

# ORDINANCE NO. 1241

**AN ORDINANCE to amend and reordain Section 28-8, Article I, Chapter 28 of The Code of the City of Alexandria, Virginia, 1953, as amended, which Section 28-8 relates to PERMIT AND BOND REQUIRED TO EXCAVATE IN STREETS, which Article I relates to STREETS AND SIDEWALKS IN GENERAL, which Chapter 28 relates to STREETS AND SIDEWALKS and which amended Section 28-8 establishes a COMPREHENSIVE NEW LAW PERTAINING TO STREET AND SIDEWALK OPENINGS: REGULATIONS AND PERMITS AND PROVIDES PENALTIES FOR VIOLATIONS.**

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 28-8, Article I, Chapter 28 of the Code of the City of Alexandria, Virginia, 1953, as amended, be and the same hereby is amended and reordained to read as follows:

**Sec. 28-8. Street and sidewalk openings; regulations, permits and penalties for violations.**

1. Definitions. The following words, when used in this section, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:
  - a. "Applicant" shall mean any person who makes application for a permit.
  - b. "City" shall mean the City of Alexandria, Commonwealth of Virginia.
  - c. "Director of Public Works" shall mean the person in charge of the Department of Public Works, or his authorized deputy, representative or inspector.
  - d. "Director of Traffic" shall mean the person in charge of the Department of Traffic, or his authorized deputy, representative or inspector.
  - e. "Emergency" shall mean an unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger to persons or properties.
  - f. "Permittee" shall mean and include any natural person, partnership, firm, association, utility, corporation, or authority created pursuant to an act of the General Assembly. Whenever used in any section prescribing and imposing a penalty, the item "Person," as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.
  - g. "Streets" shall mean and include any public street, public highway, public alley, public sidewalk, public easement, public right-of-way, or public road accepted or maintained by the City of Alexandria.
2. Permit Required. It shall be unlawful for any person, except as specified below, to dig up, break, excavate, tunnel, undermine or in any manner break up any street or to make or cause to be made

any excavation in or under the surface of any street for any purpose unless such person shall have first obtained a valid permit for such work from the Director of Public Works. Authorized personnel of the Department of Public Works shall be exempt from the provision of this section when engaged in their official capacity.

When an emergency demands the work to be done immediately, provided the permit could not reasonably and practicably have been obtained beforehand, the person may proceed with an opening without a permit, provided, however, that notification of such emergency work shall be given to the Director of Traffic by telephone before proceeding with the work. The person shall thereafter apply for a permit on the first regular business day on which the office of the Director of Public Works is open for business and said permit shall be retroactive to the date when the work was begun.

3. Application For Permits. Any person desiring to dig up, break, excavate, tunnel, or undermine any street, shall make written application to the Department of Public Works on such forms as the Department may prescribe. No work shall commence until such application has been approved and a permit issued.

Applications for a permit shall specify the location, size and purpose of each opening, and if, in the opinion of the Director of Public Works, the work is of such extent as to warrant detailed plans, such plans shall be filed in triplicate with the application; one copy to be returned to the applicant upon the issuance of such permit. Application shall be made at least 48 hours before the proposed date of starting work, except as provided in Section 2 for emergency work.

4. Issuance of Permit. Upon approval of the application, together with the payment of the hereinafter prescribed fee and surcharge, if any, and deposit with the Director of Public Works of the required certificates of insurance and bonds, the Director of Public Works shall issue a permit for the requested work, subject to all of the provisions of Section 28-8 and other applicable laws or regulations.

A permit shall not be refused to any person who complies with the provisions of Section 28-8 and who shall have been given the right of way over or use of any streets or alleys by the Commonwealth of Virginia or the City of Alexandria, except where the provisions of Section 28-8 or other applicable sections of law would be violated.

The permit shall contain, but not be limited to, a description of the location, size and purpose of the excavation, the name of the person or firm to whom issued, any special conditions applicable to the particular permit, the amount of the fee, together with a place for receipt by the City Collector, and a signed agreement by the permittee saving the City harmless from all liability as a result of the work covered by the permit.

