

STATE OF ALABAMA  
COUNTY OF BALDWIN

ORDINANCE NO. 541-97

AN ORDINANCE TO REQUIRE A PERMIT TO PERFORM WORK  
WITHIN THE PUBLIC RIGHT-OF-WAY

BE IT ORDAINED by the Mayor and Council of the City of Foley, Alabama, as follows:

**SECTION 1: DEFINITIONS:**

CITY: The City of Foley, Alabama and any areas which the City may have ownership of a right-of-way.

BUILDING OFFICIAL: The Building Official for the City, the City Engineer, City Inspector or any other agent designated by the Building Official to act on behalf of the City.

PERMITTEE: The contractor, firm, corporation or any person holding a permit under this Ordinance.

**SECTION 2: PERMIT REQUIREMENTS:**

All work performed in a public right of way in the City shall require the issuance of a Public Right of Way Access Permit. Permits shall be obtained prior to commencement of any construction within any public right of way except for emergency work. It shall be unlawful for any person to dig up, open, excavate, construct or to cause to be dug up, opened, excavated or constructed, any street, alley, sidewalk, drainage ditch or other public right-of-way in the City without first having secured a Public Right-of-Way Access Permit from the City.

The building official shall establish regulations and specifications for excavation and construction within the public rights-of-way for the protection of the public improvements and the protection of persons and property, and may place conditions on any permit as he shall deem necessary toward this goal. It shall be unlawful for any person to excavate or construct in the public rights-of-way in violation of such regulations and specifications or the terms and conditions of the permit. The Building Official may establish a time limit for work to be accomplished under a right-of-way permit.

Applications for a permit shall indicate the exact location, depth, extent, nature, and purpose of the work, including a sketch or plan as necessary, and the time required for the work.

A separate permit shall be required for each excavation or construction project. The permit shall be required at least two (2) working days prior to commencement of the work. The permit shall be kept at the site of the work and shall be exhibited upon

requests to any law enforcement officer or City building official or his authorized representative.

Utility agencies shall require the contractor who will actually be performing the work to obtain a permit. The contractor shall be required to furnish a bond as provided for herein, thereby assuming full responsibility for the work performed. Except as set forth herein, the contractor performing the work shall be the permittee.

The work of installing range boxes, surveying monuments, adjusting manhole rings and service boxes, or any similar work undertaken solely for the convenience of and at the order of City of Foley shall require a permit; however the permit shall be issued on a "NO FEE" basis. The permittee will still be required to perform his work in complete compliance with all City of Foley standards and requirements. This ordinance shall not apply to any governmental entities having an obligation or other mandate to perform work within public right-of-ways within the City or any other agents of the City performing work on behalf of the City unless specifically provided herein.

**SECTION 3: TIME OF COMPLETION AND INSPECTION:**

All work covered by the permit shall be completed within 30 days of its date of issue. A permittee may request one 30 day extension by contacting the City building official before the completion date of said permit. In the case of long term projects, further extensions may be granted on a project by project basis. Permits, when issued, shall be valid for a period of thirty (30) calendar days or as deemed necessary by the building official to properly accomplish the work, and may be renewed for one (1) additional thirty (30) calendar day period, providing the renewal is obtained prior to the expiration date of the permit. Failure to obtain a renewal or to complete the work as stated herein will require the obtaining of a new permit and payment of all applicable fees.

The building official is authorized to inspect all work performed under the permit, including, but not limited to clearing and grubbing, compaction of subgrade, placement of subbase, base and asphalt, forms, concrete work, structures, and materials to be used. The building official may be present on the site to advise contractors on these standards. The building official has authority to reject defective materials and workmanship not in conformance with the specifications upon which the permit was based.

**SECTION 4: FEES:**

An application of twenty-five and no/Dollars, (\$25.00) shall be assessed for permits and inspections at the time of application for the permit.

The Permittee shall be required to pay additional charges for work requiring a City of Foley building official to work hours other than normal City hours (Monday through Friday 8:00 a.m.-5:00 p.m.) at an hourly rate of thirty dollars (\$30.00).

The permit fee itself is not subject to refund if the permittee chooses not to perform the work, for any reason, under said permit.

**SECTION 5: BOND:**

A non-cancelable performance bond, letter of credit or cashier's check, in the amount of the cost of work or \$500.00 which ever is greater, payable to the City of Foley, shall be required in the name of the permittee prior to issuance of any permit. Said bond shall assure that the permittee will comply with all the City standards and specifications and shall assure recovery by the City of any expenses incurred, within a period of one year. The Building Official shall have sole discretion to waive the bond requirement when good cause is shown.

The permittee, by acceptance of the permit, expressly guarantees complete performance of the work in an acceptable manner to the City, guarantees all work done by him for a period of one year after the date of acceptance and agrees upon demand to maintain and make all necessary repairs during the warranty period. Failure to do so shall subject the permittee to forfeiture of his bond.

**SECTION 6: LIABILITY:**

Any person who shall undertake work pursuant to a permit issued under the provisions of this Chapter shall be liable for any damage occasioned to persons, animals or property by reason of carelessness and negligence connected with such work and shall hold the City harmless therefore. Any permit issued shall pertain only to work within the City right-of-way and is no way a permit to enter any private property adjacent to such right-of-way or private easement or to alter or disturb any facilities or installations existing within the right-of-way and which may have been installed and owned by others.

**SECTION 7: PENALTIES:**

Failure of the applicant to comply with any of the terms and conditions of the permit shall be sufficient cause for

cancellation of the permit by the building official and may be cause for the refusal of future permits. The permit, the privileges granted by the permit, and the obligations of the permittee shall be binding upon the successors and subcontractors of the permittee.

Any person, firm corporation or other organization commencing any work without a prior valid written permit or contrary to the provisions of this Ordinance, shall be fined upon conviction not less than Fifty and no/dollars, (\$50.00) and not more than One Hundred and No/Dollars, (\$100.00) and cost of court for each offense. No further permits shall be issued to a party in violation of this ordinance until all prior fines are paid.

Permit requirements shall apply to emergency repairs; however, a delay of 48 hours is granted, excluding weekends and holidays, following the beginning of such repair before the lack of a permit shall warrant a fine.

Any excavation or construction in any street, alley, sidewalk, or other public right-of-way in the City (with or without a permit as required by this Chapter) which constitutes an emergency presenting imminent danger of serious injury to persons or property is hereby declared to be a public nuisance which may be summarily abated as provided in the Zoning Ordinance of the City.

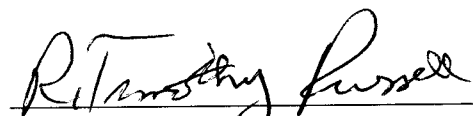
**SECTION 8: CIVIL REMEDY:**

In addition to the penalties established above, violations of this Chapter shall be cause for the City to proceed against any surety, condemn any bond to commence an action in a court of competent jurisdiction for the appropriate legal and equitable relief, and any other action permitted by law.

**SECTION 9: REPEAL OF PRIOR ORDINANCE:**

Section 6 of Ordinance No. 458-92 adopted on March 2, 1992 is hereby specifically repealed. All other portions of said Ordinance not specifically repealed herein are hereby ratified and confirmed.

Ordained by the Council of the City of Foley, Alabama this 17TH day of March, 1997.

  
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R. TIMOTHY RUSSELL, Mayor

Attest:   
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A. PERRY WILBOURNE, City Clerk