

First Reading: March 5, 2024
Second Reading: March 12, 2024

ORDINANCE NO. 14092

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE,
PART II, CHAPTER 32, ARTICLE III, SECTIONS 32-61
THROUGH 32-85, RELATING TO EXCAVATIONS AND
RESTORATION OF PAVING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
TENNESSEE:

SECTION 1. That Chattanooga City Code, Part II, Chapter 32, Sections 32-61 through 32-85, be amended by deleting same in its entirety and substituting in lieu thereof the following:

ARTICLE III. EXCAVATIONS AND RESTORATION OF PAVING¹

Secs. 32-61. Reserved.

(Ord. No. 12337, 1-5-10; Ord. No. 12824, § 2, 3-25-14)

Sec. 32-62. Permit required.

It shall be unlawful for any person to make any excavation in or to tunnel under any street, curb, alley, other improvement, or right-of-way as defined under Chattanooga City Code Section 32-231, as amended, in the City without first having obtained a street cut permit, holding all required licenses to perform the necessary work, and complying with the provisions of this Article. It shall be unlawful to violate or to vary from the terms of any such permit; provided, however, any person maintaining pipes, lines, driveways, or other facilities including private structures for erecting public access in or under the surface of any right-of-way may proceed with an excavation without a permit when emergency circumstances demand the work to be done immediately, and provided further that the person shall apply for a permit on the next working day.

(Ord. No. 12337, 1-5-10; Ord. No. 13267, § 3, 1-30-18)

¹Cross reference(s)—Plumbing, Ch. 27; encroachments and excavations on state and federal highways, § 32-86, et seq.

Sec. 32-63. Applications.

Applications for such permits shall be made to the Land Development Office and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the name of the person doing the actual excavating, and the name of the person for whom the work is being done. The applicant shall disclose any foreseeable lane or sidewalk closures or detours during excavation. Cuts into roadways that are owned by the State of Tennessee shall be coordinated and permitted with the Tennessee Department of Transportation concurrently with the City street cut permit application. As a condition of issuing a permit, all applicants must agree in writing as part of the application to comply with all ordinances and laws relating to the Work to be done. The Building Official or his designee shall consider each application for a permit filed under this Article, under all facts and circumstances, once all documents are received by the City, shall grant or refuse the permit within ten (10) working days and shall endorse his action on the application. The Building Official shall refer such application to the Transportation Division for review and comment when a professional opinion on the propriety of issuing a permit or conditions to attach thereto is needed. The action of the Building Official in granting or refusing a permit shall be final, except as it may be subject to review at law. A permit may be refused for the following reasons:

- (a) The proposed work should be redesigned to mitigate a potential safety hazard;
- (b) The proposed work should be redesigned to mitigate damage within the right-of-way;
- (c) The proposed work cannot be safely made in the Right-of-Way;
- (d) The proposed restoration plan does not meet the minimum City standards for restoration;
- (e) The applicant has willfully failed to comply with conditions of prior permits issued to the applicant; provided that such disqualification shall be removed upon correction of any such defects; or
- (f) For other good cause in the discretion of the Building Official.
- (g) A street cut permit is not a substitute for a Land Disturbing Permit and any work within the right-of-way that meets the criteria for obtaining a Land Disturbing Permit shall be required to follow the review and approval processes for obtaining all necessary permits. Similarly, a Land Disturbing Permit and/or a Building Permit does not substitute the need for a Street Cut Permit and/or a Work Zone Permit.

Provided that as to an excavation done in emergency circumstances the application shall be completed on the next working day; and the Building Official shall review the actual work completed for conformity with the requirements hereof.

(Ord. No. 12337, 1-5-10; Ord. No. 12823, § 1, 3-25-14; Ord. No. 13267, § 3, 1-30-18)

Sec. 32-64. Application Fee.

