

**CITY OF LEBANON
ORDINANCE #2019-04**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 152, Streets and Sidewalks, Article II, Excavations, Sections 152-5 thru 152-16.

BE IT ORDAINED, by the City Council or the City of Lebanon, as follows:

Section 1

The Code of the City of Lebanon is hereby amended to revise Chapter 152, Streets and Sidewalks, Article II, Excavations, Sections 152-5 thru 152-16 as follows:

§ 152-5. Declaration of policy.

The purpose of this article is to establish rules and regulations as authorized by RSA 236:10 and RSA 47:17 to govern the excavation and restoration within any public way.

§ 152-6. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DESIGNEE – That person designated by the Public Works Director to oversee and administer the Excavation Permit Process, up to and including the authority to issue and revoke permits for excavation.

EXCAVATION — The removal of soil, rock or pavement surface by any mechanical machine or device or by manual means, including but not limited to discharge of explosives on or within any public way.

EXCAVATION PERMIT CONDITIONS AND CONSTRUCTION REQUIREMENTS – Those guidelines developed by the Department of Public Works to administer and enforce the provisions of City Code Chapter 152, Article II: Excavations

EXCAVATOR/CONTRACTOR — Person (as defined below) with an excavation permit.

GREENBELT – The area outside of the paved portion of a public way and other unpaved portions of City-owned property.

PERSON — Any individual, firm, corporation or partnership proposing to make or contract for excavation.

PUBLIC WAY — Any surface improved for travel, including roadways, sidewalks, walls, shoulders, greenbelt areas, ditches, embankments, or within or on any land held by the city as easements or rights-of-way.

PUBLIC WORKS DIRECTOR — That person with managerial authority over personnel employed in the Department of Public Works.

§ 152-7. Permit required; exception for emergencies.

No person shall excavate within the public way of the City of Lebanon without a written permit from the Public Works Director or his/her designee.

Nothing in this article shall be construed to prevent excavations from occurring as may be necessary for the preservation of life or property in an emergency situation. An emergency is classified as a situation where public health or safety is endangered, and immediate action must be taken. In the case of an emergency the Department of Public Works and Lebanon Dispatch shall be notified immediately by telephone. A permit shall be obtained no later than one business day after such emergency excavation.

§ 152-8. Application for permit; fee

A. Any person desiring to excavate within the public way of the City of Lebanon shall submit a completed application a minimum of 72 hours prior to planned start date, excluding Saturdays, Sundays and holidays. For any excavation that requires the complete closure of a roadway, a completed application must be submitted a minimum of 10 days in advance of planned start date. All applications for excavations in the public way shall contain such information and specifications as the Public Works Director or his/her designee may require and shall be accompanied by plans and profiles and a nonrefundable permit fee

B. Fees:

- (1) Excavation Permit Fee - \$200 (nonrefundable)
- (2) Roadway Degradation Base Fee - \$5.00 per square foot of roadway and sidewalk impacted (to include a three-foot (3') zone of influence) as follows:
 - a. Street or sidewalk pavement less than two (2) years old: Three (3) times Roadway Degradation Base Fee
 - b. Street or sidewalk pavement from two (2) to five (5) years old: Two (2) time Roadway Degradation Base Fee
 - c. Street or sidewalk pavement from five (5) to seven (7) years old: Roadway Degradation Base Fee as established

Work conducted within the public way that is performed by City departments or those contracted by the City are exempt from fees.

Emergency repairs or replacement of existing sewer laterals for single-family and two-family dwellings are exempt from Roadway Degradation Fees but shall be subject to the Excavation Permit Fee and any bonding requirements.

C. The excavator shall not make or cause to be made any excavation in the public way other than that described in the application and plans or authorized by the permit. The excavator shall comply with the provisions of this article as well as all requirements of local, state and federal law.

D. New permits shall not be issued after November 1 each year unless the applicant can prove to the satisfaction of the Public Works Director or his/her designee that satisfactory repairs can be made prior to the onset of winter.

1. Editor's Note: The City of Lebanon Excavation Permit Conditions and Construction Requirements is located on the City's website and on file in the office of the Public Works Director.

§ 152-9. Bond.

The Public Works Director or his/her designee may require as a condition to issuing a permit that the person making application shall post a bond or other security satisfactory to the City Manager in an amount sufficient to provide for the satisfactory restoration of the highway, as determined by the Public Works Director or his/her designee. Such bond or security shall be held by the City of Lebanon for a period of two years following completion of the project to compensate the city for repair, refilling or regrading that may be required as a result of the excavation to restore the surface to its prior condition.

§ 152-10. Restoration.

It shall be a condition of the permit that any person who excavates or disturbs any public way shall restore the public way to substantially the same condition, or better, than it was prior to such excavation or disturbance. It shall further be a condition of the permit that if during the next three years after the completion of the restoration any depressions occur or the highway shall be unreasonably washed as a result of the excavation and/or disturbance covered by the permit, then such person who obtained the permit shall compensate the city for refilling or grading the area subject to excavation or disturbance.

After the excavator has restored the excavation and placed temporary hot bituminous pavement patch, a minimum thirty (30) days settlement period will be required before permanently restoring the excavation work area.

The following permanent patching schedule will be observed:

<u>Work done between:</u>	<u>To be permanently patched by:</u>
April 15 th – May 31 st	July 1 st
June 1 st – June 30 th	August 1 st
July 1 st – July 31 st	September 1 st
August 1 st – August 31 st	October 1 st
September 1 st – October 31 st	November 1 st
November 1 st – March 31 st	May 1 st

§ 152-11. Repairs.

