

ORDINANCE NO. 381-2010

AN ORDINANCE REQUIRING A PERMIT TO PERFORM WORK WITHIN PUBLIC RIGHT OF WAYS IN THE CITY OF SPANISH FORT, ALABAMA

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. Definitions.

- a. City: The City of Spanish Fort, Alabama, and any areas which the City may have or exercise ownership, control or maintenance of a right of way.
- b. Building Official: The Building Official for the City or any other agent designated by the Building Official or the Mayor on behalf of the City.
- c. Permittee: The contractor, firm, corporation or any other person or entity holding a Permit under this ordinance and/or actually performing the work under the Permit.
- d. Person: Person shall mean any natural person, individual, firm, corporation, limited liability company, partnership, business or entity.
- e. Franchisee: Franchisee is any person or entity, including any contractor or subcontractor working for the Franchisee, which has a valid Franchise Agreement with the City of Spanish Fort, Alabama, which has been adopted and approved by the City Council.
- f. Ground Disturbing Activity: The act of any person or entity to dig up, open, excavate, construct, or alter, or cause to be dug up, opened, excavated, constructed or altered any street, alley, sidewalk, drainage ditch or any other public right of way within the City.

SECTION 2. Permit Requirements.

- a. A Public Right of Way Access Permit (hereinafter referred to as a "Permit") shall be obtained prior to the commencement of any construction or other work or ground disturbing activity within any public right of way, except as provided for emergency work. It shall be unlawful for any person to dig up, open, excavate, construct or alter, or to cause to be altered, dug up, opened, excavated or constructed, any street, alley, sidewalk, drainage ditch or any other public right of way in the City without first having secured a Permit from the City.
- b. Notwithstanding any terms and conditions contained herein, a permit shall not be required to install a mailbox, cut grass, or install a driveway pursuant to a validly issued building permit.
- c. A Franchisee of the City operating under a valid Franchise Agreement shall not be required to obtain a permit under this Ordinance in order to construct or install lateral lines, service lines or a single power pole to customers located along an existing utility transmission, distribution or collection line, as long as the following conditions are met:
 - 1. The Franchisee has submitted, and the City Engineer has approved, construction details for a standard installation of lateral lines, service lines or single power pole and the subject lateral lines and service lines are actually installed in accordance with the approved construction detail; and
 - 2. The Franchisee has submitted a standing bond or cashier's check to the Building Official payable to the City of Spanish Fort in an amount equal to the estimated cost of installing the lateral lines, service lines, and single power pole and restoring the right of way after such work, plus 10%, or \$500.00, whichever is greater, which shall serve as surety for the faithful performance of all duties under this Ordinance related to the installation of such lateral lines, service lines or single power pole and the restoration of the right of way and the warranties hereunder; and

3. The exception to the permit requirement found in this Section 2(c) shall not apply if any portion of the proposed construction or installation of such lateral lines, services lines or single power pole will result in the disturbance, excavation, opening or trenching of any paved or improved portion of the right of way. In the event the proposed work involves the disturbance, excavation, opening or trenching of any paved or improved portion of the right of way, the Franchisee shall be required to obtain a permit and comply with all requirements of this Ordinance.

4. Upon completion of the work, the Franchisee shall provide a written description of the work, including the date and time of the work and a photograph of the areas disturbed to the Building Official.

5. The Franchisee shall also be required to comply with all terms of its Franchise Agreement as well.

SECTION 3. Establishment of Regulations and Specifications.

a. The Building Official may establish regulations, specifications and/or conditions for work performed within a public right of way for the protection of the right of way, public improvements and/or persons and property as may be deemed necessary in the discretion of the Building Official in addition to those required under this ordinance. It shall be unlawful for any person to perform any work or ground disturbing activity within a public right of way in violation of any applicable laws, rules, standards or specifications and/or the terms and conditions set forth in the Permit as prescribed by the Building Official. In addition, the Building Official may establish a time limit in which the work is required to be completed under the Permit which is either shorter or longer than is required under this Ordinance.

b. Permittee shall, at its expense, replace and restore the right of way to a condition comparable to the condition of the right of way existing immediately prior to the performance of any ground disturbing activity by Permittee to the satisfaction of the Building Official, including covering the disturbed area with sod. After restoring the right of way, Permittee shall be required to guarantee its work for twenty-four (24) months following its completion, except that restorative replacement and replanting of trees, grasses and other vegetation shall only be guaranteed for twelve (12) months. In the event more than one Permittee is scheduled to perform work in the right of way, the Permittees shall be required to provide the Building Official with a coordination plan to assure compliance with this Section. In the absence of a coordination plan approved by the Building Official, all persons or entities performing work or ground disturbing activities in the area shall be responsible for the restorative replacement and planting of trees, grasses and other vegetation as set forth in this Ordinance.

c. Permittee shall perform all work in a manner resulting in the least amount of damage and disruptions to the right of ways. Permittee is required to use trenchless technology for any portion of the work or ground disturbing activity which lies beneath the paved or improved portion of any roadway, unless otherwise approved by the City Council.

d. All work performed within the right of ways shall be performed in full compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to all applicable permit requirements, ordinances or franchises adopted by the City.