Each application shall be accompanied by a fee as follows:

- (a) A permit fee of Three Hundred Dollars (\$300.00) for all permits shall apply to no more than one cut or Work of the following type:

- (1) Transverse cut in the roadway pavement;
 - (2) Longitudinal cut in the roadway pavement of up to three hundred (300) feet in length;
 - (3) Within an intersection;
 - (4) Concrete curb or concrete gutter; or
 - (5) Concrete sidewalk;
 - (6) Microtrench within right-of-way;
 - (7) Installation of additional lane(s) and/or concrete curb and gutter against existing roadway;
 - (8) Jack and bore beneath City street.
- (b) In addition to the fixed permit fee for all permits, applicants are responsible for additional fees as follows:
- (1) One Hundred Dollars (\$100.00) each for each additional transverse roadway cut in a roadway segment
 - (2) One Hundred Dollars (\$100.00) each for each additional cut in the concrete sidewalk or concrete curb or gutter; and in a block segment; and
 - (3) One dollar (\$1.00) for each additional foot of longitudinal cut in the roadway pavement beyond three hundred (300) feet.
- (c) Planned cuts into the street shall be coordinated with the City's annual resurfacing work, a schedule of which is available online at the Public Works website or by calling the Transportation Division. For non-emergency street cuts, a recovery fee of 30% of the topping material cost to restore the asphalt street segment impacted by street cut shall be assessed to cuts within streets resurfaced within the previous three (3) years based on the following calculation:
- (1) Impact areas, sq.ft. = (Street segment length, ft) x (Total width of lanes impacted by street cut, ft)
 - (2) Impact area, sq.yd = (Impact area, sq.ft) x (1/9)
 - (3) Asphalt needed for impact area, tons = [(Impact area, sq.yd.) x 165] / 2000
 - (4) Total Cost Segment Resurfacing = (Current City contract price for topping, \$/ton) x (Asphalt needed for impact area, tons)
 - (5) Recovery Fee amount = 0.30* Total Cost Segment Resurfacing
- (d) Written notification of intent to work in a right-of-way must be received at least forty-eight (48) hours prior to beginning work, even if a permit is not required, except in emergencies. E-mail is considered a written notice. All applicants for any permits which require street or sidewalk closure should be submitted with enough written notice to comply with road closure policies administered by the Transportation Division .
- (e) Additionally, work zone permits are required for Work that limits public access to the full right-of-way, such as those requiring closure of a street, open public alley, or sidewalk or the temporary use of a curb-side parking space. Additional work zone permit fees may apply based on impact to the general public. Time is of the essence in completion of the

work to restore the right-of-way. Where such work within the right-of-way is required, such that it blocks a lane of traffic, open public alley or sidewalk, for more than one week, then a fee of \$100 per day for each lane of traffic, or sidewalk, will be assessed for the work zone permit. The fee is not a penalty, but considered damages suffered by the City for each day of delay in the restoration of the right-of-way. Fees for lengthy projects may be reviewed at the discretion of the City Transportation Engineer.

Traffic control plans in compliance with the MUTCD may be submitted to the City with the application for the work zone permit. If a compliant traffic control plan is not included with the application, a fee of \$150 will be assessed for the work zone permit for the City to draw and provide the necessary traffic control plan. The City reserves the right to deny the work zone permit without an included traffic control plan at its discretion.

- (f) Permits for relocation or installation of fire hydrants will be required when requested by the City, but no fee (including administrative fees) will be required.
- (g) No more than five (5) multiple cuts, each not exceeding twenty-five (25) square feet in area, when required in a single block or within a work zone distance of two hundred fifty (250) feet as part of a single project, are considered as one (1) cut. Permit and fee will be required for a single cut under these conditions. Pavement restoration extents shall be completed as shown on the published City Standard Drawings available on the Public Works website. If the cut exceeds two hundred fifty (250) feet, or multiple cuts within a block or a work zone greater than two hundred fifty (250) feet, or the number of cuts within two hundred fifty (250) exceeds five (5), then all lanes that are disturbed by construction shall be repaved from intersection to intersection.
 - (1) Cuts within any intersection of a City street requires repavement of the entire intersection including marked crosswalks. For stamped or concrete crosswalks, replacement of the crosswalk is not required unless the cut includes the pavement of the crosswalk itself.
 - (2) Any cut that includes a concrete ADA curb ramp requires full replacement of the ramp in compliance with current laws and codes.
- (h) Neither permits nor fees will be required when work in the right-of-way is conducted as part of a City street improvement project, including resurfacing, where the utility is required to move their facilities as a result of the City project.
- (i) Except as otherwise stated in this Chapter, fees shall not be waived under any other conditions.
- (j) When it is determined that non-emergency work in the City right-of-way has proceeded without the purchase of a permit, the contractor or utility shall immediately purchase a street cut permit, and the fee for the permit shall be double the standard fee; and, no further permits shall be issued to the contractor or utility until such time as the improper work is removed and replaced in accordance with this Code.
- (k) Where work in the City right-of-way is self-performed by one (1) of the following entities, or by one (1) of the entity's approved contractors, the fee for each permit shall be invoiced monthly:
 - (1) Electric Power Board of Chattanooga;

