

Cochford AS

ORDINANCE NO. 1786

(An ordinance amending Chapter 13.36 of the Hood River Municipal Code-
Street Excavation)

WHEREAS, the City's existing ordinances are inadequate to protect the City's rights of way when utility providers or other persons excavate within the rights of way; and

WHEREAS, the City desires to accord uniform treatment to all utility companies or other persons who excavate within or otherwise use the City's rights of way;

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 13.36 of the Hood River Municipal Code is amended to read as follows:

CHAPTER 13.36 - ~~STREET-EXCAVATION~~ IN CITY RIGHTS OF WAY

Sections:

- 13.36.010 Definitions
- 13.36.020 Permit--Required--Form—Duration
- 13.36.030 Permit—Application requirements—Applicant's Verifications—Construction Schedule—Construction Permit Fee
- 13.36.040 Permit--Security requirements
- 13.36.050 Permit--Issuance
- 13.36.060 Conduct of work..
- 13.36.070 Adherence to terms of permit--Permit exhibition
- 13.36.080 Notice of e Completion of work--Notice—As Built Drawings
- 13.36.090 Barricade and safety measure requirements
- 13.36.100 Liability for accidents
- 13.36.110 Maintenance responsibility—Duration
- 13.36.115 Restoration of Public rights of Way and City Property
- 13.36.120 City option to replace pavement--Cost
- 13.36.130 Applicability to city employees
- 13.36.140 Emergency cuts--Procedure and compliance
- 13.36.150 Violation--Penalty

13.36.010 Definitions. The following words when used in this Chapter shall have the meaning respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

A. "City Engineer" means that person designated by the City to as the City Engineer, or his or her designee(s).

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“Conduit” shall mean any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholes, vaults, bolts, or other facilities used for any telegraph telephone, cable television, electrical, or communications conductors, or cable right of way, owned or controlled, in whole or in part, by one or more public utilities.

“Duct” shall mean a single enclosed raceway for conductors or cable.

~~B. “Person” means a natural person, firm, copartnership, association or corporation, company, association, joint stock company or association, firm, partnership, or limited liability company, or other legal entity, private or public, whether for profit or not.~~

“Public Rights of Way” shall have the same meaning as in Hood River Municipal Code Section 13.52.010. For purposes of Hood River Municipal Code Chapter 14.01 (Telecommunications Registration and Franchising), this definition applies only to the extent of the City’s right, title, interest or authority to grant a franchise to occupy and use these areas for telecommunications facilities. “Public rights of way” shall also include utility easements as defined below.

~~C. “Street” means a way or place open as a matter of right to the use of the public for vehicular traffic and lying between curblines.~~

~~D. “Tunnel” means an excavation requiring the removal of dirt or like material and shall not include driving or forcing of pipe through the ground.~~

“Utility Easement” shall mean any easement designated on a subdivision or partition map as a utility easement or public utility easement, or any easement granted or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

~~13.36.020 Permit—Required—Form—Duration. It is unlawful for any person to cut, break, dig up, damage in any manner, undermine or tunnel under any public ~~street or alley~~ right of way without first making an application to the City Engineer, depositing of securities, and obtaining a permit. Applications for permits shall be in the form prescribed by the City Engineer. Permits shall be issued on an annual basis or for a limited time and shall specify the extent of the authority granted by the permit.~~

~~13.36.030 Permit—Application requirements—Applicant’s Verifications—Construction Schedule—Construction Permit Fee.~~

~~A. An application for a permit shall be in a form as prescribed by the City Engineer and shall specify the name and address of the applicant and the date of the application. ~~In the event of the application for permit for a limited time and for a specific cut or break in a street or alley, the applicant shall specify his name and address, the date of application, the name of the street or alley to be cut or tunneled under, the nature of the street right of way surface of or pavement involved, the purpose of the work, the size and nature of the cut or excavation, and the number of days required to complete the work. The applicant shall ~~file an agreement to~~ be required to:~~~~

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1. Deposit such securities as required by the City Engineer, to comply with the provisions of this Chapter and with the specifications of the City Engineer pertaining to the conduct of the work;

2. Save the city and its employees harmless against any injury or damage which may result from the actions of the applicant; and

3. ~~File a report of the work done within forty-eight hours of its completion~~ Comply with all reporting requirements of the permit.

