

AGENDA

AGENDA OF THE WORK SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA TO BE HELD ON TUESDAY, FEBRUARY 16, 2010, AT 6:00 PM IN THE BISBEE MUNICIPAL BUILDING, 118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING CALLED TO ORDER BY _____ AT _____ PM.

ROLL CALL

COUNCIL

Councilmember Boyd Nicholl, Ward I
Councilmember Bennie Scott, Ward III
Councilmember Luche Giacomino, Ward II
Mayor W.J. "Jack" Porter
Councilmember Anna Cline, Ward III
Councilmember Raymond Rodgers, Ward II
Councilmember Kenneth "Ken" Budge, Ward I, Mayor Pro Tempore

STAFF

Stephen J. Pauken, City Manager
Gloria P. Gonzalez, Deputy City Clerk
Dee L. Flanagan, Finance Director
John Charley, Community Development Director
Jim Elkins, Chief of Police
Jack Earnest, Fire Chief
Jennifer L. Graeme, Personnel Director
Russ McConnell, Public Works Director
Peg White, Library Director

CITY ATTORNEY

Mark J. Langlitz

THE FOLLOWING ITEM WILL BE DISCUSSED AT THIS MEETING:

1. Discussion of a Draft Ordinance Relating to Street Pavement Cuts.
Mark J. Langlitz, City Attorney

ADJOURNMENT

Anyone needing special accommodations to attend this meeting should contact Gloria Gonzalez, at (520) 432-6000 at least twenty-four hours before the meeting.



REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: February 10, 2010	TYPE OF ACTION: <input type="checkbox"/> RESOLUTION <input type="checkbox"/> ORDINANCE <input type="checkbox"/> FORMAL ACTION <input checked="" type="checkbox"/> OTHER: DISCUSSION	SUBJECT: DISCUSSION OF A DRAFT ORDINANCE RELATING TO STREET PAVEMENT CUTS.
DATE ACTION REQUESTED: February 16, 2010		
<input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT		

TO: Mayor and Council

FROM: Mark J. Langlitz, City Attorney

RECOMMENDATION: Discussion purposes only.


PROPOSED MOTION: Discussion purposes only.

DISCUSSION: The streets of the City of Bisbee are subject to pavement cuts by utility companies and contractors however there are currently no specific provisions in the City Code on the requirements to repair damage which results from such action. At a work session held on February 2, 2010, Mayor and Council discussed a draft Ordinance to amend the City Code to include such provisions. As a result of this meeting City Attorney Langlitz has amended the draft Ordinance for further discussion at this work session.

Prepared by:


Jennifer L. Graeme, Personnel Director

Reviewed by:


Stephen J. Pauken, City Manager

**REVISED DRAFT
2/16/10**

ORDINANCE O-10-05

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF
BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING
THE BISBEE CITY CODE, CHAPTER 7, BUILDING, ARTICLE 7.12,
EXCAVATIONS, RELATING TO STREET PAVEMENT CUTS;
PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR
SEVERABILITY; AND REPEALING CONFLICTING ORDINANCES.**

WHEREAS, pursuant to Section 1.03(i) of the Charter of the City of Bisbee and Arizona Revised Statutes Section 9-240(B)(3), the Mayor and Council have exclusive jurisdiction to control and regulate the use of the City's streets, alleys, avenues, sidewalks, public grounds and ways; and

WHEREAS, the Mayor and Council have determined it is in the best interests of the City to amend the provisions of the City Code relating to excavations and similar pavement openings of such streets, alleys, avenues, sidewalks, public grounds and ways.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Bisbee as follows:

Section 1: That the Bisbee City Code, Chapter 7, Building, Article 7.12, Excavations, is hereby deleted in its entirety and replaced with the following:

ARTICLE 7.12 EXCAVATIONS

7.12.1 Permit Required

No person shall excavate, dig, construct or cause to be made any opening, hole, cut, displacement, depression or impairment of any kind, or perform any work in, on or under the surface of any public place, highway, right-of-way, pathway, street, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility or other public way for any purpose whatsoever, without first obtaining a permit from the City in accordance with the provisions set forth herein.

