

City of Foley, AL



407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Ordinance: 24-2029-ORD

File Number: 24-0524

Enactment Number: 24-2029-ORD

An Ordinance to Require a Permit to Perform Work Within the Public Right-Of-Way

WHEREAS, the City deems it necessary to set standards for design and construction requirements, guidelines, details and standards for the design, development and construction relating to residential, commercial or industrial development within the jurisdiction

BE IT ORDAINED that the Foley City Council as follows:

SECTION 1 - DEFINITIONS.

The following definitions apply in this article. References hereafter to "sections" are, unless otherwise specified, references to sections in this article. Defined terms remain defined

terms whether or not capitalized.

AASHTO: American Association of State Highway and Transportation Officials.

Applicant means any person requesting permission to obstruct or construct in a right-of-way.

Application means the process by which an applicant submits a request for permission to obstruct or construct in the right-of-way.

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

City Engineer means the City Engineer of the city, or his or her designee.

Construct means to excavate, repair, rehabilitate, maintain, and install sanitary sewers, water mains, fire hydrants, valves, meters, manholes, service lines and connections, gas mains,

telephone and electrical conduit and their miscellaneous service lines and connections, telecommunications facilities, cables, wires, lines, wave guides, antennas, and other equipment

or facilities, pedestals, and service cabinets, poles, guy wires, storm drains, manholes, inlets, catch basins, irrigation systems, driveways, sidewalks, pavement extensions, curbs, walks, steps,

building canopies, balconies, overhead walkways, and temporary detour pedestrian walkways on, above, or under any part of the right-of-way provided however, that "construct" shall not mean

installation, repair, rehabilitation or maintenance of facilities that do not involve excavation of any portion of the right-of-way.

Construction standards means the compilation of provisions and requirements that provide the technical specifications and details for the construction of facilities in the right-of-way (see Appendix B to this article).

Department means the City Engineering department, including its staff members and the City Engineer.

Emergency means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property or utility service.

Facilities means any tangible thing located in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street edge of pavement.

Major project shall mean construction and/or installation of water, sewer, gas, stormwater, telephone, communications, fiber optic, electrical wires, poles, cable, duct, and/or

TV cable facilities, including the jacking, boring, pushing and tunneling, and retrofitting existing facilities, storm drain and any other miscellaneous major facility construction projects that

involve more than one (1) continuous block or five hundred (500) linear feet of right-of-way.

Minor project shall mean repair of miscellaneous utility and communications service lines, manhole installation not associated with major project construction, main line point repairs and

installation, miscellaneous utility and communications service line repair, storm drain and inlet repairs, vaults, irrigation systems and other miscellaneous construction and repair projects that

involve less than one (1) block or five hundred (500) linear feet of right-of-way.

Permittee shall mean the contractor, firm, corporation, or any person holding a permit under this Ordinance.

Permit fee means money charged by the City to cover the costs as provided in section 5.

Right-of-way means the surface and space above and below any real property in which the City has an interest in law or equity, whether held in fee, or other estate or interest including

public easements, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct,

bridge, park, or any other place, area, or real property owned by or under the control of the city.

Right-of-way permit means the permit which must be obtained before a person may construct in, or obstruct a right-of-way as required by section 2.

Routine Project means the placement or repair of service lines or main line point repairs where the roadway, sidewalk, or other public improvements are not impacted or involve cutting

and replacing less than 100 square feet of pavement.

Underground facilities mean all lines, cables, conduits, posts, tanks and any other facilities owned or operated by persons other than the City which are located wholly or partially

underneath right-of-way.

Utilities means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunication, signal, communications, or cable television conduit, fiber, wire,

cable, or operator thereof.

SECTION 2 - PERMIT REQUIRED; TYPE OF PERMIT.

It shall be unlawful for any person to dig up, open, excavate, construct within, or to cause to be dug up, opened, excavated or constructed, within any street, alley, sidewalk, drainage ditch or other

public right-of-way in the City without first having secured a Right-of-Way Permit from the City.

(a) Permit Required. All work performed in a public right of way in the City shall require the issuance of a Right of Way Permit. 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.

(b) Type of Permit. The Department shall issue the following types of permits:

(1) Permit authorizing Major Project, as defined in Section 1.

(2) Permit authorizing Minor Project, as defined in Section 1.

(3) Permit authorizing Routine Project. Applicants may be allowed, at the sole discretion of the Department, to obtain in advance an annual, quarterly, or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation.

