

**CITY OF DAPHNE
ORDINANCE NO. 2017-22**

**REPEALING AND REPLACING ORDINANCE 2016-55
THE RIGHT-OF-WAY ORDINANCE**

WHEREAS, the City Council of the City of Daphne, Alabama desires to protect, preserve and promote the health, welfare and safety of the citizens of Daphne by ensuring the structural integrity of public streets; and

WHEREAS, the City Council of the City of Daphne, Alabama desires to ensure that city rights-of-way are maintained in a state of good repair free from unnecessary encumbrances; and,

WHEREAS, the City Council of the City of Daphne, Alabama, possessing authority to manage and control its rights-of way, desires to establish the rules and regulations related to right-of-way work; to provide applicable definitions; to define prohibited acts; to provide penalties for the violation hereof; and to enact reasonable regulations in furtherance thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA AS FOLLOWS:

SECTION I. DEFINITIONS

A. For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context the words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely derivative.

1. Applicant. Means any person or entity requesting or under a duty to request permission to obstruct or construct in a City of Daphne right-of-way.
2. City. Means the City of Daphne, Alabama.
3. Code Enforcement Officer. Means any person authorized by the City of Daphne to enforce the Codes of the City and issue Municipal Offense Tickets for violations thereof.
4. Construct. Means to excavate, repair, rehabilitate, maintain, and install sanitary sewers, water mains, fire hydrants, valves, meters, manholes, service lines and connections, gas mains, telephone and electrical conduit and their miscellaneous service lines and connections, telecommunications Facilities cables, wires, lines, wave guides, antennas, and other equipment or Facilities, pedestals, and service cabinets, poles, guy wires, storm drains, manholes, inlets, catch basins, irrigation systems, driveways, sidewalks, pavement extensions, curbs, walks, steps, building canopies, balconies, overhead walkways, and temporary detour pedestrian walkways on, above, or under any part of the Rights of Way provided however, that Construct shall not mean installation, repair, rehabilitation or maintenance of Facilities that do not involve excavation of any portion of the Rights of Way.
5. Construction Bond. Means a bond posted to ensure proper and complete construction and/or repair of a permitted site pursuant to a permit issued by the Public Works Department.

6. Construction Standards for miscellaneous construction, utility excavation, Right-of-way and pavement restoration. Means the compilation of provisions and requirements that provide the technical specifications and details for the construction of facilities in the right-of-way.
7. Department. Means the City of Daphne Public Works Department.
8. Department Inspector. Any person designated/authorized by the Public Works Director to carry out inspections related to the provisions of this article.
9. Emergency. A condition that poses a clear and immediate danger to life or health, or of a significant loss of property or utility service. "Emergency" also includes requests for service which the applicant deems urgent and can be classified as small project types A and B.
10. Excavation. Means any work on the surface or subsurface of the public right-of-way including but not limited to opening the right-of-way, installing, servicing, repairing, or repairing/modifying any facilities/sites in or under the surface or subsurface, and restoring the surface and subsurface of the public right-of-way.
11. Facilities. Means any tangible thing located in any right-of-way; and shall include boulevard plantings or gardens planted & maintained in the right-of-way between a person's property and the street edge of pavement.
12. Geo-technical Engineer. Means a professional engineer experienced in soils engineering and materials testing.
13. Geo-technical Company. Means a professional engineering company that provides soils engineering and testing services, laboratory and field testing services, construction material testing, and possesses a certificate of authorization from the state board of registration for professional engineers and land surveyors.
14. In. Means, when used in conjunction with "right-of-way", means over, above, in, within, on or under a right-of-way.
15. Landscape or Landscaping. Means trees, shrubs and other plantings of materials that are or may grow to a height of eighteen (18) inches or more, and irrigation systems (in unpaved areas), in the right-of-way.
16. Major Project. Means construction of water, sewer, gas, telephone, fiber optic, electrical power conduit, cable and duct, TV cable, jacking, boring, pushing and tunneling, retrofitting existing facilities/sites, storm drain and any other miscellaneous major facility construction projects that involve more than one continuous block or five hundred (500) linear feet of right-of-way.
17. Minor Project. Means construction of miscellaneous utility service lines, manhole installation not associated with Major Project construction, main line point repairs and installation, miscellaneous utility service line repair, storm drain and inlet repairs, vaults, irrigation systems and other miscellaneous construction and repair projects that involve less than one (1) block or five hundred (500) linear feet of right-of-way.
18. Municipal Court. Means the part of the City of Daphne Municipal Court System designed to enforce local laws and ordinances relating to the physical appearance of the City, and the health and safety of the public.

