

TOWN OF PERDIDO BEACH

ORDINANCE 2010-02

AN ORDINANCE REQUIRING A PERMIT TO PERFORM WORK WITHIN THE PUBLIC RIGHTS OF WAY IN THE TOWN OF PERDIDO BEACH, ALABAMA

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF PERDIDO BEACH, ALABAMA, AS FOLLOWS:

SECTION 1. DEFINITIONS:

- (a) *Town* - The Town of Perdido Beach, Alabama, and other areas which the Town may have ownership of a right of way.
- (b) *Mayor* - The person responsible for the Public Works activities for the Town or any other agent designated by the Mayor to act on behalf of the Town.
- (c) *Permittee* - The contractor, firm, corporation or any other person or entity holding a Permit under this ordinance and/or actually performing the work under the Permit.

SECTION 2. PERMIT REQUIREMENTS.

A Public Right of Way Access Permit (hereinafter referred to as a "Permit") shall be obtained prior to the commencement of any construction or other work within any public right of way, except as provided for emergency work. It shall be unlawful for any person to dig up, open, excavate, construct or alter, or to cause to be altered, dug up, opened, excavated or constructed, any street, alley, sidewalk, drainage ditch or any other public right of way in the Town without first having secured a Permit from the Town. When the project cost estimate is more than five thousand (5000) dollars all work shall be done by an appropriate contractor.

SECTION 3. ESTABLISHMENT OF REGULATIONS AND SPECIFICATIONS.

The Town may establish regulations, specifications and/or conditions for work performed within a public right of way for the protection of the right of way, public improvements and/or persons and property as may be deemed necessary in the discretion of the Mayor. It shall be unlawful for any person to perform any work within a public right of way in violation of any applicable laws, rules, standards, specifications, and any terms and conditions set forth in the Permit as prescribed by the Town. In addition, the Town may establish a time limit in which the work is required

to be completed under the Permit which is either shorter or longer than is required under the Ordinance.

SECTION 4. APPLICATION FOR PERMIT.

Applications for a Permit shall indicate the exact location, depth, extent, nature and purpose of the proposed work, and the application shall set forth time required for the work, the name and address of the Permittee and the cost of the work. In addition, the Town, at its discretion, may request a sketch or plan of the proposed work.

A separate Permit shall be required for each excavation, construction or work project. The Permit must be obtained at least ten (10) working days prior to the commencement of the work. The Permit shall be kept at the site of the work and shall be exhibited upon request by any law enforcement officer, the Mayor or any authorized representative.

If emergency work or repairs are required, within two (2) business days after the occurrence of the emergency, any person, firm, contractor, corporation or other entity performing the work shall apply for the necessary Permit, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the action it took in response to the emergency.

SECTION 5. WORK PERFORMED AT THE REQUEST OR ORDER OF THE TOWN OF PERDIDO BEACH, ALABAMA.

The work of installing range boxes, surveying monuments, adjusting manhole rings and service boxes or any other work undertaken solely for the convenience or benefit of and at the order of the Town of Perdido Beach shall require a Permit, but the Permit shall be issued on a "no fee" basis. *This Ordinance shall not apply to the State of Alabama, Baldwin County, or the Town of Perdido Beach, having an obligation or other mandate to perform work within a public right of way of the Town.*

SECTION 6. TIME OF COMPLETION.

Unless otherwise specified, Permits shall be valid for a period of thirty (30) days, and all work to be performed under the Permit shall be completed with thirty (30) days of the date of issuance of said Permit. The time for completion may be extended for an additional thirty (30) day period in the discretion of the Mayor, provided the request for an extension of time is obtained prior to the expiration date of the Permit. Failure to

complete the work in accordance with the Permit or to obtain an extension of time prior to the expiration of the Permit will require the Permittee to obtain a new Permit and pay the applicable fees. Within thirty (30) days of the completed project the permittee shall provide the Town with an “as built” drawing or blue print indicative of the completed project.

SECTION 7. INSPECTION.

The Town shall have the right and authority to inspect all work performed under the Permit, including but not limited to, clearing and grubbing, compaction of sub-grade, placement of sub-base, base and asphalt, form concrete work, structures, materials to be used, materials actually used and any other aspect of the work. The Mayor may be present on the site to advise contractors on the applicable laws, rules, standards and specifications, and the Mayor shall have the authority to reject any defective materials and workmanship not in conformance with the Permit and the applicable laws, rules, standards and specifications governing the projects.

SECTION 8. FEES.

An application fee of \$50.00 shall be paid for a Permit at the time of application for the Permit. The Permit fee is non-refundable regardless of whether or not the Permittee actually undertakes to perform the work. If the Mayor or designee is required to work, inspect or perform any services on behalf of a Permittee during any hours other than normal working hours, (i.e. Monday through Friday, 8:00 AM to 4:00 PM), the Permittee shall be required to pay \$30.00 per hour for the services of said person.

