

A BILL FOR AN ORDINANCE REGULATING )  
EXCAVATIONS AND CONSTRUCTION WITHIN )  
THE PUBLIC RIGHT-OF-WAY AND REPEALING )  
ORDINANCE NO. 1294 SECTION 12.12 )  
LEBANON MUNICIPAL CODE. )

ORDINANCE BILL NO. 31  
for 1982

ORDINANCE NO. 1901

THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section 1. Application. Each section of this Ordinance, unless specifically noted within that section, shall apply to any and all persons, firms and corporations performing work affecting the City right-of-way and work affecting City utilities and structures within legal easements, subject to the restrictions expressed and implied in the recorded easement document.

Section 2. Terminology. The term "City Engineer" as used throughout this Ordinance shall include the City Engineer, his authorized representative, or such other employee of the City of Lebanon as the City Engineer may designate as responsible for the administration and enforcement of this Ordinance. "Person" or "Persons" as used herein shall include any individual, firm, corporation, public utility company, or other legal entity.

Section 3. Permit Required. It shall be unlawful for any person to perform work affecting the public right-of-way without obtaining a permit therefor as provided in this Ordinance. Work affecting the right-of-way includes, but is not limited to, construction, reconstruction, grading, oiling, repair, placing or erecting structures, opening or excavation of a sidewalk, street, curb, driveway, culvert, ditch or any area falling within any City of Lebanon right-of-way or easement.

Said permit requirement shall not be deemed to apply to construction and maintenance operations by the City and its employees, by persons operating under contract with the City, to work performed under a subdivision agreement, to any franchised utility firm in the construction, operation and maintenance of equipment, transmission facilities, and appurtenances directly related to the service the firm is franchised to provide, or to the routine maintenance of landscaping and clearing of sidewalks required of property owners adjacent to rights-of-way. The City Engineer further reserves the right to waive the permit requirement or reduce permit fees for operations he may deem to have negligible impact upon the right-of-way or its uses.

Section 4. Permit Format. The City Engineer shall prescribe one of two permit formats depending on the scope of the proposed activity, be it financial scope or potential to alter or affect the right-of-way or City appurtenances thereto.

A. The Permit For Work Within The Right-of-Way shall apply to projects of minor scope. Projects normally falling within this category include, but are not limited to, sanitary or storm sewer service lateral connections, single lot sidewalk and driveway apron construction and maintenance, curb cuts and, generally, work for which prior submittal of plans is not required.

B. The Permit For Construction Of Public Improvements shall apply where the City Engineer deems the proposed work a major project. This permit shall normally apply to, but not be limited to, road

construction, extensions of sanitary and storm sewer mains, large excavations and, generally, work for which the City Engineer requires prior submittal and approval of plans.

Section 5. Requirements of the Applicant.

A. Prequalification. Except as provided below, no person shall be issued a permit for work within the right-of-way unless prequalified by the City Engineer to perform such work. Prequalification is granted at the discretion of the City Engineer through fulfillment of one or more of the following requirements:

- (1) A history of performance which is deemed satisfactory by the City Engineer.
- (2) Current prequalification, by the State of Oregon, to perform such work.
- (3) The provision of security in the form of a cash deposit or performance bond in an amount which, in the judgment of the City Engineer shall be sufficient to cover all costs associated with restoration, repair or replacement of any damage directly or indirectly caused by the subject activity. If the permit holder fails to perform in accordance with the provisions of this Ordinance, and the City has unreimbursed costs or expenses resulting from such failure, the City shall call on the cash deposit or bond for reimbursement. If the amount of the bond or cash deposit exceeds costs and expenses incurred by the

City, the remainder shall be released. If the amount of the cash deposit or bond is less than the costs and expenses incurred by the City, the permit holder shall be liable to the City for the difference.

- (4) The provision of a blanket security bond covering various activities within the right-of-way and subject to the same conditions as (3) above.

Applications for prequalification shall be to the City Engineer on forms prescribed and provided by him and shall contain such information as he deems necessary to effect a determination of eligibility. The City Engineer reserves the right to waive prequalification in the case of landscaping, minor maintenance, and such other operations that, in his discretion, do not require special qualification or performance guarantees.

B. Insurance. The acceptance of a permit constitutes an agreement by the applicant to save the City, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit.

C. Information. Applications shall be accompanied by or contain such maps, plans, surveys, information, stipulations and restrictions as may be required by the City Engineer to determine whether the proposed work conforms to City specifications and sound engineering and design practices.