19. Municipal Offense Ticket (M.O.T.). Means a citation issued for a violation of this ordinance. A M.O.T. may require payment of a fine as defined by the municipal offense ticket system (M.O.T.) fine schedule, as may be amended from time to time, appearance in municipal court and if determined by the judge of said court, jail or community service.
20. Notice of Violation. Means a written warning issued by the Department, or the City of Daphne Code Enforcement Officer, for a violation or possible violation of this ordinance.
21. Obstruct. Means to place any one or any tangible object in a right-of-way so as to hinder free and open passage over, under or through that or any part of the right-of-way.
22. Permit Fee. Means money charged by the City of Daphne to cover the costs as provided in Appendix A (Schedule of fees) of this ordinance.
23. Permittee. Means any person or company to whom a permit to construct or obstruct a right-of-way has been granted by the City.
24. Person. Means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have facilities/sites located in any right-of-way.
25. Restoration. Means the process by which a constructed or obstructed right-of-way is restored as specified in the constructed standards.
26. Right-Of-Way. Means the surface and space above and below any real property in which the City has an interest in law or equity, whether held in fee, or other estate or interest including easements, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, detention pond, retention pond, culvert, ditch, storm water management facility, bridge, park, or any other place, area, or real property owned by or under the control of the City.
27. Right-Of-Way Permit. Means the permit which must be obtained before a person may construct in, or obstruct in a right-of-way as required by Section III (Right-of-way permits) of this ordinance.
28. Service or Utility Service. Means services provided by utilities.
29. Sidewalk. Means the paved pedestrian walkway between the edge of the road and the street right-of-way line.
30. Small Project (Type A). Means the installation of equipment cabinets, junction boxes, terminal boxes, splice boxes, regulator stations, meters and valves in paved areas, utility poles, guy poles and appurtenances not associated with a major or minor project.
31. Small Project (Type B). Means the installation, repair and routine maintenance of miscellaneous utility drop lines, overhead wires and cables, traffic signal poles, light poles, traffic signs, meters, valves and other miscellaneous construction,

repair, routine maintenance and inspection, that requires minimal excavation or right-of-way disruption.

32. Supplementary Application. Means an application made to construct or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.
33. Trenchless Technology. Means the use of directional boring, horizontal drilling and micro-tunneling and other techniques in the construction of underground portions of facilities which result in the least amount of disruption and damage to right-of-way as possible.
34. Underground Facilities. Means all lines, cables, conduits, posts, tanks and any other facilities owned or operated by persons other than the City which are located wholly or partially underneath right-of-way.
35. Utilities. Means any water, sewer, gas, drainage, irrigation or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber / fiber optic, wire, cable, or operator thereof.

SECTION II. RIGHT OF WAY ADMINISTRATION

A. Administration. The City of Daphne Public Works Director shall be the principal City official responsible for the administration of the right-of-way, right-of-way permits, and the ordinances related thereto. The Public Works Director may amend from time to time, construction standards and other rules reasonably required to carry out the purposes of this ordinance. Any requirement not specifically covered by this ordinance or the construction standards shall be determined by the Public Works Director. The Public Works Director may delegate any or all of the duties hereunder.

B. Appeal Procedure. The Public Works Director may grant a special exception to the requirements of this ordinance if a permittee demonstrates, with written evidence, that:

1. The exception will not create any threat to public health, safety or welfare.
2. The permittee demonstrates that the increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of this ordinance actually, or effectively, prohibits the ability of the permittee to provide utility services in the City.
3. The permittee demonstrates that the requirement unreasonably discriminates against the permittee in favor of another person.

C. Should any person be aggrieved by the decision of the Public Works Director, such person may appeal by filing written notice with the Public Works Department within fifteen (15) days from the date of such decision. The Department shall send a copy of the appeal and all relevant Documentation, within fifteen (15) days, to the City Clerk's Office to be considered by the City Council at a public hearing.

SECTION III. RIGHT-OF-WAY PERMITS

A. Permit requirements.

1. Except as otherwise provided in this ordinance, no person may construct or obstruct any right-of-way without first having obtained one of the following right-of-way permits from the Public Works Department:

- a) Major Project;
 - b) Minor Project;
 - c) Small projects;
 - 1) Type A;
 - 2) Type B; or
 - d) Landscape
2. Right-of-way permit. A right-of-way permit is a permit which allows the holder to construct, obstruct, or landscape in that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein. A permit is valid only for the date(s) and the area(s) of right-of-way specified in the permit. No person may construct in or obstruct the right-of-way beyond the date or dates specified in the permit unless such person:
- a) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
 - b) A new permit or permit extension is granted.

However, if no work is initiated within four months or if the project lies dormant for a period of thirty (30) calendar days after being started, the Permit is made invalid.

3. Emergencies. When the work must commence immediately because of an emergency, the permittee shall comply with the provisions in Section V, subsection B, 1.
 4. Exemptions. No permits shall be required for the following activities:
 - a) Installation and repair of facilities by, or for, City of Daphne Departments; and
 - b) Installation of landscaping materials which are, or may grow, to a height of not more than eighteen (18) inches.
 5. Permit authorizing routine work. Applicants may be allowed, if determined by the Public Works Department, to obtain in advance, an annual, quarterly or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation. Permit fees shall be calculated based upon the actual work completed during the term and due for payment at the end of the term. Bi-weekly summary submittals will be required of blanket permit applicants covering the type and extents of work, locations, durations, etc... These summary submittals will be used to verify fees based on the actual work completed under that blanket permit. A twenty-five dollar (\$25.00) application fee plus all fees will be charged at the end of the term.
- B. Permit applications. Application for a permit is made to the Public Works Director.
1. All permit applications shall contain, and will be considered complete only upon compliance with the requirements of the construction standards, as appropriate.

a) Tree and landscaping requirements of this article shall be administered and enforced by the Director of Community Development, in cooperation with the Director of Public Works.

C. Issuance of permit; conditions.

1. If the Director of Public Works determines that the applicant has satisfied the requirements of this ordinance, he may issue a permit or issue notification and reason for denial of same.
2. The Director of Public Works may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the right-of-way, to protect the property of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public, including notification to property owners.