(4) Permit authorizing emergency work. Each permittee shall notify the City Engineer (by telephone or in person) of any event regarding its facilities which it considers to be an emergency by the next business day. The applicant may proceed to take whatever actions are necessary in order to respond to an emergency. Within two

(2) business days after the occurrence of the emergency, the applicant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency. In the event that the City Engineer becomes aware of an emergency regarding an applicant's facilities, the department shall attempt to contact the local representative of each applicant affected, if known, or potentially affected, by the emergency, who must comply with this subsection. In any event, the department may take whatever action deemed necessary in order to respond to an emergency.

(5) No Fee Permit. The work of installing 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 person his work in complete compliance with all City of Foley standards and requirements.

(c) Permit Applications. Permits shall be obtained prior to commencement of any construction within any public right of way except for emergency work.

(1) 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. Certain major projects may require planning approval. The City Engineer, together with the Planning Director, shall direct any right of way permit application to the Planning Commission for approval prior to issuance of a right of way permit in compliance with the City of Foley Zoning Ordinance

(2) 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 Engineer 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.

SECTION 3 - CONSTRUCTION STANDARDS; UNDERGROUND REQUIREMENTS.

(a) Authority of the City Engineer. The City Engineer shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient

space to accommodate all of the requests or if the project conflicts with the City's future plans for the right of way. In making such decisions, the City Engineer shall strive to the

extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

(b) Construction Standards. The City Engineer shall establish construction standards, regulations and / or specifications for excavation and construction within the public right-of-way for the

protection of the public improvements, persons and property; and, may place conditions on any permit as they shall deem necessary toward this goal.

(c) Compliance with construction standards. All construction or maintenance of facilities shall be in accordance with this Code, the construction standards, the Land Development

Ordinance (Appendix A and B of the City of Foley Municipal Code of Ordinances) and such other conditions imposed on the permit by the City Engineer under section 2. It shall be unlawful for any person to excavate or construct in the public right-of-way in violation of such regulations and specifications or the terms and conditions of the permit.

(d) Overhead Utility Placement. No utility, public or private, is permitted to install aerial mains, service supply lines, or erect poles for electrical service, telephone, or cable television in any municipal right-of-way within the city, except that overhead utility lines may be permitted as follows:

(1) Along those public right of ways where there currently exists an overhead 115kV or higher electric transmission line (generally depicted on the attached map and to be made available at <https://foleyal.maps.arcgis.com/home/index.html>);

(2) Along those currently existing public alleyways shown on the lands covered by the Magnolia Springs Land Company's Subdivision of Foley and/or the Magnolia Springs Land Company's Addition to Foley where there currently exist any overhead utility lines, with the exception of the alleyway situated west of McKenzie Street and east of Alston Street, running south from Marigold Avenue to Roosevelt Avenue; and,

(3) Along those currently existing utility easements (or unopened alleyways) not located on the public right of way where there currently exist overhead utility lines.

(e) Location of facilities, generally. Facilities shall be placed in accordance with the permit and the regulations of the City of Foley. A permittee shall select locations for its above-

ground facilities, both outside and in the rights-of-way, which comply with the City's visibility obstruction regulations; which are not within the paved or traveled portions of

existing or platted rights-of-way, including the sidewalks, or which do not otherwise block or impede vehicle or pedestrian traffic; which do not block or impede existing public drainage facilities or channels or are otherwise in a designated floodway; or which otherwise raise a reasonable public health, safety, or welfare concern.

(f) Co-location required. Conduits should be stacked or bundled to occupy minimal space in the rights-of-way. Restrictions apply to utility aerial mains and service supply lines.

(g) Least disruptive technology. Applicants are encouraged to perform construction and maintenance of facilities in a manner resulting in the least amount of damage and disruption of the right-of-way. Applicants will be required to use trenchless technology for major and minor construction projects, within roadway limits, in arterial and other

high volume streets and in streets constructed or resurfaced within the last three (3) years, unless otherwise approved by the City Engineer and such approval shall not be unreasonably withheld. The City Engineer may require trenchless technology in other locations, where extreme circumstances prevent or make open cut methods impractical.

Applicants may use either the open cut method or trenchless technology for major and minor projects outside roadway limits.

(h) Right-of-way restoration. The right of way must be restored work to be done under the permit, and the restoration of the right-of-way as required herein, must be completed

within the dates specified in the permit.

