

There came on for consideration at a duly constituted meeting of the City Council and Mayor of the City of Gulfport held on the 22<sup>nd</sup> day of September, 2009, the following Ordinance, which was reduced to writing and presented in advance of the meeting for reading and examination:

**ORDINANCE NO. 2644**

**AN ORDINANCE REGULATING, LIMITING, AND RESTRICTING THE EXCAVATION, DIGGING, TRENCHING, AND/OR REMOVAL OF MATERIAL, EARTH, AND DIRT IN, ALONG, OR ACROSS IMPROVED STREETS, ALLEYS, AND WITHIN RIGHTS-OF-WAY IN THE CITY OF GULFPORT, PROVIDING FOR THE PAYMENT OF COSTS FOR REPAIRS AND REPLACEMENT OF DAMAGED OR AFFECTED STREETS AND AREAS AND PROVIDING A PENALTY FOR VIOLATION THEREOF.**

**WHEREAS**, cutting or trenching across or under streets and alleys and excavations within rights-of-way degrade and shorten the life of roads, improvements, and areas within the public rights-of-way in the City of Gulfport; and

**WHEREAS**, studies previously conducted on streets across the country, including in the cities of Cincinnati, Los Angeles, Phoenix, Sacramento, and San Francisco, have concluded that excavations in paved streets degrade and shorten the life of the surface of the streets and such degradation increases the frequency and cost to the public of necessary resurfacing, maintenance and repair; and

**WHEREAS**, studies performed in these cities as well as in Sacramento, California, have further demonstrated that even if pavement restoration in the trench itself is structurally adequate, excavations damage the strength and life of the pavement located adjacent to the trench where the excavation occurs and that the potential for damage to the pavement is magnified when a street is subject to multiple excavations after the street is surfaced or resurfaced and before the next scheduled resurfacing; and

**WHEREAS**, millions of dollars in public funds have been invested to build, maintain and repair City streets and the City holds these streets as an asset in trust for its citizens; and

**WHEREAS**, it is desirable to adopt regulations that will help protect the structural integrity of City streets and thereby safeguard the value of the public investment in City streets for the benefit of all City residents, by providing incentives to reduce the number of excavations performed in City streets after the street is surfaced or resurfaced and before the next scheduled resurfacing; that such incentives should encourage installation, maintenance, and repair of underground facilities without making excavations in City streets wherever feasible, and should promote better coordination among those making excavations in City streets to minimize the number of excavations being made

wherever feasible and to ensure that excavations are performed, to the maximum extent possible, in streets scheduled for resurfacing within the same or succeeding fiscal year as the excavation; and

**WHEREAS**, in an effort to reduce and eliminate damage to City property and improvements, to minimize expenditure of public resources, to safeguard against traffic safety concerns or hazards, and to limit inconveniences to the community, the Governing Authority of the City of Gulfport desires to implement standardized practices and regulations for the digging, cutting, trenching, and excavation of streets, alleys, sidewalks, curbs, and areas within the public rights-of-way; and

**WHEREAS**, the permitting and coordination of excavations and work within City streets and public rights-of-way will help reduce disruption of and interference with public use of the streets and help prevent pavement damage and maintain the safe condition of the streets, all of which protects the public health, safety and welfare and is a valid and appropriate exercise of the City's police power; and

**WHEREAS**, the Mayor and City Council find and declare that the enactment of this Ordinance will also enable and promote quality control of street excavations, trenching, and other damage to public rights-of-way.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1.** That the matters, facts and things recited in the above and foregoing Preamble to this Ordinance be, and they are hereby adopted as the official findings of the Governing Authority of the City of Gulfport.

**SECTION 2.** That the Code of Ordinances of the City of Gulfport, Mississippi be and the same is hereby amended to add the following Ordinance, to read as follows:

**STREET TRENCHING AND  
RIGHT-OF-WAY MANAGEMENT ORDINANCE**

**SECTION 1. Definitions.**

The following words and phrases, whenever used in Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. "Applicant" means any owner, contractor, developer, or builder who has submitted an application for a permit to excavate or perform work or construction on, within, or under any street, alley, or public right-of-way.
- B. "City" shall mean the City of Gulfport, Mississippi.
- C. "City Engineer" means the Director of the City's Engineering Department, or other person designated by the Mayor or City Engineer.
- D. "Director of Public Works" means the Director of the Public Works Department, or other person designated by the Mayor or the Director of Public Works.