Permits are not transferable from one person to another and the work shall not be made in any place other than the location specifically designated in the permit. The Director of Public Works

may in the public interest refuse to issue further permits to any person who has had an opening permit suspended or revoked, or who is delinquent in opening permit fees.

5. Expiration of Permit. Every permit shall expire at the end of the period of time which shall be set out in the permit. If the permittee shall be unable to complete the work within the specified time, provided the work was commenced prior to the expiration time, he shall, prior to expiration of the permit, present in writing to the Director of Public Works a request for an extension of time, setting forth therein the reasons for the requested extension. The Director of Public Works may for good cause shown grant an extension of time in writing. If the permit expires before the actual work commences, it shall be necessary to make application for and be issued a new permit. It shall be unlawful for any person to dig up, break, excavate, tunnel, or undermine any street when a permit has expired.
6. Suspension and Revocation of Permits. The Director of Public Works may order an immediate suspension of any permit when he finds that there is:
  - a. Violation of any condition of the permit or of any provision of Section 28-8.
  - b. Violation of any provision of any other applicable ordinance, law, or regulation relating to the work.
  - c. Existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others.

The Director of Public Works may reinstate a suspended permit when he finds that there is no longer such a violation, nuisance or danger.

Any permit may be revoked by the Director of Public Works, after seven days notice to the permittee, for:

- a. Violation of any condition of the permit or of any provision of Section 28-8.
- b. Violation of any provision of any other applicable ordinance, law, or regulation relating to the work.
- c. Existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others.
- d. Continued existence of a suspended permit which has not been reinstated.

Written notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work. The notice shall contain a brief statement of the grounds relied upon for revoking the permit and must be served at least seven days prior to revocation. Notice may be served either by personal delivery thereof to the person to be notified or by certified or registered

United States mail addressed to the last known address of the person to be notified.

When any permit has been revoked and the work authorized by the permit has not been completed, the Director of Public Works shall do such work as may be necessary to restore the street or part thereof to as good a condition as before the opening was made. Expenses incurred by the City may be recovered from the deposit or bond the permittee has made or filed with the City or by any other lawful remedy.

It shall be unlawful for any person to dig up, break, excavate, tunnel, or undermine any street when his permit has been suspended or revoked.

7. Bond and Insurance. General—Every person desiring to obtain a permit under this section shall first furnish the Director of Public Works with:

- a. An adequate performance and payment bond.
- b. An adequate maintenance bond.
- c. A certificate of public liability and property damage insurance including automobile insurance when applicable.

(1) Performance and payment bond. This bond shall be conditioned upon (a) completion of the opening in satisfactory compliance with the regulations governing street openings and all other applicable city and state laws, and (b) payment for additional work done over and above the original amount of the permit as set forth in the regulations for street openings. This bond shall be in an amount sufficient to cover the cost of making the opening, the amount to be determined by the Director of Public Works. For cases involving more than one permit per year, such bond may be a continuing bond but shall be for not less than \$5,000.00.

(2) Maintenance bond. This bond shall be conditioned upon maintaining and keeping the completed opening in good repair, in compliance with the street opening regulations and the provisions of Section 28-8. The term of each such bond shall begin on the date the city is notified by the permittee that work is completed and shall terminate upon issuance of a final certificate of inspection by the Director of Public Works, but in no case shall the date of termination be less than one year after the date the city is notified by the permittee that work is completed. This bond shall be in an amount sufficient to cover the cost of maintaining and repairing the opening, the amount to be determined by the Director of Public Works. In the case of a permittee who anticipates requesting more than one permit per year, the bond may be a continuing one and shall be for not less than \$5,000.00 (3) Public liability and property damage insurance. Public liability insurance in the amount of \$100,000/\$300,000 and property damage insurance in the amount of \$10,000 shall be carried by the applicant who shall deposit certificates of same with the Director of Public Works. Such insurance shall

be kept in force at all times while such applicant shall hold valid permits for street openings, and shall indemnify and save harmless the city from all liability due to acts of omission or commission by the permittee during the life of the permit. Public service corporations franchised to do business by the city may file a bona fide statement of self-insurance in place of a certificate of insurance.