D. Permit fees.

1. Permit fees shall be established by the City Council upon recommendation by the Director of Public Works. Said fees shall be in an amount sufficient to recover the following costs:
 - a) The City costs, including administration, inspection, and enforcement; and
 - b) The cost for obstructing the right-of-way, including costs associated with traffic management that results from street obstruction, lost tax revenues resulting from streets blocked and as an encouragement to minimize costs and to encourage timely, efficient use of the right-of-way.
 - c) The current schedule of permit fees is set forth in Appendix A to this article.
2. Payment of permit fees. No permit shall be issued without payment of such fees unless the Public Works Director authorizes payment to be made thirty (30) days following billing. All changes in fees shall be approved by the City Council.
3. Nonrefundable fees. All permit fees are nonrefundable.
4. Joint applications. Applicants are encouraged to make joint applications for permits to construct or obstruct the right-of-way at the same place and time.

SECTION IV. CONSTRUCTION; RESTORATION

A. Compliance with construction standards. All construction or maintenance of facilities shall be in accordance with this ordinance, the construction standards and such other conditions imposed on the permit by the Public Works Director under Section III, C.

B. Location of facilities. The Public Works Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests or permittees to occupy and use the right-of-way. In making such decisions, the Public Works Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of public interest, the public's need for the particular utility service, the condition of the right-of-way, the protection of existing

facilities/sites in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

C. Least disruptive technology. Applicants are encouraged to perform construction and maintenance of facilities in a manner resulting in the least amount of damage and disruption of the right-of-way. Applicants will be required to use trenchless technology for major and minor construction projects, within roadway limits, in arterial and other high volume streets constructed or resurfaced within the last five (5) years, unless otherwise approved by the Director of Public Works and such approval shall not be unreasonably withheld. The Director of Public Works may require trenchless technology in other locations, where extreme circumstances prevent or make open cut methods impractical. Applicants may use the open cut method or trenchless technology for major and minor projects outside roadway limits.

D. Right-of-way restoration.

1. The work to be done under the permit, and the restoration of the right-of-way as required herein, must be completed within the dates specified in the permit. In addition to its own work, the permittee must restore the general area of the work, including all disturbed landscaping materials and the permitted areas, including the paving and its foundations, per the City of Daphne construction standards.
2. The permittee shall perform the work according to the standards and with the materials specified by the City of Daphne Public Works Director including but not limited to the construction standards.
3. By restoring the right-of-way, the permittee guarantees its work for twenty-four (24) months following its completion. During this twenty-four month period, the permittee shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary using the method required by the Director. Said work shall be completed within the time frame specified by the Director of Public Works.

E. Installation requirements. The excavating, backfilling, restoration, and all other work performed in the right-of-way shall be done in conformance with specifications set forth in the construction standards.

F. Inspection. Except for routine work, when the work under any permit for major and minor projects hereunder is completed, the permittee shall notify the Public Works Director.

1. Permittee shall make the work site available to the Public Works Director or his authorized representative and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.
2. At the time of the inspection, the Director of Public Works or his authorized representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
3. The Director of Public Works or his authorized representative may issue a notice of violation to the permittee for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for issuance of a Municipal Offense Ticket (M.O.T.) and/or a stop work order. Within the time frame indicated on the notice after issuance of the order, the applicant shall present proof to the Director of Public Works that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Works may issue a stop work order and/or have a Municipal Offense Ticket (M.O.T.) issued.

G. Other obligations. Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations.

1. A permittee shall comply with all requirements of local, state and federal laws, including a franchise duly adopted by the City Council. Contact shall be made to the one call excavation notice system, Alabama Statutes @ 1-800-292-8525, or such other number which may be applicable.
2. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.
3. Except in the case of an emergency, and with the approval of the Director of Public Works, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.
4. A permittee shall not so obstruct a right-of-way that the natural and free passage of water through the gutters or other waterways shall be interfered with.
5. Private vehicles not owned by or under contract to permittee may not be parked within or adjacent to a permit area.

SECTION V. ENFORCEMENT OF PERMIT OBLIGATION

A. Denial of permit.

1. Mandatory denial. Except in the case of emergency, no right-of-way permit will be granted:
 - a) To any person who has failed to comply with the requirements of this article;
 - b) To any person who is delinquent in paying a debt owed to the City;
 - c) If, in the discretion of the Director of Public Works, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Director of Public Works, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.
4. Permissive denial. The Director of Public Works may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the rights-of-way and its users. The Director of Public Works may consider one (1) or more of the following factors:
 - a) The extent to which the right-of-way space where the permit is sought is available;
 - b) The competing demands for the particular space in the right-of-way;

- c) The availability of other locations in the right-of-way or in other right-of-way for the facilities of the particular company;
- d) The applicability of other ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
- e) The degree of compliance of the applicant with the terms and conditions of its franchise, this ordinance, and other applicable ordinances and regulations; the degree of disruption to surrounding neighborhoods and businesses that will result from the use of that part of the right-of-way; and
- f) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial construction; and the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.
- g) The public policy of allowing an obstruction of similar character in other right of ways in the City.