SECTION 4. Applications for Permit.

a. Applications for a Permit shall indicate the location, depth, extent, nature, and purpose of the proposed work or ground disturbing activity, and the application shall set forth the time required for the work to be completed, the name and address of the Permittee and the cost of the work or ground disturbing activity.

b. The Permittee shall provide an erosion control plan using best management practices, a safety plan to indicate methods to be used to protect the general public from injury which may include the use of barricades, signs, lights, fencing and other barriers as needed, and a traffic control plan in the event the work or ground disturbing activity will interfere in any way with the normal flow of traffic.

c. The Permittee shall provide digital photographic or video evidence of the physical condition of the right of way prior to the commencement of the work.

d. In the event the application is for the addition of improvements, then the application shall include a preconstruction drawing, showing the location, character and extent of the proposed improvements. In the event the proposed work involves the disturbance, excavation, opening or trenching of any paved or improved portion of the right of way, then the application shall also include a detailed drawing, stamped by a licensed professional engineer, showing the location and depth of the proposed improvements involving the paved right of way. This provision shall not apply to repairs or replacement of existing improvement unless the repair or replacement increases the area occupied by the improvement within the right of way.

e. A separate Permit shall be required for each scope of work involving ground disturbing activities. The Permit must be obtained prior to the commencement of the work. The Permit shall be kept at the site of the work and shall be exhibited upon request by any law enforcement officer, the Building Official, the Mayor, or any authorized representative.

f. If emergency work or repairs are required, a delay of 48 hours shall be granted, excluding weekends and holidays, following the beginning of such repair during which any person, firm, contractor, corporation or other entity performing the work shall obtain a Permit. In the event of a natural disaster, including, but not limited to, flooding, hurricanes or tornadoes, the Mayor, in his sole discretion, may allow such additional time as deemed necessary to obtain such permits and waive any required permit fees.

SECTION 5. Work Performed at the Request or Order of the City Of Spanish Fort, Alabama.

The work of installing range boxes, surveying monuments, adjusting manhole rings and service boxes or any other work undertaken solely for the convenience or benefit of and at the order of the City of Spanish Fort shall require a Permit, but the Permit shall be issued on a "no fee" basis.

SECTION 6. Completion.

Unless otherwise specified, Permits shall be valid for a period of sixty days, and all work to be performed under the Permit shall be completed within sixty days of the date of issuance of said Permit. The time for completion may be extended in the discretion of the Building Official, provided the request for an extension of time is obtained prior to the expiration date of the Permit. Failure to complete the work in accordance with the Permit or to obtain an extension of time prior to the expiration of the Permit will require the Permittee to obtain a new Permit and pay the applicable fees.

In the event the Permittee has added improvements in the right of way, then Permittee shall provide the Building Official with an electronic copy of as-built drawings stamped by a licensed professional engineer showing the improvements, the location and depth of the improvements and the approximate location of known or discovered preexisting improvements in relation to the improvements within the public right of way and certifying that the improvements were installed in conformance with sound engineering practices and in compliance with any applicable Franchise Agreements, Codes and/or Standard Specifications adopted by the City. These drawings shall be submitted within thirty (30) days of completion.

The records of utility improvements provided to the City of Spanish Fort pursuant to this Ordinance are hereby deemed to be records relating to and having an impact upon the security and safety of persons, structures, facilities and infrastructure and critical energy infrastructure. The public disclosure of these records is reasonably expected to be detrimental to the public safety and welfare and would otherwise be detrimental to the best interests of the public. Therefore, the records of utility improvements provided to the City of Spanish Fort, pursuant to this Ordinance, are not public records and are exempt from the requirements of Section 36-12-40 of the Code of Alabama.

SECTION 7. Inspection.

The Building Official shall have the right and authority to inspect all work performed under the Permit, including but not limited to, clearing and grubbing, compaction of subgrade, placement of subbase, base and asphalt, forms, concrete work, structures, materials to be used and actually used and any other aspect of the work. The Building Official may be present on the site to advise contractors on the applicable laws, rules, standards and specifications, and the Building Official shall have the authority to reject any defective materials and workmanship not in conformance with the Permit and the applicable laws, rules, standards and specifications governing the project.

The Permittee shall keep all areas surrounding any excavation or work clean and free of trash.

SECTION 8. Fees.

An application fee of \$25.00 shall be paid for a Permit. The Permit fee is non-refundable regardless of whether or not the Permittee actually undertakes to perform the work. The applicant shall also be required to pay the actual costs incurred by the City for engineering services to review the applications if deemed necessary by the Building Official, not to exceed \$500.00. If the Building Official is required to work, inspect or perform any services on behalf of a Permittee during any hours other than normal working hours, i.e. Monday through Friday, 8:00 A.M. to 4:30 P.M., the Permittee shall be required to pay \$45.00 per hour for the services of the Building Official, and in the event, the City Engineer or other engineer is requested to perform inspection activities, the Permittee shall pay the sum of \$65.00 per hour for engineering services performed on behalf of the City.

SECTION 9. Bond.

