

ORDINANCE NO. 1295-03-10-02

AN ORDINANCE PRESCRIBING THE MANNER IN WHICH EXCAVATION, CUTS AND/OR ALTERATIONS MAY BE MADE TO RIGHTS-OF-WAY, STREETS AND PAVED OR UNPAVED ROADS FOR THE PURPOSE OF INSTALLING AND/OR MAINTAINING PUBLIC UTILITIES WITHIN THE LIMITS OF THE CITY OF DYER, AR; REPEALING PREVIOUS ORDINANCES; PROVIDING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS; AND DECLARING AN EMERGENCY.

**WHEREAS**, excavation and alterations are a necessary part of installation and maintenance of public utilities; and

**WHEREAS**, such excavations and alterations may result in damage to rights-of-way and other property; and

**WHEREAS**, the City of Dyer has experienced difficulties with a consistent procedure heretofore in effect allowing people to obtain a permit to excavate and repair city streets; and

**WHEREAS**, the purpose of this ordinance is to insure inspection of the repair of damage to any right-of-way, streets and paved or unpaved roads to provide a procedure for obtaining permits to excavate, alter and/or repair;

**NOW, THEREFORE**, be it ordained by the City Council of the City of Dyer, AR:

**Section 1: Definitions.** For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. The word "shall" is always mandatory and not merely directory.

- a. "Applicant" is any person making application for an excavation, alteration and/or repair permit issued hereunder.
- b. "City Inspector" is the inspector (or other duly authorized official) of the City of Dyer, Arkansas.
- c. "Excavate" or "Excavation" or "Alteration" shall include, but not be limited to, digging, trenching, cutting, drilling, tunneling into or under the surface, modification, removal or moving of surface structure or structures, or property below the surface, removal of dirt, topsoil, rock or other geological materials from their position prior to said removal, or in any other manner disturbing the surface of any right-of-way within the City for the purpose of installing or maintaining Public Utilities.

- d. "Permittee" is any person who has been granted and has in full force and effect an Excavation or Alteration permit issued hereunder.
- e. "Person" is any individual, firm, partnership, association, corporation, company, public utility, public entity or organization of any kind.
- f. "Public Utilities" means any line, system and appurtenance or facility used for producing, storing, conveying, transmitting or distributing communications, electricity, gas, heat, water, steam and sewage.
- g. "Repair and/or Restoration" is the return of disturbed substrate and/or Rights-of-Way and/or the existing Public Utilities to their original condition.
- h. "Right-of-Way" means any area along which Public Utilities are located.
- i. "Roads" means any paved or unpaved road within the Dyer City limits.
- j. "Street" means any city street, road, highway, alley, sidewalk or other public way, curb or gutter.

**Section 2: Prohibition.** It shall be unlawful for any person to excavate, alter and/or repair rights-of-way, roads or streets within the city, unless such person meets the requirements for obtaining a permit hereunder and has been granted and has in full force and effect an Excavation or Alteration permit issued hereunder and notice has been given as prescribed hereunder.

**Section 3: Services Performed by the City.** The City shall make all routine repairs to city streets, except as hereinafter provided.

**Section 4: Permits: Application for Permit: Permit Fees; Cash Deposit or Bond, Notice.** Permits may be issued to people who, in the opinion of the City Inspector, are property qualified to make the Excavations and repair. The permit shall be submitted to the City Recorder/Treasurer along with a fifty dollar (\$50) processing fee and shall include the following information:

- A. Application for Permit: An application for an Excavation, Alteration or repair permit shall be made, in writing, to the City Recorder/Treasurer and shall contain the following:
  - 1. The name, address, and telephone number of the person or entity making application and proposing to perform the excavation
  - 2. The qualifications and experience of the party performing the work
  - 3. The location and purpose of the proposed excavation
  - 4. The name, address and telephone of the owner(s) of the property or abutting property to excavation site
  - 5. A plan or description of the excavation proposed, including, but not limited to:

- a. The number of square feet to be excavated
  - b. The way the excavation will be accomplished
  - c. The anticipated damage to the right-of-way, street and/or roads
  - d. The estimated cost of repair or restoration
  - e. Detailed or engineered drawings of the project
  - f. A plan or description of the measures intended to restore the site to its original condition following the Excavation
6. Such other information as the city inspector shall find reasonably necessary to decide of whether the permit should be issued.
- B. Boring Permit: Based upon documentation submitted with the permit application, the City Inspector may require the applicant to bore under the street in lieu of a permit to excavate.
- C. Permit Fees:
  1. Filing Fee: The fee for a permit hereunder shall be fifty dollars (\$50) and shall accompany the application.