~~B. An application for each a permit to be issued for a limited time and for a specific cut or break in the street or alley shall be accompanied by a permit fee in an amount the council shall specify by resolution. to be determined by resolution of the City Council and which helps to defray the costs of the city's administration of the requirements of this Chapter.~~

~~C. An application for an annual permit shall be in a form as prescribed by the engineer and shall specify the name and address of the applicant and the date of the application. The applicant shall file an agreement to:~~

~~— 1. Deposit such security as required by the engineer, to comply with the provisions of this Chapter;~~

~~— 2. Save the city and its employees harmless against any injury or damage as a result of the actions of the applicant; and~~

~~— 3. File a report of all work done under the permit within ten days after the initial cut or break in the alley or street has been made.~~

~~D. Application for an annual permit shall be accompanied by a permit fee in an amount the council shall specify by resolution.~~

C. Applications for permits to construct, install or modify underground facilities within a public right of way shall be accompanied by documentation, drawings, plans and specifications; provided, however, that the City Engineer may, at his sole discretion, waive the requirement for written documentation, drawings, plans and specifications in the case of projects having minimal impact on rights of way.

1. The documentation, drawings, plans and specifications shall be in sufficient detail to demonstrate or show:

a. That the facilities will be constructed or installed in accordance with all applicable codes, rules and regulations.

b. That the facilities will be constructed or installed in accordance with the applicant's franchise agreement, if any.

c. The methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way, and description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.

d. The estimated cost of the work proposed.

e. The location, dimension and types of all trees or other vegetation that will be trimmed, removed or replaced or restored as result of the areas disturbed during construction and that are within or adjacent to the public rights of way along the route proposed by the applicant. The applicant shall also submit a landscape plan, satisfactory to the City Engineer, for the protection, replacement or restoration of such trees or other vegetation.

f. The utilities contacted as provided in Section 13.36.060(C).

2. The drawings shall also specifically show:

a. The location and route of the facilities, if any, to be installed aboveground or on existing utility poles.

b. The location and route of all facilities on or in the public rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Existing facilities shall be differentiated on the plans from new construction.

c. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights of way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.

D. All documentation, drawings, plans and specifications submitted with permit applications shall be accompanied by the verification of a registered professional engineer that the drawings, plans and specifications comply with applicable technical codes, rules and regulations. In the City Engineer's sole discretion, documents, drawings, plans and specifications may be verified by a person who is not a registered engineer but who is a qualified and authorized representative of the applicant.

E. All permit applications shall be accompanied by a written schedule, which shall include a deadline for completion of the work. The schedule shall be subject to approval by the City Engineer.

13.36.040 Permit-Security requirements. Before the issuance of any permit, the engineer shall require the applicant to file with him as security either:

~~A. If an annual permit is requested, a surety bond in the amount of one thousand dollars. If an application for a permit for one particular cut or break in an alley or street is requested, a surety bond in the amount fixed by the engineer but not to exceed five hundred dollars. The bond shall be left on deposit with the city for a period of one year after date of completion of the work. The bonds in either of such cases to be conditioned that the applicant will, immediately upon the completion of the work, remove all surplus earth, rubbish or other materials, replace the pavement cut or undermine in a condition as good as or better than it was before, and keep the same in good repair, at his own expense, for a period of time to be designated by the City Engineer, but not to exceed one year from the completion of such work; or~~

Unless otherwise provided in a franchise agreement, before construction is commenced within the public rights of way the permittee shall provide a performance bond or other form of surety acceptable to the City in an amount equal to at least 100% of the estimated cost of the work for the permittee's telecommunications facilities.

A. The surety shall remain in force until one (1) year after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction.

B. The surety shall guarantee, to the satisfaction of the City:

1. Timely completion of construction;

2. Construction in compliance with applicable plans, permits, technical codes and standards;

3. Proper location of the facilities as specified by the City;

4. Restoration of the public rights of way and other property affected by the construction; and

5. Timely payment and satisfaction of all claims, demands and liens for labor, material and services provided in connection with the work.

