

ORDINANCE NO. 746

AN ORDINANCE CREATING STAYTON MUNICIPAL CODE SECTION 12.04.015, "DEFINITIONS"; AMENDING SECTION 13.04.010, "DEFINITIONS"; AMENDING SECTION 12.04.090, "RIGHT-OF-WAY CONSTRUCTION PERMIT: REQUIRED"; AMENDING SECTION 12.04.091, "RIGHT-OF-WAY PERMIT: CHARGES"; CREATING SECTION 12.04.092, "RIGHT-OF-WAY PERMIT: PENALTIES FOR EXCAVATION"; CREATING SECTION 12.04.093, "RIGHT-OF-WAY PERMIT: SECURITY REQUIRED"; CREATING SECTION 12.04.094, "RIGHT-OF-WAY PERMIT: MAINTENANCE"; CREATING SECTION 12.04.095, "RIGHT-OF-WAY PERMIT: COMPLIANCE WITH STANDARD SPECIFICATIONS"; CREATING SECTION 12.04.096, "RIGHT-OF-WAY PERMIT: CLEAN UP REQUIRED"; CREATING SECTION 12.04.097, "REVIEW OF PROVISIONS;" AMENDING SECTION 13.08.150, "APPROVAL AND ACCEPTANCE OF WORK: WARRANTY PERIOD"; AND AMENDING SECTION 17.24.1050.8, "STREET IMPROVEMENTS, SIDEWALKS, UNDERGROUND UTILITIES, AND SURFACE DRAINAGE."

WHEREAS, the Stayton Transportation Committee has deemed it necessary to regulate the opening and excavating of public places; to regulate the backfilling and resurfacing of excavations; to prescribe surety bond and/or a warranty period; and to prescribe penalties for violations of its provisions; and

WHEREAS, Stayton Municipal Code Section 13.08.140 states it is the responsibility of the property owner to ensure that there is adequate inspection, testing, and documentation of the work prior to requesting acceptance by the City of Stayton Department of Public Works; and

WHEREAS, Stayton Municipal Code Section 17.24.1050.8.a states that all street improvements, including pavement, curbs, sidewalks, underground utilities, and surface drainage shall be in accordance with the specifications and standards prescribed by the city; and

WHEREAS, the Stayton Transportation Committee wishes to expand responsibilities of utilities and/or contractors performing excavation to newly surfaced or constructed public rights-of-way;

NOW, THEREFORE, THE STAYTON CITY COUNCIL hereby ordains as follows:

SECTION 1. Stayton Municipal Code Section 12.04.015 is hereby created to read:

12.04.015 DEFINITIONS

For the purposes of this code, terms, phrases, words, abbreviations, and their derivatives shall be construed as specified herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. The word "shall is always mandatory and not merely directory.

EXCAVATION: Any opening in the surface of a public place made in any manner whatsoever; including an opening into a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

FACILITY: Pipe, pipeline, tube, main, service trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed, or maintained in, upon, along, across, under, or over any public place.

PERSON: Any person, firm, partnership, association, corporation, company, or organization of any kind.

PERMITTEE: Any person, firm, partnership, association, corporation, company, or organization of any kind on whose behalf a right-of-way construction permit is obtained.

PUBLIC FACILITY: Any facility which is immediately or is eventually to be taken over by the city for maintenance and operation. Facilities include, but are not limited to, public utilities, streets, sidewalks, curbs, parking lots, driveways, public buildings, and properties.

PUBLIC PLACE: Any public street, street right-of-way, place, alley, sidewalk, park, square, plaza, or any other public property owned or controlled by the city.

PUBLIC WORKS DIRECTOR: That person assigned the title of Public Works Director or any person the assigned director designates.

STANDARD SPECIFICATIONS: Uniform design, material, and workmanship standards under which all public works facilities shall be constructed in the city. "Public works facilities" include public utility systems which are constructed to be immediately or eventually operated and maintained by the city.