**Section 5: Cash Deposit or Surety Bond.** No person shall make any Excavation, Alteration or repair for which a permit is required by this ordinance unless such person has deposited with the Recorder/Treasurer a cash deposit or provided a copy of sufficient surety bond for the purpose of guaranteeing the repair or restoration of the excavated site. The amount of the cash or surety bond shall be no less than two thousand five hundred dollars (\$2,500).

1. Forfeiture. The cash or surety bond shall be forfeited for failure by Permittee to complete the repairs and/or restoration, complete the necessary cleanup, cause unnecessary inconvenience or damage to vehicles or other traffic or failure to otherwise adhere to the requirements of this ordinance.
2. Exemption. The Public Utilities operated by companies franchised by the City shall be exempt from the cash deposit or surety bond requirements of this ordinance.

**Section 6: Permit issuance, Expiration and Renewal.** A permit required by this ordinance shall be issued only after a proper application has been filed along with a copy of the surety bond or receipt of cash deposit. A permit issued shall expire six (6) months from the date of issuance, but may be renewed upon application. The procedure for renewal of applications shall be in the same manner and with the same fees as the original application.

**Section 7: Notice.** No person shall make any excavation or bore unless such person has given notice of the issuance of the permit to the City's water department and street department and has complied with the Arkansas Underground Facilities Damage Prevention Act.

**Section 8: Protective Measures.** Every person performing Excavation, Alteration or repairs governed by this ordinance shall place and maintain property and adequate caution lights, guards and other appropriate protective measures around the same for the protection of the public. Such protective measures shall comply with State rules and regulations.

**Section 9: Clearance for Fire Equipment.**

1. The Excavation, Alteration or repair work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within ten (10) feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free of piles of material or other obstructions.
2. The Permittee shall construct and maintain adequate and safe crossings over Excavations to accommodate firefighting and emergency equipment as well as pedestrian and vehicular traffic of the public.

**Section 10: Repairs.**

1. Each person making an Excavation under this ordinance shall repair the street at such a person's own expense and under the direction and supervision of the City Inspector to the following standards:
  - a. All Excavations shall be backfilled with SB-2 material applied in eight-inch (8") lifts and each lift shall be individually compacted to a minimum of 95% (ninety-five percent) proctor density. All street Excavations shall be resurfaced with the type of surface materials which exist immediately prior to such Excavations unless otherwise directed by the City Inspector.
  - b. Any grass or vegetation shall be replaced or re-seeded per the specifications of the City Inspector.
  - c. All curbs and gutters shall be replaced and restored to the condition which existed immediately before the excavation.
2. The Permittee shall notify the City Inspector prior to the beginning of such repair work of the time and manner of repair and obtain the approval of the City Inspector prior to the beginning of such repair and afford the City Inspector the opportunity of being present during the progress of such repair until completed.

**Section 11: Inspection of Repair Work.** After the repair work required by Section 10 has been completed, the Permittee shall notify the City Inspector. The City Inspector shall inspect to ensure that the work has been done in accordance with the requirements of Section 10 and the other reasonable specifications provided to the Permittee by the City Inspector prior to commencement of the repair work. In the event any or part of any work is

not done in a satisfactory manner or not in conformity with this ordinance or such specifications, the City Inspector shall issue a "notice of non-compliance" stating deficiencies and explaining corrective actions necessary. All corrective actions shall be accomplished as required in Section 10 within fourteen (14) days of receipt of the notification.

**Section 12: Deposit or Bond Refund.** When the repairs required by this ordinance are satisfactorily completed and approved and paid for, the City Inspector shall authorize the return of any sum deposited as provided in this ordinance. In the event that the Permittee shall fail, refuse or neglect to make such repairs, or shall fail, refuse or neglect to remove and replace any rejected work, the City may make such repair or cause such repair to be made and deduct the cost from the amount on deposit or process a claim through the surety bond with the City and the balance, if any, shall be paid to the Permittee. In any case where the cash deposit is not sufficient to cover the cost incurred by the City in making the required repairs, the City may recover the excess cost from Permittee as permitted by law.

**Section 13: Penalty.** Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding two thousand five hundred dollars (\$2,500) and such violation shall be stopped until a proper permit has been issued. Each day such violation continues shall constitute a separate offense and shall be punishable as such hereunder.

**Section 14: Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**Section 15: Ordinances Repealed.** All ordinances and parts of ordinances in conflict with provisions of this ordinance are hereby repealed.

**Section 16: Emergency.** The council has determined that the improper Excavation or Alteration of any roads, streets or rights-of-way within the City is a detriment to public health, safety and welfare, an emergency is hereby found to exist and this ordinance shall be in full force and effect from and after its passage, approval and publication.


PASSED AND APPROVED THIS 10<sup>th</sup> DAY OF March, 2025.

APPROVED:



  
Lynn Hubbard, Mayor

ATTEST:

  
Karen S. Robson, Recorder Treasurer