~~B C.~~ In lieu of a surety bond, the applicant may file as security cash or certified check in an amount equal to twice the estimate of replacement value of pavement to be cut, together with the costs of re-excavation and refilling with proper materials, if necessary, as determined by the engineer, to be held and returned subject to the same conditions as set forth in the case of surety bonds;

~~€ D.~~ In the case of unimproved ~~streets~~ rights of way, no security shall be required, unless, in the opinion of the City Engineer, such security is necessary for the protection of the public interest.

13.36.050 Permit—Issuance. If the City Engineer is satisfied that the application, plans and documents submitted comply with all requirements of this Chapter and any applicable franchise agreement, that the excavation, cut or tunnel is feasible and proper, ~~that the application is made in due form,~~ that adequate security has been filed as required by provision of this Chapter and ~~that upon payment of the permit fee has been paid,~~ a permit shall be issued showing the name of the person to whom the permit is granted, the date of issuance of the permit, the ~~street or streets~~ right(s) of way to be cut or tunneled under, the estimated time in which the work is to be completed, and such other restrictions as may be deemed necessary or proper by the City Engineer for the safety of the public or protection of public interests.

13.36.060 Conduct of work.

A. All work under such permits shall be done in conformity with the provisions of this Chapter, the terms of the application and permit, and in a manner approved by the City Engineer. Upon completion of the excavation, cut or tunnel, all surplus earth, rubbish or other materials shall be removed immediately and the ~~street~~ surface or pavement of the right of way shall be replaced in as good as or in better condition than it was before work commenced.

B. Except in the case of an emergency, the permittee shall notify the City Engineer not less than two (2) business days in advance of any excavation or construction in the public rights of way. When advance notice is not possible because of an emergency, the permittee shall give notice within 24 hours of excavation or work.

C. When feasible, permittee shall contact all other persons located within the right of way where construction is to occur. The purpose of the contact is to determine if joint projects are feasible to minimize duplication of work and excavation in the right of way, and to implement Section 14.01.040. For those persons expressing an interest in a joint project, the permittee shall give them reasonable notice of the particular dates on which open trenching exists. Upon mutual agreement, the permittee shall make the trench available to those persons participating in the joint project for installation of conduit, pedestals, vaults, laterals, wires, lines or equipment. The payment for the cost of trenching and installation shall be as mutually agreed to by the parties.

13.36.070 Adherence to terms of permit—Permit exhibition.

A. No work shall be undertaken other than that specified in the application and permit for a particular cut or excavation. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities.

B. The City Engineer and the City's representatives shall be provided access to the work site and any further information as they may require to ensure compliance with the permit and plans or protection of the City's right of way. Upon demand of the City Engineer, his assistants or any police officer, the permit shall be produced at the place where the work is

in progress or shall be on display at the place of business of the person within the City. If a permit is not produced, the work shall be stopped until the permit is produced.

C. Any work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Chapter, shall be removed, replaced or corrected at the permittee's own expense within thirty (30) days following written notice from the City Engineer. The City Engineer is authorized to stop work in order to assure compliance with the provisions of this Chapter. If the work is not replaced or corrected as required by this Section and the City Engineer's notice, the work shall be removed at the permittee's own expense.

13.36.080 Notice of e Completion of work—NoticeReport—As Built Drawings.

A. The permittee shall promptly complete all construction activities so as to minimize disruption of the City rights of way and other public and private property. All construction work within City rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless the City Engineer has approved an alternate schedule.

~~B. A permittee shall, on or before the tenth day of the month following the month in which the cut or excavation is completed, report the completion to the Engineer and report the exact location of the cut or excavation.~~

B. When documentation, drawings, plans or specifications have been required for a permit application, the permittee shall furnish the City with two (2) complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit, one set on paper and the other set in electronic format acceptable to the City, such as Autocad. These plans shall be submitted to the City Engineer within sixty (60), in a format mutually acceptable to the permittee and City Engineer.