SECTION 2. Stayton Municipal Code Section 13.04.010 is hereby amended to read:

13.04.010 DEFINITIONS

: For the purposes of this code, terms, phrases, words, abbreviations, and their derivatives shall be construed as specified herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory

CAPITAL IMPROVEMENTS ADVISORY COMMITTEE: The "capital improvements advisory committee" is an advisory committee consisting of nine (9) members authorized to review, evaluate, and prioritize pending public facility projects and to make recommendations to the city council regarding the capital improvements program which implements the master utilities plan.

CAPITAL IMPROVEMENTS PROGRAM: The "capital improvements program" is a phased implementation program based on the master utilities plan. Timing provisions for the public utilities are prioritized by a five-year phased program which is updated on a yearly basis and are consistent with the comprehensive plan's projected growth

estimates. Planned revenues and expenditures are also projected over the five-year phased program. The capital improvements program includes the master utilities fee schedule.

CONNECTION CHARGE: A "connection charge" is cost borne by the user to provide a utility connection at the property line.

DEVELOPER: A "developer" is deemed to be the individual, firm, corporation, partnership, association, syndication, trust, or other legal entity that is responsible for the development of land, thereby creating a demand on the public utility systems.

DEVELOPMENT: "Development" is any improvement which places a demand on the public utility systems or other public facility.

DWELLING UNIT: A "dwelling unit" is one or more rooms in a dwelling or portion of a dwelling designed for occupancy by one family for living purposes and having its own cooking and sanitary facilities.

ENGINEERED CONSTRUCTION PLANS: "Engineered construction plans" means drawings and specifications of proposed public utility systems to be developed bearing the stamp of a professional engineer.

EXCAVATION: Any opening in the surface of a public place made in any manner whatsoever; including an opening into a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

FACILITY: Pipe, pipeline, tube, main, service trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed, or maintained in, upon, along, across, under, or over any public place.

MASTER UTILITIES FEE SCHEDULE: The capital improvements advisory committee shall annually review and recommend to the city council a comprehensive schedule of fees and charges in connection with the funding of the capital improvement program. The fees and charges shall include, but not be limited to:

- a. Systems development fee;
- b. User fees;
- c. Connection fees (water);
- d. Connection fees (sewer);
- e. Permit charges

MASTER UTILITIES PLAN: The "master utilities plan," a support document to the comprehensive plan for the city, describes water, sanitary sewer, and storm sewer (exclusive of the Mill Creek Flood Basin) utilities which are to support the land uses designated within the urban growth boundary by the comprehensive plan as required by OAR 660-11-045. The master utilities plan contains the following items:

- a. An inventory and general assessment of the condition of all the significant public utility systems which support the land uses designated in the comprehensive plan;
- b. A list of the significant public utility projects which are to support the land uses designated by the comprehensive plan. Public utility project descriptions or specifications of these projects as necessary;
- c. Rough cost estimates of each public utility project;
- d. A map or written description of each public utility project's general location or service area;
- e. Policy statements regarding the urban growth management and identifying the city as the provider of the public utility system;
- f. An estimate of when each utility project will be needed.

MASTER UTILITIES FINANCE PLAN: The city is the provider of the public utility systems identified in the master utilities plan and the "master utilities finance plan" is the funding mechanism for the city to fund the development of each public utility project. The funding mechanisms include:

- a. Systems development fees;
- b. User fees;
- c. Other means of funding.

PAYMENT SCHEDULE AGREEMENT: A "payment schedule agreement" is a written agreement between the developer and the city outlining the amount to be paid and the terms of the payment.

PERSON: Any person, firm, partnership, association, corporation, company, or organization of any kind.

PERMITTEE: Any person, firm, partnership, association, corporation, company, or organization of any kind on whose behalf a right-of-way construction permit is obtained.

PUBLIC FACILITY: Any facility which is immediately or is eventually to be taken over by the city for maintenance and operation. Facilities include, but are not limited to public utilities, streets, sidewalks, curbs, parking lots, driveways, public buildings, and properties.

