

CITY OF VAN BUREN, ARKANSAS

ORDINANCE NO. _____-2002

AN ORDINANCE ESTABLISHING PROCEDURES FOR APPROVAL OF PROJECTS REQUIRING OBSTRUCTION OF, BORING UNDER, OR EXCAVATION IN ANY CITY STREET, RIGHT-OF-WAY, OR EASEMENT; PROVIDING FOR PAYMENT THEREOF; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, The City has suffered damage to its infrastructure assets as a result of unregulated excavation, boring and construction within its rights-of-way and easements; and

WHEREAS, The City is entitled to just and reasonable compensation in the form of license fees, for any use of the City's streets, rights-of-way and easements; and

WHEREAS, Establishing formal procedures for issuance of permits allowing activities within or upon the City's streets, rights-of-way and easements will allow the City to safeguard the rights of the City and the public to unobstructed use of City easements and rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VAN BUREN, ARKANSAS:

SECTION 1: *Permit required.* That it shall be unlawful for any person, corporation, utility company or contractor to make or cause to be made any excavation in, bore under or obstruction of any street, alley, right-of-way, or easement of this City without first having obtained a written permit from the Mayor's authorized representative, hereinafter called the City Representative.

SECTION 2: *Fees.* That a fee in the amount of \$50.00 or as altered by the City Council of the City of Van Buren, Arkansas from time to time shall be paid at the time of application for a permit under the provisions of this section except that the fee may be waived for permits for work being accomplished by the Departments of the City of Van Buren or their agents or their contractors but the requirement for the securing of a permit shall not be waived. Such sum shall be paid into the general fund of the City. There shall be no fee required for individual property owners to repair, replace or maintain their existing driveway or culvert in residential zones (R-1, R-2, R-3).

SECTION 3:

Supervision. That any activity undertaken in accordance with this Ordinance shall be under the supervision of the City Representative.

SECTION 4:

(a) Before a permit required by subsection (1) shall be issued, the applicant or his duly authorized agent shall submit three copies of a written permit application to the City Representative. The application shall contain plans, specifications and descriptions necessary to show the location, design and layout of the proposed improvement and its relation to the City's streets, alleys, rights-of-way and easements, plans for traffic control and a statement that appropriate agencies will be notified of the time construction will occur, and plans for the restoration and/or repair of the property.

(b) All persons, public or private corporations, utility companies, contractors and others seeking a permit shall be required to post a surety bond or provide evidence that such bond is in force to insure that the requirements of this Ordinance are met. The minimum surety bond shall be equal to the estimated cost of restoration and/or repair of the property to its condition prior to the improvement or \$500.00 whichever is greater. The bond may be waived for work being accomplished by the Departments of the City or their agents or their contractors. There shall be no bond required for individual property owners to repair, replace or maintain their existing driveway or culvert in residential zones (R-1, R-2, R-3).

(c) When such written application and plans conforming to such subsection (4)(a) and the other provisions of this section have been duly submitted, and the fee hereinafter required is paid, the City Representative shall approve or reject said improvement within 15 calendar days following submission to him. In the event of rejection, the City Representative shall specify the reasons therefore and shall permit the applicant the opportunity to cure said objections. One (1) copy of the approved application shall be on file in the Van Buren City Clerk's office with the surety bond.

(d) In determining whether to accept or reject such application, the City Representative shall take into consideration the location of existing public utilities and plans for any future location or relocation of public utilities or other usage by the City.

SECTION 5:

(a) The City Representative may order removal and/or replacement of any work and/or materials found to be in noncompliance with the permit or provisions of this section, and may order completion of permitted work within a specified time.

(b) The City Representative may order the permittee to suspend work on any job whenever he shall deem such suspension to be necessary to ensure good work or when the public interest otherwise requires such suspension.

(c) The City representative is authorized to give all notices and instructions with reference to the work either to the permittee, any agent of the permittee, or to any person in charge of the permitted job.

(d) After all work is completed, the permittee shall remove all rubbish, waste and excess materials from the construction area and restore the area to its previous condition or as approved in the permit.

(e) All improvements shall comply with applicable laws, rules and regulations.

(f) If any person, public or private corporation, utility company, contractor or other does faulty work in the restoration and/or repair of the property to its condition prior to the improvement or as agreed upon, or otherwise violates the provisions and requirements of this Ordinance, the City shall reserve the right to refuse to allow said person, public or private corporation, utility company, contractor or other to do any further work in the streets, rights-of-way or easements of the City.

(g) Upon completion and clean up of the permit site, the permittee shall notify the City Representative of completion and readiness for final inspection.

(h) If during the final inspection, the City Representative determines that work and/or material at the permit site is found to be in noncompliance with the permit or provisions of this section then the City Representative shall notify the permittee in writing of any remedial actions required. If the permittee fails to correct the noncompliant work within 30 days of notice from the City Representative, then the City Representative shall have the noncompliant work repaired at the permittee's expense and shall pursue penalties in accordance with the requirements of this Ordinance.

SECTION 6:

Street Crossings. (a) Crossing of existing streets by open cut methods is not permitted except under certain conditions when approved by the City Representative. Conditions where open cuts of the pavement may be permitted are:

- 1) When longitudinal utility lines are located under the pavement; or
- 2) When it is determined by the City Representative that boring is not possible.

(b) All boring under City streets shall be located at least thirty six inches (36") below the pavement surface or thirty six (36") below the bottom of roadside drainage ditches, whichever is a greater depth.

(c) All open cuts of City streets or pavement deformed or damaged by boring shall be repaired in compliance with the approved permit and the "Street Cut and Repair Standards" of the Van Buren Street Department.

SECTION 7:

Appeals. Any applicant for a permit may appeal any decision of the City Representative to the City Planning Commission by filing a written notice of such intention to appeal with the Chairman of the Planning Commission within ten (10) calendar days following the decision to be appealed. If the Planning Commission upholds the rejection and/or conditions or imposes conditions, which are not acceptable to the applicant, the applicant shall have the right to appeal to the City Council, whose decision shall be final.

SECTION 8:

Penalties. Violation of any of the provisions or regulations of this Ordinance shall be punishable as a misdemeanor with a fine of up to \$250.00. Each day that said violation continues shall be a separate offense and each day subsequent to the first day of the violation shall be punishable by a fine of up to \$250.00 per day.

SECTION 9:

Severability. The intention of this Ordinance is to repeal Ordinance No. 39-1995. The intention of this Ordinance is not to repeal Ordinance No. 21-1973 and in the event of a conflict between these Ordinances, No. 21-1973 shall control. The provisions of this Ordinance are hereby declared to be severable, and if any provisions shall for any reason be illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

PASSED AND APPROVED THIS _____ DAY OF SEPTEMBER, 2002.

MAYOR JOHN RIGGS

ATTESTED:

CITY CLERK/TREASURER