- E. "Emergency" shall mean the repair of a utility which must be made to restore service, to avoid property damage, or to eliminate danger to the public. An application shall be made for a permit for all emergency cuts, digging, or excavations within forty-eight (48) hours after the cuts, digging, or excavations have been made. However, a prospective applicant shall give verbal notice immediately to the City Engineer or his or her designee upon determination that "emergency" work or construction is needed and prior to commencing this work. All other provisions of this Ordinance shall apply to "emergency" cuts, digging, or excavations.
- F. "Excavation" shall mean any opening in the paved or improved surface or subsurface of the public right-of-way.
- G. "Excavation Influence Area" means the mandatory minimum areas for resurfacing an excavation.
- H. "Installations" means any legally authorized type of structure, plant, equipment, or other property installed in the public rights-of-way.
- I. "Notice" means a written notification which is deemed to have been received on the date on which it was faxed or three days after the date on which it was mailed via First Class United States Mail, postage pre-paid.
- J. "Owner" means the company or business authorized to construct, repair, or adjust a utility or to perform the work or construction referred to in the application or permit.
- K. "Pavement" means the fully improved roadway surface of the Public Rights-of-Way, designed and constructed to support the movement of vehicular traffic. Pavement typically consists of asphaltic concrete or cement concrete and it includes any sub-grade installations.
- L. "Person" means any natural person, corporation, partnership, or any governmental agency, department, or subdivision of the City, County, or the State of Mississippi, or United States of America.
- M. "Permit" means a permit to perform an excavation, trenching, or cutting across a street or within a right-of-way as it has been approved or may be amended or renewed by the City Engineer or his or her designee.
- N. "Permit Application" means the prescribed "Permit Application for the Construction, Repair, or Adjustment of a Utility or for Work Within, On, or Under City Rights-of-Way" or such other application as approved by the City Engineer.
- O. "Pothole" means a limited excavation used to determine the actual vertical and horizontal location of underground installations.
- P. "Public Rights-of-Way" or "rights-of-way" means the paved area across, along, beneath, in, on, over, under, upon, and within the City streets, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Urban Development and Department of Engineering.
- Q. "Resurface" or "Resurfacing" means any or all of the following as directed the Director or Public Works or City Engineer or their authorized representative(s):
- 1) Any removal and replacement necessary for sub-base repairs using either cement concrete, or full depth base asphaltic concrete.
  - 2) Cold planning/milling the gutter-line, and making horizontal header cuts to a minimum depth of one-inch, for a minimum of six (6) feet in width, or if required by the City Engineer, cold planning/milling of the entire street width.
  - 3) Replacement of any damaged traffic signal detection loops.
  - 4) Placement of Pavement reinforcing fabrics, if required by the City Engineer.
  - 5) The placement of hot mix asphaltic concrete upon the existing roadbed, in varying thicknesses as directed by the City Engineer.
  - 6) The adjustment of any affected City manholes and gate valve covers.
  - 7) The permanent layout and installation of pavement markings.
- R. "Street" shall mean any public highway, road, street, avenue, alley, lane, drive, way, easement, place, court, or trail, which has been accepted, or is hereafter accepted, by the City of Gulfport, Mississippi into the City road system or in which the City has easement or ownership interests.
- S. "Trenchless Technology" means methods, material, equipment and techniques that can be used to install, replace, renew or repair underground infrastructure with minimal surface disturbance. Trenchless Technology includes drilling, auguring, boring and tunneling.
- T. "Unimproved Rights-of-Way" means City rights-of-way that do not have pavement and do not have a sidewalk, curb or gutters.

## **SECTION 2. Excavating, Digging, and Trenching Prohibited; Permit Required.**

It shall be unlawful for any person to open, excavate, cut, trench, bore, tunnel, undermine, or dig or cause to do so in, on, or under any public street, public place, or right-of-way for the installation, repair, or removal of any pipe, conduit, duct, tunnel, utility pole, or any other facility or installation or for any other purpose without having first obtained a permit from the City Engineer or his or her designee in accordance with the provisions of this Ordinance and all work performed which relates to such activities shall be performed in compliance with the provisions hereof provided.