B. Work done without a permit.

- 1. Emergency situations. Each permittee shall notify the Director of Public Works (by telephone or in person) of any event regarding its facilities which it considers to be an emergency immediately upon its discovery of same. The applicant may proceed to take whatever actions are necessary in order to respond to the emergency. Within three (3) business days after the occurrence of the emergency, the applicant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this ordinance for the actions it took in response to the emergency.
- 2. In the event that the Director of Public Works becomes aware of an emergency regarding a permittees' facilities/site, the Department shall attempt to contact the local representative of each permittee affected, if known, or potentially affected, by the emergency, who must comply with subsection B, 1. of this section. In any event, the Department may take whatever action deemed necessary in order to respond to the emergency.
- 3. Non-emergency situations. Except in the case of an emergency, any person who obstructs or excavates a right-of-way without a permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by City Codes, is subject to the issuance of a notice of violation and/or a Municipal Offense Ticket (M.O.T.), deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all requirements of this article.

C. Enforcement.

- 1. Permittees hold permits issued pursuant to this ordinance as a privilege and not as a right.

2. If the Director of Public Works determines that the Applicant has violated a material term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the Director of Public Works shall issue a notice of violation to the Applicant to remedy such violation. The demand shall state that continued violations may cause for the issuance of a stop work order and issuance of a Municipal Offense Ticket (M.O.T.). Further, a substantial breach, as stated above, will allow the Director of Public Works, at his or her discretion, to place additional or revised conditions on the permit.
3. A material violation by Applicant shall include, but shall not be limited to, the following:
 - a) The violation of any material provision of the permit;
 - b) An evasion or attempt to evade obtaining a permit or any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - c) Any material misrepresentation of fact in the application for a permit;
 - d) The failure to maintain the required bonds and/or insurance;
 - e) The failure to complete the work within a timely manner; or
 - f) The failure to correct a condition indicated on an order issued pursuant to Section IV, F.
5. Within forty-eight (48) hours of receiving a notice of violation, permittee shall contact the Director of Public Works with a plan, acceptable to the Director of Public Works, for its correction. Applicant's failure to so contact the Director of Public Works, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate issuance of a stop work order and issuance of a Municipal Offense Ticket (M.O.T.)
6. From time to time, the Director of Public Works may establish a list of conditions of the permit that will automatically warrant the issuance of a Municipal Offense Ticket (M.O.T.) to the permittee.

SECTION VI. INDEMNIFICATION AND LIABILITY

- A. The City does not accept liability. By reason of the grant of a right-of-way permit, the City does not assume any liability:
 1. For injuries to persons, damage to property, or loss of service claims by parties other than the applicant or the City; or
 2. For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by permittees or activities of permittees.

b) Applicant or permittee indemnifies the City. By accepting a permit, a permittee is required to, indemnify and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities/site, or out of any activity undertaken in or near a right-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a right-of-way. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities/site, or any activity undertaken in or near a right-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a permit. The foregoing does not indemnify the City for its own negligence. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the applicant or to the City; and the applicant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

c) Exceptions. The provisions of subsection (b) of this section shall not apply to a permittee that has, as effective date of this ordinance, a valid franchise duly granted by the City, and said franchise requires the permittee to hold harmless the City for damages occasioned by the presence, operations or maintenance of the permittee's facilities/site. This exemption shall not apply where said franchise does not afford the City at least the level of protection stated in section (b) of this section, unless the permittee agrees to provide the same or greater level of protection to the City.

SECTION VII. PENALTY.

A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, in the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.

SECTION VIII. NON-EXCLUSIVITY

The remedies provided in this ordinance are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public right-of-way, including damages to the right-of-way, whether caused by a violation of any of the provisions of this chapter or other provisions of this ordinance.

SECTION IX. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

SECTION X. REPEALER

Ordinances 2004-23 and 2016-13 are hereby repealed and replaced by this Ordinance. Any other Ordinances or parts of Ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

SECTION XI. EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF DAPHNE, ALABAMA, ON THE 20TH DAY OF MARCH, 2017.

**CITY OF DAPHNE
A MUNICIPAL CORPORATION**



DANE HAYGOOD, MAYOR

ATTEST:


REBECCA A. HAYES, CITY CLERK

**APPENDIX A
SCHEDULE OF FEES**

RIGHTS-OF-WAY AND EXCAVATION PERMIT FEES

<u>Description</u>	<u>Permit Fee</u>
Administration Fee	\$25.00 (all permits)
Aerial utility construction (new installation)	\$0.50 per L.F.
Utility poles including guy and anchor (new installation)	\$2.00 per pole
Excavation for all new projects (paved areas)	\$3.00 per L.F. (minimum fee \$100.00)
Excavation for all new projects (unpaved areas)	\$0.75 per L.F.
Excavation for point repairs - service lines, storm drains, manholes, etc. (paved areas)	\$20.00 per square yard
Excavation for point repairs - service lines, storm drains, manholes, etc. (unpaved areas)	\$6.00 per square yard
Directional boring and jacking operations, tunneling, retrofit or repair of existing utilities by bore, stitch boring, plowing, irrigation systems, etc...	\$0.40 per L.F. (minimum fee \$25.00)
Communication towers (new installation)	\$50.00 per tower
Terminal boxes, junction boxes, equipment cabinets, splice boxes, regulator stations, meters & valves in paved areas, vaults, utility pedestals	\$5.00 each
Sidewalk, driveway, curb, gutter, mitered-end sections (new construction, replacement, or repair):	
0 sq. yds. to 2 sq. yds.	\$10.00
2 sq. yds. to 25 sq. yds.	\$30.00
25 sq. yds. to 100 sq. yds.	\$50.00
100 sq. yds. to 200 sq. yds.	\$100.00
200 sq. yds. or greater	\$0.50 per SY
Steps, Ramps (ADA compliant), etc...	\$50.00 per location
Monitoring wells	\$50.00 each
Temporary pedestrian walkway	\$50.00 per location
Balconies, Canopies	\$10.00 per location

Note: Applicants may be allowed, if determined by the Department to obtain, in advance, an

annual, quarterly, or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation as defined by the Public Works director. Permit fees shall be calculated based upon the actual work completed during the term and due for payment at the end of the term. Bi-weekly summary submittals will be required of blanket permit applicants covering the type and extents of work, locations, durations, etc... These summary submittals will be used to verify fees based on the actual work completed under that blanket permit. A \$25 application fee plus all fees will be charged at the end of the permit term.

