

ORDINANCE NO. 671-05

AN ORDINANCE REGULATING AND REQUIRING PERMITTING OF DIGGING OR EXCAVATION IN OR UNDER THE STREETS OR SIDEWALKS OF THE CITY OF HELENA OR WITHIN ANY PUBLIC RIGHT-OF-WAY AND PROHIBITING SUCH DIGGING OR EXCAVATION WITHOUT APPROPRIATE PERMITS AND POSTING OF BONDS, AND PROVIDING FOR CRIMINAL PENALTIES FOR THE VIOLATION HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HELENA, ALABAMA, AS FOLLOWS:

Section 1. It shall be unlawful for any person or entity, except duly authorized employees of the City and the Utilities Board of the City of Helena and its duly authorized employees to make any excavations in or under the streets of the City or the public rights-of-way within the City, without first complying with the terms and conditions of this Ordinance.

Section 2. Any person or entity who or which shall desire to make any excavation in or under the street or sidewalks of the City or within the rights-of-way of any public road or thoroughfare shall be required before commencing such excavation to file a written application and obtain a written permit from the City at a cost therefor as is established by the City from time to time and depositing with the City Clerk a sum estimated by the City Engineer to be sufficient to replace and repair such street or pavement or right-of-way in as good condition as it was before or posting good and adequate bond in form and substance as approved by the City to secure the cost of replacing or repairing the same and remedying any other damage which might be sustained, which bond or deposit shall in no event be less than One Thousand Dollars (\$1,000.00). Such bond or deposit shall be on condition that same shall be forfeited to the City, in addition to all other remedies, in the event such street or pavement or right-of-way and any damage occasioned by the digging or excavation is not within fifteen (15) days from the completion of the work, without cost to the City, placed in as good a condition as it was before.

Section 3. Any person or entity who or which makes any excavation in or under the streets or sidewalks of the City or within any public right-of-way shall be responsible for any damage which such person or entity may do to the sewer, street, or sidewalk, or right-of-way, or other utilities of the City located therein, and shall be responsible for restoring the same immediately to as good condition as it was at the beginning of such digging or excavation. Should person or entity fail to make such repairs to the streets, sidewalks, and rights-of-ways are necessary to restore them to as good condition as they were at the beginning of his work, or to repair any damage to City property or right-of-way or utilities, the City shall have the option in its sole discretion to make such repairs; and for such work, there should be made by the City a reasonable charge against said person or entity which shall be payable immediately. Nothing in this section shall be construed to release from liability any person or entity who or which may dig into or under or through any street or

sidewalk or public right-of-way and leave the same in an unsafe condition or fail to restore the same to its condition as it existed prior to the work. Any person or entity who or which fails or refuses to pay any such charges made against him by the City within five (5) working days after notice by the City of such charges shall then and there forfeit the license for any occupation which requires or allows excavating in or under the streets or sidewalks of the City or within the public right-of-way.

Section 4. If any person making any excavation in or near a street or sidewalk or within the public right-of-way shall leave such excavation open, so as to endanger persons in passing along the street or sidewalk, he or it shall be guilty of a misdemeanor.

Section 5. Fences required around excavations abutting sidewalks or streets.

(a) Any person who makes any excavation for the purpose of improving property or for any other purpose or any other excavation dangerous to the public, or who has already made any excavation for the purpose of improving property or for any other purpose, alongside or abutting any sidewalk or public street in the city shall be required, for the purpose of protecting pedestrians, to provide the following means of safety: He shall erect and establish, where such excavation abuts a sidewalk or public street, a substantial fence, either of posts and woven wire or posts and boards or planks, such fence to be at least four feet in height from the grade line of such sidewalk or public street and if built of planks or boards, to be constructed of planks or boards of at least one-half inch in thickness and three inches in width, to be not more than 12 inches apart, and whether built of boards, planks or woven wire, to be fastened to and supported by good and substantial posts, securely set in the ground, not more than eight feet apart.

(b) Any person who shall make or cause to be made any excavation for the purpose of improving property or for any other purpose, or who has already made such excavation for the improvement of property or for any other purpose, alongside any sidewalk or public street in the city and who permits it to remain open and unprovided with means of protection to pedestrians, for a period of 24 hours, shall be guilty of a misdemeanor.

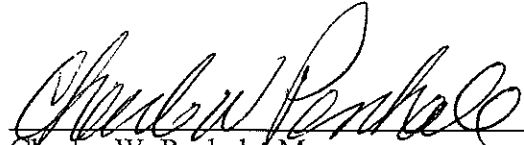
Section 6. Excavating or removing earth, similar material, from streets. Any person who shall dig or make any excavation in any street, sidewalk, alley, or other public grounds or public rights-of-way of the City or remove any earth, brick, stone, gravel, or other material, unless permitted by the City shall be guilty of a misdemeanor.

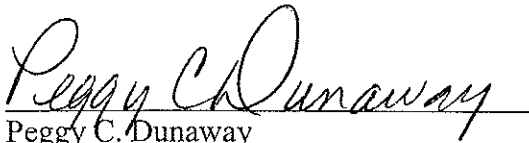
Section 7. Inspection; permission to fill. When an excavation is made in or under any public street, avenue, sidewalk, or alley, or within any public right-of-way of the City, no person shall cause or allow it to be closed until the pipe, cable, line, or other object laid or repaired in such excavation has been inspected by the City Engineer.

Section 8. This ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HELENA, ALABAMA on this 7 day of February, 2005.





Charles W. Penhale, Mayor


Peggy C. Dunaway
City Clerk

**STATE OF ALABAMA
SHELBY COUNTY**

I, Peggy C. Dunaway, City Clerk of the City of Helena, do hereby certify that the above is a true and correct copy of an Ordinance duly adopted by the Council of the City of Helena at its meeting held the 7th day of February, 2005.

Given under my hand and corporate seal of the City of Helena, this the 7th day of February, 2005.




Peggy C. Dunaway
City Clerk



CERTIFICATION

I, Peggy C. Dunaway, the duly appointed and acting Clerk of the City of Helena, Alabama, do hereby certify that the within Ordinance Number **671-05** is a true copy as recited in the said City Clerk's Minute Book and posted by me as provided by law in three public places in said City, being on the bulletin board of the City Hall, and in the Helena Public Library in said City, in the BP Coosa Mart in the City of Helena and that said Ordinance shall become a duly lawful Ordinance of said City of the 14 day of February, 2005, five or more days after the posting of the same as provided by law.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 7 day of February, 2005.


Peggy C. Dunaway
City Clerk