## **SECTION 3. Permit Application.**

(1) No permit shall be issued without a completed application on the form approved by the City Engineer. The application shall be submitted to the permitting division of the City's Department of Urban Development, who will then forward the application to the City Engineer, and shall minimally include: (a) a detailed description of the size, type, nature, and extent of the work or construction to be done; (b) the exact location and approximate area where the anticipated work or construction is expected to occur, including the approximate length and width and, if the excavation or digging is in a street or alley, whether it is parallel or transverse to the direction of the travel lanes; (c) the name and residential or business address and telephone number for the permittee; (d) the name and residential or business address and telephone number for the project manager or person to oversee and/or manage the anticipated work or construction; (e) the dates of commencement and completion of the work; and (f) the purpose of the work or construction. No application authorized or imposed by this Article shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any City street to relocate the facilities at no cost to the City, in the event that relocation is required by the City to accommodate a proper governmental use of the City street.

(2) Along with the application for a permit, an applicant must submit evidence acceptable to the City that the applicant or person to perform the work or construction has sufficient expertise and ability to timely repair the street, road, or right-of-way and shall execute an indemnification and hold harmless agreement to the City which indemnifies, protects, and holds harmless the City from the actions of the applicant or permittee and their agents and representatives in any way arising out of or stemming from their construction or work.

(3) For new construction, an applicant must submit three (3) sets of project construction plans at the time of filing an application for a permit. Plans are not required for routine maintenance and service installations. Such plans shall include the location(s), width, and arrangement of the proposed work or construction; the distance between any existing entrances within 100 feet of the proposed work or construction; distance(s) from the centerline of the traveled way to any structures, gasoline pumps, or other obstructions within 100 feet of the proposed work or construction; property lines and easements within 100 feet of the proposed work or construction; the length, size and location of existing pipes, culverts, catch basins or manholes, conduit, curbing, curb and gutter, and/or sidewalks, and above ground utilities within 100 feet of the proposed work or construction; and the proposed location of new pipes, conduit, culverts, catch basins or manholes, curbing, work or construction sought to be completed. The construction plans will be promptly reviewed and a permit will be issued or denied within five (5) working days after the application has been properly submitted along with the plans. The applicant is responsible for the engineering and design of its project and construction and the integration of its maintenance and construction responsibilities.

(4) No permit shall be issued until the applicant has presented a utility location request number from the Mississippi One-Call Program (811) which meets requirements of notification, except in case of emergencies as defined in Section 1(E). The applicant is responsible for locating all utilities within the area of the proposed work or construction and any damage to other utilities shall be at the sole cost and expense of the applicant or permittee, as the case may be.

(5) In order to expedite the issuance of a permit, a permit may be issued with conditions on construction and work hours.

(6) No permit shall be transferable.

(7) Except for requirements subject to the exclusive jurisdiction of another regulatory agency or governing state or federal body or any valid agreement or franchise, the location, depth and other physical characteristics of any facilities or construction for which a permit is issued hereunder shall be subject to approval of the City Engineer or his or her designee, such approval not to be reasonably withheld and to be based on, but not limited to, maintenance, operation, and oversight of the affected streets, alleys, sidewalks, rights-of-way and construction areas.

**SECTION 4. Fees.**

**SECTION 4.1. Initial/Base Permit Filing Fee.** At the time an application is submitted or filed with the permitting division of the City Department of Urban Development, the following non-refundable fees shall accompany this application and be paid to the City through the permitting division for the issuance of permits herein and associated with the servicing of such permits, inspection of affected areas, and general compliance with this Article:

- (a) Openings or excavations up to 100 feet - \$200.00; and
- (b) Openings or excavations over 100 feet - \$2.00 per foot for every foot over 100 feet plus \$100.00.

**SECTION 4.2. Street/Right-of-Way Temporary Closure Fee.** In addition to any other fees required under this Article, permits requiring the temporary closure of any portion of the City’s streets or rights-of-way shall be subject to the following fees:

Length of Closure	Application	Inspection
3 days or less	\$15.00	\$0.00
4 days through 10 days	\$15.00	\$10.00
11 days through 20 days	\$15.00	\$20.00
21 days through 30 days	\$15.00	\$30.00
31 days through 45 days	\$15.00	\$45.00
46 days through 90 days	\$15.00	\$50.00 plus \$1.00/day beyond 50 days

Closures in excess of ninety (90) days are prohibited.