8. Fees—generally. It shall be the duty and responsibility of any person to pay the applicable fee as set forth herein and any surcharge and inspection costs prior to the issuance of a permit.

The Director of Public Works, upon receipt of a properly completed application, shall determine the amount of the fee, surcharge, if any, and inspection costs, if any, to be paid by the permittee in accordance with the provisions of Section 28-8. The fee, surcharge, if any, and inspection costs, if any, shall be paid prior to the time the permit is received. If inspection fees are over-estimated a refund shall be made to the permittee, and if under-estimated the additional cost shall be paid before continuing work. In the case of excavations by public utility companies operating under a franchise issued by the city, a permit may be granted without payment of such fee, surcharge or inspection costs at the time of issuance, but in such cases the utility shall be liable for payment of all such fees, surcharges and inspection costs on a monthly basis, based upon bills submitted by the city; provided, however, that the city may in the future require such fee, surcharge or inspection costs from any such utility to be paid at the time of issuance, if a bill rendered in accordance with the above remains unpaid thirty days after date of billing.

9. Base and surface work performed by city. The city will normally install or cause to be installed a new street base and surface after excavation without additional cost to any permittee.
10. Persons not to install street base or surface without approval of Director of Public Works. It shall be unlawful for any person to install or have installed a new street base or surface at the site of any break, excavation or tunnel in the city streets unless such person shall have first obtained the approval of the Director of Public Works.
11. Notice of openings in new streets, sidewalks and alleys. When the city shall plan to improve or pave any street, the Director of Public Works shall first give notice to all persons owning property abutting on the street about to be paved or improved, and to all public utilities and authorities operating in the City, and all such persons, utilities and authorities shall make all connections as well as any repairs thereto, which would necessitate excavation of the street, within thirty (30) days from the giving of such notice if they wish to avoid extra costs. The time may be extended if permission is requested in writing and approved by the Director of Public Works.
12. Map requirements. Every person owning, using, controlling or having an interest in pipes, conduits, ducts or other structures under the surface of any street used for the purpose of supplying or

conveying gas, electricity, communication impulses, water or steam to or from the city or to or from its inhabitants, or for any other purposes, shall file with the Director of Public Works within one-hundred-twenty (120) days after the adoption of this section a map or set of maps, each drawn to scale, showing the location, size and description of all such installations.

Within thirty (30) days after the first day of January of each and every year, such person shall file with the Director of Public Works a corrected map or set of maps, each drawn to scale as above, showing such installations, including all those made during the previous year; provided, however, if no additions have been made to its installation during the previous year, a utility or authority may file with the Director of Public Works a written statement to that effect, within the period of time specified above.

Map requirements shall not apply to service connections.

### **13. Regulations.**

#### **a. General regulations.**

(1) No opening or excavation in any street shall extend beyond the center line of the street before being backfilled and the surface of the street temporarily restored. On arterial streets or major thoroughfares, no excavation shall extend across more than one traffic lane, unless, in the opinion of the Director of Traffic, such excavation will not unduly impede traffic. No opening shall be any larger in size than specified by the permit.

(2) Monuments of concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point or a permanent survey bench mark within the city shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the Director of Public Works. Permission shall be granted only upon condition that the permittee shall pay all expenses incident to the proper replacement of the monument.

(3) When any earth, gravel or other excavated material is caused to roll, flow or wash upon any street, the permittee shall cause the same to be removed from the street immediately upon notification by the Director of Public Works. In the event the earth, gravel or other excavated material so deposited is not removed, the Director of Public Works shall cause such removal and the cost incurred shall be paid by the permittee.

(4) Access to private driveways shall be provided at all times except during working hours when construction operations prohibit provision of such access. Before any private driveway shall be closed, the users of such access shall be notified and given sufficient time for removal of equipment or automobiles if desired. Fire access must be provided at all times to fire hydrants.

(5) Work authorized by a permit shall be performed between the hours of 7:00 A.M. and 5:00 P.M., Monday through Saturday, except in emergency or when otherwise noted on permit.