7.12.2 Exceptions to Permit Requirements

- A. The City is not required to obtain permits from itself pursuant to this article, however, contractors or other persons performing work under contract with the City or on behalf of the City in any public way must obtain appropriate permits and comply with all applicable requirements set forth in this article.

- B. The marking of pavements, curbs and sidewalks by utility companies, engineers and surveyors to indicate the location of underground utility lines and monuments in connection with surveying, design, construction and maintenance work may be done without a permit; ~~however, all other pavement, curb and sidewalk marking requires a permit.~~
- C. In the event of an emergency requiring immediate action in order to protect life or property, a person may perform work described in Section 7.12.1 above without first obtaining a permit; provided such person obtains a permit as soon as is reasonably practicable thereafter and otherwise complies with all requirements set forth in this article.

7.12.3 Application

- A. The City shall prescribe and provide a regular form of application for the use of applicants for permits required by this article. The application shall show such information and details as the City deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed work and shall be submitted to the Public Works Director, or designee, together with ~~the a~~ non-refundable application fee of \$50.00 for residential permits and \$150.00 for commercial permits, and other applicable fees established by the Council.
- B. The application shall be accompanied by construction plans, engineered designs, maps, sketches, diagrams or similar exhibits. The same shall be of the size and in the quantity prescribed by the City and of sufficient clarity to illustrate the method of construction, design, location, dimensions, nature and purpose of the proposed work and its relation to existing and proposed structures and facilities in the public way.
- C. The applicant shall also enclose with or attach to the application a certified statement that the applicant has obtained all other licenses, permits or approvals required by the City or any other governmental agency or private party.
- D. No changes shall be made in the plans, design, location, dimensions, character or duration of the work as approved in the permit except upon the written authorization of the Public Works Director, or designee.

7.12.4 Issuance

- A. Upon review of the application and other required documents, and payment by the applicant of all applicable fees, the permit application may be approved, conditionally approved or denied by the Public Works Director, or designee. If the Public Works Director, or designee, finds that the application is in compliance with the requirements of this article and this code, he or she may issue a permit for the work, attaching such conditions as are necessary for the protection of the health, safety and welfare of the public including, but not limited to, aesthetic

considerations. If the Public Works Director, or designee, finds the application is in conflict with the provisions of this article or this code, the permit shall be denied and the applicant given written reasons for the denial. No permit is valid unless signed by the Public Works Director, or designee.

- B. No permit shall be issued for work which would unduly interfere with the public works of the City, endanger the health, safety or welfare of the public or permanently or unduly restrict, block or interfere with traffic.

7.12.5 Terms and Conditions of Permits.

- A. Indemnification. The Public Works Director, or designee, may require as a condition of issuing any commercial permit that the applicant execute and file ~~No permit shall be issued until the applicant has executed and filed~~ with the City an indemnity agreement satisfactory to the City Attorney. Such agreement shall include, without limitation, a requirement that the applicant shall be responsible for and shall indemnify, defend and hold harmless the City, its elected officials, officers and employees from all claims, demands, expenses or liabilities including, but not limited to, personal injury and property damage, arising out of or related to the work performed by the applicant, its agents and employees, under the permit.
- B. Insurance. The Public Works Director, or designee, may require as a condition of issuing any commercial permit that the applicant file and maintain on file ~~No permit shall be issued until the applicant has filed and maintained on file~~ with the City evidence of self insurance satisfactory to the City or a certificate of insurance demonstrating sufficient public liability and property damage insurance coverage issued by an insurance carrier authorized to do business in this state, insuring the applicant and the City, its elected officials, officers and employees, against loss by reason of injuries to, or death of persons, or damages to property arising out of or related to the work performed by the applicant, its agents and employees, under the permit. Such insurance shall be primary and provide coverage for all liability assumed by the applicant under subsection A of this section and shall be provided by the applicant in minimum amounts as required by the City's Risk Manager, which shall not be less than two million dollars (\$2,000,000.00).
- C. Performance bonds or other financial security. The Public Works Director, or designee, may require as a condition of issuing any commercial permit, that the applicant post performance bonds or other approved financial security satisfactory to the City Attorney to ensure satisfactory compliance with all requirements of this article.
- D. Commencement of work. The permittee shall begin the work authorized by a permit issued pursuant to this chapter within thirty (30) days from date of issuance, unless a different period is stated in the permit. If the work is not so