*No fee/permit shall be required for replacing existing poles of similar size or routine inspection.

*****Please note: all fees are non-refundable*****

OBSTRUCTION FEES

The following conditions shall apply in determining obstruction fees:

1. The obstruction of commercial pedestrian walkways will be charged at the rate of five dollars (\$5.00) per calendar day for each twenty (20) linear feet of length.
2. Fees will not be charged for obstruction of less than eight (8) hours.

APPENDIX B

CONSTRUCTION STANDARDS FOR MISCELLANEOUS CONSTRUCTION UTILITY EXCAVATION, AND RIGHT-OF-WAY AND PAVEMENT RESTORATION

SECTION I. CONSTRUCTION PLAN SUBMITTAL REQUIREMENTS WITHIN PUBLIC RIGHT-OF WAYS AND EASEMENTS

A. Major projects.

1. Major projects within roadway limits:

a) Construction plan submittal. Applicants for right-of-way permits shall submit three (3) sets of construction plans and specifications, including the following information, for review and approval:

1.) The location of all topographic features affected by the project within the right-of-way.

b) Complete plan & profile sheets indicating the horizontal and vertical location of all components of the proposed project and other related information including, but not limited to, pipe and manhole flow line elevations, type and size of pipe, the number and location of all utility markers left above ground (shall not exceed 24" in height above grade except as required by federal or state law) and other related structures, profile and other elevations necessary for roadway and right-of-way restoration, and the design details of the proposed construction and pavement and right-of-way restoration will be required for gravity flow systems including sanitary sewer, storm drain and related projects.

Note: Complete plan & profile sheets and other information currently required for gravity flow systems will be required for projects submitted after future ordinance amendment to include provisions for implementation of GIS mapping requirements.

- c) A plan indicating the location of the proposed project with respect to the centerline, edge of road, and right-of-way, tie-in to nearest street intersection, components and material type used, and dimensions and depth of the proposed installation, will be required for non-gravity flow systems including water distribution systems, gas systems, communication, cable TV and electric power distribution systems, unless otherwise authorized by the Director of Public Works.
 - d) An erosion control plan and best management practices (BMP's) complying with provisions of the City Stormwater Management Ordinance.
 - e) A safety plan to include methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.
 - f) A traffic control plan complying with all of the provisions of the Federal Manual on Uniform traffic Control Devices, current edition, shall be submitted to the Director of Public Works.
 - g) A landscape plan complying with the tree landscaping and protection ordinance; and
 - h) Complete as-built construction plans of the construction project shall be submitted to the Director of Public Works, after final inspection of the project. The as-built plans shall be submitted in hard copy medium as well as CAD files in DWG Format.
2. Major projects outside roadway limits:
- a) Construction plan submittal. Applicants for right-of-way permits shall submit three (3) sets of construction plans & specifications, including the following information for review and approval:
 - 1.) The location of all visible topographic features within the right-of-way that will be impacted by the proposed project.;
 - b. anchor;
 - c. Complete plan and profile sheets indicating the horizontal and vertical location of all components of the proposed project and other related information including, but not limited to, pipe and manhole flow line elevations, type and pipe size, and other related structures, profile and other elevations necessary for right-of-way restoration and the design details of the proposed construction, including the right-of-way restoration will be required for gravity flow systems including sanitary sewer, storm drain and related projects.

Note: Complete plan & profile sheets and other information currently required for gravity flow systems will be required for projects submitted after ordinance amendment to include provisions for the implementation of GIS mapping requirements.

d) A plan indicating the location of the proposed project with respect to the centerline, edge of road, and right-of-way, tie-in to nearest street intersection, components and type of material used, and dimensions and depth of the proposed installation, will be required for non-gravity flow systems including water distribution systems, gas systems, communication, cable TV and electric power distribution systems, unless otherwise authorized by the Director of Public Works.

e) An erosion control plan with best management practices (BMP's) complying with the City's Stormwater Management Ordinance.

f) A safety plan to indicate methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

g) A traffic control plan complying with all the provisions on the Manual on Uniform Traffic Control Devices, current edition, shall be submitted to the Director of Public Works, if any roadway is affected.

h) A landscape plan complying with the tree landscaping and protection ordinance; and

i) Complete as-built construction plans of the construction project shall be submitted to the Director of Public Works, after final inspection of the project. The as-built plans shall be submitted in hard copy form and CAD files in DXF Format.

B. Minor projects.

1. Minor projects within roadway limits.

a) Construction plan submittal. Applicants for right-of-way permits shall submit a plat of the proposed project including the following information:

1) A plat prepared at a scale acceptable to the Director of Public Works to indicate the plan view of the proposed project, location with respect to centerline, edge of roadway, and right-of-way, tie-in to nearest street subdivision lot corner or street intersection, components and type of material used for the project, and dimensions and depth of proposed installation.