(6) In granting any permit, the Director of Public Works may attach such special conditions thereto as may be reasonably necessary to prevent damage to public or private property, and so as to prevent the operation from being conducted in a manner hazardous to life or property or in a manner likely to create a nuisance. Such conditions may include but shall not be limited to: (a) limitations on the period of the year in which the work may be performed; (b) restrictions as to the size and type of equipment; (c) designation of routes upon which materials may be transported; (d) requirements as to the laying of dust, the cleaning of streets, the preventing of noise and other results offensive or injurious to the neighborhood, the general public or any portion thereof; and (e) regulations as to the use of streets in the course of the work.

(7) Upon completion of all work accomplished under the provisions of a permit, the permittee shall notify the Director of Public Works in writing. A certificate of final inspection shall be issued by the Director of Public Works to each permittee not sooner than one (1) year after the permanent restoration of the excavation has been made, provided the work authorized by the permit has been performed according to city specifications and proper maintenance had. Prior to the issuance of a certificate, the Director of Public Works shall make or cause to be made a final inspection of the restoration to determine whether city specifications and proper maintenance have been adhered to.

(8) If any settlement in a restored area occurs within a period of one (1) year from date of completion of the permanent restoration, any expense incurred by the city in correcting such settlement shall be paid by the permittee, unless the permittee submits proof satisfactory to the Director of Public Works that the settlement was not due to defective backfilling or other causes controllable by the permittee.

(9) It is the obligation of the permittee to notify the Director of Public Works and the Director of Traffic Control prior to any opening in any street, and to adhere to any requirements regarding maintaining traffic lanes and times for beginning and ending work and any other ordinances or regulations pertaining to same.

(10) The work of permanent restoration, including both paving surface and paving base, shall be performed by the City of Alexandria or its authorized contractor under the supervision of the Director of Public Works except that public utility companies operating under franchise may perform such restoration for all cuts over 10 square yards in area, under the supervision of the Director of Public Works.

(11) The Director of Public Works may make daily inspection of all work done on any opening, and the Director of Public Works is authorized and empowered to provide a full-time inspector if the work to be performed is of a nature that he deems such inspector necessary to insure compliance with the provisions of Section 28-8.

b. Excavation and backfill.

(1) Excavated materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the Director of Public Works may require the permittee to provide toe boards as bins; and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks shall be installed by the permittee as directed by the Director of Public Works. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, the permittee shall keep a passageway at least one-half the sidewalk width open along such sidewalk line.

(2) All pavement cuts, openings and excavations shall be properly made, backfilled and temporarily surfaced by the permittee according to city specifications.

(3) The Director of Public Works must be notified by the permittee prior to the beginning of backfilling of the date and approximate time at which backfilling will begin.

(4) No backfilling shall be accomplished unless or until the Director of Public Works or a designated city inspector is present.

(5) After excavation is commenced, the work of making and backfilling the same shall be prosecuted with due diligence.

(6) The use of spongy, or frozen material or material of excessive moisture content or excessive plasticity shall not be permitted. Where, in the opinion of the Director of Public Works, the material excavated from the trench is unsatisfactory, such material shall be removed from the site and the backfill shall be made with bank run gravel of gradation and quality approved by the Director.

(7) No puddling or flooding of backfill will be permitted.

(8) Backfill

(a) Backfill over all pipe laid within the limits of the roadway of any street shall conform to Section 302.12 of "Road and Bridge Specifications" of the Virginia Department of Highways, dated April 1, 1958, significant sections of which are quoted below:

"The backfill shall be made in horizontal layers not more than (6) inches thick, and each layer shall be compacted with a mechanical tamper capable of exerting a blow equal to two hundred (200) pounds per square foot of area of the tamping face."

"The Engineer may require that the material used in making the backfill be obtained from a source entirely apart from the structure."

(b) The compacted backfill shall in all cases be equal to or exceed the density of the natural ground adjoining the excavated area.

c. Utilities.

(1) All utility facilities shall be exposed sufficiently ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary.

(2) Pipe drains, pipe culverts, or other facilities encountered shall be protected by the permittee.

(3) When work performed by the permittee interferes with the established drainage system of any street, provision shall be made by the permittee to provide proper drainage to the satisfaction of the Director of Public Works.