The Building Official shall require the Permittee to furnish a bond payable to the City of Spanish Fort conditioned upon the faithful performance and discharge of all duties, obligations and/or work pursuant to a Permit issued under the provisions of this Ordinance. The bond shall be in an amount equal to the cost of the work plus 10% or \$500.00, whichever is greater, and the bond shall be issued in the name of the Permittee. Said bond shall assure that the Permittee will comply with the Permit and/or all applicable laws, rules, standards and specifications and shall guarantee the work performed for twenty-four (24) months following its completion as set forth in Section 3(b) and assure recovery by the City of any expenses incurred by the City in connection with the work to be performed under the Permit.

At the request of the Permittee and upon approval of the City Council, Permittee may furnish a blanket or standing bond to ensure the faithful performance and discharge of all duties, obligations and/or work pursuant to any permits issued under the provisions of this Ordinance. In addition, upon approval by the City Council, a Permittee furnishing a blanket or standing bond and otherwise meeting the requirements of a Franchisee pursuant to Section 2(c), with the exception of the requirement of a Franchise Agreement, shall not be required to obtain a permit under this Ordinance in order to construct or install lateral lines or service lines to customers located along an existing utility transmission, distribution or collection line.

The Permittee, by accepting the Permit, expressly guarantees and warrants to complete the work in accordance with the Permit and/or all applicable laws, rules, standards and specifications and agrees to maintain and make any and all necessary repairs, upon demand by the City of Spanish Fort or the Building Official, during the twenty-four (24) month warranty period. The warranty period shall continue for a period of twenty-four (24) months after the date of acceptance of the Permit by the Permittee and/or a period of twenty-four (24) months after the work performed under the Permit is completed. Failure to perform any obligations or duties imposed upon the Permittee by this Ordinance, the Permit and/or any other applicable laws, rules, standards and specifications shall subject the Permittee to forfeiture of his or her or its bond and any and all other penalties imposed under this Ordinance or other applicable laws.

At the option of the Permittee, the Permittee may deliver a cashier's check to the Building Official payable to the City of Spanish Fort in an amount equal to the cost of the work plus 10% or \$500.00, whichever is greater, and the proceeds of the cashier's check shall serve as surety in and to the same extent as a bond under this Ordinance.

SECTION 10. Liability.

The Permittee shall be liable for any damage caused to the right of way and/or any other property or improvements owned by the City of Spanish Fort. In addition, the Permittee expressly agrees to indemnify and hold harmless the City of Spanish Fort from any and all liability arising out of the issuance of a Permit and/or any work performed thereunder, and the Permittee agrees to reimburse the City for all costs and/or monies paid or expended by the City of Spanish Fort as the result of any litigation, including, but not limited to, all costs, judgments, damages, interests and attorney's fees.

SECTION 11. Penalties.

Failure of the Permittee to comply with any of the terms and conditions of the Permit and/or any other applicable laws, rules, standards and specifications shall be sufficient cause for revocation and cancellation of the Permit by the Building Official, and said failure to comply shall be taken into consideration in determining whether or not to grant future Permits. The Permit, and the privileges and duties and obligations thereunder, shall be binding upon any and all successors, assigns and contractors of the Permittee. Any person, firm, corporation or other entity commencing any work without first obtaining a valid Permit, or found to be in violation of the provisions of this Ordinance, shall be fined upon conviction in the amount of up to \$500.00 per day for each offense until the offense is corrected, together with the costs of court. Each day such violation continues shall constitute a separate offense. No further Permits shall be issued to a party convicted of violating this ordinance until all prior fines are paid and correction work is completed.

SECTION 12. Civil Remedies.

In addition to the penalties established above for violations of this Ordinance, the City of Spanish Fort expressly reserves the right to proceed against any surety or bond, and the City reserves the right to take any appropriate legal action and/or seek equitable relief, including but not limited to, correcting any defective work as the result of defective materials or workmanship and filing suit to collect the costs of said repairs from the Permittee.

Any work, or the negligent or improper performance of any work, in any right of way in the City (with or without a permit as required under this Ordinance) which constitutes or creates an emergency or imminent danger of physical harm to persons or property, as determined by the Mayor or Building Official, is hereby declared to be a public nuisance which may be abated as provided in any applicable laws or ordinances, or by appropriate legal or equitable action.

SECTION 13. Disclaimer of Warranties.

The City makes no representation or warranty regarding its rights to authorize the installation of improvements within any particular right of way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Permittee.

SECTION 14. Repealer Clause.

Ordinance No. 76-97 is hereby repealed. The provisions of this Ordinance and the requirements and obligations imposed hereunder shall be cumulative and in addition to all other applicable laws, rules and regulations.

SECTION 15. Severability Clause.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance which shall continue in full force and effect notwithstanding such holding.

SECTION 16. Exemption.

The State of Alabama and Baldwin County are exempt from the requirements of this Ordinance to the extent they perform work within a State or County maintained right of way. This Ordinance shall not apply to the City of Spanish Fort.

SECTION 17. Effective Date.

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

Adopted and approved this 19th day of July, 2010.

Joseph C. Bonner
Mayor

ATTEST:

Mary Lynn Williams, MMC
City Clerk