2) An erosion control plan with best management practices (BMP's) complying with provisions of the City's Stormwater Management Ordinance.

3) A safety plan to indicate methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

4) A traffic control plan complying with all the provisions of the Manual on Uniform Traffic Control Devices, current edition, shall be submitted to the Director of Public Works, if any roadway traffic is affected; and

5) Complete as-built construction plans of the construction project shall be submitted to the Director of Public Works, after final inspection of the project. As-built plans shall be submitted in hard copy medium and CAD files in DWG Format.

2. Minor projects outside roadway limits.

a) Construction plan submittal. Applicants for right-of-way permits shall submit a plat of the proposed project including the following information:

1) A plat prepared at a scale acceptable to the Director of Public Works to indicate a plan view of the proposed project, location with respect to edge of roadway, centerline, and right-of-way, tie-in to nearest subdivision lot corner or street intersection, components and type of material used, dimensions and depth of proposed excavation.

2) An erosion control plan with best management practices (BMP's) complying with the City's Storm Water Management Ordinance.

3) A safety plan to indicate methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

4) A traffic control plan complying with all the provisions of the Manual on Uniform Traffic Control Devices, current edition, shall be submitted to the Director of Public Works, if any impact on traffic movement is involved.

5) A landscape plan complying with the tree landscaping and protection ordinance.

6) Complete as-built construction plans of the construction project shall be submitted to the Director of Public Works, after final inspection of the project. The as-built plans shall be submitted in hard copy medium and CAD files in DXF Format.

C. Small projects. The applicant will not be required to submit a construction plan or plat for small projects. However, a location sketch will be required for the approval of small projects (Type A). Any pavement or areas in the right-of-way that is disturbed shall be restored in conformance with sections 6 and 7 of this ordinance.

SECTION II. BOND REQUIREMENTS

A. Construction bond. The applicant shall be required to provide an irrevocable, unconditional letter of credit or bond to guarantee the proper construction and completion of right-of-way restoration. The amount of the bond shall be based on the estimated cost of the right-of-way restoration provided by the permittee and approved by the Director of Public Works. A construction bond will not be required for small projects if no paved area or right-of-way is disturbed by the project. The Director of Public Works may waive the requirement for the construction bond for permittees who evidence financial ability to pay the cost of the repairs to City rights-of-way resulting from their permittee activity.

B. City Departments performing installation of facilities/sites, routine maintenance and repair, and other agencies working in the right-of-way that are not involved in the installation, repair and maintenance of utilities, are exempt from the requirements of section 2.

SECTION III. NOTIFICATION PROCEDURES FOR MAJOR AND MINOR PROJECTS

A. Except for emergencies, the following notification procedures will be followed for major & minor projects, prior to the commencement of any construction activities:

1. The one call line location center will be notified forty-eight (48) hours prior to any excavation. The location of all utilities shall be verified before commencing construction.
2. The Director of Public Works shall be notified twenty-four (24) hours prior to commencing any construction activity involving major and minor projects within roadway limits.
3. The Public Works Director will be notified seventy-two (72) hours prior to the closure of any roadway or interruption in traffic flow.
4. A written notice will be distributed to each occupant of premises adjacent to the project site five (5) days prior to commencing construction activity relating to major projects.

SECTION IV. INSPECTION

A. City engineering personnel will conduct periodic inspections of utility construction, right-of-way and pavement restoration. The contractor will schedule a final inspection for major & minor projects when construction is complete.

SECTION V. TRENCH EXCAVATION AND GENERAL UNDERGROUND CONSTRUCTION REQUIREMENTS FOR MAJOR AND MINOR PROJECTS

A. Excavation.

1. Trench excavating methods (trench box, shoring, etc.) shall be used to keep the width of the trench to a minimum. Extra wide excavation to accommodate equipment will not be permitted. Sheeting, bracing, shoring, pre-fabricated steel trench boxes and other trench restraint system will be used to keep trench width to a minimum and to comply with OSHA regulations.
2. Hazardous materials. The applicant will comply with all federal, state and local laws, regarding hazardous material. For purposes of this section, hazardous material shall mean any material, substance or waste which, because of its quantity, concentration, or physical or chemical characteristics, is deemed to pose a present or potential hazard to human health, safety or to the environment.
3. Utility construction. The construction of utilities will be in conformance with the plans which constitute a part of the permit approval process.

A. Depth requirements for underground installation:

- 1) Within roadway limits. The minimum clear depth for open cut installation, and jacking, boring, and pushing operations shall be thirty-six (36) inches, unless otherwise authorized or directed by the Director of Public Works.
 - 2) Outside roadway limits and driveways. The minimum clear depth for open cut installation and jacking, boring, and pushing operations shall be thirty (30) inches, unless otherwise authorized or directed by the Director of Public Works.
4. Housekeeping and excavated material. The permittee shall keep the area surrounding the excavation clean (including trash, loose materials or other debris).