PUBLIC PLACE: Any public street, street right-of-way, place, alley, sidewalk, park, square, plaza, or any other public property owned or controlled by the city.

PUBLIC UTILITY SYSTEMS: For the purpose of this chapter, "public utility systems" include and are limited to the following:

- a. Water
 - i. Sources of water
 - ii. Treatment of water
 - iii. Storage system
 - iv. Pumping system
 - v. Primary distribution system
- b. Sanitary Sewer
 - i. Treatment facilities system
 - ii. Primary collection system
- c. Storm Sewer
 - i. Primary collection system
 - ii. Mayor drainage ways (streams, ditches, pump stations, and retention basins).
 - iii. Outfall locations.

PUBLIC WORKS DIRECTOR: That person assigned the title of Public Works Director or any person the assigned director designates.

PUBLIC WORKS PROJECT REPORT: A "public works project report" is a study and written report by the director of public works for a specified utility project. The report will include the following:

- a. A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof;
- b. Plans, specifications, and estimates of the work to be done; provided, however, that when the proposed project is to be carried out in cooperation with any other governmental agency, the report may adopt the plans, specifications, and estimates of such agency;
- c. An estimate of the probable cost of the improvement including any legal, administrative, and engineering costs attributable to it;
- d. A recommendation as to the method of assessment, if any, to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited;
- e. The description and assessed value of each lot, parcel of land, or portion to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;
- f. A statement of outstanding assessments against the property to be assessed.

REQUEST FOR PUBLIC UTILITIES: A "request for public utilities" is an application for water and/or sewer service by a developer. The application form provided by the city shall indicate the date of application, location of premises to be served, the size of

service desired, the date service is to be used, the address for mailing utility bills, and such other information as the city may reasonably require.

RIGHT-OF-WAY CONSTRUCTION PERMIT: A "right-of-way construction permit" is a document giving authority to construct, alter, modify, or connect to any public utility system, approved by the director of public works.

SERVICE: A "service" is a branch or lateral from the main to which the user is allowed to connect.

STANDARD SPECIFICATIONS: Uniform design, material, and workmanship standards under which all public works facilities shall be constructed in the city. "Public works facilities" include public utility systems which are constructed to be immediately or eventually operated and maintained by the city.

SYSTEMS DEVELOPMENT FEE: A "systems development fee" is levied at the time engineered construction plans are approved. Such fee, as collected, is placed in a special fund designated as the systems development fund. The fund will assist in financing the installation and construction of increased capacity in public facilities.

USER FEE: A "user fee" is the periodic fee charged to the customer for the use and benefit of the public utility system

SECTION 3. Stayton Municipal Code Section 12.04.090 is hereby amended to read:

12.04.090 RIGHT-OF-WAY CONSTRUCTION PERMIT: REQUIRED

1. Any person desiring to repair sidewalks or construct new sidewalks, except where so ordered by the council, shall apply to the superintendent of public works for a permit to do any such work.
2. The application shall describe the location of the proposed improvements and contain a statement that the person constructing any sidewalks or curbs will comply with the requirements of this chapter and with any applicable provisions of the "Standard Specifications," as adopted by Section 12.08.010 of this chapter.
3. If the superintendent of public works is satisfied that all applicable requirements will be met, he shall issue a permit to build, improve, or repair the sidewalk or curb.

SECTION 4. Stayton Municipal Code Section 12.04.091 is hereby amended to read:

12.04.091 RIGHT-OF-WAY PERMITS: CHARGES

1. The following right-of-way inspection charges are imposed per inspection as follows:

- a. Streets \$25.00
 - b. Storm Sewer Connection \$25.00
 - c. Sewer Connection \$25.00
 - d. Water Connection \$25.00
 - e. Curbs/Sidewalks/Driveways \$25.00
2. Cost of right-of-way construction permits (set by resolution) shall be doubled if the start of construction occurs prior to application for the permit.