**SECTION 4.3.** The City, by and through the City Engineer or his or her designee, may waive any or all permit fees for work performed by a governmental agency, whether this work is performed by employees of the governmental agency or by a private firm or corporation under contract with the governmental agency. However, such governmental agency or private firm or corporation under contract therewith shall not be relieved of the responsibilities for obtaining a permit for work covered in this Ordinance as well as complying with all other provisions herein not in conflict with state or federal law.

**SECTION 5. Completion of Work.**

**SECTION 5.1.** A permit issued under the terms of this Ordinance shall expire and be of no further force or effect if work authorized by such permit shall not be commenced within thirty (30) days from the date of issuance, and further, that such authorized work be completed and restored within fourteen (14) days of the start of such work or as approved by the City Engineer or his or her designee for additional time. Exceptions to those provisions may be granted by the City Engineer or his or her designee when unusual circumstances are demonstrated. Failure to comply with any conditions relating to issuance of a permit shall be cause for revocation of such permit and shall constitute a violation of this Ordinance. The City reserves the right to make emergency repairs if deemed required for public safety. The cost of those repairs shall be borne by the permit holder and will be taken from the performance bond if not paid.

**SECTION 5.2.** All work performed under a permit issued hereunder shall be in conformance with all applicable and current codes, regulations, and laws and the permittee is responsible for all work performed pursuant to the permit, regardless of who performs the work. A permittee shall not obstruct a street, alley, curb, gutter, sidewalk, or right-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

**SECTION 6. Bond Required.**

Every person obtaining a permit shall at the time of receiving the same, make, execute and deliver to the permitting division of the City's Department of Urban Development or any authorized representative, a good and sufficient bond, to cover the costs of replacing permanent pavement and any improvements, payable to the City with a surety company doing business in the state as surety thereon, in such amount as the City Engineer or his or her designee may require, not less than five thousand dollars (\$5,000.00) nor more than ten thousand dollars (\$10,000.00). Such bond shall be utilized to repair any necessary damage or lack of sufficient or adequate resurfacing and/or restoration and any surplus shall be returned upon final inspection by the City's Department of Engineering.

Any general contractor or public utility using the streets or rights-of-way, or any part thereof, may execute a like bond, general in terms, to cover any and all work that may be done by such contractor or public utility in the streets or within public rights-of-way for an amount not less than five thousand dollars (\$5,000.00) nor more than ten thousand dollars (\$10,000.00). Such bond when executed and delivered shall be in lieu of the bond hereinabove required in each case.

Bonding for organizations or companies that are under franchise agreements with the City shall be governed by their Franchise Agreements, to the extent covered or governed therein, but these organizations are subject to all other requirements of this Ordinance.

**SECTION 7. Work Hours; Notification of Work.**

(1) Except for emergency repairs or as approved by the City Engineer or his or her designee, work conducted or pursued in accordance with a permit shall be between the hours of 7:00 a.m. and 6:00 p.m., prevailing time. Starting or warming up equipment prior to 7:00 a.m. is prohibited. Work on the weekend or legal holidays is prohibited unless specifically authorized by the City Engineer or his or her designee.

(2) At least five (5) days in advance of any permitted work occurring, the permittee shall provide written notice to each owner of property that is located or found to be within 200 feet of any of the work or construction to occur. Such notice shall minimally include a written description of the project and where the work is to occur and a schedule for completion of the work. Within the same time parameters, the permittee shall further notify emergency agencies and television, radio, and print media within the City of any road closures or obstructions due to anticipated work or construction.

(3) The permittee shall further coordinate his or her activities associated with the permitted work or construction with the City Engineer. If, during the course of construction or work, any City owned or maintained sewer, underdrain, manhole, catch basin, curb, guardrail, sidewalk, or other facility, appurtenance, or improvement is damaged, destroyed, or disturbed, such condition shall be reported immediately to the City Engineer or Director of Public Works, who shall then prescribe, direct, supervise, and inspect the necessary corrective action, with inspection costs as well as all the costs of repair and all other resulting expense being borne by the permittee.