B. Backfill material.

1. Backfill material for major projects will be select granular soil material approved by the geotechnical engineering company or the Director of Public Works. Excavated material from the trench will not be used unless approved. Material excavated from utility poles, guy wire installation, replacing existing poles and routine pole inspections may be used for backfill.
2. Backfill material for minor projects within the roadway shall be comprised of crushed stone material up to subgrade elevation, unless otherwise approved by the Director of Public Works. Backfill material for other areas will be select granular soil material approved by a geotechnical engineering company or the Director of Public Works.
3. Installation of backfill material:
 - a) Backfilling of the excavated area shall follow closely behind the installation project.
 - b) The backfill material shall be compacted at near optimum moisture content, in layers not exceeding six (6) inches compacted thickness, to a density of not less than ninety-five (95) percent, unless otherwise approved by the geotechnical company. Mechanical tampers shall be used unless another method of compaction is approved. Jetting will not be permitted. The backfill material shall be installed uniformly and brought up evenly in layers for the full length of the trench.
4. Geotechnical testing and compaction for major & minor projects.
 - a) Major projects. A geotechnical engineering company will perform compaction tests at intervals of no more than 200 feet along the main trench line. Tests will be conducted at the installation of service lines within these limits where directed by the Director of Public Works. The geotechnical engineering company will perform tests at as many levels of backfill installation, and at lateral locations to certify that compaction requirements have been achieved. Documented test reports will be prepared and submitted to the Director of Public Works before any right-of-way restoration proceeds.

- b) Minor projects. Compaction tests may be requested for minor projects at specific locations.
5. General public safety: Every effort will be taken by the contractor to protect the safety and welfare of the general public, and to insure compliance with the safety and traffic plans submitted with the permit application.
 6. Steel plates may be required by the Director of Public Works, in congested or heavily traveled areas, to cover open trenches. Temporary patching will be required for any trench excavation in the roadway prior to opening the area to traffic. The Director of Public Works may also require the temporary covering of any excavated area that will be left open overnight, if he so deems that not covering the excavated area will present a threat to public safety or health.
 7. For major projects a construction sign will be placed adjacent to the utility construction area where traffic flow is to be obstructed. The signs will be placed seventy-two (72) hours prior to construction, at least every five hundred (500) feet along the project. The name of the utility/company involved and phone numbers that may be contacted on a twenty-four hour basis to be shown on the sign(s).

SECTION VI. RIGHT-OF WAY RESTORATION WITHIN ROADWAYS

A. All construction procedures and materials utilized will be in compliance with Alabama Department of Transportation Standard Specifications for Highway Construction, current edition. A geotechnical engineering company will be retained by the utility/company or permittee, to conduct field testing to document and certify that all materials and compaction efforts are in compliance with Alabama Department of Transportation Standard Specifications for Highway Construction, latest edition and procedures specified in the City engineering department's design details for right-of-way restoration.

B. Major projects.

1. Asphalt road surface.
 - a) Base construction.
 - 1) Granular soil, sandy clay base. The base course of the affected lanes shall be reconstructed full width.
 - 2) Bituminous base, stone base. The base course of the affected lanes shall be patched with equivalent base material if the structural integrity of the roadway has not been affected by the project, as determined by the geotechnical engineering company. Otherwise, the affected lanes shall be reconstructed full width.
 - b) Wearing surface. The full width of the roadway surface shall be resurfaced within the limits of the project. Existing traffic striping and markings will be replaced.
2. Asphalt roadway surface overlay on existing concrete pavement.
 - a) Base construction. The existing concrete street may be patched with concrete, if the structural integrity of the roadway has not been affected by the project, as

determined by the geotechnical engineering company. Otherwise, the affected panels of the existing concrete street shall be reconstructed.

b) Wearing surface. The full width of the roadway surface shall be resurfaced within the limits of the project. Existing traffic striping and markings will be replaced.

3. Concrete roadway surface.

a) Base construction. The base course of the affected lanes shall be reconstructed full width as determined by the geotechnical engineering company.

b) Concrete pavement. The entire roadway panel sections of the affected lanes shall be reconstructed. If the structural integrity of the roadway has been significantly affected by the project, the Director of Public Works may require the entire concrete surface, within the project limits, be reconstructed full width. Existing traffic striping and markings will be replaced.

4. Unpaved roadway surface. The entire roadway shall be surfaced with six (6) inches of stone within project limits.

B. Minor projects.

1. Asphalt roadway surface sixteen (16 square) feet or greater. For transverse service lines and miscellaneous installation and repair projects within excavated areas sixteen (16) square feet or greater, the entire width of the lane disturbed will be resurfaced from a point measured ten (10) feet from the edge of the excavation each way longitudinally along the centerline of the roadway. If more than one (1) lane is disturbed, the entire width of the disturbed lanes will be resurfaced. If the replacement pavement is more than seventy (70) feet long or more than ten (10) percent of the roadway area within a block is affected, the entire roadway will be resurfaced within the block. Existing traffic striping and markings will be replaced (See Fig. B-1).

2. Asphalt roadway surface less than sixteen (16) square feet. For miscellaneous construction involving excavated areas less than sixteen (16) square feet, the area from the edge of the excavation extending one (1) foot outside the perimeter of the cut area will be resurfaced. If more than one (1) lane is disturbed, the entire width of the disturbed lanes will be resurfaced. If the replacement pavement is more than seventy (70) feet long or more than ten (10) percent of the roadway area within a block is affected, the entire roadway will be resurfaced within the block. Existing traffic striping and markings will be replaced.

3. Concrete roadway surface. The entire affected roadway panel sections, including base course, will be reconstructed joint to joint. Existing traffic striping and markings will be replaced.

4. Unpaved roadway surface. The entire roadway width will be resurfaced with six (6) inches of stone from a point ten (10) feet measured longitudinally along the roadway from the center of the excavation each way.

