

Ordinance No. 629

AN ORDINANCE TO REGULATE THE MAKING OF CUTS IN STREETS; TO REQUIRE APPLICATION, PERMITS AND SECURITY THEREFOR; TO ESTABLISH FEES FOR INSPECTION OF CUTS; AND TO PRESCRIBE PENALTIES FOR THE VIOLATION THEREOF.

The City of Willamina, OR ordains as follows:

Section 1. It shall be unlawful for any person, group of persons or other legal entity to open, clear, cut, break, excavate, grade, level, damage in any manner, undermine or tunnel under any public street, alley or property in any manner dedicated to public use, or perform any work or construction thereon, regardless, of the state of improvement or development thereof, without first making application to the City and providing assurances for the furnishing of additional utilities as may be required in accordance herewith, all as provided in this ordinance.

Section 2. Applications for said permits shall be in the form prescribed by the City and shall specify the name and address of the applicant, the date of the application, the name of the street or alley to be cut or tunneled under, the nature of the street surface or pavement involved, the purpose of the work, the size and nature of the cut or excavation, the number of days required to complete the work and an agreement to deposit such security as required by the City; to comply with the provisions of this ordinance and with the standards and specifications of the City pertaining to the conduct of the work, to save the City and its employees harmless against any injury or damage that may result from the acts of the applicant and to file a report of the work done within 48 hours of its completion. Applications shall also contain or be accompanied by such maps, plans, information and stipulations as may be required by the City, and the applicable permit fee set by Council by resolution, unless the applicant is exempt from the fee.

Section 3. Before the issuance of any permit, the City shall require the applicant to file with the City either a surety bond, cash or certified check, to be forfeited in the event that the applicant shall fail to fulfill the following, as appropriate:

(a). Security in the amount equal to twice the estimated cost of replacing any pavement to be cut, removing all surplus earth, rubbish or other material, the cost of any re-excavation and refilling with proper material, with an amount equal to twice the estimated cost of any utilities required by the applicant to be provided in the course of such project, as herein provided, to be forfeited in the event that the applicant shall fail to complete the project in accordance with the requirements and limitations of applicant's permit and the terms and conditions of this ordinance.

(b). In lieu thereof, applicant may provide a blanket security to cover all projects subject hereto which may be undertaken by any particular applicant for a period of one year from the date the same is delivered to the City, in an amount to be fixed by the City, but not to exceed \$25,000, and subject to the same conditions as stated above.

Provided, however, that in the case of unimproved streets, the City may waive such security if the City shall determine that the same is not necessary for the protection of the public interest.

The City will refund the deposit to the applicant after the expiration of the maintenance period set forth in Section 11. Provided, however, that if some or all of the deposit is forfeited pursuant to this Section or is applied to costs of work done by the City pursuant Section 12 or any other applicable ordinance or agreement, the City will refund only the remaining amount of the deposit, if any.

Section 4. If the City is satisfied that the project is feasible and proper, that the said application has been made in due form, the permit fee has been paid, and that adequate security has been provided, as required by the provisions of this ordinance, the City shall issue a permit which shall designate: The name and address of the person to whom the permit is granted; the date of the issuance of the permit; the street or streets to be affected by said project; the nature of the streets surface or pavement involved; the purpose of the work, the size and nature of the project; estimated cost of restoration; the nature and amount of security deposited; the time within which the work is to be completed, as determined by the City; and such other restrictions as may be deemed necessary or proper by the City for the safety of the public and the protection of public interest. Moreover, in the case of unopened, undeveloped or unimproved streets, if the City determines that such project is for the purpose of developing property adjacent thereto, the City may require as a condition to such permit that the applicant complete the improvement of the street to City standards and specifications and/or that the applicant provide water, sewer and such other utilities to the property adjacent thereto as may be necessary for health, safety and the orderly development of property adjacent thereto.

If the City does not issue the permit, the permit fee and the security deposit, if any, will be returned to the applicant.

Section 5. All work under said permits shall be done in conformity with the provisions of this ordinance, the terms of said applications and permits, and under the supervision and subject to the approval of the City. Upon completion of the excavation, cut or tunnel, all surplus earth, rubbish, or other material shall be removed immediately and the street or surface pavement shall be replaced in as good as or better condition than it was before, as determined by the City.