**SECTION 8. Excavation and Backfill.**

(1) Methods of construction for excavation and backfill shall be in accordance with the standard specifications for road and bridge construction as adopted by the Mississippi Department of Transportation or construction standards for the City of Gulfport as determined by the City Engineer, whichever is stricter or more stringent, and

such provisions as are included herein and as may be added in the special conditions. No opening or excavation off a cross trench shall extend beyond the centerline of the road before being backfilled, compacted and the surface of the roadway temporarily restored. All trenches will be backfilled in six (6) inch lifts and compacted with vibratory mechanical compaction. No excavation shall take place unless the mechanical vibratory compactor is actually on the site. All utility facilities shall be located sufficiently ahead of trench excavation work to avoid damage of those facilities and to permit their relocation, if necessary. Storm drains, pipe culverts or other facilities encountered shall be adequately protected by the permittee. If the work performed interferes with the established drainage system of any street, road, or alley, adequate provision shall be made by the permittee to provide proper drainage during construction and to restore the existing system, all to the satisfaction of the City Engineer or his or her designee. No dewatering equipment, wells, points, or piping shall occupy the traveled portion of roadways unless specifically approved and adequately protected to the satisfaction of the City Engineer or his or her designee. Effluent from dewatering systems shall be discharged in such a manner that erodible soils are not adversely affected. All silt sediments being carried in the dewatering effluent must be intercepted prior to effluent discharge into any drainage system through use of a sedimentation basin designed to allow retention of discharge for sufficient time to render such waters free of suspended silt and sediments. The use of screening devices in lieu of sedimentation basin must receive specific approval from the City Engineer or his or her designee and be employed only for minor flows. Any gravel, earth or other excavated material which is caused to roll, flow, or wash upon any road shall be removed from the roadway after deposit and such removal shall not occur more than twenty-four (24) hours therefrom. In the event the earth, gravel or other excavated material so deposited is not removed, the City or another on behalf of the City may remove the material and any and all costs incurred shall be paid by the permittee or applied from his or her bond. The permittee shall employ construction methods and rests that will keep flying dust to the minimum to the satisfaction of the City Engineer or his or her designee. At the first sign of precipitation, all work on the shoulders and traveled way of streets and alleys shall stop and they shall be cleared of all dirt, gravel, and loose materials and the area backfilled until the weather permits resumption of work.

(2) **Back-Filling.** Before back-filling of any cuts, trenches, or openings in streets, roads, or rights-of-way, the permittee shall request an inspection by the City Engineer or his or her designee. All back-fill material will be free from cinders, ashes, refuse, vegetable or organic matter, boulders, rocks or stones, wet material, or other materials which renders same unsuitable to obtain a firm and compact cover for the installed pipe. The back-fill shall be placed in layers not to exceed six (6) inches and each layer shall be thoroughly compacted to not less than 95% of the maximum dry density as defined by a Standard Proctor Test. Flowable fill will be substituted for compacted back-fill when directed by the City Engineer or his or her designee. A Standard Proctor Test (ASTM D698) shall be conducted by an independent soil testing firm and the results given to the City Engineer or his or her designee. The cost of this test shall be borne by the permittee or the person, firm, or corporation doing the back-fill.

## **SECTION 9. Joint Excavation.**

Whenever applicants propose work or construction in the same block or area of the City, the City shall condition permits for such work in a manner that maximizes coordination and minimizes the total period of construction. Such work may be conditioned to require the applicants to participate in a single excavation with the bond to reflect the pro rata share of the work. Applicants may seek a waiver of the joint excavation requirements with respect to a particular excavation. Within twenty (20) calendar days of receipt of a written request for a waiver, the City Engineer or his or her designee shall render a decision upon such a request, taking into account the impact of the proposed excavation on the neighborhood and the public health, safety, welfare, and convenience.

## **SECTION 10. Resurfacing; Restoration.**

**SECTION 10.1. Resurfacing.** Resurfacing shall include, but is not limited to:

A. Where the excavation is in the direction of traffic, the permittee shall resurface the entire length of the excavation area plus the excavation influence area on each end, and the entire width of the public right-of-way from curb-line to curb-line, or where a raised median is present the owner shall resurface from the curb-line to the median. Where there has been a 50% or greater surface area impacted, the permittee will be required to resurface the entire lane within the construction area. Where there has been a 50% or greater surface area impacted on an entire roadway, the permittee will be required to resurface the entire road section within the construction area.

B. Where the excavation is perpendicular to the direction of traffic, the permittee shall resurface the length of the excavation from curb-line to curb-line or the length of the excavation plus the excavation influence area extending on each end of the excavation, whichever is less. This resurface shall also include the excavation area plus the excavation influence area on each side of the excavation.