begun, then the permit shall become void. The permittee shall complete the work authorized by the permit within the time specified in the permit, which shall not be longer than one (1) year.

- E. Renewal of permits. Permits may be renewed by the City in its sole discretion upon application under the same terms and conditions as the initial application for a permit.
- F. Relocation. Unless otherwise provided in a franchise agreement between the permittee and the City, any encroachment including, without limitation, pipes, conduit, wire, cable, appurtenances or other structures or facilities installed or maintained in, on or under any public way, shall be relocated, at the sole expense of the permittee, as may be necessary to facilitate a public purpose or any City project.
- G. Assignment. ~~Permits shall be applied for by and issued to the person who will make use of the permit and not to the contractor who has been employed to perform the work; provided, however, all contractors and subcontractors who will be performing work in the public way shall be named and identified in the permit application.~~ The rights granted by the permit shall not be assignable without the express prior written consent of the Public Works Director, or designee.
- H. Supplemental. The Public Works Director, or designee, may require additional conditions for the issuance of a permit as are applicable and necessary to meet specific situations, for the public health, safety or welfare and to insure compliance with this article and all other City, state or federal regulations.
- I. Acceptance. ~~Acceptance of any permit granted under the provisions this article shall not become effective until written acceptance thereof shall have been filed by the permittee with the Public Works Director, or designee.~~ By accepting ~~this~~ a permit, the permittee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City and the permit.

7.12.6 Terms of Construction.

- A. All work done under such permits shall be to the satisfaction of the City and shall be in accordance with the terms and conditions of the permit and all adopted regulations, standards and specifications of the City including, without limitation, the regulations and specifications for pavement restoration and signage. Installation of all facilities shall meet the standard specifications, details and requirements of the Public Works Director, or designee. ~~The Public Works Director, or designee, may require a permittee to retain~~ Prior to commencement of construction, all permittees shall notify an approved utility line identification or locator service such as Arizona Blue Stake.

- B. The permittee shall, to the satisfaction of the City, repair all sewer lines, streets, sidewalks, curbs, gutters or other property, structures, improvements or facilities damaged by construction or operation pursuant to the permit. All such repairs shall be done in accordance with **the Maricopa Association of Governments 2010 Uniform Standard Specifications and Details for Public Works Construction, and other applicable** City **standard** specifications, details and requirements of the Public Works Director, or designee.

7.12.7 Street Cuts.

- A. ~~Permission to excavate~~ **Excavation** in new streets ~~shall not be granted for within~~ three (3) years after completion of street construction, reconstruction or renovation (major rehabilitation) **is discouraged and shall be permitted only where the applicant has shown there are no reasonable alternatives to such excavation.** ~~Utilities shall determine alternate methods of making necessary repairs to avoid excavating in new streets.~~ Exceptions to the above are as follows:

- (1) Emergencies which pose an immediate danger to life or property.
- (2) Work that is mandated by city, county, state or federal legislation.