SECTION 5. Stayton Municipal Code Section 12.04.092 is hereby created to read:

12.04.092 RIGHT-OF-WAY PERMITS: PENALTIES FOR EXCAVATION

- 1. To conserve new paving and resurfacing of streets, pavement cuts in travel lanes are prohibited except upon payment of a penalty charge. The maximum period of time for which such penalty shall apply shall be five years.
 - a. The penalty for excavating any public facility shall be \$5.00 per square foot of excavation (length x width = square foot of excavation) multiplied by the number of years remaining in the penalty period.

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| First year after surfacing: | \$5.00 x square footage of excavation x 5 |
| Second year after surfacing: | \$5.00 x square footage of excavation x 4 |
| Third year after surfacing: | \$5.00 x square footage of excavation x 3 |
| Fourth year after surfacing: | \$5.00 x square footage of excavation x 2 |
| Fifth year after surfacing | \$5.00 x square footage of the excavation |
 - b. The city shall inform utilities and affected property owners before new paving or resurfacing is performed. The city shall provide a tentative list of street improvements six months prior to construction.
 - c. Potholing smaller than four square yards shall be allowed outside the travel lanes without penalty. Contractors must comply with ORS 7547.541 through 757.571, which requires hand exposure of underground utilities and reasonable care to avoid damaging underground facilities.

SECTION 6. Stayton Municipal Code Section 12.04.093 is hereby created to read:

12.04.093 RIGHT-OF-WAY PERMIT: SECURITY REQUIRED

Before the issuance of any right-of-way construction permit to excavate a newly resurfaced or constructed public place or facility, the applicant may be required to file as security either:

- a. A surety bond in an amount fixed by the public works director or designate, not to exceed \$10,000, conditioned that the applicant will immediately upon the completion of work remove all surplus earth, rubbish, or other material; replace the pavement, cut, or undermine in a condition as good as or better than existed; and keep the same in good repair at the applicant's own expense for a period of time to be designated by the public works director, normally a one year period.
- b. Cash or certified check in an amount equal to twice the estimated replacement value of the pavement to be cut, together with the cost of re-excavation and refilling with proper materials, if necessary, as determined by the public works director, to be held and returned subject to the same conditions as set forth above in the case of surety bonds.
- c. Acceptance or approval of any excavation work by the public works director shall not prevent the city from asserting a claim against the permittee and his or its surety under the surety bond required hereunder for incomplete or defective work if discovered within 24 months from the completion of the excavation work. The presence of city officials during the performance of excavation work shall not relieve the permittee of his responsibilities hereunder.
- d. All franchise holders shall be exempt from providing security.

SECTION 7. Stayton Municipal Code Section 12.04.094 is hereby created to read:

12.04.094 RIGHT-OF-WAY PERMITS: MAINTENANCE

- a. Patches or excavations within the public place in need of maintenance shall be reported to the public works director. In most cases, a utility cut requires maintenance or repair if any part of the replacement surfacing deviates more than one-half inch from the finished surface street grade or one-quarter inch from a finished sidewalk grade.
- b. If, upon reasonable notice, the permittee fails to restore and maintain the public place affected by the permittee's work, the city may perform the work and charge the cost to the permittee.
- c. If, in the judgment of the public works director, a hazardous or dangerous condition exists that affects the public health, safety, and welfare, the notification requirement may be waived and the city may take necessary corrective action to remove the hazardous conditions and charge the cost thereof to the responsible party without prior notification.
- d. Nothing in this section shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in a conduit or pipe; or for making repairs, provided that the person making such excavation shall apply to the director of public works

for such a permit on the first working day after such work is commenced. Emergency excavation does not release the permittee from any obligation or any penalties or regulations that would normally apply.

SECTION 6. Stayton Municipal Code Section 12.04.095 is hereby created to read:

12.04.095 RIGHT-OF-WAY PERMIT: COMPLIANCE WITH STANDARD SPECIFICATIONS

Work done under a right-of-way construction permit must meet or exceed the requirements of the standard specifications for public works construction in the City of Stayton in effect at the time the permit is issued and/or such other standards as required by the permit.