C. Where a raised median is present and the excavation is perpendicular to the direction of traffic, the permittee shall resurface either from the raised median to the curb-line, or for the length of the excavation, plus the excavation influence area extending on each end of the excavation, whichever is less. This resurface shall also include the excavation plus the excavation influence area on each side of the excavation.

**SECTION 10.2. Restoration.** In addition to any required resurfacing, any areas affected by work or construction shall be restored within three (3) days of completion of work or construction on the property or areas affected thereby so that each such property or area shall, to the best extent possible, be placed in the same or better condition it was in prior to the commencement of work or construction. Such restoration shall include, but not be limited to, the replacement of all markings and/or stripping per the current Manual on Uniform Traffic Control Devices and City construction standards and the re-sodding of like or higher quality turf or replacement of similar vegetation that was adversely affected or damaged by the work as well as the replacement or restoration of any and all sidewalks, driveways, shoulders, curbs, curb cuts, manholes, and any other improvements. Replacement of improvements necessitated by work authorized by a permit shall be made in accordance with prevailing and governing industry standards, codes, regulations, and laws at the time of the replacement. If a sidewalk, curb, and/or gutter were damaged by the permittee, the permittee shall be responsible for all costs associated with its replacement. Sidewalks, curb, and gutter shall be saw cut three inches (3") prior to replacement to provide a clean edge. The permittee shall be responsible for cracks or settling of same for a period of two (2) years from date of repair. Restoration of grassy areas that were, in the opinion of the City Engineer, not generally maintained prior to commencement of work authorized under a permit, may include re-seeding of grass in lieu of re-sodding of turf. All such restoration efforts shall be inspected by the City Engineer or his or her designee. The permittee's bond shall not be released or surrendered for the work or permit until acceptance of all restoration efforts has been made by the City Engineer or his or her designee. By restoring the rights-of-way and areas affected by construction or work permitted hereunder, the permittee guarantees its work for twenty-four (24) months following its completion and acceptance by the City Engineer or his or her designee. During this twenty-four (24) month period, the permittee shall, upon notification from the City Engineer or his or her designee, correct all restoration work to the extent necessary using the method required by the City Engineering Department and such work shall be completed within the time specified by the City Engineer or his or her designee.

**SECTION 11. Safety; Lighting and Barricading Required.**

The permittee shall be responsible to comply with all current and applicable federal, state and local safety regulations, codes, requirements, and laws. The permittee shall further be responsible at all times for the safety of the area(s) where work or construction is to occur under a permit issued hereunder as well as for the safety of the public who may encounter such area(s). The permittee shall further ensure that any work authorized by a permit hereunder which is left overnight or in an unfinished condition at any time when construction is not actually occurring or during actual construction is made safe, which shall minimally include the placement of danger or warning lights and barricades as required by any applicable or governing safety or traffic codes, regulations, and laws and in accordance with the Manual on Uniform Traffic Control Devices.

**SECTION 12. Existing Signs; Removal and Replacement.**

Right-of-way or property monuments and/or markers, traffic control devices and other devices or signs on public rights-of-way shall not be removed or disturbed unless permission to do so is first obtained in writing from the City Engineer or his or her designee. Permission shall be granted only upon the condition that the permittee shall pay all expenses incident to the replacement and/or relocation of such monuments, signs, and/or devices.

**SECTION 13. Danger Lights on Excavations, Unfinished Fill, Other Obstructions.**

At all times, including non-work and overnight hours, the permittee shall be responsible for the safety of the area where any excavation, unfinished fill or any obstruction of any kind whatever is placed in any street, alley, sidewalk, or right-of-way and permitted to remain or exist. Such area shall minimally be marked with good and sufficient danger or warning lights, with barricades, and in such manner as to plainly show or reveal the place and extent of such excavation, unfinished fill or obstruction. Danger or warning lights shall be erected and illuminated not later than sunset of each evening and kept burning continuously until sunrise the next morning. The placement, type, and form of danger or warning lights and barricades and ensuring the safety of these areas shall be in accordance with any and all applicable or governing safety or traffic codes, regulations, and laws and with the Manual on Uniform Traffic Control Devices.