C. Jacking, boring, pushing, tunneling, retrofitting, and pipe lining projects. Any pavement damage caused by these types of projects will be restored in conformance with provisions of sections 5, 6, & 7 of this ordinance. Any existing pavement damage relating to the replacement, retrofitting, or pipe

lining of damaged utilities will be restored in conformance with sections 5, 6, & 7 of this ordinance.

**SECTION VII. RIGHT-OF-WAY AND EASEMENT RESTORATION
OUTSIDE ROADWAY AREAS**

- A. Driveways.
1. Asphalt.
 - a) Asphalt driveways affected by the construction project shall be replaced from the right-of-way line to the curb or edge of road.
 - b) Construction of asphalt driveways will comply with Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 410.
 2. Concrete.
 - a) Construction of concrete driveways affected by the construction project shall be replaced to the nearest control joint.
 - b) Construction of concrete driveways will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 618.
- B. Concrete sidewalks.
1. Concrete sidewalks affected by the construction project shall be replaced to the nearest control joint in the affected construction area. Joints will be sawed unless at an expansion joint.
 2. Construction of sidewalks will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 618.
- C. Curb and gutter.
1. Concrete curb and gutter, affected by the construction project, will be replaced from joint to joint in the affected area.
 2. Concrete curb and gutter construction will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 623.
- D. Miscellaneous structures.
1. All walls, steps, and other miscellaneous structures, affected by the construction, will be replaced as required by the Director of Public Works.
- E. Drainage systems and structures.
1. All disturbed drainage channels, structures, and pipe systems affected by the construction will be replaced as required by the Director of Public Works.

F. Unpaved areas.

1. All established lawn areas, affected by the construction project, will be replaced with similar landscaping materials which were existing prior to the project construction beginning, or upgraded at the discretion of the Director of Public Works. Other areas will be restored with approved topsoil replacement, and or sodding or seeding.

TYPICAL ASPHALT ROADWAY REPAIR

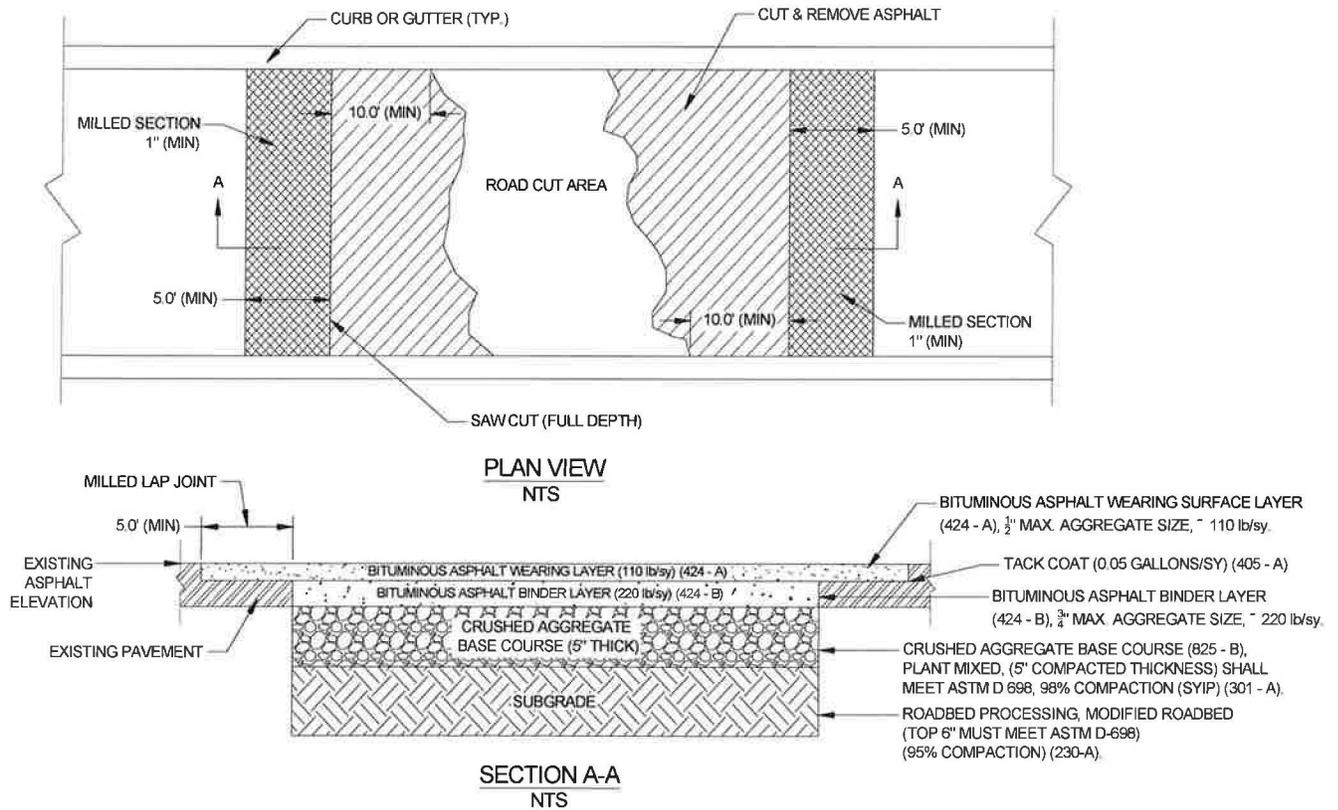


Figure B-1