

ORDINANCE NO. 906

“AN ORDINANCE AMENDING THE ATHENS MUNICIPAL CODE BY REVISING CHAPTER 2 OF TITLE 16 IN ITS ENTIRETY.”

BE IT ORDAINED BY THE CITY OF ATHENS, TENNESSEE, AS FOLLOWS:

Section 1. Chapter 2 of Title 16 of the Athens Municipal Code is revised in its entirety to read as follows:

CHAPTER 2

RIGHTS- OF-WAY MANAGEMENT

SECTION

- 16-201. Intent and purpose.
- 16-202. Permit required.
- 16-203. Applications.
- 16-204. Failure to apply.
- 16-205. Fee.
- 16-206. Deposit.
- 16-207. Manner of excavating--barricades, signage, and lights.
- 16-208. Restoration of public rights-of-way.
- 16-209. Existing facilities in rights-of-way.
- 16-210. Perpetual care.
- 16-211. Inspection.
- 16-212. Specifications.
- 16-213. Insurance.
- 16-214. Indemnification.
- 16-215. Time limits.
- 16-216. Supervision.
- 16-217. Stop work order.
- 16-218. Facility relocation.
- 16-219. Violation and penalty.

16-201. Intent and purpose. In order to provide for the public health, safety and welfare of the citizens of the City of Athens, as well as to ensure the structural integrity of the City's streets and related infrastructures; to minimize the disruption to the traveling public; and to ensure the costs incurred by the City to maintain, and manage the rights-of-way and that they are properly allocated among the various users of the rights-of-way, the City hereby establishes standards for authorizing and managing the placement of facilities in rights-of-way; performing installation, maintenance, and other work in the rights-of-way; and appropriately recovering costs incurred by the City related to such activities.

16-202. Permit required. (a) It shall be unlawful for any person, firm, corporation, public or private utility, association, or others to make any cut or excavation in any street, curb, sidewalk, alley, or public rights-of-way, or to tunnel under any street, sidewalk, curb, alley, or public rights-of-way in the City without having first obtained a rights-of-way construction permit, as herein required, and without complying with the provisions of this chapter; and it shall be unlawful to violate, or to vary from, the terms of any such permit; provided, however, any person maintaining existing pipes, lines, driveways, or other facilities in or under the surface of any public rights-of-way may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately, provided the permit could not reasonably and practicably have been obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the city manager is open for business, and said permit shall be retroactive to the date when the work was begun; however, the city manager or his designee shall have the authority to waive emergency permits.

(b) No one shall cut, build, or maintain a commercial or residential driveway across a public rights-of-way without first obtaining a rights-of-way construction permit from the city manager or his designee and receiving the necessary lines and grades from the Public Works

Department. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrian and/or vehicular traffic.

16-203. Applications. Applications for such permits shall be made to the city manager, or such person designated by him to receive such applications, and shall include, but not be limited to the following:

1. Name of the owner or operator of the facility; and
2. A sketch or drawing of the project; and
3. Dates of the construction activity, the proposed start and stop times and any proposal to temporarily reopen any roadway for any "peak hour" period; and
4. The names of any known subcontractors working on the proposed project under the applicant's responsibility and authority; and
5. Proof of payment of all money due the City for rights-of-way Construction Permit fees and any invoiced cost, loss, damage, or expense suffered by the City as a result of the applicant's prior construction activity including but not limited to any emergency action taken by the City; and
6. Evidence that the applicant has obtained the insurance coverage required by Section 16-214; and
7. A traffic control plan if traffic is going to be impacted; and
8. A list of the applicant's emergency providers, including name of company, local contact person, mailing and e-mail address, 24-hour emergency phone number, and pager or fax number. This information shall be kept current by written notice to the Public Works Director.
9. For Major Projects, as determined by the Public Works Director the following may be required:
 - a. Detailed engineering plans. The plans shall show the location and area of the proposed project, the locations of all existing and proposed equipment and/or facilities, the height and/or depth of the proposed equipment and/or existing facilities, and the spatial relationship with any adjacent infrastructure, rights-of-way line, easement, utility, and/or other physical features. The plans shall be prepared under the direction of and signed by a registered professional engineer, and shall meet the size and scale as set forth in the Department of Public Works' Standard Design Criteria Manual; and
 - b. A copy of the engineering plans in an electronic format acceptable to the Public Works Director; and
 - c. The applicant shall meet with the Public Works Director for a pre-work conference prior to issuance of a rights-of-way construction permit.

16-204. Failure to apply. Any person that fails to comply with 16-203 shall be precluded from obtaining any rights-of-way construction permit or performing any further construction within the City's rights-of-way for up to three (3) months from the date of notification, in addition to any monetary penalty imposed by the City.

16-205. Fee . The fee for such rights-of-way construction permits shall be set by resolution as adopted by the Council of the City of Athens.

