

ORDINANCE NO. 292**AN ORDINANCE PROVIDING FOR REGULATIONS FOR PUBLIC RIGHTS OF WAY AND REQUIRING SECURITY AS A CONDITION FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS, AND REPEALING ORDINANCE NOS. 175 AND 235.**

The City of Coos Bay ordains as follows:

ARTICLE I: REGULATORY AUTHORITY OVER RIGHTS-OF-WAY**Section 1: Definitions.**

City: The City of Coos Bay.

Department: The Department of Community Services.

Director: The Director of Community Services or his or her designee.

Excavation: Digging, scooping, hollowing out or other removal of soil or earth.

Permittee: The person authorized to make excavation in public right-of-way, including the person who seeks to have the excavation made and his or her agent.

Person: A natural person; a corporation, partnership, limited liability company, or any other entity in law or fact.

Public Improvement: Any street, sidewalk, curb, gutter, sewer line or other public improvement which is located in public right-of-way and which will be dedicated or otherwise transferred to the City at the time the improvement is completed, or any other improvement over which the City has regulatory authority.

Public Rights-of-Way: Any real property owned by the City that is used for the free and unimpeded passage of the public; any lesser interest in real property held by the City which contains a grant for the free and unimpeded access by the public across such property. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, public trails and paths, and all other easements which provide the public with a right of access or give the City the right to construct, maintain, repair and operate a public improvement. As used in this ordinance, public rights-of-way includes subsurface and air space over the property.

Section 2: Jurisdiction.

(a) Except as otherwise provided by state or federal law, the City has jurisdiction, and may exercise regulatory control, over all public rights-of-way owned by or otherwise vested in the City.

(b) The exercise of jurisdiction and regulatory control pursuant to this section does not obligate or create an obligation for the City to maintain, repair or improve any part of or improvement in public rights-of-way.

Section 3: Encroachments. No person may occupy or otherwise encroach upon public rights-of-way subject to the jurisdiction or regulatory authority of the City without first obtaining a franchise, license or permit, as the case may be, from the City for such occupation or encroachment.

Section 4: Restoration of Public Rights-of-Way.

(a) Whenever a person performs any work which affects a public right-of-way, the person shall, at the person's sole expense, promptly restore such right-of-way to as good as condition as existed before the work was undertaken, unless otherwise directed by the Department. If the person does not promptly restore such right-of-way, the City may cause the restoration to be made, and the costs of such restoration assessed against the person.

(b) Any tree, shrub or other landscape planting which shows substantial damage attributable to the person's actions within eighteen months of completion of the work shall be replaced at the person's sole expense.

Section 5: Fees. Except as otherwise provided in this Ordinance, the City Council shall, by resolution, establish fees and other charges for permits, plan checks, and other activities by persons performing work in or otherwise utilizing public right-of-way.

ARTICLE II: EXCAVATIONS IN RIGHTS-OF-WAY

Section 6: Excavation Permits.

(a) Except as otherwise provided by ordinance, no person shall make any excavation or tunnel under any area within public rights-of-way without first obtaining an excavation permit from the Department. Utilities, as defined by Ordinance No. 72 are exempt from this subsection, and must comply with the provisions of Ordinance No. 72.

(b) Nothing in this section shall prevent emergency excavation necessary for the immediate preservation of life or property, for locating trouble in conduit or pipe or for making emergency repairs; provided, however, that any person making such emergency excavation applies for and receives a permit on the first working day after which the work is commenced.

Section 7: Excavation Permits.

(a) Applications for excavation permits shall be made on forms provided by the Department. The application shall describe the purpose, location and size of the anticipated excavation, the name of the person performing the actual excavation, and the name of the person for whom the excavation is being performed. The application shall contain a provision endorsed

by the person for whom the excavation is being performed or the person's agent, and that the person performing the excavation will comply with the requirements of this ordinance and any conditions imposed upon the excavation.