13.36.090 Barricade and safety measure requirements.

A. Whenever a person, under authority of this Chapter or otherwise, places obstructions in a ~~street or alley~~ right of way or makes any excavation therein for any purpose, it shall be the duty of such person to keep the obstruction or excavation properly safeguarded by substantial barricades and display lighted ~~red~~ yellow lanterns or other lights or flares from dusk until day light in conformity with such regulations as may be specified by the City Engineer. Whenever, in the opinion of the City Engineer, the public safety is so seriously endangered by such cuts or excavations as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning, and all traffic is properly routed around such barricades, the person to whom the permit for work is granted shall be responsible for furnishing a night watchman for that purpose.

B. All permit applications that involve work on, in, under, or across or along any public rights of way that are arterials or major collector streets shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian, bicycle, and vehicular traffic.

13.36.100 Liability for accidents. A person who places an obstruction in a ~~street or alley~~ right of way or who makes an excavation therein under provision of this Chapter, shall be responsible to anyone for any injury by reason of the presence of such obstruction or excavation on the public highways when such obstruction or excavation is the sole proximate cause of the injury and shall also be liable to the City, in the event that the City is held responsible for any action or claims or otherwise arising out of the presence of such obstruction or excavation on such public highway.

13.36.110 Maintenance responsibility—Duration. A person to whom a permit is granted shall be personally responsible for the maintenance and repair of the ~~street~~ right of way surface or pavement cut, dug up, damaged, tunneled under or undermined under the provisions of such permits, and shall leave the same in as good as or better condition than before such work was undertaken, at their own expense and for such a period of time as required by the City Engineer, but not to exceed one year.

13.36.115 Restoration of Public rights of Way and City Property.

A. When a permittee, or any person acting on their behalf, does any work in or affecting any public rights of way or City property, they shall, at their own expense, promptly remove any obstructions therefrom and restore the ways or property to good order and condition unless otherwise directed by the City Engineer, or unless otherwise specified by the permit.

B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore and maintain the affected rights of way or property if directed to do so by the City Engineer. Temporary restoration shall be at the permittee's own expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent permanent restoration. Any corresponding modification to the construction schedule will be subject to approval by the City. Temporary restoration means restoring the property to a safe condition permitting the use of the property as was made prior to the work being undertaken. Temporary restoration does not require paving, landscaping or surfacing of a permanent nature.

C. If the permittee fails to restore rights of way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time, not exceeding thirty (30) days, to restore the rights of way or property. If the permittee fails thereafter to restore the rights of way or property to good order and condition, the City may cause the restoration to be made at the expense of the

permittee, and the permittee shall reimburse the City for such costs, including all labor and material costs and an administrative overhead fee of 20%.

13.36.120 City option to replace pavement—Cost. Whenever, in the opinion of the City Engineer ~~or his designee~~, it would be ~~to~~ in the best interest of the City for the City itself to replace or repair the ~~street right or way~~ surface or pavement cut, which may be damaged, tunneled under or undermined under the provisions of this Chapter, such work shall be done by the City under the direction of the City Engineer and the cost of such work shall be either charged to the person to whom the permit for such cut or excavation has been granted or deducted from security deposited by him with the City Engineer.


13.36.130 Applicability to City employees. The provisions of this Chapter shall not be deemed to apply to the construction or maintenance of pavement by the City, by its employees, or by persons operating under contract with the City.

13.36.140 Emergency cuts—Procedure and compliance. In the event of an emergency affecting the public safety, a cut may be made in a ~~street or alley~~ public right of way provided that a report of such cut shall be made to the City Engineer within forty-eight hours, and all provisions of this Chapter complied with as though making an application for an original permit.

13.36.150 Violation—Penalty. Any person violating any of the provisions of this Chapter, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars, or by imprisonment in the City jail for a period not to exceed sixty days, or by both.

Read for the first time: November 22, 1999.

Read for the second time and passed: November 22, 1999, to become effective thirty (30) days hence.


Paul G. Cummings, Mayor

ATTEST:


Anita R. Smith, City Recorder