

ORDINANCE NUMBER 2677

AN ORDINANCE REPEALING ORDINANCE NUMBERS 97, 751 AND 1425 AND AMENDING SECTION NUMBERS 15-2 THROUGH 15-8 OF THE VESTAVIA HILLS CODE OF ORDINANCES TO REGULATE AND CONTROL ALL UTILITY CONSTRUCTION, BOTH PUBLIC AND PRIVATE, UNDER EXISTING ASPHALT AND CONCRETE SURFACES WITHIN PUBLIC RIGHTS-OF-WAY WHERE THE CITY HAS JURISDICTION IN AN EFFORT TO PROTECT THE INTEGRITY, SAFETY, AND OPERATIONAL PERFORMANCE OF THE ROADWAYS WITHIN THE CITY OF VESTAVIA HILLS

WHEREAS, on February 3, 1964, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 97 – An Ordinance fixing and prescribing fees to be charged for blasting permits and for excavation in highway, alley or street permits issued by the City of Vestavia Hills, Alabama; and

WHEREAS, on April 15, 1985, the City Council adopted and approved Ordinance Number 751 requiring developers to submit sureties for subdivision streets developed in the City; and

WHEREAS, on January 5, 1994, the City Council adopted and approved Ordinance Number 1425 – An Ordinance to Amend Ordinance Number 290 of the City of Vestavia Hills, Alabama Business License; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

WHEREAS, issues have arisen under the standing Ordinances related to utility construction, as the means and methods used by utility companies, contractors, developers, etc. to install, adjust, repair or relocate utilities in public rights-of-way are not always in accordance with standard City specifications and therefore result in damage to the structural integrity of the public way and interference with the public's use of the public way; and

WHEREAS, the City of Vestavia Hills Public Services Department has performed a study of the City's existing ordinances, process and fee structure related to street cuts, as well as street-cut procedures followed by other jurisdictions in an effort to develop an improved process for the City to adopt to address such issues; and

WHEREAS, the City Council finds that the repeal of prior ordinances along with the adoption of a new ordinance to regulate said operations would further enhance the health, safety,

and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. That in order to protect the City's roadways and the citizens who utilize them on a daily basis, the Mayor and the City Council hereby repeal Ordinance Numbers 97, 751 and 1425 and amend Section Numbers 15-2 through 15-8 of the Vestavia Hills Code of Ordinances in their entirety and shall read as follows:

"Sec. 15.2. – Street Cutting permit – Establishment of Procedure; Fee

ARTICLE 1: APPLICABILITY

These standards shall apply to all underground public and private utilities that are to be located, adjusted, repaired or relocated within the rights-of-way of roadways under the jurisdiction of the City. It shall be unlawful for any person other than an authorized officer, employee or agent of the City to make any opening, cut or excavation in or under the surface of any street, alley, sidewalk or public way on the property of the City without having first obtained a permit as provided by this Ordinance. All permanent pavement repair work is to be performed by the City or a Contractor acting on behalf of the City. It is the responsibility of the Utility Owner or Contractor to coordinate with the City Engineer on work to be performed. The Utility Owner or Contractor will be responsible for installing proper backfill, compacting appropriately, and installing a temporary asphalt repair once the utility work is complete. Upon inspection by the City, the City or Contractor acting on behalf of the City will complete the necessary paving work to repair the surface in a permanent and appropriate manner.

ARTICLE 2: APPLICATION AND FEES

Street Cut Fee

An underlying street cut fee in the amount of \$100 shall accompany a Street Cutting Permit application for utility work in City right-of-way.

Restoration Deposit

A restoration deposit is required to accompany a Street Cutting Permit application to pay for the proper restoration of asphalt or concrete that was removed. The City will be responsible for the repair, and the deposit will be used for that purpose. It will be the responsibility of the utility company or contractor making the cut to properly backfill the excavated area per City specifications and details in preparation for the new asphalt and/or new concrete to be installed.

A sketch that shows the extents and dimensions of the impacted area shall be

provided to the City Engineer prior to submission of a Street Cut permit application or, in the case of an emergency situation as identified in Section 4, upon application for a permit. The City Engineer will determine the amount of the restoration deposit per the sketch provided based on current industry costs for construction labor and materials, rounded up to the nearest hundred. **The deposit will be filed with the City Engineer.**

Any excess of such deposit over the cost required for proper restoration shall remain on deposit with the city for such time as the utility company or contractor is licensed to do business within the city and can be transferred for future restoration deposits. If the cost of restoration exceeds the amount of the deposit, the difference shall be paid by the utility company or contractor. The payment must be paid within five days of the day upon which the applicant is billed by the city for the excess amount.