For the purposes of the section, a street is considered "new" when it is first constructed, when it is reconstructed or when it is renovated. Reconstruction shall mean completely rebuilding all the lanes of the street by removing all the pavement and aggregate base course material, re-compacting the sub-base and restoring the base material and then completely re-paving the surface. Renovation shall mean a major rehabilitation which shall include mill and overlay or other similar roadway improvement work that physically modifies the surface of the roadway prior to applying new roadway surface or other similar work. The Public Works Director, or designee, shall determine the date of completion for new streets and the date each street was last reconstructed or renovated, based on the date the street was opened or reopened for traffic.

- B. In addition to the payment of the Pavement Restoration Fee set forth in Section 7.12.8 below, all **commercial** street cut permits for cutting the pavement of a street issued within three (3) years after completion of a major rehabilitation (as defined in subsection A of this section) of such street shall require that the permittee renovate such street by mill and overlay/inlay, for a minimum of the full width of all lanes impacted by the cut(s) (outside lane includes to the curb) and for arterial streets extending a minimum length of fifty (50) feet both directions from the area of the cut(s) and for collector streets extending a minimum length of twenty-five (25) feet both directions from the area of the cut(s), all as more specifically directed by the Public Works Director, or designee. Provided,

however, for pavement cuts smaller than two (2) square feet, the requirement to renovate the street by mill and overlay/inlay shall not apply.

7.12.8 Pavement Restoration Fee.

- A. Whenever any **commercial** permit is issued to cut into, open, bore, attach to, or make any break or disturbance to the street pavement of any arterial or collector street within the City, the permittee shall, in addition to the repairs required by this article, pay to the City the Pavement Restoration Fee established in subsection C of this section. Neither the City nor contractors or other persons performing work under contract with the City or on behalf of the City shall be required to pay a Pavement Restoration Fee.
- B. The Pavement Restoration Fee shall be paid prior to or at the time a **commercial** street cut permit is issued. In the event changes or amendments to the **commercial** street cut permit are required which would result in a change in the amount of the Pavement Restoration Fee, an adjusted fee shall be assessed and charged based on such change or amendment. Such amended permit shall be applied for and any additional fees shall be paid within one (1) week of the field change or prior to any new permits issued to the applicant.
- C. The Pavement Restoration Fee per cut shall be payable as follows:
 - 1. For permits issued within three years after completion of a major rehabilitation:
 - a. For 5 sq. yds. or less \$330.00 per sq. yd. of cut
 - b. For larger than 6 to 100 sq. yards \$1,600.00 plus \$18.00 per sq. yd. of cut over 5 sq. yds.
 - c. For larger than 100 sq.yds. \$3,360.00 plus \$14.00 per sq. yd. of cut over 100 sq. yds.

The above fees shall be in addition to the requirement for mill and overlay/inlay set forth in section 7.12.7(B) of this article.

- 2. For permits issued from more than three to five years after completion of a major rehabilitation:
 - a. For 5 sq. yds. or less \$230.00 per sq. yd. of cut
 - b. For larger than 6 to 100 sq. yards \$1,150.00 plus \$13.00 per sq. yd. of cut over 5 sq. yds.

- c. For larger than 100 sq.yds. \$2,385.00 plus \$10.00 per sq. yd. of cut over 100 sq. yds.

In lieu of the above fees, the permittee may choose, with the approval of the Public Works Director, or designee, to perform a mill and overlay/inlay set forth in section 7.12.7(B) of this article.

- 3. For permits issued from more than five to seven years after completion of a major rehabilitation:
 - a. For 5 sq. yds. or less \$130.00 per sq. yd. of cut
 - b. For larger than 6 to 100 sq. yards \$650.00 plus \$8.00 per sq. yd. of cut over 5 sq. yds.
 - c. For larger than 100 sq.yds. \$1,410.00 plus \$5.00 per sq. yd. of cut over 100 sq. yds.
- 4. For permits issued after seven years after completion of a major rehabilitation:
 - a. For 5 sq. yds. or less \$65.00 per sq. yd. of cut
 - b. For larger than 6 to 100 sq. yards \$325.00 plus \$4.00 per sq. yd. of cut over 5 sq. yds.
 - c. For larger than 100 sq.yds. \$700.00 plus \$3.00 per sq. yd. of cut over 100 sq. yds.
- 5. The Pavement Restoration Fee shall not be required for permits issued within one year prior to a major rehabilitation approved in the capital improvements program of the City's annual budget.