SECTION 7. Stayton Municipal Code Section 12.04.096 is hereby created to read:

12.04.096 RIGHT-OF-WAY PERMIT: CLEAN-UP REQUIRED

As the excavation work progresses, all streets shall be kept thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All clean up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed as may be directed by the public works director, and in any event immediately after completion of said work. Failure to comply with clean up requirements, either at the completion of the project or as directed by the public works director, within 24 hours of completion of the project or of notification from the public works director, clean up work may be done by the city and costs thereof be charged to the permittee.

SECTION 8. Stayton Municipal Code Section 12.04.097 is hereby created to read:

12.04.097 REVIEW OF PROVISIONS

Fees, penalties, and conditions are subject to review a minimum of every three years.

SECTION 9. Stayton Municipal Code Section 13.08.150 is hereby amended to read:

13.08.150 APPROVAL AND ACCEPTANCE OF WORK; WARRANTY PERIOD

Prior to acceptance of the work, the public works director shall determine that the new construction or street repair meets City of Stayton standard specifications, that the regulations have been met, and that all permit fees have been paid.

- a. Acceptance by the city on a fully improved or resurfaced street project financed by the city shall be on the date of the check for final payment. A warranty period of not less than one year from the date of acceptance shall be provided. Warranty for all pavement, storm drainage, sanitary sewers, water mains, and services shall be provided by one of the following:

1. The director of public works shall determine that the work done under the right-of-way permit is such that the warranty period shall be provided by one of the methods listed below:
 - ii. **Surety Bond** executed by a surety company authorized to transact business in the state of Oregon in a form approved by the city attorney.
 - iii. **Personal Bond** co-signed by at least one additional person together with evidence of financial responsibility and resources of those signing the bond sufficient to provide reasonable assurance of ability to perform any work necessary in accordance with the warranty.
 - iv. **Cash**
- b. Acceptance by the city of all other right-of-way construction shall be in written form. A warranty period of not less than one year, beginning the date of the city's letter of acceptance, shall be provided.

SECTION 10. Stayton Municipal Code Section 17.24.1050.8 is hereby amended to read:

8. **STREET IMPROVEMENTS, SIDEWALKS, UNDERGROUND UTILITIES, AND SURFACE DRAINAGE**
 - a. All street improvements, including pavement, curbs, sidewalks, underground utilities, and surface drainage shall be in accordance with the specifications and standards prescribed by the city. All utilities and public agencies shall be made aware of the street construction so that every chance is provided to install conduit where the actual placement of lines is not practical and to advise them of penalties for street excavation during the first five years after construction.
 - b. Subdivision plats and final partition plans involving public improvements shall not have final approval until such time as the city in its judgment is satisfied that the following street improvements will be completed in accord with the specifications and standards set forth in this section:
 - 1) Clearing and grading to full right-of-way limits.
 - 2) Storm drainage facilities both within and outside of right-of-way limits.
 - 3) Base and pavement materials for roadways in place and compacted.
 - 4) Concrete curbs and concrete sidewalks, the location and width hereof shall be determined by the commission. In making such determination, the commission shall take into consideration the topography of the land, the presence of improvements, trees or other plantings, the type of street, and the location of sidewalks, if any, in adjacent areas or subdivision.

In residential neighborhoods property line sidewalks shall be used whenever possible. In all cases, sidewalks shall be placed one foot from the property line on arterial and collector streets.

- 5) Bikeways, including striping and signing, if required.
- 6) Signage and traffic signalization, if required.

ADOPTED BY THE STAYTON CITY COUNCIL this 19th day of June 1995.

Date: 6-21-95 By: Willmer Van Vleet
WILLMER VAN VLEET, Mayor

Date: 6/20/95 Attest: Thomas L. Barthel
THOMAS L. BARTHEL, City Administrator

APPROVED AS TO FORM

Date: JUN 15 1995
David A. Rhoten
DAVID A. RHOTEN, City Attorney