(b) The application shall be accompanied by a cash deposit, performance bond, or other security acceptable to the City Attorney, to insure proper restoration of the public right-of-way. From this security shall be deducted the expense, if any, incurred by the City in cleaning up and removing material and debris and restoring the public right-of-way. The balance, if any, shall be returned to the person posting the security after excavation is complete and the right-of-way has been restored to good order and condition as the property was in immediately prior to the time excavation was undertaken.

Section 8: Manner of Excavation.

(a) Permittee performing excavation shall excavate in such a manner so as to avoid unnecessary inconvenience or annoyance to the general public and occupants of neighboring properties. The permittee shall take appropriate measures to reduce, to the fullest practicable extent, noise, dust and unsightly debris. Between the hours of 6:00 p.m. and 7:00 a.m., the permittee shall not, except in case of emergency, use any tool, appliance or other equipment producing noise of sufficient volume to disturb the peace or repose of occupants of neighboring properties.

(b) No permittee shall make any excavation at variance with, or in any way contrary to, the terms of the excavation permit issued therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground. Excavation shall not at any point extend underneath or beyond the width of the opening at ground level.

(c) No injury shall be done to pipes, cables or conduit in making excavation. Notice shall be given to all persons maintaining pipes, cables or conduit which are or may be endangered or affected by the excavation prior to the time excavation commences.

(d) No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

(e) After excavation commences, the person performing the excavation shall proceed with diligence and promptly complete the work.

(f) The permittee shall adequately barricade the area being excavated, and shall install sufficient warning lights to protect the public.

Section 9: Inspection of Work. All excavation shall be inspected by the City. The Director shall be notified before any work commences. The permittee shall not proceed until receiving authorization from the City at each step of the project as identified in the permit.

Section 10: Placement of Excavated Material.

(a) All excavated material shall be laid compactly alongside the trench and kept trimmed so as to cause as little inconvenience to vehicular and pedestrian traffic as reasonably possible. Whenever necessary to expedite traffic flow or to abate a nuisance caused by dirt or dust, the City may require toe boards or bins to contain excavated material.

(b) Where the confines of the area being excavated are too narrow to permit piling excavated material beside the trench, the Director may require the permittee to haul the excavated material to a storage site for storage until the time the trench is to be backfilled.

Section 11: Clean Up. From time to time as may be ordered by the Director, and immediately after completion of the work, the permittee shall, at the permittee's sole expense, clean up and remove from the site all refuse and unused material of any kind resulting from the excavation, and upon the permittee's failure to do so, the City may cause the clean up and removal to be made, and assess the cost to the permittee.

Section 12: Resurfacing. Unless otherwise provided for in the permit, all pavement resurfacing shall be inspected and approved by the City, and made solely at the cost of the permittee. If the work fails inspection, the permittee shall rectify the problem within the time specified by the Director. If the applicant fails to rectify the problem, the Director may cause the resurfacing to be done, and the costs therefore assessed against the permittee.

Section 13: Emergency Excavation. When traffic conditions, safety or convenience of the public require excavation be performed on an emergency basis, the Director shall have the authority to order at the time the excavation permit is issued that a crew and adequate facilities be employed by the permittee on a twenty-four hours basis such that the excavation may be completed as soon as practicable.

ARTICLE III: BOND OR OTHER SECURITY

Section 14: Construction Standards. No person shall construct, install or operate a public improvement within public right-of-way, unless such construction, installation or operation complies with applicable codes, rules and regulations.

Section 15: Undertaking Construction of Public Improvements.

(a) (1) Any person desiring to construct a public improvement within public right-of-way shall submit construction plans and specifications for the public improvement to the Director along with a plan check fee. Construction plans and specifications shall be accompanied by a verification from a registered professional engineer or other qualified professional that the plans and specifications meet standards set forth in the applicable codes, rules and regulations.

(2) After receiving preliminary approval of the plans from the City, but prior to the commencement of construction of the public improvement, the person shall obtain

to ensure completion of construction. The right-of-way construction permit shall require that the public improvement be completed within twenty-four months of the date of issuance, or the bond or other security will be forfeited. The proceeds from any such forfeiture shall be used by the City to complete the improvement.