A. Upon notice from the Public Works Director or his/her designee, the excavator shall repair any portion of the public way damaged as a result of the excavator's work, including deterioration to the road surface. Repairs shall be made within 24 hours of notice of all damages which, in the opinion of the Public Works Director or his/her designee, constitute a public hazard. All other damages shall be repaired within a seventy-two-hour period

after the completion of the work or within 72 hours of receiving notice from the Public Works Director or his/her designee, whichever is later.

B. In the event that repairs are not made within the time limits set forth above, the Public Works Director or his/her designee is authorized to make the necessary repairs and charge the excavator all costs, plus 20% overhead.

§ 152-12. Protection of Streets and Sidewalks.

A. In an effort to protect the City's investment in its infrastructure, excavations in newly constructed, reconstructed, rehabilitated, or overlaid pavements within a public way or on City property, are prohibited for seven (7) years after the effective date of notice of completion or acceptance of the new, reconstructed, rehabilitate, or overlaid improvements except as follows:

(1) Excavations to remedy a public emergency or a situation that creates an imminent threat to public safety, health, or welfare.

(2) Repair or modification to prevent interruption of essential utility services where no reasonable alternatives are available to avoid excavation in new pavements.

(3) Relocation work that is mandated by State or Federal legislation.

(4) Utility services for new buildings or parcels without existing utility services where no other reasonable means of providing service exists, as determined by the Public Works Director/Designee.

(5) Excavations within protected streets or sidewalks where the City has scheduled the reconstruction within one year due to the failure of the original pavement.

(6) Other situations deemed by the City Manager to be in the best interest of the general public.

B. For permits issued subject to any of the above criteria, a Roadway Degradation Fee will be charged pursuant to §152-8.B.

§ 152-13. Time limit for completion of work.

All work shall be completed within the time limit set forth in the permit. This time limit may be extended by the Public Works Director for a reasonable period of time for good cause. In the event that all work is not completed within the stated time limit, the Public Works Director is authorized to complete the work and charge the excavator all costs, plus 20% overhead.

§ 152-14. Protective measures and traffic.

Requirements for protective measures and traffic control shall be as specified in the City of Lebanon Excavation Permit Conditions and Construction Requirements and the Manual of Uniform Traffic Control Devices (MUTCD).

A. Prior to the commencement of any street improvement or alteration which would interfere with the normal and regular flow of traffic within the City of Lebanon, the primary contractor responsible for the work being performed shall be required to provide adequate traffic control. A traffic control plan must be approved by the Public Works Director or his/her designee as part of the issuance of the excavation permit.

B. The contractor shall not interfere with any existing utility without the written consent of the Public Works Director and the owner of the utility. All costs relating to the relocation and protection of utilities shall be paid by the contractor.

C. If the contractor does not comply with the approved traffic control plan, a notice of violation may be issued to prevent any further work as it relates to the interference of vehicular and/or pedestrian traffic.

D. Exception. This section does not apply to the Lebanon Public Works Department, the New Hampshire Department of Transportation, or their employees while so employed. This exception does not apply to subcontractors of either agency. If there is any question as to the application of this exception, the Chief of Police, in conjunction with the Public Works Director, will make the final determination.

§ 152-15. Suspension of permit; cease-and-desist order.

In the event the excavator violates any condition or requirement of the permit, the Public Works Director or his/her designee may suspend the permit and issue a cease-and-desist order to prevent any further work done on the excavation. The excavator shall comply with any requirements of the Public Works Director or his/her designee contained in the cease-and-desist order for the purpose of protecting the traveler or pedestrian. In the event the excavator does not so comply, then the city shall be entitled to recover from the excavator all costs and expenses incurred for such protective measures.

§ 152-16. Insurance.

The excavator shall hold the city harmless from any and all claims, demands, liabilities and damages which the city may sustain or which may be made upon the city by reason of the excavation, and the excavator shall obtain general liability insurance in the amount of \$1,000,000/\$2,000,000 aggregate and shall provide the city with a certificate of insurance outlining the above coverages and naming specifically the city as an additional named insured as its interest may appear.

§ 152-17. Penalties for offenses.

The penalty for the violation of this ordinance shall be a fine not to exceed \$1,000 as provided in RSA 47:17.

Persons who operate without a permit or violate the provisions of any permit required by this section shall be assessed penalties as outlined below. In addition, the excavation permit may be revoked by the Public Works Director or his/her designee for noncompliance with any of the required provisions.

(1) A fine not to exceed one hundred dollars (\$100.00) for the first violation; and

(2) A fine not to exceed five hundred dollars (\$500.00) for a second violation within one year from the date of the first violation, and will not be granted an excavation permit for one (1) year; and

(3) A fine not to exceed one thousand dollars (\$1,000.00) for a third violation and each additional violation within one year from the date of the first violation and will not be granted an excavation permit for five (5) years.

Section 2: Severability

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Section 3

Effective date: this Ordinance shall be effective upon passage.

This ordinance was adopted by the City Council on October 2, 2019 and is hereby authenticated by the undersigned as required by Section C419:22 of the City Charter.

CITY OF LEBANON

DocuSigned by:
tim mcnamara
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By: _____
Timothy J. McNamara, Mayor

DocuSigned by:
Sandra L. Allard
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By: _____
Sandra L. Allard, City Clerk

Effective Date: October 2, 2019
Date of Publication of Notice of Public Hearing: September 21, 2019
Date of Public Hearing: October 2, 2019
Date of Adoption: October 2, 2019
Date of Notice of Adoption: October 11, 2019
Date of Recording of the Ordinance by the City Clerk: October 11, 2019