(1) All temporary patching of pavement must be permanently fixed in compliance with the Department construction standards within the dates specified in the permit. In addition to its own work, the permittee must restore the general area of the work, including all disturbed landscaping materials and the permitted areas, including paving and its foundation, per the Department construction standards.

(2) The permittee shall perform the work according to the standards and with the materials specified by the City Engineer including, but not limited to, the construction standards.

SECTION 4 - TIME OF COMPLETION AND INSPECTION.

(a) Time of Completion. All work covered by the permit shall be completed within 180 days of its date of issue. A permittee may request one 90-day extension by contacting the City Engineer before the completion date of said permit.

(1) In the case of long-term projects, further extensions may be granted on a project-by-project basis.

(2) 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.

(b) Inspection. The City Engineer is authorized to inspect all work performed under the permit, including, but not limited to clearing and grubbing, compaction of subgrades,

placement of subbase, base and asphalt, forms, concrete work, structures, and materials to be used. The City Engineer may be present on the site to advise contractors on these

standards. The City Engineer has authority to reject defective materials and workmanship not in conformance with the specifications upon which the permit was based.

SECTION 5 - PERMIT FEES.

(a) Permit fee. Permit fees shall be established by the City Council. Said fees shall be in an amount sufficient to recover the following costs:

- (1) The city cost, including administration, inspection, and enforcement; and
- (2) The cost for obstructing the right-of-way, including lost parking meter revenue, costs associated with traffic management that results from street obstruction, lost tax revenues resulting from streets blocked and as an encouragement to minimize costs and to encourage timely, efficient use of the right-of-way.

(b) The current schedule of permit fees is set forth in Chapter 4, Section 76 of the City of Foley Code of Ordinances. The Permittee shall be required to pay additional charges for work requiring a City of Foley City Engineer to work hours other than normal City hours (Monday through Friday 8:00 a.m. - 5:00 p.m.).

(c) Payment of permit fees. No permit shall be issued without payment of such fees. All changes in fees shall be approved by the City Council.

(d) Nonrefundable fees. All permit fees are nonrefundable.

(e) Joint applications. Applicants are encouraged to make joint application for permits to construct or obstruct the right-of-way at the same place and time.

SECTION 6 - BOND.

(a) Bond. A non-cancelable performance bond, letter of credit or cashier's check, in the amount for the cost of work or \$500.00, whichever is greater, payable to the "City of Foley," shall be

required in the name of the permittee prior to issuance of a Major Project or Minor Project 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. City Engineer shall have sole discretion to waive the requirement when good

cause is shown.

(b) Guarantee. 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 7 - LIABILITY.

Any person who shall undertake work pursuant to a permit issued under the provisions of this Chapter shall be liable for 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 8 - PENALTIES.

(a) Revocation / Stop Work Order. Failure of the applicant to comply with any section of this Ordinance is hereby deemed a violation and shall be sufficient cause for the City of Foley,

through a Code Enforcement Officer or City Engineer, to issue an order suspending all work (a "stop work order") on the site until satisfactory measures are taken to comply with this

Ordinance. Failure to comply with the terms and conditions of the permit shall be sufficient cause for cancellation of the permit by the City Engineer and may be cause for the refusal of

future permits.

(b) Municipal fines. 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. The City may recover all attorney's fees, court costs and other

expenses associated with the enforcement of this Ordinance.

(c) Abatement of unpermitted activity. Any excavation or construction in any street, alley, sidewalk, or other public with-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 City of Foley Code of Ordinances.

SECTION 9 -- CIVIL REMEDY.

In addition to the penalties established above, violations of this Chapter shall be cause for the City to proceed against any surety, commence an action in a court of competent jurisdiction for the

appropriate legal and equitable relief, and any other action permitted by law.

SECTION 10 -REPEAL OF PRIOR ORDINANCE.

Ordinance No. 541-97 adopted March 17, 1997, is hereby specifically repealed. All other portions of said Ordinance not specifically repealed herein are hereby ratified and confirmed.

Section 11. "The terms and provisions of this ordinance are severable. If any part or portion of this ordinance is declared invalid, void, or unconstitutional, that portion shall be deemed severed, and the remaining portions of the ordinance shall remain in full force and effect."

Section 12. All ordinances or parts of ordinances, in any manner conflicting herewith are hereby repealed.

Section 13. This ordinance shall become effective upon its publication as required by law.

PASSED, APPROVED AND ADOPTED this 16th day of September 2024.

President's Signature _____

Date _____

Attest by City Clerk _____

Date _____

Mayor Signature _____

Date _____