(4) The permittee shall be responsible for coordination of his work with the various public utilities which may be affected thereby and for protecting the installation of such utilities.

d. Protection.

(1) Every permittee shall place around the project such barriers, barricades, lights, warning flags and signs as shall be determined by the Director of Public Works and the Director of Traffic to be necessary for the protection of the public. Additional safety requirements may be prescribed by the Director of Public Works.

Whenever any person fails to provide or maintain the safety devices required by the Director of Public Works, such devices shall be installed and maintained by the City. The amount of the cost incurred shall be paid by the permittee or deducted from his deposit.

No person shall willfully move, remove, injure, destroy or extinguish any barrier, warning light, sign, or notice erected, placed or posted in accordance with these regulations.

e. Fees.

(1) The fees for restoration work done by the City shall be as follows:

(a) For each square yard or fraction thereof of asphalt base and asphalt top in accordance with the following table.

0 to, but not including 5 sq. yds.	\$6.00 sq. yd.
5 to, but not including 10 sq. yds.	\$5.25
10 to, but not including 15 sq. yds.	\$4.50
15 to, but not including 25 sq. yds.	\$3.75
25 and up	\$2.50

(b) For each square yard or fraction thereof of concrete base and asphalt top in accordance with the following table:

0 to, but not including 5 sq. yds.	\$20.00
5 to, but not including 10 sq. yds.	\$17.50
10 to, but not including 15 sq. yds.	\$15.00
15 to, but not including 25 sq. yds.	\$11.25
25 and over	\$ 7.50

(c) For each square yard or fraction thereof of finished concrete pavements (street) in accordance with the following table:

0 to, but not including 5 sq. yds.	\$25.00
5 to, but not including 10 sq. yds.	\$22.00
10 to, but not including 15 sq. yds.	\$18.00
15 to, but not including 25 sq. yds.	\$13.50
25 and over	\$ 9.00

(d) For each square yard or fraction thereof of concrete sidewalk \$4.50 or the current unit price for applicable city contract square yard.

(e) For each lineal foot of concrete curb and gutter \$2.60 or the current unit price for applicable city contract lineal foot.

(f) For each square yard or fraction thereof of brick pavement (brick s/w on sand base) \$8.00 square yard.

(g) For each square yard or fraction thereof of brick pavement brick s/w on concrete base) \$12.50 square yard.

(h) For each square yard or fraction thereof of brick pavement (brick driveway on concrete base) \$18.00 square yard.

(2) The fees for restoration work done by Public Utilities shall be as follows: Actual inspection costs (salaries, test, etc.) plus 15% for administration.

(3) Extra costs (surcharge) for openings in new streets, sidewalks and alleys shall be as follows:

No permit shall be issued which would allow an excavation or opening in any paved or improved street or alley or sidewalk, the surface of which has been improved within/ five (5) year period preceding the date of permit issuance unless there has first been paid to the City a surcharge which shall be in addition to the usual permit fee. The surcharge shall be equal to fifty (50) percent of the usual permit fee for an opening if the street or alley or sidewalk has been improved within the preceding five (5) years and

seventy-five (75) percent if such improvement was made within the preceding two (2) years.

(4) Full time inspection costs, when required, shall be paid by the permittee and such costs shall be based on the actual cost of inspection.

(5) When a permit covers more than one opening, separate fees shall be charged for each opening.

14. Penalties for violations. Any person violating any provision of this Section 28-8 or any regulations or conditions promulgated pursuant thereto shall, upon conviction thereof, be fined in an amount not exceeding One Hundred Dollars (\$100.00) or be imprisoned in jail for a period not exceeding thirty (30) days, or be both so fined and imprisoned. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and each day that a violation continues to exist shall constitute a separate offense. The imposition of the penalties herein prescribed shall not preclude action to restrain, correct or abate a violation in any court of jurisdiction.

Section 2. That this ordinance shall be published in a newspaper of general circulation in the City not later than five days following its introduction together with a notice containing the time and the place for a public hearing. The Clerk of the Council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective January 1, 1964.

FRANK E. MANN  
Mayor

Final Passage: October 22, 1963