

026.022

MAYOR
DANNEL P. MALLOY



ACTING
DIRECTOR OF LEGAL AFFAIRS
AND CORPORATION COUNSEL
THOMAS M. CASSONE

DEPUTY CORPORATION COUNSEL
SYBIL V. RICHARDS

ASSISTANT CORPORATION COUNSEL
JAMES V. MINOR
JOHN W. MULLIN, JR.
KENNETH B. POVODATOR
BURT ROSENBERG
MICHAEL S. TOMA

CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS

888 WASHINGTON BOULEVARD
P.O. BOX 10152
STAMFORD, CT 06904-2152
(203) 977-4081
FAX (203) 977-5560

DATE: August 26, 2002
TO: Representative David Martin
President, Board of Representatives
FROM: Michael S. Toma, Assistant Corporation Counsel *MST*
RE: Street Opening Permit Fee Structure

RECEIVED
AUG 27 2002
Board of Representatives

The new fee structure for street excavations found in the recently passed Ordinance 987 provides for a flat fee plus a fee that increases as the size of the excavation increases. After reviewing the relevant law, I must conclude that the graduated fee structure is in conflict with previous Department of Public Utility Control (DPUC) and Connecticut court rulings.

Municipalities are authorized by state statute (16-229) to require that public service companies secure a permit before they excavate a street, but the terms and conditions of the permit process must be "reasonable." The DPUC has interpreted the reasonableness requirement to allow only fees that are rationally related to the municipality's cost of issuing the permit. If a company is aggrieved by the amount of a fee it may take an appeal to the DPUC.

In its review of the City of Hartford's street excavation permit fees, a 1998 Superior Court decision, City of Hartford v. DPUC, (1998 WL 61916), reviewed the controlling caselaw. This decision cited two Connecticut Supreme Court opinions which are relevant here. The first, Welch v. Hotchkiss, 39 Conn. 140, held that when a municipality issues a permit, it has the power to charge a fee to cover "the necessary expense attending the issuance and recording of the license," but it could not set the fee to recover any other related expenses, such as the expense of inspecting the work.

The second case, City of New Haven v. New Haven Water Company, 44 Conn. 105, invalidated a city ordinance that established a graduated fee schedule for excavation

permits because the fees were excessive; that is, they “were not designed for the sole purpose of paying the cost of the licenses.”

The DPUC has consistently followed the rule of the above cases in its own decisions. Notably, it applied the above-referenced principles to the City of Stamford in 1982 and held that the fees charged by Stamford for excavation permits were unauthorized because they exceeded the cost of issuance of the permits. (See DPUC decisions #82-06-07 and #82-06-19). In these City of Stamford decisions, a change in Stamford’s ordinance had resulted in permit fees increasing from a longstanding flat fee to a flat fee plus an additional charge based on length of excavation. The DPUC concluded that this fee schedule was unreasonable because it was not based on the cost of issuing the permit.

Although Ordinance 987 states that the higher fees are intended to cover higher administrative costs, graduated fee structures are considered to be inconsistent with the rule that fees be confined to the cost of issuance of the permit, and they have been repeatedly invalidated, as seen above.

The above-noted decisions also require that the municipality be able to substantiate that the amount of the flat fee is based upon the administrative cost of issuing the permit.

Based on the above, I have directed the Engineering Bureau to cease collection of the incremental portion of the new fee pending action by your Board. I would advise that you consider amending Chapter 214 of the Code of Ordinances to replace the graduated fee structure with a flat fee that approximates the cost of issuance, as the Mayor had originally proposed. Based on a review that was recently performed by the Engineering Bureau, that sum should be in the approximate amount of \$200.00.

Cc: Edward Gentile, Engineering Bureau