7.12.9 Supervision and Inspection of Work.

- A. The City may make any inspections deemed necessary in connection with permits issued under this article. During the work, the City will inspect all trenching, backfilling, street or pavement cuts, and other work as deemed necessary by the Public Works Director, or designee. Any work utilizing electrical connections must obtain an electrical inspection from the City.
- B. In addition to obtaining a permit pursuant to this article, before beginning any work in any public way, the permittee shall notify the City at least twenty-four (24) hours in advance of the exact date and time work will commence. Upon completion of all work authorized by the permit, the permittee shall notify the City.

- C. No work shall be deemed to be completed until notification of completion is given and the work is approved by the City.

7.12.10 Abandonment.

If the permittee abandons use of structures, cable, pipes, equipment or other facilities placed in the public way pursuant to the permit then, at City's option, City may require the permittee to remove all such structures, cable, equipment or facilities or may elect to accept ownership, in which case, title to such structure, cable, pipes, equipment or other facilities shall vest in the City. Abandonment shall be presumed if the permittee does not complete the work within the time provided in the permit. The permit may specify a different time period after which abandonment may be presumed.

7.12.11 Condemnation by City.

Nothing in the permit shall be construed to deny the City the right to acquire the property of the permittee by the exercise of the right of eminent domain in accordance with the Arizona Revised Statutes.

7.12.12 Excavation Permit is Revocable.

- A. All permits may be revoked by the Public Works Director, or designee, when the public way, or any portion thereof, occupied and used by the permittee is needed or required for a public use, and upon notice from the City, the permittee shall promptly remove all property belonging to permittee from the public way.
- B. If at any time the Public Works Director, or designee, finds that the delay in the completion of the work authorized by a permit is due to lack of diligence on the part of the permittee, it may cancel the permit and restore the public way to its former condition unless such restoration is completed by the permittee. The permittee shall reimburse the City upon demand for all expenses incurred by the City in restoring the public way.

7.12.13 Termination.

All permits granted hereunder are subject to termination by the Public Works Director, or designee, if:

- A. The permittee fails to comply with the requirements of the permit or this article or any other rule or regulation of the City applicable to the permit granted hereunder; or
- B. The permittee fails to pay when due, any fee as required by this article.

7.12.14 Appeal.

Any person aggrieved by a decision of the Public Works Director, or designee, acting under this article may appeal the decision to the City Manager. The aggrieved person shall file notice, in writing, with the City Clerk within seven (7) calendar days after final action of the Public Works Director, or designee. The City Manager may affirm, modify or reverse the action of the Public Works Director, or designee. The decision of the City Manager shall be final.

7.12.15 Stop Work Orders.

Whenever any work is being done contrary to the provisions of this article, the Director of Public Works, or designee, may order the unauthorized work stopped by notice in writing served on any person engaged in the doing or causing such unauthorized work to be done, and any such person shall immediately stop such unauthorized work. Any person performing work in a public way shall have a copy of a valid permit issued by the City at the site and make such permit available for inspection by the City at all times work is being performed or property or equipment is located in the public way.

Section 2: Penalties. That any person found guilty of violating any provisions of this ordinance, shall be guilty of a Class 1 misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed two thousand five hundred dollars, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 3: Severability. That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

Section 4: Repeal of conflicting ordinances. All prior ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed and of no further force or effect.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee, County of Cochise, State of Arizona, on this ____ day of _____, 2010.

APPROVED:

W. J. Porter, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Mark J. Langlitz, City Attorney