ORDINANCE NO. 2009-12-01

AN ORDINANCE TO REGULATE THE EXCAVATION AND CUTTING OF STREETS IN THE CITY OF LEEDS ALABAMA BY PROVIDING FOR THE REPEAL OF THE EXISTING ORDINANCE AND REPLACING IT WITH THE PROVISIONS CONTAINED HEREIN

WHEREAS, Ordinance Number 344, §§ (a) - (m) was adopted February 3, 1969 regulating the excavation and cutting of streets, alleys, sidewalks, or public ways of the City of Leeds, Alabama and codified as §§ 17-20 to 17-29 of the Code of Ordinances of the City of Leeds, Alabama;

WHEREAS, Ordinance Number 557 §§ (a) - (n), was adopted December 7, 1987, which provided for the repeal of Ordinance Number 344 and enacted new provisions, pertaining to the same subject matter and were codified as §§ 17-20 to 17-29 of the Code of Ordinances of the City of Leeds, Alabama in lieu of those repealed;

WHEREAS, the city desires to repeal Ordinance Number 557 and enact new provisions, pertaining to the same subject matter;

NOW THEREFORE BE IT ORDAINED AS FOLLOWS, that Ordinance No. 557 codified in the Code of Ordinances of the City of Leeds as Chapter 17, Article II, §§ 17-20 through 17-29 is hereby repealed and the following is hereby adopted:

Section 1. Permits—Generally.

It shall be unlawful, except in an emergency as set forth in section 4, for any person other than an authorized officer, employee or agent of the city to make any opening, cut or excavation in or under the surface of any street, alley, sidewalk, right-of-way or public way on the property of the city without having first obtained a permit as provided by this Ordinance.

Section 2. Same—Issuance; fees.

(a) All permits provided for in sections 1 and 4 shall be authorized by the city's superintendent of the streets & sanitation, or his designee, and issued by the City Clerk or his authorized deputy, copies of which shall be furnished immediately to the street & sanitation and fire departments.

(b) A permit fee as set forth in section 12 shall be paid for each permit, prior to issuance, in addition to all other charges and deposits required herein to be paid, except that Public Utilities may pay an annual fee in lieu of a permit fee. The annual fee is due on a calendar year basis and must be remitted before issuance of the first permit to a Public Utility in a new calendar year.

Section 3. Licensing and bonding of excavation contractors.

Any person who makes or performs any excavation in the city must, prior to making any excavation, obtain the proper license and execute and deposit with the City Clerk a good and sufficient bond in the sum of $10,000.00 which bond shall be executed by a corporate surety authorized to do business in the state. The bond shall be condi-

tioned on the faithful observance by such person of all laws, ordinances, rules and regulations pertaining to the business of making excavations. The bond shall provide (1) that the city shall be indemnified and saved harmless from all claims and liabilities arising from acts or omissions of such person and his employee, servants and agents in performing such work or arising from any unfaithful or inadequate work done either by him or by his employees, servants and agents, and (2) that all work done by such person shall be performed in a good and workmanlike manner. The bond shall be subject to the approval of the City Clerk and shall be filed with the City Clerk. Only one bond is required to be filed and maintained by any person covered by this section. This bond shall remain in full force and effect until 30 days after receipt by the City Clerk of written notice of the surety's intent to cancel this bond. Except with respect to liability accruing prior to the effective date of cancellation, the surety's liability on the bond shall terminate 30 days after receipt by the City Clerk of such written notice. The form and substance of the bond shall be as established by the city council. A copy of the form of such bond shall be kept on file in the office of the City Clerk. The bond shall be submitted to the City Clerk for approval and shall be kept in the custody of the City Clerk. Failure of persons or entities covered by the section to maintain the proper bond shall be a violation of this Ordinance.

Section 4. Repair of sewers, mains, etc., endangering property or persons.

(a) In the event that any sewer, main, conduit or other utility installation in or under any street, alley, sidewalk or public way shall burst, break or otherwise be in such condition as seriously to endanger persons or property, the owner of such sewer, main, conduit or other installation shall immediately repair such condition and shall immediately take all necessary steps to make such location safe and secure. Such owner shall not, however, begin making any permanent repairs to such street, alley or sidewalk until he shall have secured a permit as provided in this article. Such permit shall be secured within 24 business-day hours after such break or serious condition shall have developed, and the necessary temporary repairs to the street, alley, sidewalk, or public way shall be made as directed by the Building Inspector or his authorized deputy and shall be completed as soon as practicable after receipt of this permit.

(b) It shall be unlawful for any person to cut any pavement under this section unless such emergency shall be of such nature that immediate repair is required for the safety of persons or property or both, and it shall be unlawful for any such person to fail to comply with all other provisions of this section including, but not limited to, the securing of such permit within the time required therein and the payment of the special charge under section 9, and the making of permanent restoration in the manner and time required by this section and section 5.