D. Fees.

- (1) Permit For Work Within The Right-of-Way. A permit fee, in an amount adopted by Resolution of the Lebanon City Council, shall be paid at the time the permit is issued.

If the permit is terminated within the 60 day period of validity, and the applicable work is not performed, the City Engineer may, at his discretion, remit a portion of the permit fee not to exceed 75% of the full amount.

After the passage of 60 days from the date of issuance, the permit shall no longer be valid and the permit fee shall be forfeited by the applicant.

(2) Permit For Construction of Public Improvements. At the time of permit issuance, a fee shall be paid based on the estimated true cost of the construction and shall be 4% of the first \$15,000.00 plus 2.5% of project costs exceeding that amount. In calculating the true cost of construction, any donated materials and equipment time, or unpaid labor, shall be computed at fair market value and prevailing rates for similar materials, equipment, and labor. At the time of project completion, fees shall be adjusted, if necessary, to reflect the above percentages of true construction costs.

(3) Franchised Utility Operations. The City Council may, by Resolution, establish fees for work within the right-of-way by Lebanon's franchised utilities except where specifically restricted in the franchise agreement. Such fees shall be due and payable no later than the fifteenth day of the month following that in which the work is completed.

Section 6. Issuance Of Permits. If the City Engineer determines that the applicant has satisfied the provisions of this Ordinance and that the excavation, cut, tunnel or alteration is feasible and proper, he shall endorse

and issue a permit for the proposed activity. If, for any reason, the applicant is denied a permit, the applicant shall have the right to appeal to the City Administrator and, finally, to the City Council whose decision shall be final.

Section 7. Requirements Of Permit Holders And Franchised Utilities.

A. No work shall be undertaken by the permit holder other than that specified in the application and permit.

B. Permit holders and franchised utilities shall notify the City Engineer at least 12 hours, but not more than 72 hours, prior to the commencement of any excavation or fill work other than emergencies. Inspection may occur at any time throughout the project.

C. The responsible person or his authorized representative shall be present, on-site, whenever operations are occurring within or affecting the right-of-way. The representative shall have the power and authority to modify procedures and plans or to cause the complete cessation of work if so directed by the City Engineer.

D. A copy of the validated permit, where issued, shall be available at all times, on-site, and shall be produced upon demand of the City Engineer or any officer of the Lebanon Police Department.

Section 8. Conduct Of Work. The conduct and quality of work performed in the public right-of-way shall be governed by:

- A. The terms of the application and permit;
- B. The provisions of this Ordinance;
- C. The applicable City of Lebanon standards and specifications as set forth by the City Engineer;
- D. The judgement of the City Engineer.

Section 9. Special Requirements Of Franchised Utilities. In lieu of securing individual permits, franchised utilities shall endeavor to inform the City, in advance, of the need to work within the right-of-way for all routine and emergency work normally requiring a permit. In addition, the utility shall submit to the City Engineer, on a monthly or more frequent basis, a report of all hard surface cuts made within the right-of-way; the date and location of such cuts; and the date of permanent repairs.

Any mainline construction or relocation, non-emergency hard-surface cut exceeding twenty (20) square feet in area, or other major project shall necessitate prior submittal of plans for City review and concurrence.

Section 10. General Specifications.

A. Safeguards. Whenever any person under authority of this Ordinance or otherwise, shall place any obstruction in the public right-of-way, or make any excavation or alteration thereto for any purpose, it shall be the duty of such person to keep the obstruction, excavation or alteration properly safeguarded by substantial signs, barricades and flagmen as necessary and to make use of lighting, lighted lanterns, flashing lanterns or other lights or flares from dusk to daylight, in conformity with such regulations as may be specified by the City Engineer. Whenever, in the opinion of the City Engineer, the public safety is so endangered by such obstructions, excavations or alterations as to require constant supervision to insure that warning and traffic control devices are functional and that traffic is safely and properly routed around such barricades, the person to whom a permit has been granted shall be responsible for furnishing a night watchman for that purpose. Twenty-four

hours notice shall be given before partial or complete closure of any travel lane in any street or alley. Should an emergency situation arise where this 24 hours notice is not feasible, every reasonable effort shall be made to notify the City Engineer, the Lebanon Police Department and the Lebanon Fire Department in advance of occupation of the right-of-way.

