law. A permit may be refused for the following reasons:

- a. The proposed excavation should be redesigned to mitigate a potential safety hazard;
- b. The proposed excavation should be redesigned to mitigate damage within the right-of-way;
- c. The proposed excavation cannot be safely made in the public right-of-way;
- d. The proposed restoration plan does not meet the minimum standards for restoration;
- e. The applicant has willfully failed to comply with conditions of prior permits issued to the applicant; provided that such disqualification shall be removed upon correction of any such defects;
- f. For other good cause in the discretion of the Building Official.

Provided that as to an excavation done in emergency circumstances the application shall be completed on the next working day; and the Building Official shall review the actual work completed for conformity with the requirements hereof.

Sec. 32-64. Application Fee.

Each application shall be accompanied by a fee as follows:

- a. Permit fee of \$300.00 for transverse cuts in pavement.
- b. For longitudinal cuts in pavement the permit fee of \$1.00 per foot shall be charged (\$300.00 minimum).
- c. Permit fee of \$50.00 for cuts in the sidewalk.
- d. Permit fee of \$100.00 for cuts in the curb and/or curb and gutter.
- e. Street Cut Permit is not required for cuts outside the sidewalk and street pavement.
- f. Written notification of intent to work in a City right-of-way must be received at least 24 hours prior to beginning work, even if a permit is not required, except in emergencies. E-mail is considered a written notice.
- g. Permits for relocation or installation of fire hydrants will be required when requested by the City, but no fee (including administrative fees) will be required.
- h. Multiple cuts, each not exceeding 25 square feet in area, when required in a single block or within a work zone distance of 250 feet as part of a single project, are considered as one cut. Permit and fee will be required for a single cut under these conditions. If the cut exceeds 250 feet, or multiple cuts within a block or a work zone greater than 250 feet, then the entire lane that is disturbed by construction shall be repaved from intersection to intersection.
- i. Neither permits or fees will be required when work in the right-of-way is conducted as part of a City street improvement project, including resurfacing, where the utility is required to move their facilities as a result of the City project.
- j. Fees shall not be waived under any other conditions.
- k. When it is determined that non-emergency work in the City Right-of-Way has proceeded without the purchase of a permit, the contractor or utility shall immediately purchase a street cut permit, and the fee for the permit shall be double the normal fee; no further permits shall be issued to the contractor or utility until such time as the improper work is removed and replaced in accordance with this Code.
- l. Where work in the City Right-of-Way is self-performed by one of the following entities, or by one of the entity's approved contractors, the fee for each permit shall be invoiced monthly. Invoicing may be provided for:
 - (1) Electric Power Board of Chattanooga;
 - (2) Tennessee-American Water Company;
 - (3) Chattanooga Gas Company;
 - (4) A T & T;
 - (5) Comcast Cable Company;

- (6) Hixson Utility District; and
- (7) Eastside Utility District.

Sec. 32-65. Manner of excavating - barricades and lights.

Any person making any excavation or tunnel shall do so according to the specifications and standards issued by the City Engineer. In accordance with the Manual on Uniform Traffic Control Devices (MUTCD) sufficient and proper barricades, lights and other traffic control devices shall be maintained to prevent accidents and injury to persons or property. If any sidewalk is blocked a temporary sidewalk shall be provided which shall be safe for travel and convenient for users. No work shall be done which deviates from the approved plans and until a change of plans has been secured from the Building Official. All expenses of such safety measures and temporary sidewalk shall be borne by the applicant or owner.

Sec. 32-66. Bond required.

When permits are required to excavate or in any way obstruct any street in the City, the Building Official shall require from such applicant, before granting a permit, a bond with good and sufficient sureties, conditioned to secure the City against all loss, damage or injury of any kind which may result to the City by reason of such excavation or obstruction; provided, that persons engaged in the business of contracting shall be allowed to give an annual bond, instead of a bond for each obstruction such annual bond in every instance to be renewed at least once every twelve (12) months.

Sec. 32-67. Manner of excavating street.

- a. In excavating any street, all material for paving or ballasting must be removed with the least possible injury or loss of the same and, together with the excavated materials from the trenches, must be placed where they will cause the least possible inconvenience to the public. All pavement, where trench excavations are to be made, shall be saw cut. Cutting the street with a jackhammer or a hoe-ram is not permitted.
- b. The permittee shall carry on the work authorized by the permit in such manner as to cause a minimum of interference with traffic. He shall provide adequate warning signs and devices to warn and guide traffic, and shall place the signs and warning devices in a position of maximum effectiveness. The latest editions of the Manual on Uniform Traffic Control Devices, copies of which are on file in the Traffic Engineer's Office, may be used as a guideline for proper positioning of signs and devices.
- c. Where difficult or potentially hazardous conditions exist, competent flagmen shall be provided to effect a safe and orderly movement of traffic. Where insufficient traffic lanes exist because of street openings, adequate bridging shall be supplied by the permittee. When traffic congestion occurs in spite of all precaution, the permittee shall be responsible for providing a flagman. In the event the Building

Official, Traffic Engineer or City Engineer shall discover any hazardous excavation or unwarranted traffic congestion where flagmen have not been provided, he shall direct the permittee to immediately post flagmen. A failure to post flagmen following a directive shall be a violation of this Article.