**SECTION 14. Dragging Articles Over Streets, Sidewalks.**

It shall be unlawful for any person to drag or move over or along any street, alley, or sidewalk in the City that is paved with asphalt or concrete or improved with brick or any other kind of paving material any article, the weight or character of which is liable to displace or loosen the paving material or otherwise damage the pavement or improvement; provided, however, that such article may be dragged or moved over or along such streets and sidewalks if such article is supported and moved on wheels or rollers of sufficient width to cause no damage to the pavement or improvement.

**SECTION 15. Repair of Sunken Pavement Over Excavation.**

If the subsurface material or pavement over or within the trench influence area associated with an area of construction or work in a permit becomes depressed or broken at any time within two (2) years after the excavation has been completed and accepted and before resurfacing of the City street or at any time prior to such time as the street surface is completely resurfaced, the bond shall be used to cover the costs of the repair and the person or persons who excavated the area as well as those who were responsible for the excavation, including, but not limited to, the permittee, shall be liable for any and all remaining costs arising out of such repair.

**SECTION 16. Moratorium.**

Excavation, cutting, or digging in, around, under, or through newly created, renovated, or resurfaced City streets is prohibited for five (5) years after the filing of a notice of completion or acceptance of a new street or structural overlay of the street, except as follows:

- (1) Emergency which endangers life or property, such as an occurrence that
  - (a) Endangers the health and safety of property; and
  - (b) Requires excavation in order to remediate the emergency;
- (2) Repair or modification to prevent interruption of essential utility service;
- (3) Relocation work that is mandated by City, County, State or Federal law;
- (4) Service for buildings where no other reasonable means of providing service exists, as determined by the Director of Public Works and the City Engineer, or their authorized representative(s);
- (5) In a City street that the City has scheduled for resurfacing either during the fiscal year (October 1- September 30) when the excavation permit is issued or during the following fiscal year and the work takes place prior to the resurfacing;
- (6) For potholing to verify utility depth or location;
- (7) Trenchless excavations greater than three (3) feet in depth of cover over the utility facility not requiring a significant surface incision greater than industry bore pit standards may be allowed at the discretion of the Director of Public Works and the City Engineer, or their authorized representative(s);
- (8) New service to a specific location that cannot be provided
  - (a) through existing conduit; or
  - (b) where Trenchless Technology is impractical due to one or more of the following:
    - (1) Soil conditions; or
    - (2) Proximity of Installations; or
    - (3) Where a large conduit package is being installed; or
    - (4) Where Trenchless Technology is economically impractical compared to trenching and resurfacing performed in accordance with approved standards; or
- (9) Other situations deemed by the Director of Public Works and the City Engineer, or their authorized representative(s), to be in the best interest of the general public.

**SECTION 17. Cleaning Up of Streets/Rights-of-Way.**

In every case and at all times, it shall be the duty and responsibility of the permittee to properly remove or caused to be removed from streets, alleys, rights-of-way and work or construction areas all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the work or construction that is the subject of the permit or which arises therefrom.

**SECTION 18. Street Closings.**

Any anticipated closing of any streets, roads, or alleys due to construction or repair must be approved by the City Engineer or his or her designee with detailed plans and plans for emergency vehicle access submitted to him or her for review and approval a minimum of seven (7) days in advance of any anticipated closing or anticipated traffic pattern change. The City reserves the right to alter the construction schedules of the applicant or permittee in the coordination of traffic flow through an area where multiple openings are to take place. All construction signing, protection devices, warnings, and flaggers must be in accordance with applicable or governing codes, regulations, and laws, including, but not limited to, the Manual on Uniform Traffic Control Devices.

**SECTION 19. Trees; Shrubs.**

In the course of any work in the right-of-way, the permittee shall not remove or damage or cause to be removed or damaged any trees or shrubs which exist in or along a street, alley, or right-of-way area without first obtaining the approval of the City Engineer or his or her designee and the City Tree Protection Advisor and only if the same would not be in violation of any other Ordinance, regulation, or code.

**SECTION 20. Posting of Permits.**

At all times while work or construction is in progress, the permittee shall keep and publicly post the original permit or a copy thereof at or near the work or construction site

and shall, on demand, exhibit the permit to the City Engineer or his or her designee or any police officer.

## **SECTION 21. Additional Requirements.**

**SECTION 21.1.** Upon completion of work permitted under this Article and in compliance with a permit hereunder, and at the discretion of the City Engineer or his or her designee, permittee shall furnish as built plans of such completed work which show a correct plan view to scale, details and a profile showing the locations of all elements of the installation based on data obtained in the field during construction.