- (2) Tennessee-American Water Company;
 - (3) Chattanooga Gas Company;
 - (4) AT&T;
 - (5) Comcast Cable Company;
 - (6) Hixson Utility District; and
 - (7) Eastside Utility District.
- (l) Fees set forth within this Section may be revised by the City in connection with the annual budget adopted each fiscal year.

(Ord. No. 12337, 1-5-10; Ord. No. 12824, § 1, 3-25-14; Ord. No. 13267, § 3, 1-30-18)

Sec. 32-65. Manner of excavating; barricades and lights.

Any person making any excavation shall do so according to the specifications and standards issued by the Transportation Division. In accordance with the Manual on Uniform Traffic Control Devices (MUTCD), sufficient and proper barricades, lights and other traffic control devices shall be maintained to prevent accidents and injury to persons or property. If any sidewalk is blocked, a temporary sidewalk shall be provided which shall be safe for travel and accessible for all users. No work installing or maintaining such safety measures and/or temporary sidewalks shall be done which deviates from the approved plans and until a change of plans has been secured in writing from the Building Official. All expenses of such safety measures and temporary sidewalk shall be borne by the applicant or owner.

Traffic control plans in compliance with the MUTCD may be submitted to the City with the application for the work zone permit. See the previous section (32-64) concerning fees for traffic control plans and work zone permits.

Where difficult or potentially hazardous conditions exist, the permittee shall provide competent flaggers to effect a safe and orderly movement of traffic. Where insufficient traffic lanes exist because of street openings, adequate bridging shall be supplied and maintained by the permittee. When traffic congestion occurs in spite of all precautions, the permittee shall be responsible for providing a flagger. In the event the Building Official or Transportation Division shall discover any hazardous or unwarranted traffic congestion where flaggers have not been provided, it shall direct the permittee to immediately post flaggers. A failure to post flaggers following a directive shall be a violation of this Article, and shall subject the permittee to penalties and/or rescission of the permit

(Ord. No. 12337, 1-5-10; Ord. No. 12823, § 1, 3-25-14; Ord. No. 12824, § 1, 3-25-14; Ord. No. 13267, § 3, 1-30-18)

Sec. 32-66. Bond required.

When permits are required to excavate or in any way obstruct any street in the City, the Building Official shall require from such applicant, before granting a permit, a bond with good and sufficient sureties, conditioned to secure the City against all loss, damage or injury of any kind which may result to the City by reason of such excavation or obstruction; provided, that persons engaged in the business of contracting shall be allowed to give an annual bond, instead of a bond

for each obstruction such annual bond in every instance to be renewed at least once every twelve (12) months.

(Ord. No. 12337, 1-5-10; Ord. No. 13267, § 3, 1-30-18)

Sec. 32-67. Manner of excavating street.