Section 5. Restoration.

(a) Prior to issuance of any permit as provided in sections 1 and 4, any person for whom application for such permit is made shall, in addition to the fees and other payments required herein to be made, deposit with the city a certified check, payable to the order of the city, in the amount determined by the City Clerk to be necessary to restore the street, sidewalk or right-of-way. Such deposit amount shall be based on the cost of restoration as set forth in Section 12 herein with a minimum charge in any case as set forth in section 12. The city shall hold any such deposit for one (1) year after completion of the restoration of the pavement, curb or sidewalk to the

satisfaction of the city. Upon expiration of the one (1) year period, the city shall refund any remaining deposit to the permit holder.

(b) Any Public Utility that regularly applies for permits under this Ordinance may, at its option, maintain a cash deposit with the City Clerk in the amount of $10,000.00 in lieu of paying the per permit deposit set forth in paragraph (a) above. Should the balance of the cash deposit fall below $10,000.00 at any time, the Public Utility must make such additional cash deposit as necessary to maintain the $10,000.00 deposit. This additional deposit must be made within 21 days of notice of a deficiency by the City Clerk to the Public Utility.

(c) The city shall perform or complete, or have performed or completed, any work necessary to restore the pavement, curb or sidewalk to the satisfaction of the city and pay the cost of such restoration work from the deposit set forth in subsection (a) or (b) above if: (a) the permit holder does not perform the restoration work within a reasonable period of time or performs it in a manner which is unsatisfactory to the city; or (b) during the one (1) year period following completion of the restoration, the restoration becomes unsatisfactory to the city. If the deposit is not sufficient to pay the cost of the restoration which the city performed or had performed, such difference shall be paid by the permit holder, or his agent or contractor, all of whom shall be jointly and severally liable therefore. Such payment must be made within five days of the day upon which the permit holder and such other parties are billed by the city for such amount. The cost of restoration for asphalt or concrete pavement is as set forth in section 12 and such reasonable amount for curb and sidewalk as may be fixed by the city's superintendent of streets & sanitation, or his designee.

(d) It shall be unlawful for any person, firm or corporation, except a Public Utility, to use or attempt to use any sewer or public utility for which such pavement, sidewalk or curb cut was made until such restoration shall have been completed and finally accepted by the streets & sanitation department, or its designee, where such work is done by a contractor and the cost thereof paid where done by the city.

(e) Whenever an excavation is made in any unimproved, unpaved street, alley or sidewalk, or the same is otherwise obstructed, any person doing the same shall forthwith, upon completion of the work thereon, proceed to fill in such excavation, to remove all obstructions and to leave such street, alley or sidewalk in as good condition as he found it, and free from all irregularities, obstructions or unevenness.

(f) In the event any cut, opening or excavation is made in or under the surface of any street or alley which is already paved or which is about to be paved pursuant to the terms of any existing contract, it shall be the duty of the persons making such cut, opening or excavation or causing same to be done and of each agent acting for any such persons to make restoration in accordance with the diagram and description of the minimum requirement for street restoration attached hereto as Exhibit A and on file and available for inspection in the offices of the City Clerk and the streets & sanitation department. All restorations made under this provision shall be made under the supervision of the streets & sanitation department, or its designee, and are subject to its final acceptance. Such restoration work must be performed by a licensed contractor, but, in the event a permit is issued to a Public Utility such work may be done by competent employees of such utility, if authorized by the streets & sanitation department,

or its designee, but, however, in all events, in accordance with such specifications, supervision and final acceptance herein set out.

Section 6. Installations where city intends to repave street—Notice of city's intent generally.

Whenever the city governing body determines to pave or repave any street, alley or any portion of the vehicular way of any street or alley by a public improvement ordinance assessing abutting property owners for such improvements or by any other means or procedure and whenever the State of Alabama, acting through any of its duly constituted agencies either solely or in conjunction with the Federal Bureau of Roads or other federal agency, proposes to pave or repave any street or alley in the city and whenever any private person proposes to do any such work in connection with the development of any subdivision in the city, the City Clerk upon receipt of appropriate information and advice from the streets & sanitation department, or its designee, shall mail written notice thereof by certified mail, postage prepaid, to the person last assessed for such abutting property for city ad valorem taxation, at his most recent address on the records of the County Tax Assessor's Office for the county in which such abutting property is situated and to each Public Utility maintaining any sewers, mains, conduits and other utility installations in or under such roadway or alley, informing all such persons and such utilities that no permit for any opening, cut or excavation in the proposed paving or repaving will be issued for a period for five years after the completion date of such improvements, except under conditions set forth in this article, and that each Public Utility is required by law to install all underground sewers, mains, conduits or other utility installations and to make all repairs thereto then necessary or contemplated to be necessary within five years, within 30 days from the date of such notice, and that each such abutting property owner, within the same period, is required either to install all necessary service lines connecting with any mains, sewers, conduits or other utility installations located in the street or alley or to stub out or extend such connections to the property line, failing which the right to make any such installation, except as otherwise provided in this article shall be forfeited for a period of five years after the completion date of such new paving. Copies of such notices shall also be transmitted to the Water Works Board of the City of Leeds.