Impact Fee for New Surface

Additionally, any cut made in pavement, curb or sidewalk which has been constructed or repaved less than five years from the date the permit application and fee are filed is subject to an additional impact fee that will become part of the general fund of the City. The amount of the said impact fee will be prorated according to the age of the pavement as outlined below:

Impact Fee for New Surfaces (\leq 5 years):	
during first 12 months after completion	\$500
during second 12 months after completion	\$400
during third 12 months after completion	\$300
during fourth 12 months after completion	\$200
during fifth 12 months after completion	\$100

Sec. 15.3. – Same - Performance

Before any Contractor shall engage in the business of making excavations in the City, he shall first obtain the proper license and execute and deposit a good and sufficient bond in the sum of \$10,000 with the City Engineer. The bond shall be executed by a corporate surety authorized to do business in the state of Alabama. The bond shall provide that the city shall be indemnified and saved harmless from all claims and liabilities arising from acts or omissions of such person and his employee, servants and agents in performing such work or from any unfaithful or inadequate work done either by him or by his employees, servants and agents, and that all work done by such person shall be performed

in a good and workmanlike manner, conforming to the specification requirements herein in addition to all other City regulations and requirements. This bond shall remain in full force and effect until 30 days after receipt by the City Engineer of written notice of the surety's intent to cancel this bond. Except with respect to liability accruing prior to the effective date of cancellation, the surety's liability on the bond shall terminate 30 days after receipt by the City Engineer of such written notice. The bond shall be submitted to the City Engineer for approval and shall be kept in the custody of the City Engineer.

Sec. 15.4. – Same – Emergency Repairs;

In the event that any sewer, main, conduit or other utility installation in or under any street, alley, sidewalk or public way shall burst, break or otherwise be in such condition as to seriously endanger persons or property, the owner of such sewer, main, conduit or other installation shall immediately repair such trouble and shall immediately take all necessary steps to make such location safe and secure. The City should be notified of any emergency work performed as soon as possible. Such owner shall not begin making any permanent repairs to such street, alley, sidewalk or public way until he meets the permit requirements as provided in this article. Such permit shall be secured within 18 hours after such break or serious trouble shall have developed, and the necessary temporary repairs to the street, alley, sidewalk or public way shall be made as directed by the City Engineer or his authorized deputy and shall be completed as soon as practical after receipt of proper permit.

Sec. 15.5 – Same – Specifications and Standards

All work shall conform to the City of Vestavia Hills guidelines for utility repair in public right-of-way. See the City of Vestavia Hills Public Works Manual and the City of Vestavia Hills Subdivision Regulations

Sec. 15.6 – RESERVED

Sec. 15.7 – Deposit of Construction Materials, etc.

It shall be unlawful for any person engaged in or responsible for the construction of any structure or the grading, clearing or maintaining of any lot within the City limits to cause or permit the depositing of soil, rocks, gravel, mud, cement, construction debris and maintenance debris on the traveled way, gutters, sidewalks or storm draining facilities of any street, alley or thoroughfare of said City at any time. The acts prohibited by this section shall include the scattering of soil, sand, cement and mud by the tires and tracts of construction vehicles.
(Ord. No. 209, § 1,7-6-71)

Sec. 15.8 – Developers of subdivisions to guarantee street improvement and construction

Developers of subdivisions in the City shall execute and deliver a written agreement and comply with the requirements, policies and procedures set forth in the City's Public Works Manual as approved by the City's Planning and Zoning Commission. All subdivisions shall be built in accordance with the minimum requirements set forth in said agreement and in compliance with all other terms and provisions of the Public Works Manual and the Vestavia Hills Subdivision regulations."

2. **PENALTIES:** In addition to any other penalty imposed by the provisions of any city code or ordinance, any person or entity violating the provisions of this article shall pay all costs of restoring any street, sidewalk, alley or public way necessitated by such violation.
3. **SEVERABILITY:** If any portion of this ordinance shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions of this chapter nor render the remaining portions of this chapter invalid, and to that end the provisions hereof are declared to be severable.
4. **EFFECTIVE DATE:** The requirements set forth herein shall be effective following posting/publishing as required by Alabama law.

ADOPTED and APPROVED this the 12th day of September, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2677 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 12th day of September, 2016, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2016.

Rebecca Leavings
City Clerk