- d. On main thoroughfares and in congested districts, sufficient traffic lanes shall be kept open at all times to permit substantially normal traffic flow. Unless this can be accomplished, work shall be done only during the period between 9:00 a.m. and 4:00 p.m. or between 7:00 p.m. and 7:00 a.m., as the City Engineer may designate.
- e. For backfill in roadway areas, the contractor shall provide six-inches (6") of graded aggregate base above the utility's main line. From top of graded aggregate base backfill to bottom of paving, the backfill material shall be flowable fill with a compressive strength of 200-250 psi in 48 hours. Flowable fill shall be placed a minimum of forty-eight (48) hours prior to the placing of the asphalt or concrete topping. Where it is impractical to use flowable fill because of terrain, slope, width of trench, or other situations, the material for the backfill in the roadway areas may be approved for cement treated aggregate base at the sole discretion of the City Engineer. Each 8" layer of backfill shall be thoroughly compacted by means of a mechanical tamp. Other backfill materials may be acceptable, but prior approval for the substitution shall be determined by the City Engineer or his designee.
- f. Backfill for trenches within the sidewalk areas shall be compacted graded aggregate base instead of loose washed stone. Each 8" layer of graded aggregate base shall be thoroughly compacted by means of mechanical tamp.
- g. If a perpendicular cut reaches the centerline of the roadway, the asphalt must be replaced from curb to curb and a minimum of ten (10) feet on each side of the centerline of the excavation.

Sec. 32-68. Liability and responsibility for repair.

Any person who shall properly make any excavation or other change to the street right-of-way, and shall have same inspected by the Building Official or his designee and shall be relieved from any liability for any defects due to inadequate workmanship or defective materials provided the excavation shall remain free from defects for twelve (12) months following installation.

If a contractor, utility, or other entity makes five or more excavations within one block of a City right-of-way or within a work zone distance of 250 feet within the City right-of-way, whichever is shorter, causing disruption to any part of the pavement within two years after said right-of-way has been resurfaced or constructed, said contractor, utility or other entity shall repave the entire street for the distance of the City block or 250 feet, said distance being the distance utilized to require the repaving. Said repaving shall be done to the standards approved by the City Engineer and shall be done under the supervision and control and at the direction of the City. The contractor, utility, or other entity shall bear the entire cost of such repaving. In the

event any such contractor, utility, or other entity fails to repave as required herein, then such contractor, utility or other entity shall be prohibited from acquiring any permits for additional excavations in any City right-of-way until such time as the repaving required by this section is completed and approved by the City Engineer.

Sec. 32-69. Inspection.

It shall be the responsibility of any person granted a permit to schedule an inspection of the permitted work by the City's Inspector upon such conditions as may be specified in the permit. The utility or contractor making any changes to a City right-of-way, shall, at a minimum, have the following inspections performed by the City's Inspector:

- a. After the repairs or installation of the new conduit or piping and before the graded aggregate base fill over the pipe has been placed;
- b. During the placement of the flowable fill or other approved fill in the sole discretion of the City Engineer; and
- c. Final completion.
- d. Should inspections be required after normal working hours or on weekends, the contractor or utility making the changes to the City right-of-way, shall reimburse the City for the inspector's time at a rate to be determined in accordance with the personnel policies in effect at the time the repairs are performed.

When it is determined that improper work has been performed in the City's right of way, the contractor or utility responsible for the work shall remove improper work and reinstall the work in accordance with the City Standards. If a permit was not obtained, the contractor or utility shall purchase a permit and the fee shall be double the normal fee. No future permits will be issued to the violating contractor or utility until the improper work has been corrected.

Sec. 32-70. Specification.

Upon issuance of each permit, the Building Official shall specify minimum restoration standards applicable to the permit. The City Engineer and/or Traffic Engineer shall prepare and provide standard specifications for routine circumstances, which may be specifically referenced in the permit. Provided that where the work involved is greater in scope than provided for by standard specifications as determined by the Building Official, the City Engineer or the Traffic Engineer, the permittee shall be required to submit suitable plans of installation and street restoration for approval prior to issuance of a permit.

Sec. 32-71. Insurance.

Each person applying for a permit shall file a certificate of insurance (or provide other proof in form and substance to be approved by the City Attorney) indicating that he is insured, or the applicant shall provide an indemnity agreement with security satisfactory to the City Attorney, against claims of personal injury or property damage which may arise from or out of the performance of the work, whether such performance be by the applicant, a contractor or

subcontractor, or anyone employed by him. Such insurance or indemnity agreement shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The minimum amount of the liability insurance for bodily injury shall not be in an amount less than \$300,000 for each person and \$700,000 for each accident and for property damages in an amount not less than \$100,000, unless other limits are established by the Tennessee Governmental Tort Liability Act.

Sec. 32-72. Supervision.

The Building Official, or his designee, shall from time to time inspect all excavations and see to the enforcement of the provisions of this ordinance. The permittee shall give notice to the Building Official, or his designee, before refilling any such excavation or tunnel and said work may not commence until the Inspector arrives at the site or otherwise gives permission to proceed.

Secs. 32-73 -- 32-85. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

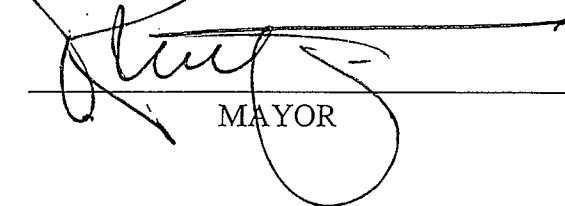
PASSED on Second and Final Reading

January 5, 2010


CHAIRPERSON

APPROVED: DISAPPROVED:

DATE: 1-12, 2009.


MAYOR

PAN/kac/mms