## **SECTION 22. Suspension; Revocation of Permit.**

If work under an issued permit fails to conform to the conditions of the permit or the requirements of this Ordinance or existing Ordinances of the City of Gulfport, the permit may be revoked or suspended. If the permit is suspended, work shall be stopped until such time as the permittee gives assurance to the City Engineer of his or her ability and intention to complete the work in accordance with the conditions of the permit and this Ordinance and the other Ordinances of the City. Any notice of revocation, suspension or stop work shall be delivered in writing to the permittee or his or her designee or to a representative of the permittee, such as the project manager or the person who is overseeing or managing the work or construction, and shall state the reasons for such action.

## **SECTION 23. Liability of the City.**

Neither the City nor any officer or employee thereof shall be held responsible for any damages caused by any work or construction in any street, alley, sidewalk, right-of-way, or other public place made by any person under the authority of a permit issued pursuant to the provisions of this Ordinance. The permittee shall be solely liable for any damage or loss occasioned by any act or omission occurring in connection with such work or construction, and shall fully indemnify, hold harmless and defend City, its officers, officials, and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the City and its officers, officials, and employees may be subjected for injury of any type, death or property damage arising from or connected with any such act or omission. The City shall promptly notify a permittee, at the address(es) set forth in the permit, of any claim or suit served upon the City and alleging negligent or wrongful conduct by the permittee in connection with work or construction that is the subject of a permit.

## **SECTION 24. Violations and Penalties.**

**SECTION 24.1.** Any person violating any of the provisions of this Article shall be guilty of a misdemeanor. Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Article is committed or permitted. Upon conviction of any such violation, such person shall be punished by a fine of not more than one thousand dollars (\$1,000.00) for each violation.

**SECTION 24.2.** No person who has violated any provision of this Article shall be issued another permit hereunder, nor shall any contractor or agent apply for or be issued such a permit on such person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the Director of Public Works and the City Engineer, or their authorized representative(s), which approval shall not be unreasonably withheld. The foregoing requirement or penalty is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.

## **SECTION 25. Appeal.**

A person directly and adversely affected by a decision made in accordance with this Article may appeal the decision by filing a written notice of appeal with the City Engineer or his or her designee within ten (10) days of the decision or action being appealed. The

notice must state the grounds for appeal. The appeal shall be heard by the City Council within forty-five (45) days from the date the notice of appeal is received.

**SECTION 26. Other Ordinances; Severability.**

(1) All provisions of the ordinances of the City of Gulfport in conflict with the provisions of this Article are hereby repealed and all other provisions of the ordinances of the City of Gulfport not in conflict with the provisions of this Article shall remain in full force and effect.

(2) If any sentence, paragraph, subdivision, clause, phrase, or section of this Article or the application thereof to any person or circumstances be adjudged or held to be unconstitutional, illegal, invalid, or unenforceable by a court of competent jurisdiction, such finding or such invalidity shall not serve as an invalidation or affect the validity or enforceability of any other section or provision of this Article and to this end, the provisions of this Article are declared to be severable. Such an invalid sentence, paragraph, subdivision, clause, phrase, or section shall also not affect the validity of the Code of Ordinances as a whole.

**SECTION 3.** This Ordinance shall take effect and be in full force immediately upon its passage.

**THE ABOVE AND FOREGOING ORDINANCE**, after being first reduced to writing and presented to the Mayor and Council Members for reading, was introduced by Council Member Walker, and seconded by Council Member Roland, and was adopted by the following roll call vote:

<u>AYES</u>	<u>NAYS</u>	<u>ABSENT</u>
Casey	None	None
Roland		
Holmes-Hines		
Waller		
Dombrowski		
Flowers		
Pucheu		

**WHEREUPON**, the President declared the Motion carried and the Ordinance adopted, this the 22<sup>nd</sup> day of September, 2009.

( S E A L )

ATTEST:

ADOPTED:

/s/Amelia Bordeaux

/s/Ricky Dombrowski

\_\_\_\_\_  
**City Clerk**

\_\_\_\_\_  
**President of Council**

**THE ABOVE AND FOREGOING ORDINANCE** was submitted to and approved by the Mayor, this the 23<sup>rd</sup> day of September, 2009.

/s/George Schloegel

\_\_\_\_\_  
**Mayor**