16-206. Deposit . It shall be the responsibility of the permittee to place with the City of Athens a cash deposit or a surety bond either by the job or activity or on an annual basis. The amount of the deposit shall be determined by the city manager or his designee based upon the size and nature of the permitted work within the rights-of-way. The City may use the deposit to cover its cost should a failure of restoration work occur to the public rights-of-way facility.

16-207. Manner of excavating-- barricades, signage, and lights. Any person, firm, corporation, public or private utility, association, or others making any excavation or tunnel shall do so according to the specifications and standards issued by the City of Athens and must comply with the provisions of the Tennessee Underground Utility Damage Prevention Act

(Tennessee Code Annotated § 65-31-101 et. seq.). Sufficient and proper barricades, signage, and lights shall be maintained to protect persons and property from injury by or because of the excavations being made. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. It shall be the responsibility of the permittee to adhere to the Manual on Uniform Traffic-Control Devices.

16-208. Restoration of public rights-of-way. Any person, firm, corporation, public or private utility, association or others making any excavation or tunnel in or under any street, curb, alley or public rights-of-way in the City shall backfill said street, curb, alley or public rights-of-way and restore the same including final surfacing to City specifications and standards promptly upon the completion of the work for which the excavation or tunnel is made. Final surfacing may be done by the City at the expense of the entity for which the excavation or tunnel is made, if requested, providing that City crews can schedule the work within twenty-four hours of this request. If not, the entity will be required to place final surfacing in accordance with the requirements of this chapter. No excavation or tunnel in or under any street, curb, sidewalk, alley, or public rights-of-way shall be permitted to obstruct the flow of traffic unless the permit holder coordinates with the City Public Works Department and Police Department and provides a plan to address the impact on traffic flow. In the event final resurfacing cannot be completed immediately after backfilling, the entity shall use temporary resurfacing materials such as coldmix or steel plate or an approved detour around such opening or excavation which would aid the flow of traffic. The detour must be approved by the Public Works Director or his designee prior to establishing any such detour. Such detour routes must be adequately signed and marked according to the Manual on Uniform Traffic-Control Devices. Maintenance of signage and markings will be the responsibility of the permittee.

16-209. Existing facilities in rights-of-way. Between January 1, 2003 and July 1, 2003 each existing rights-of-way occupant with more than 100 linear feet of facilities shall provide the City the following information:

1. The name, address, telephone number and form of business of the individual, company or corporation owning facilities within the public rights-of-way of the City of Athens, and the names and addresses of all persons authorized to act on behalf of the individual, company or corporation;
2. The name, address and telephone number of a responsible person whom the City may notify or contact at any time concerning the rights-of-way occupant's facilities;
3. A detailed description of the physical facilities owned, operated, managed or leased by the rights-of-way occupant as of January 1, 2003. Detailed description to include, but not be limited to, as built drawings and plans of existing facilities showing the locations of the facilities, including any manholes or overhead poles, the size, type and depth of any conduit or other enclosures, and the relationship of the system to all other existing poles, utilities, sidewalks, pavement, telecommunication facilities, and other improvements within the rights-of-way.

Such information must be submitted in hard copy and, if available, digitally. After July 1, 2003 individuals, companies and corporations who have failed to provide the information required in this section shall be prohibited from making extensions, modifications or improvements to any existing facilities within the rights-of-way of the City of Athens and will not be approved to install any new facilities within the rights-of-way of the City of Athens until the information required in this section is provided. Nothing in this section shall be construed as granting permission or authority for an unauthorized facility to remain in the City's rights-of-way.

16-210. Perpetual care. Any person, firm, corporation, public or private utility, association, or others affecting a public rights-of-way within the City, shall be responsible for any defects which occur to the public facility within the public rights-of-way due to workmanship or materials. The cost for repairs shall be the responsibility of the utility owners of the facility which was placed within the City of Athens rights-of-way. The City's Public Works Department will be responsible for making the repairs or having the work contracted. The City may allow the utility to make the repair if requested to do so. Repairs shall be made in accordance with specifications furnished by the City of Athens or the City's engineering consultants.

16-211. Inspection . It shall be the responsibility of any person, firm, corporation, public or private utility, association, or others to call the Director of Public Works for an inspection of the permitted facility as required by the rights-of-way construction permit. The permit shall specify, based upon the size and scope of the permitted work, the type of inspection to be required. The cost of all inspections shall be borne by the owner of the permitted work whether the work is performed by the staff of the City of Athens or by a third party service. The permittee is to be bound by the rules and regulations as specified on the permit.

16-212. Specifications . Each rights-of-way construction permit shall be assigned a set of restoration specification standards. These specifications will be referenced by number and so indicated on the permit. It shall be the responsibility of the City Public Works Department to maintain and provide the specification standards. The permittee may request a copy as required. The cost of the specification shall be limited to reproduction cost and paid by the permittee.

16-213. Insurance . In addition to making the deposit hereinbefore provided to be made, each person applying for a rights-of-way construction permit shall file a certificate of insurance or other suitable instrument indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of the insurance shall be prescribed by the city manager in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury in effect shall not be in an amount less than the current limits found in the Tennessee Governmental Tort Liability Act (T.C.A. §§ 29-20-101 et.seq.) or \$250,000 for each person and \$600,000 for each accident and for property damages an amount not less than \$85,000, with an aggregate of \$685,000 for all accidents, whichever is greater.