SECTION 9. BOND

For work exceeding a cost of more than five thousand (5000) dollars, the Town shall require the Permittee to furnish a bond payable to the Town of Perdido Beach conditioned upon the faithful performance and discharge of all duties, obligations and/or work pursuant to a Permit issued under the provisions of the Ordinance. The bond shall be in an amount equal to the cost of the work plus 10% or \$500.00, whichever is greater, and the bond shall be issued in the name of the Permittee. Said bond shall assure that the Permittee will comply with the Permit and all applicable laws, rules, standards and specifications and shall assure recovery by the Town of any expenses incurred in connection with the work to be performed under the Permit for a period of one year after completion of said work.

The Permittee, by accepting the Permit, expressly guarantees and warrants to complete the work in accordance with the Permit and all applicable laws, rules, standards and specifications and agrees to maintain and make any and all necessary repairs, upon demand by the Town of Perdido Beach or the Mayor, during the warranty period. The warranty period shall continue from the date of acceptance of the Permit by the Permittee until one year after the work performed under the Permit is completed. Failure to perform any obligations or duties imposed upon the Permittee by this Ordinance, the Permit or any other applicable laws, rules, standards and specifications shall subject the Permittee to forfeiture of his or her bond and any and all other penalties imposed under this Ordinance or other applicable laws.

At the option of the Permittee, the Permittee may deliver a cashier's check to the Town payable to the Town of Perdido Beach in an amount equal to the cost of the work plus ten percent (10%) or \$500.00, whichever is greater, and the cashier's check shall serve as surety in and to the same extent as a bond under this Ordinance.

SECTION 10. LIABILITY.

The Permittee shall be liable for any damage caused to the right of way and any other property or improvements owned by the Town of Perdido Beach or others. In addition, the Permittee expressly agrees to hold harmless the Town of Perdido Beach from any and all liability arising out of the issuance of a Permit and any work performed there under, and the Permittee agrees to reimburse the Town for all costs and monies paid or expended by the Town of Perdido Beach as the result of any litigation, including but not limited to court costs, judgments and attorney's fees.

SECTION 11. PENALTIES.

Failure of the Permittee or their agent to comply with any of the terms and conditions of the Permit or any other applicable laws, rules, standards and specifications shall be sufficient cause for cancellation of the Permit by the Mayor, and said failure to comply shall be taken into consideration in determining whether or not to grant future Permits. The Permit and the privileges, duties and obligation there under, shall be binding upon any and all successors, assigns and contractors of the Permittee.

Any person, firm, corporation or other entity commencing any work without first obtaining a valid Permit, or found to be in violation of the provisions of the Ordinance, shall be fined in the amount of not less than \$50.00 and not more than

\$100.00 for each offense, and each day shall constitute a separate offense. No further Permit shall be issued to a party convicted of violating this Ordinance until all prior fines are paid.

SECTION 12. CIVIL REMEDIES.

In addition to the penalties established above for violation of the Ordinance, the Town of Perdido Beach expressly reserves the right to take any appropriate legal action and/or seek equitable relief, including but not limited to, correcting any defective work as the result of defective materials or workmanship and filing suit to collect the costs of said repairs from the Permittee.

Any work, or the negligent or improper performance of any work, in any right of way in the Town (with or without a permit as required under this Ordinance) which constitutes or creates an emergency or imminent danger of physical harm to persons or property is hereby declared to be abated as provided in any applicable laws or ordinances, or by appropriate legal or equitable action.

SECTION 13. LEAST DISRUPTIVE TECHNOLOGY.

Permittees are encouraged to perform all work in a manner resulting in the least amount of damage and disruption of the rights of way. Permittees will be required to use trenchless technology for projects within the roadway limits, in arterial and other high volume streets and in streets constructed or resurfaced within the last five (5) years, unless otherwise approved by the Town and such approval shall not be unreasonably withheld. The Town may require trenchless technology in other locations where extreme circumstance prevent or make open cut methods impractical. Permittees may use either the open cut method or trenchless technology for projects outside the road way limits.

SECTION 14. NOT IN LIEU OF FRANCHISE.

Compliance with the permitting requirements of the Ordinance shall not excuse any person, entity or governmental agency from complying with all other requirements of law, including without limitation, holding a valid franchise of the Town of Perdido Beach.

SECTION 15. REPEALER CLAUSE.

Any ordinance heretofore adopted by the Town Council of the Town of Perdido Beach, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 16. SEVERABILITY CLAUSE.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance which shall continue in full force and effect notwithstanding such holding.

This Ordinance shall become effective upon its adoption.

ADOPTED AND APPROVED THIS 24th DAY OF JUNE, 2010

ATTEST:

Lynn Thompson, Town Clerk

Patsy W. Parker, Mayor

CERTIFICATION

I, Mrs. Lynn Thompson, Town Clerk/Treasurer of the Town of Perdido Beach, Alabama, do hereby certify that the above noted Ordinance was published by posting copies thereof in the Perdido Beach Town Hall, the Perdido Beach Volunteer Fire Department, Perdido Beach Baptist Church, and Saint Andrews By The Sea Church, all located in the Town of Perdido Beach, Alabama, on the **25th day of June, 2010**, and it becomes effective **five (5) days thereafter**.

Mrs. Lynn Thompson, Town Clerk