Section 7. Same—Duty of affected utilities and landowners to act.

Within 30 days after the date of any notice mailed as provided in section 6, it shall be the duty of each Public Utility to which the City Clerk has mailed such notice to install all sewers, mains, conduits and other necessary utility installations and to make all needed repairs thereto then necessary or contemplated to be necessary within five years. In the event any abutting property owner to whom a notice is sent pursuant to section 6 shall fail, within 30 days after the date of such notice, to install all necessary service lines connecting with any mains, sewers, conduits or other utility installations or to stub out or extend such connections to the property lines, all rights of such owner or his successors in title to make any such installation, except as otherwise provided in this article, shall be forfeited for a period of five years after the date of completion of such new paving.

Section 8. Same—Factors beyond applicant's control; charges where notice was not mailed.

In the event that the city's superintendent of the streets & sanitation, or his designee, shall, in his sound discretion, determine that due to circumstances beyond the control of any person who owns such property as to which notice was mailed as provided in section 6, which abuts on or is in any street or alley which has been paved or repaved within five years next preceding the application for a pavement cut permit, improvements on such property have been damaged or destroyed in such manner as to require a permit for a pavement cut to be issued pursuant to the rebuilding or repair of such destroyed or damaged improvements, then the City Clerk may approve the issuance of a permit for such pavement cut without requiring the payment of such special charge as provided in section 9.

Section 9. Fees for cutting improved surfaces.

(a) Any person authorized by this ordinance to make any opening, cut or excavation in or under the surface of any paved, curbed or otherwise improved street, alley or sidewalk which has been paved or repaved less than five years prior to the application for such permit, shall, at the time the permit provided for in sections 1 and 4 is applied for and prior to the issuance thereof, pay to the City Clerk a special charge to become a part of the general fund of the city in an amount calculated according to the age of the pavement, as set forth in section 12.

(b) In no case shall such special charge be required where notice was not mailed as provided in section 6.

Section 10. Applicability of article to electric, gas, building and plumbing codes.

Any and all provisions of the electrical code, gas code, building code and plumbing code of the city relating to excavation in streets or alleys and relating to connections with or use of sewers and utilities requiring a permit for pavement, sidewalk or curb cuts as provided in this Ordinance shall be subject to all applicable provisions of this Ordinance.

Section 11. Costs of restoration on violation of article.

In addition to any other penalty imposed by the provisions of the Code of Ordinances of the City of Leeds, Alabama or other ordinances of the city, any person violating the provisions of this article shall pay all costs of restoring any street, sidewalk, alley or other public way necessitated by such violation.

Section 12. Fees.

The fees to be paid to the city for the service, license or permit indicated shall be as follows. The presence of a fee in this section without a requirement elsewhere in this Ordinance that the fee be paid shall be construed as a requirement that the fee be paid:

Section of this Ordinance	Applicable Fee		Amount of Fee (in $)
Section 2	Excavation Permit Fee		30.00
	Public Utility Annual Permit Fee		100.00
Section 5	Cost of restoration for asphalt or concrete pavement (per square yard)		300.00
	With a Minimum Charge of		1,500.00
	Public Utility Cash Deposit		10,000.00
Section 9	Charge for cutting improved surfaces according to the age of the pavement		
		During the first 12 months after completion	500.00
		During the second 12 months after completion	400.00
		During the third 12 months after completion	300.00
		During the fourth 12 months after completion	200.00
		During the fifth 12 months after completion	100.00

Section 13. Traffic Control.

Open excavations shall not remain open and unattended during repair. The holder of the permit issued pursuant to this Ordinance shall maintain traffic and post all necessary signs and flagmen in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highway, latest edition.

Section 14. Conflict of Laws.

All laws or parts of laws which conflict with this Ordinance, including, but not limited to Ordinance No. 557 §§ (a)-(n), are hereby repealed.

COUNCIL ROLL CALL: **AYES: 6**

NOES: 0

ABSENT FROM VOTING: 0

ABSTAIN: 0

CITY OF LEEDS, ALABAMA

R. Eric Patt

R. ERIC PATTERSON, MAYOR

12-07-09

DATE

ATTEST:

KEVIN FOUTS, ACTING CITY CLERK

I, Kevin Fouts, Acting City Clerk of the City of Leeds, hereby certify that the above Ordinance was duly adopted by the City Council of the City of Leeds at a regular meeting held on the 7th day of December 2009, and that same has been published in accordance with law in the Leeds News on the 10th day of December 2009.

Kevin Fouts, Acting City Clerk