16-214. Indemnification. Each rights-of way occupant and permittee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its elected and appointed officials, officers, boards, commissions, commissioners, agents, employees, and volunteers against any and all claims, suits, causes of action (whether frivolous or otherwise), proceedings, and judgments for damages or equitable relief arising out of the installation, construction, maintenance, or operation of facilities by the rights-of-way occupant or permittee; the conduct of the rights-of-way occupant's business in the City; or in any way arising out of the rights-of-way occupant's enjoyment or exercise of the privileges granted by the City or applicable law, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the City, other applicable law, or the terms of any grant to occupy the rights-of-way.

Each rights-of-way occupant and permittee shall indemnify and hold harmless the City, and its elected and appointed officers, officials, boards, commissions, commissioners, employees, agents, and volunteers from and against any and all claims, demands, suits, or causes of action (whether frivolous or otherwise) of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the rights-of-way occupant or permittee, or its agents, independent contractors, or employees related to or in any way arising out of the construction, operation or repair of the facilities in question.

The indemnity provision of this section includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such action, claim, suit (whether

frivolous or otherwise), or proceeding, as well as the reasonable value of any services rendered by the City Attorney, or City staff or employees.

Nothing in this chapter shall be construed to waive any immunity the City enjoys under applicable law, or the Tennessee Constitution.

Acceptance of the provisions of this section shall be a condition of all rights to occupy City rights-of-way or to obtain a rights-of-way construction permit.

16-215. Time limits. Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement, or until the refill is made ready for the pavement to be put on by the City if the City restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the city manager.

16-216. Supervision . The city manager or his designee shall monitor all excavations and tunnels being made in or under any public street, curb, sidewalk, alley, or other public rights-of-way in the City and see to the enforcement of the provisions of this chapter. Notice shall be given to him before the work of refilling any such excavation or tunnel commences and said work may not commence until the inspector arrives at the site or gives verbal permission to proceed.

16-217. Stop work order. If at any time that any person, firm, corporation, public or private utility, association, or others is making any cut or excavation in any street, curb, alley, or public rights-of-way, or is tunneling under any street, curb, alley, or public rights-of-way in the City and it is determined by the city manager or his designee that the work being performed is not in compliance with the City's regulations, State or federal regulations or recognized construction and/or safety practices, the city manager or his designee shall issue a stop work order and the person, firm, corporation, public or private utility, association, or others that is making the cut or excavation in any street, sidewalk, curb, alley, or public rights-of-way, or is tunneling under any street, sidewalk, curb, alley, or public rights-of-way shall cease work in the City's rights-of-way until corrective measures are taken and the city manager or his designee rescinds the stop work order.

16-218. Facility relocation. A rights-of-way occupant shall, within three (3) months from the date of notification, at its own expense, permanently relocate, protect, or modify any part of its facility when required by the City by reason of traffic safety, public safety, road construction, change of street grade, installation of water, stormwater, or sanitary pipes, traffic signal devices, or any other types of City improvement projects. The city manager may recommend such actions in order to prevent interference by the rights-of-way occupant's facilities with: a present or future City use of the City's rights-of-way; or a capital improvement project funded and scheduled to be undertaken by the City; or an economic development project in which the City has an interest or investment. The city manager may also recommend such actions: when the public health, safety and welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the rights-of-way, both vehicular and pedestrian; or when aboveground equipment is located in such a manner as to create an obstruction to a driver's line of sight. The rights-of-way occupant may for due cause make application to the Public Works Director for an extension to complete such relocation as required by this section.

Failure by the rights-of-way occupant to relocate its facilities within the three (3) months from date of notification shall result in the rights-of-way occupant being assessed liquidated damages for each day of the delay. The daily amount of liquidated damages shall be determined by the liquidated damages contained in any construction contract(s) the City may have entered into in conjunction with infrastructure improvements that necessitate the need for the rights-of-way occupant to relocate its facilities. In those cases where the City is performing the infrastructure improvements with City forces, the amount of the daily liquidated damages shall be the average of the daily liquidated damages amounts found in all City contracts for the past two years commencing with the date of notification referenced above. If the rights-of-way occupant fails to pay the City for the liquidated damages as charged, the total amount of liquidated damages

(daily amount x the number of days delayed) shall be attached to the cost of any future permit the rights-of-way owner may apply for to install, extend or improve their facilities within the City's rights-of-way and no permit shall be issued until the total costs are paid.

16-219. Violation and penalty. In addition to any other action the City may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

Section 2. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

PASSED ON FIRST READING: January 21, 2003

PASSED ON SECOND READING: February 18, 2003

WILLIAM BO PERKINSON, Mayor

MITCHELL B. MOORE, City Manager

APPROVED AS TO FORM:

/s/

CHRIS TREW, City Attorney