B. Inherent Responsibilities.

- (1) All drainage ways and structures shall be left open for the free flow of water during operations and after completion. No drainage system shall be altered without prior approval of the City Engineer.
- (2) It is incumbent on the responsible person that no mud, gravel or debris be allowed to remain on the travelled portion of any improved right-of-way. Provisions must also be made to prevent migration of such material to the City storm drainage system.
- (3) At the close of each work day, all waste material shall be removed from the site. Travelled portions of the right-of-way shall be restored to a condition acceptable to the City Engineer. On hard-surfaced rights-of-way, this restoration shall include permanent resurfacing, the placement of temporary asphaltic concrete, or an alternative approved in advance by the City Engineer.
- (4) Excavations, cuts, and other alterations to the right-of-way shall be permanently repaired in a timely manner. Every effort must be made to effect permanent repairs



immediately following project completion. "Time settling" of trenches is not an approved method and any time spent by Engineering Division personnel locating and alerting responsible persons to failing trench patches will be charged to those persons.

- (5) Any damage caused to existing lines shall be reported to the applicable utility company or to the City if City facilities are involved.
- (6) Upon completion of the authorized activity, all surplus earth, rock, paving materials and other rubbish shall be removed immediately and becomes the property of the permit holder. Any and all areas disturbed as a result of the activity within the right-of-way shall be repaired as nearly as practicable to original condition.
- (7) It is the position of the City that it should not, at any time, assume the responsibility and costs involved in maintenance of failing street patches and other such repairs made by any person in connection with utility, storm drain and sanitary sewer installation and maintenance. Such persons, therefore, shall be held responsible for the maintenance of such repairs, in a condition acceptable to the City Engineer, and for all present and future costs incurred as a result of the permitted work and resultant repairs.

Section 11. Work By City Forces. Failure to comply with any provision of this Ordinance, with the standards and specifications set forth by the City Engineer, or with sound and accepted safety, health and engineering practices shall be just cause for the City Engineer to direct City forces or an independent contractor to make any temporary or permanent repairs deemed necessary to bring the subject work into compliance with the above standards and practices. Cost of this work shall be charged to the permit holder at a rate of one and one-half times the cost to the City for personnel time, equipment, fees, materials, and contract work, plus 15% overhead and administration. The City Engineer may revoke the prequalification of any party with delinquent payments and may take other steps necessary to collect such costs including, but not limited to, the filing of a lien on the property for which the work was performed.

Section 12. Notice of Completion/Refund. Within 48 hours of the completion of the work authorized by a permit issued in accordance with the provisions of this Ordinance, the person to whom the permit has been issued shall report to the City Engineer that such work has been completed and shall give such other information as he may require. The City Engineer shall thereupon examine the work and if he finds it to be fully and properly restored, he shall endorse his approval on the permit and arrange the timely release of any related bond or deposit.

Section 13. Violations. Violation of any provision of this Ordinance shall be a misdemeanor offense punishable by a fine not to exceed \$500.00 and/or 30 days in jail. Each day of violation shall constitute a separate offense.

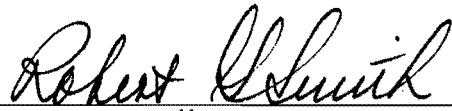
Section 14. City Liability. Nothing contained herein shall be implied to require the City of Lebanon, or its officers, agents or employees, to monitor or inspect any project to determine whether the provisions of this ordinance have been, or are being, complied with.

Section 15. Succession. Provisions of this Ordinance hereby supersede and take precedence over conflicting provisions of previous ordinances.

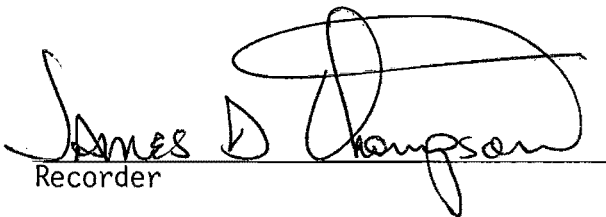
Section 16. Severability. If any provision or section of this ordinance shall be held void or unconstitutional, all other parts, provisions, and sections of this ordinance, not expressly so held to be void or unconstitutional, shall continue in full force and effect.

Section 17. Repealer. Ordinance No. 1294 is hereby repealed and this ordinance shall replace it as Section 12.12, Lebanon Municipal Code.

Passed by the Council by a vote of 6 for and 0 against and approved by the Mayor this 10th day of November, 1982.

  
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Mayor

ATTEST:

  
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Recorder