

ORDINANCE NO. 2000-697

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, PROVIDING AUTHORITY GOVERNING THE WORK WITHIN PUBLIC EASEMENTS OR THE RIGHTS-OF-WAY; AND DECLARING AN EMERGENCY.

WHEREAS, the City rights-of-way are a valuable public asset acquired and maintained at taxpayer's expense; and

WHEREAS, the City desires to minimize extraordinary expenses to said taxpayers due to loss of useful life of valuable public assets; and

WHEREAS; the City finds and determines that pavement cuts in streets, easements and rights-of-way accelerate the degradation of said valuable assets and cause additional maintenance activities and costs; and

WHEREAS, the establishment of permit requirements and permit, inspection and maintenance surcharge fees, in addition to regular permit fees, ensure work is performed in accordance with approved City specifications, standards and guidelines and that the City is compensated for the damage and early deterioration of the assets and that those persons requesting the permit will incur part of the costs associated with implementing the permit and inspection service and additional maintenance; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Goodyear, Arizona that:

SECTION 1. That Ordinance No. 2000-697, is enacted to provide authority to the Public Works Director to: 1) prohibit the opening, cutting or excavation of any street or sidewalk without approval of the Director; 2) establish permit, indemnity and bonding requirements for work within the City's easements or rights-of-way; 3) establish permit, inspection and surcharge fees for persons requesting to work within the public rights-of-way and easements by cutting the pavement and/or sidewalks.

1. Authority of the Public Works Director to prohibit the opening, cutting or excavation of any street or sidewalk without an approved permit.
 - (a) It shall be unlawful for any person to make, build, construct, install, cut, remove, excavate or replace any pavement, driveway, curb, gutter, sidewalk, pipes, conduits without an approved permit issued by the Public Works Director or designee.
 - (b) Notwithstanding subsection (a) of this section, repairs to any pavement, curb, gutter, driveway, pipes or conduits may be made by the original party

constructing the improvements or their successors in interest in accordance with the original approved permit.

- (c) Whenever a cut or excavation is necessary for the protection of public health and safety and must be performed outside the normal city working hours, applicants and/or owners shall obtain any required permits within three working days of the work.
- (d) Any person found guilty of violating any provision of this Ordinance is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$2,500.00, no more than \$5,000.00, but in no event greater than the maximum amount allowed by law or by imprisonment for a period of not to exceed six months or by both. Each day , or any part thereof that a violation continues shall be a separate offense punishable as hereinabove described.

2. Establishment of Permit, Bonding and Indemnification Requirements for work within the City's easements or rights-of-way.

(a) Permit Requirements

(1) Permit Application

- (a) All applications to the city for a permit to open, cut or excavate in any street or sidewalk, easement or right-of-way shall be in writing on a form promulgated by the city and shall be accompanied by at least one copy of a plot plan showing the location of the work with reference to street lines, utilities, buildings, curbs, sidewalks, trees, poles or other objects that might affect the work.
- (b) All Applications shall include a permit and plan review fee to cover the city's cost of plan review, inspection and issuing the permit. The permit fee shall be the amount set forth in Section 3 of this Ordinance entitled "Permit Fees and Pavement cut Surcharge". No part of the permit and plan review fee shall be refundable.

(2) Qualifications of Applicant

- (a) Applicants for permits may be either an owner or a contractor. If the improvement to be constructed under the permit is not to become the property of the city and if the applicant is someone other than the owner, the owner shall also sign the permit form indicating consent agree to the conditions of the permit.
- (b) It shall be unlawful to perform construction work in the public right-of-way except as permitted in this section. The work under a permit issued by the city may be performed only by:
 - (1) Contractors Licensed by the State of Arizona to work in the public rights-of-way and easements.

- (2) Public Service Corporations and Telecommunication Licensees
- (3) Governmental Agencies

(3) Right to Repair Street Cuts

- (a) If the applicant for a pavement cut has unsatisfactorily repaired one or more pavement cuts in the determination of the Public Works Director or designee, the City may condition the issuance of a permit to make a pavement cut upon the City repairing the pavement cut. In the event the city repairs the pavement cut, the city will charge the pavement cut surcharge, the city's estimated repair fee and an administrative charge of 15% of the estimated repair fee. In the event final construction cost is less than the estimated repair fee, the difference of the fee and the administrative charge will be refunded.

(4) Duty to Repair Street

- (a) It shall be the duty of every person working in the public right-of-way who causes any damage to the public street or other facility to repair the facility in accordance with city standards, specifications and guidelines, under a city permit, review and inspection and in such manner that it is returned as nearly as practicable to its original condition and maintain the repair for a period not less than two (2) years from the date of final acceptance of the repair.

(5) Restoration

- (a) For those streets that have been subject to pavement maintenance in the last three years, the applicant shall provide the same type of maintenance on the half street where the cut is made for a distance 50 feet from each end of the pavement cut.

(6) Compliance With Standard Details and Specifications

All work done under permits granted by authority of this Ordinance shall be completed within the time set by the Public Works Director or designee. All work shall be done in accordance with the official grades, specifications, standards and guidelines of the city.