- (a) The street cut permit number provided by the City with an approved street cut permit shall be marked and maintained at each street cut site in white marking paint or sign posting adjacent to the limits of the street cut so that inspectors can readily identify the permit number when arriving on site for inspections.
- (b) In excavating any street, all material for paving or ballasting must be removed with the least possible injury or loss of the same, and together with the excavated materials from the trenches, must be placed where they will cause the least possible inconvenience to the public. All pavement where trench excavations are to be made shall be saw cut. All edges shall be made clean and square. No other method of demolition is acceptable.
- (c) The permittee shall carry on the Work as authorized by the permit in such manner as to cause a minimum interference with traffic. The permittee shall provide adequate warning signs and devices to warn and guide traffic, and shall place the signs and warning devices in a position of maximum effectiveness. The latest editions of the Manual on Uniform Traffic Control Devices, copies of which are on file in the Transportation Division Office, and are generally available online, may be used as a guideline for proper positioning of signs and devices.
- (d) Any steel plate(s) placed within lanes of traffic shall be clearly labeled with the name of the owner of the plate and a 24-emergency contact phone number and shall respond to the site within 2 hours of notification from a City official.
- (e) On main thoroughfares and in congested districts, sufficient traffic lanes shall be kept open at all times to permit substantially normal traffic flow. However, if this requirement is not possible, then Work shall be done only during the period between 9:00 a.m. and 4:00 p.m. or between 7:00 p.m. and 6:00 a.m., as the Transportation Division may designate.
- (f) For backfill in roadway areas;
 - (1) No material excavated from the streetcut shall be returned to the trench.
 - (2) The contractor shall provide six (6) inches of graded aggregate base above the utility's main line top of pipe.
 - (3) From top of graded aggregate base backfill to within four (4) feet of the street surface, the contractor shall provide fine aggregate (crushed limestone dust no larger than one-sixteenth (1/16) inch.) Each eight (8) inch lift of the fine aggregate base shall be moistened and compacted by means of a mechanical tamp. Flowable fill that meets the specifications below may be used in lieu of fine aggregate.
 - (4) The contractor shall complete the backfill up to the bottom of the paving with flowable fill with a compressive strength of two hundred (200) to two hundred fifty (250) psi in forty-eight (48) hours.
 - (5) Flowable fill shall be placed a minimum of forty-eight (48) hours prior to the placing of the asphalt or concrete topping.
 - (6) Steel plate(s) shall be pinned in place in the roadway and shall not stay in the roadway longer than 5 days from the placement of the flowable fill.

- (7) Flowable fill surface shall not be exposed to traffic following removal of steel plate(s). If final resurfacing work of the street cut cannot be immediately executed following removal of the steel plate, an interim asphalt material (hot mix asphalt or cold patch mix) shall be placed neatly and cleanly on top of the flowable fill until final milling and resurfacing can be performed. This interim measure is allowed to remain in place no longer than 90 days from placement of flowable fill.
- (8) Where it is impractical to use flowable fill because of terrain, slope, width of trench, or other situations, the material for the backfill in the roadway areas may be approved for cement treated aggregate base, placed in eight (8) inch thick layers, at the sole discretion of the Division of Transportation. Each eight (8) inch layer of backfill shall be thoroughly compacted by means of a mechanical tamp.
- (g) Backfill for trenches within the sidewalk areas shall be compacted graded aggregate base instead of loose washed stone. Each eight (8) inch layer of graded aggregate base shall be thoroughly compacted by means of mechanical tamp.
- (h) Any perpendicular cut in a roadway must be repaved no less than the full width of the travel lane(s) to the existing longitudinal joint that it cuts, and a minimum of ten (10) feet on each side of the centerline of the excavation. Any longitudinal cut must be repaved no less than the full width of the travel lane(s) that it cuts extended no less than ten (10) feet beyond the beginning and end of the cuts being made.
- (i) The proposed restoration plan shall require that permanent repairs or restoration of street cuts shall be made to match existing surfaces.
- (j) Surface elevation of the permanent repair shall not vary more than one-quarter (¼) inch for asphalt roadways or one-eighth (⅛) inch for concrete roadways when checked with a straight edge ten (10) feet long to ensure smooth surface across street cut restoration and existing roadway surface.

(Ord. No. 12337, 1-5-10; Ord. No. 12391, 4-27-10; Ord. No. 12823, § 1, 3-25-14; Ord. No. 12824, § 1, 3-25-14; Ord. No. 13267, § 3, 1-30-18)

Sec. 32-68. Liability and responsibility for repair.

