

ORDINANCE NO. 1152

AN ORDINANCE REGULATING EXCAVATIONS OF STREETS WITHIN THE CITY OF PRINEVILLE

The people of the City of Prineville ordain as follows:

1. Definitions.

- a) *Applicant* means a person applying for a permit pursuant to this Ordinance;
- b) *City* means the City of Prineville;
- c) *Community Development Director* shall mean the Community Development Director of the City of Prineville or his or her designee;
- d) *Excavation* means a hole, cut, tunnel, or other cavity in, through, across, or under a street, not including the driving or forcing of pipes through the ground;
- e) *Permitee* means a person who has received a permit pursuant to this Ordinance.
- f) *Person* means every natural person, firm, co-partnership, association, limited liability company, corporation, or other legal entity;
- g) *Street* means every way or place open as a matter of right to the use of the public for vehicular and pedestrian traffic including sidewalks, curbs, and alleys;

2. Permit Required.

It is unlawful for any person to cut, break, dig up, damage in any manner, undermine or tunnel under any street without first complying with the provisions of this Ordinance in regards to the obtaining of permits, depositing of securities, and the making of applications to the Community Development Director. Applications for permits shall be in the form prescribed by the Community Development Director. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit.

3. Application for Permit.

In the application for an excavation permit, the applicant shall specify his/her name and address, the date of application, the name of the street to be cut or tunneled under, the exact location of the excavation; the nature of the street surface involved; the purpose if the work; size and nature of the excavation; the number of days required to complete the work; and an agreement to deposit such securities as required by the Community Development Director to comply with the provisions of this Ordinance and with the specifications of the Community Development Director pertaining to the conduct of the work, to save the City and its employees harmless against any injury or damage which may result from the actions of the applicant, and to file a report of the work within 48 hours of its completion. Applications for each permit to be issued shall be accompanied by a fee in an amount set by resolution of the City.

4. Security.

Before the issuance of any permit, the Community Development Director shall require the applicant to file with the application as security either:

- a) A surety bond in the amount fixed by the Community Development Director. The bond shall be conditioned that the applicant will, immediately upon the completion of the work, remove all surplus earth, rubbish, or other materials, replace the surface excavated in a condition as good as or better than before, and keep the same in good repair, at his/her own expense, for one year from the completion of the work;

b) In lieu of the above mentioned surety bond, the applicant may file as security cash or certified check in an amount equal to twice the estimate of replacement value of surface to be cut, together with the costs of re-excavation and refilling with proper materials, if necessary, as determined by the Community Development Director, to be held and returned subject to the same conditions as set forth in the case of surety bonds; provided, however, that in the case of unimproved streets, no security shall be required, unless, in the opinion of the Community Development Director, such security is necessary for the protection of the public interest.

5. Insurance.

Each applicant shall submit with his or her application a certificate of insurance designating the City additional insured under the applicant's policy of liability insurance with policy limits in an amount deemed appropriate by the City. In addition, the applicant shall provide City with proof of an endorsement for completed operations.

6. Issuance of Permit.

If the Community Development Director is satisfied that the excavation is feasible and proper, that the application has been made in due form, that adequate security has been filed as required by the provisions of this Ordinance that the applicant has provided the appropriate certificate of insurance, and upon payment of the permit fee, he/she shall issue a permit which shall designate the name and address of the persons to whom the permit is granted; the date of issuance of the permit; the street or streets to be cut or tunneled under; the estimated time in which the work is to be completed; and such other conditions or restrictions as may be required, including, but not limited to the following:

- a) Requiring that access to fire hydrants be available at all times;
- b) Requiring that the actual work be confined to the hours of 7 a.m. to 9 p.m., unless otherwise specified, or to certain days;
- c) Setting forth the maximum lengths of excavations to be opened at any one time;
- d) Requiring that access to driveways be maintained;
- e) Requiring that provisions be made for routing and protection of traffic;
- f) Relating to the care and disposition of excavated material during construction;
- g) Making provision for water courses during excavation;
- h) Setting forth minimum or maximum depths of excavation or structures;
- i) Providing for control of noise, dust, and debris during excavation;
- j) Prescribing acceptable methods and materials for securing proper backfill and resurfacing, including temporary surfacing, if necessary.

7. Conduct of Work.

All work under such permits shall be done in conformity with the provisions of this Ordinance, the terms of the application and permits, the standards and specifications of the City, and in a manner approved by the Community Development Director. Upon completion of the work, any excavation shall be filled, compacted, and the street surface restored to as good or better condition than before the work and in conformity with City standards for the particular street surface. Cold-mix asphalt patching will only be allowed as a temporary measure during adverse weather conditions, and the permanent patching shall be placed as soon as weather permits.

8. Notice of Completion of Work.

The applicant shall notify the Community Development Director within 48 hours after completion of the work under the permit and the work shall be inspected and approved by the Community Development Director.

9. Barricades and Safety Measures.

Whenever any permittee places obstructions in a street or makes any excavation therein for any purpose, it shall be his or her duty to keep the obstruction or excavation safe guarded by substantial barricades and the display of lighted red lanterns or other lights or flares or other warning devices approved by the City from dusk until daylight. Whenever the public safety requires that obstructions or excavations require constant supervision, the permittee shall be responsible for furnishing such constant supervision.

10. Liability for Accidents.

Every person having occasion to place any obstruction in any street or alley or to make any excavation therein under provision of this Ordinance shall be responsible to anyone for any injury by reason of the presence of such obstruction or excavation on a street when the obstructions or excavation is the proximate cause of the injury and shall also be liable to the City, in the event that the City is held responsible for any action or claims or otherwise arising out of the presence of the obstruction or excavation of the street.

11. Repairs.

All permittees shall be personally responsible for the maintenance and repair of the street excavated under the provisions of the permits and shall place the excavated street in as good as or better condition than before such work was undertaken, at their own expense, and for one year period after the work has been approved by the Community Development Director.

12. Option of City to Repair Excavation.

Whenever, in the opinion of the Community Development Director, it would be to the best interest of the City for the City itself to replace or repair the street excavation under the provisions of this Ordinance, such work shall be done by the City under the direction of the Community Development Director and the cost of the work shall be either charged to the person to whom the permit for excavation has been granted or deducted from security deposited by him/her with the Community Development Director.

13. Applicability to City Employees.

The provisions of this Ordinance shall not be deemed to apply to the construction or maintenance of streets by the City, by its employees, or by persons operating under contract with the City.

14. Emergencies.

In the event of an emergency affecting the public safety, a cut may be made in a street providing that a report of the cut is made to the Community Development Director within 48 hours, and all provisions of this Ordinance are complied with as though making an application for an original permit.

15. Severability.

Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision or the remaining provisions of this Ordinance.

16. Repeal.

Ordinance No. 707 is hereby repealed.

17. Violations

Any person who violates any provision of this Ordinance, may upon conviction, be fined in an amount not to exceed \$500.

Passed by the City Council this _____ day of _____, 2008.

Signed by the Mayor this _____ day of _____, 2008.

Mike Wendel, Mayor

ATTEST:

Robb Corbett, City Recorder/Manager