(7) Liability of Persons Repairing Street for Defective Repair

- (a) Any person who fails, neglects or refuses to repair or maintain the repair to a public street or facility in the city's rights-of-way or easements as required by this Ordinance shall be given a written notice from the Public Works Director or designee to repair the public street or facility. Such notice shall contain a

brief statement of the violation and the name, address and phone number of a city representative who may be contacted for further information. The notice shall further inform such persons that failure to comply with the notice within the stated time will cause the City to perform the work and that all charges, plus fifteen (15) percent administrative fee will be billed to the person.

(b) When any persons to whom notice has been given, fails, neglects or refuses to repair or maintain the repair to a public street or facility by the date set for compliance within the notice, the Director of Public Works or designee shall repair or maintain the public street or facility and do such other action as necessary to abate the failure to repair the public street or facility. Upon completion of the work, the person who was given notice and failed to repair or maintain the public street or facility within the time period set forth in the written notice shall pay the city its entire cost, including design, engineering and incidentals, together with applicable overhead and administrative charges. The Public Works Director or designee shall bill the cost and administrative charges. Shall the owner fail to pay, the Public Works Director or designee may initiate collection proceedings as allowed by law and add to the billed amount collection costs plus applicable overhead and administrative charges.

(c) The Public Works Director or designee shall have the authority to determine the date of completion of the initial repair period and whether or not the repair has been satisfactorily maintained for a period of two years. In determining whether or not a repair has been satisfactorily maintained, the Director of Public Works or designee shall apply normal engineering practices for the type of street or facility in question and such other applicable specifications, standards and guidelines as adopted by the City.

(b) Construction: Financial Assurance, Bonding

(1) The city shall require each applicant referred to in this Ordinance, before granting a permit, to deposit a financial assurance equal to the cost of the work proposed in the application, as determined by the Public Works Director or designee. The financial assurance shall constitute a guarantee that the work shall be done in accordance with permit and city specifications, standards and guidelines. The applicant shall be given a receipt for the financial assurance.

(2) If a surety bond is posted, it shall be executed by the applicant as principal, with a corporation duly authorized to transact business in the State of Arizona. The bond shall be in favor of the City, shall be continuous in form and shall be conditioned that the total aggregate liability of surety for all claims shall be released upon

satisfactory performance and acceptance of the work, or may be cancelled after the applicant has provided other security satisfactory to the city that will cover obligations that remain.

- (3) If the Public Works Director determines that the amount of financial assurance required is less than five hundred dollars, the Public Works Director or designee may waive the requirement for financial assurance.
- (4) This bond or financial assurance shall not be required where the other provisions of City Code also cover the improvements and the cost of work proposed in the application.

(c) Indemnification Requirements

- (1) As a condition of issuance of a permit, applicant shall protect and hold harmless the City of Goodyear, its agents, servants and employees from any and all liability for injuries to persons or property resulting from or caused by activities associated with the work described in the permit.

3. Permit Fees and Pavement Cut Surcharge

- (a) All applications shall include, in addition to the normal permit, plan review and inspection fee, an excavation fee and a pavement cut surcharge. Fees and surcharges will be per the following table:

1) Excavation Fee: \$100.00

2) Pavement Cut Surcharge:

(a) Pavement less than 12 months old with:

- 1) Openings less than 9 square feet or
- 2) 9 linear feet of trench: \$1,000.00
- 3) Trenches over nine feet long for every fifty linear feet or fraction thereof: \$2,500.00

(b) Pavement 12 to 24 months old with:

- 1) Openings less than 9 square feet or
- 2) 9 linear feet of trench: \$750.00
- 3) Trenches over nine feet long for every fifty linear feet or fraction thereof: \$1,875.00

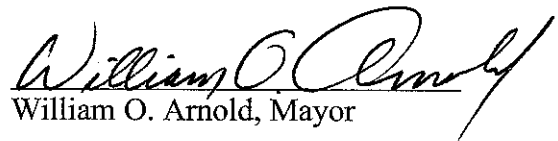
(c) Pavement 24 to 36 months old with:

- 1) Openings less than 9 square feet or
- 2) 9 linear feet of trench: \$375.00
- 3) Trenches over nine feet long for every fifty linear feet or fraction thereof: \$935.00

- (b) All Pavement Cut Surcharge fees collected shall be placed in the city's street fund, designated for street maintenance and shall be used to offset the cost of resurfacing city streets.


SECTION II. Whereas, the immediate operation of the provisions of this ordinance are necessary for the preservation of the public peace, health and safety of the City of Goodyear, an emergency is declared to exist, and this Ordinance shall be in full force and effect from and after its passage by Council, approved by the Mayor and publication and posting as required by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Arizona, this 10 day October 2000.


William O. Arnold, Mayor

ATTEST:


Dee Cockrum, City Clerk

APPROVED AS TO FORM:

James H. Oeser, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)

) ss.

County of Maricopa)

I, the undersigned, Dee Cockrum, being the duly appointed, qualified and City Clerk of the City of Goodyear, Maricopa County, Arizona, certify that the foregoing Ordinance No. 00-697 is a true, correct and accurate copy of Ordinance No. 00-697, passed and adopted at a regular meeting of the Council of the City of Goodyear, Maricopa County, Arizona, held on the 10 day of October, 2000, at which a quorum was present and, by a 7-0 vote, voted in favor of said ordinance.

Given under my hand and sealed this 10 day of October, 2000.



Dee Cockrum, City Clerk