(3) All public improvement shall be constructed according to the plans and specifications as approved by the City. The permittee shall retain qualified inspectors or engineers during construction to ensure the public improvement is constructed according to the approved plans and specifications. At the time the public improvement is completed, the permittee shall provide the City with two sets of “as-built” drawings certifying that construction was completed according to the approved plans and specifications, along with copies of all inspections or engineer’s reports.

(b) If the permittee is unable to complete the improvement within the twenty-four month period, the Director may grant a one-year extension upon good cause shown. Extensions beyond the one-year period may be granted by the Council, upon good cause shown. If an extension is granted, no other right of way-use permit shall be issued to the permittee until the public improvement is completed, unless the permit is first approved, in writing, by the Director. Any extension shall be conditioned upon the permittee obtaining an extension of the bond or other security and providing adequate documentation of such extension to the City.

Section 16: Form of Bond or Other Security.

(a) The bond or security required by Section 15 shall be in the form of a surety or performance bond, cash deposit, or negotiable instrument. The cost of the public improvement shall be established by a contract between the person and a contractor for the construction of the improvement. The amount of the bond or other security shall be determined by the Director, but in no case shall be in an amount not less than the contract price for the construction of the public improvement.

(b) The bond or other security shall:

(1) Name the City as the obligee;

(2) Be in a form approved by the City Attorney;

(3) Release shall be conditioned upon final approval of the development and transfer of the public improvement to the City by dedication or other instrument;

(4) Provide full warranty for the improvements for a minimum of two (2) years after the date the improvements are formally transferred to the City;

(5) Shall be subject to forfeiture if the permittee does not complete the improvements within the stated period or, if the person creates a hazard which poses

imminent danger to public health or safety within the immediate vicinity of the improvement and the permittee fails to commence correction within twenty-four hours of the date notification of the danger is provided to the permittee by the Director, in writing;

(6) Shall cover all costs, liquidated damages and attorney's fees incurred by the City as a result of the permittee's failure to complete construction within the specified time or to correct a hazard posing imminent danger to public health or safety in a timely fashion.

Section 18: Penalties.

(a) Monetary Penalty. Failure to comply with any provision of this ordinance is a violation, and shall be subject to a penalty not to exceed \$750.00 per violation. Each day that a violation continues after notice of the violation is provided shall constitute a separate and distinct violation.

(b) Revocation.

(1) In addition to, and not in lieu of the foregoing penalties, the Director may revoke any permit issued pursuant to this ordinance and file a claim against the permittee's bond for violation of any provision of this ordinance, and may disqualify any permittee who engages in repeated violations of this ordinance from obtaining a permits. Notice of the Director's decision shall be provided to the permittee by mailing a copy of the notice of revocation by first class mail and certified mail with return receipt, to the permittee's last-known address.

(2) Appeals.

(A) The permittee may appeal any decision revoking a permit or disqualifying the permittee from obtaining permits to the City Manager, by filing a notice of appeal, in writing, with the Director within fifteen days of the date of the Director's decision.

(B) Appeal from the Decision of the City Manager shall be to the City Council. The permittee shall file a notice of appeal, in writing, within fifteen days of the date of the City Manager's decision.

Section 19: Repeal. Ordinance Nos. 175 and 235 are hereby repealed. Repeal of these ordinances does not revive any ordinance in effect before or at the time the repealed ordinance took effect. The repeal does not affect a fee, charge, or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal to collect any fee or charge or prosecute any violation committed under the repealed ordinance.

Section 20: Savings Clause. All permits issued prior to the effective date of this ordinance are hereby ratified, and shall be in full force and effect from and after the effective date of, and shall be subject to the terms of, this ordinance.

Section 21: Severability. The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 22: Emergency. The City Council of the City of Coos Bay finds that the health, safety and welfare of the City of Coos Bay requires this Ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this Ordinance shall be in full force and effect from the time of its passage and approval.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 2nd day of May, 2000.