- (a) Subject to the provisions set forth within this Section, any person who shall properly make any excavation or other change to the right-of-way, and shall have same inspected by the Building Official or his designee, shall be relieved from any liability for any defects due to inadequate workmanship or defective materials provided the excavation shall remain free from defects for three (3) years following installation.
- (b) Said repaving specified in this Section shall be completed to the standards approved by the Transportation Division and shall be performed under the supervision and control and at the direction of the City. The contractor, utility, or other entity shall bear the entire cost of such repaving. The contractor, utility or other entity shall be prohibited from acquiring any permits for additional excavations in any City right-of-way until such time as the repaving required by this street segment section is completed and approved by the Transportation Division.
- (c) If a contractor, utility, or other entity damages any traffic control device, then said contractor, utility, or other entity shall immediately replace the device(s) per the standard of the Transportation Division. Damaged signal detection loops or sensors shall be replaced

including connection to the signal cabinet with oversight by the Intelligent Cities Division of the Department of technology Services. Damaged pavement markings (stop bar, crosswalk, lane line, turn arrow, bike symbol, colored pavement, or other) shall be replaced in ninety (90) mil thermoplastic.

(Ord. No. 12337, 1-5-10; Ord. No. 12823, § 1, 3-25-14; Ord. No. 12824, § 1, 3-25-14; Ord. No. 13267, § 3, 1-30-18)

Sec. 32-69. Inspection.

It shall be the responsibility of any person granted a permit to schedule, with a minimum of forty-eight (48) hours notice, an inspection of the permitted work by the City's Inspector upon such conditions as may be specified in the permit. Said work may not commence until the City's inspector arrives at the site or otherwise gives permission to proceed. The utility or contractor making any changes to a City right-of-way, shall, at a minimum, have the following inspections performed by the City's Inspector:

- (a) After the repairs or installation of the new conduit or piping and before the graded aggregate base fill over the pipe has been placed;
- (b) During the placement of the flowable fill or other approved fill in the sole discretion of the Transportation Division; and
- (c) Final completion.
- (d) Three months prior to the end of the three (3) year warranty period...
- (e) Should inspections be required after normal working hours or on weekends, the contractor or utility making the changes to the City right-of-way, shall reimburse the City for the inspector's time at a rate to be determined in accordance with the personnel policies in effect at the time the repairs are performed.

When it is determined that improper work has been performed in the City's right of way, the contractor or utility responsible for the work shall remove improper work and reinstall the work in accordance with the City Standards. If a permit was not obtained, the contractor or utility shall purchase a permit and the fee shall be double the normal fee. No future permits will be issued to the violating contractor or utility until the improper work has been corrected.

(Ord. No. 12337, 1-5-10; Ord. No. 12823, § 1, 3-25-14)

Sec. 32-70. Specification.

Upon issuance of each permit, the Building Official shall specify minimum restoration standards applicable to the permit. The Transportation Division shall prepare and provide standard specifications for routine circumstances, which may be specifically referenced in the permit. Provided that where the work involved is greater in scope than provided for by standard specifications as determined by the Land Development Office or Transportation Division , the permittee shall be required to submit suitable plans of installation and street restoration for approval prior to issuance of a permit.

(Ord. No. 12337, 1-5-10; Ord. No. 12823, § 1, 3-25-14; Ord. No. 12824, § 1, 3-25-14)

Sec. 32-71. Insurance.

Each person applying for a permit shall file a certificate of insurance (or provide other proof in form and substance to be approved by the City Attorney) indicating that he is insured, or the applicant shall provide an indemnity agreement with security satisfactory to the City Attorney, against claims of personal injury or property damage which may arise from or out of the performance of the work, whether such performance be by the applicant, a contractor or subcontractor, or anyone employed by him. Such insurance or indemnity agreement shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The minimum amount of the liability insurance for bodily injury shall not be in an amount less than three hundred thousand (\$300,000.00) for each person and seven hundred thousand dollars (\$700,000.00) for each accident and for property damages in an amount not less than one hundred thousand dollars (\$100,000.00), unless other limits are established by the Tennessee Governmental Tort Liability Act.

(Ord. No. 12337, 1-5-10)

Sec. 32-72. Supervision.

The Building Official, or his designee, shall from time to time inspect all excavations and see to the enforcement of the provisions of this ordinance. The permittee shall give notice to the Building Official, or his designee, before refilling any such excavation or tunnel and said work may not commence until the Inspector arrives at the site or otherwise gives permission to proceed.

(Ord. No. 12337, 1-5-10)

Secs. 32-73—32-85. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

Passed on second and final reading: March 12, 2024


CHAIRPERSON

APPROVED: DISAPPROVED:


MAYOR

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