Section 6. No work shall be undertaken other than that specified in the application and permit for the particular cut or excavation. Upon demand of the City, said permit shall be produced at the place where the work is in progress; or such work shall be stopped until said permit is produced.

Section 7. No permit shall be issued by the City which would allow an excavation or opening in a newly paved or constructed street less than three (3) years old unless the applicant can clearly demonstrate that the public safety or interest require the proposed work, and (1) an emergency condition exists; (2) the cut is necessary for a newly constructed residence or building to be served with required utilities and the applicant acquired ownership of the land or lot on which the newly constructed building is situated after completion of the last paving or repaving; or (3) the City Engineer determines that there is no feasible alternative to excavating or opening the street in order to provide utility service to a building or residence.

The City Engineer will determine the restoration work required for any excavation or opening on a newly paved or constructed street less than three (3) years old. The City Engineer may require restoration to higher engineering and construction standards than those ordinarily required so that the restoration will conform with the qualities of the existing street. Any additional cost incurred as a result of the higher standards required will be borne solely by the applicant.

Section 8. Within 48 hours of the completion of said cuts or excavations, the person to whom the permit to do such work has been issued shall report to the City, stating that such work has been completed, and giving such other information as may be required by the City. After notice of completion, the City will inspect the work. The City will accept the work as complete only if the work and restorations comply with applicable City standards and specifications. If the work and restorations do not comply with applicable City standards and specifications, the applicant shall make all necessary repairs and restoration at the applicant's expense within 48 hours, until the City accepts the work.

Section 9. Whenever any person or corporation shall, under authority of this ordinance or otherwise, place any obstruction in any street or alley or make any excavation therein for any purpose whatsoever, it shall be the duty of such person or corporation to keep such obstruction or excavation properly safeguarded by substantial barricades and to display lighted red lanterns or other lights or flares from dusk until daylight in conformity with such regulations as may be specified by the City. Whenever, in the opinion of the City, the public safety is so seriously endangered by said cuts or excavations as to require constant supervision from dusk to daylight to insure that all barricades are in proper conditions, that all warning lights are burning, and that traffic is properly routed around such barricades, the person to whom the permit for the work has been granted shall be responsible for furnishing a night watchman for that purpose.

Section 10. Every person or corporation, having occasion to place any obstruction in any street or alley or to make any excavation therein under the provisions of this ordinance, shall be responsible to anyone for any injury by reason of the presence of such obstruction or excavation in the public highways; and also shall save the City and its employees harmless from, and indemnify and defend the City and its employees for, any and all liability, settlements, loss, costs, and expenses in connection with any legal action or claim resulting or allegedly resulting from or arising out of the presence of any such obstruction or excavation in said public highways.

Section 11. All persons to whom such permits are granted shall be personally responsible for the maintenance and repair of the street surface or pavement cut, dug up, damaged, tunneled under, or undermined under the provisions of said permits in as good as or better condition than before such work was undertaken, at their own expense and for such period of time as may be required by the City, but not to exceed one year. The time period set forth in this section shall begin on the date the work is accepted by the City pursuant to Section 8.

Section 12. Whenever, in the opinion of the City, it would be to the best interests of the City for the City itself to replace or repair the street surface or pavement cut, dug up, damaged, tunneled under, or undermined under the provisions of this ordinance, such

work shall be done by the City and the cost of said work shall be either charged to the person to whom the permit for the said cut or excavation has been granted or deducted from the security deposited by him with the City.

Section 13. The provisions of this ordinance shall not be deemed to apply to the construction or maintenance of pavement by the City, by its employees, or by persons operating under contract with the City; nor to cuts or excavations made by the employees of the City utility departments; but the employees of the City and persons operating under contract with the City shall give prior notice and report to the City all street cuts which would otherwise be subject to the provisions of this ordinance.

Section 14. Any owner, contractor or other person failing, neglecting, omitting, resisting or refusing to comply with any of the conditions, terms, regulations or requirements of this ordinance, upon conviction thereof be punished by a fine not to exceed \$300.00.

Section 15. The sections and subsections of this ordinance are hereby declared severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Passed by the Council this 12th day of April, 2007,

AYES: Buck, Reynaud, Nortness, Howell, Pond, Tovey

NAYS: _____

Submitted to and approved by the Mayor on the 12th day of April, 2007



Curtis Grubbs, Mayor

ATTEST:



Sam Sasaki, City Manager

