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NANCY EASTHAM

FAULKNER COUNTY CIRCUIT CLERK

BY: SHAWN MIX, D.C.

**ORDINANCE**

**City of Conway, Arkansas  
Ordinance No. O-23-94**

**AN ORDINANCE REGULATING ALL OF THE CITY OF CONWAY, ARKANSAS, RIGHTS-OF-WAY, REQUIRING A PERMIT PRIOR TO WORKING WITHIN THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR A PENALTY AND FOR OTHER PURPOSES**

**Whereas**, the City Council has determined that a risk exists for misuse, abuse, and damage to the City's streets, curbs, ditches, gutters, sidewalks and rights-of-way by persons attempting to utilize these public areas for private or commercial benefit; and,

**Whereas**, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and,

**Whereas**, the City Council has determined that it is necessary to protect the health, safety and welfare of the public in the best interest of the residents of the City of Conway, Arkansas, for persons desiring to utilize for excavations, cuts, work, boring or blocking the public rights-of ways, streets, curbs, ditches, gutters or sidewalks for any purpose to obtain a permit prior to accessing or disturbing these areas; and,

**Whereas**, the City Council finds that the Ordinance has been beneficial to the health, safety, and welfare of the public by generally accomplishing its objectives; and,

**Whereas**, the City Council finds that it is appropriate to recover its costs of Transportation Department administering this Ordinance through the assessment of permit fees; and,

**Whereas**, the City Council finds that the fees are reasonably related to the cost of Transportation Department administering this Ordinance; and,

**Whereas**, the City Council finds that the adoption of this Ordinance would further enhance the benefits to the public health, safety, and welfare through regulation of excavations, cuts, borings, work or blockages in the public rights-of-way in the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS, OF THE FOLLOWING:**

**SECTION 1: Title.** This Ordinance shall be titled, "The City of Conway, Arkansas, R.O.W. / Street and Curb Cut Ordinance."

**SECTION 2: Purpose.** The City of Conway, Arkansas, finds that the city has experienced development, construction and maintenance operations by utilities and other entities which requires excavations and cuts in public rights-of-way and other properties. These excavations or cuts occur because of such things as the installation of water lines, sanitary sewers, drainage structures, electricity lines, telecommunication lines, gas lines, and other utilities, or the replacement, improvement or maintenance of such systems. When these excavations or cuts occur, significant problems can face the City because of the vast number of cuts, the occasional poor restoration techniques, or the multiple cuts in the same area by different entities due to poor communication between utility contractors and other entities. As a result, there is a real potential for serious deterioration of the paved public rights-of-way and a threat to public safety. As a result, an ordinance is required that sets forth in detail the responsibilities of any entity that uses the public rights-of-way through franchise or other legal authority, and in the course of, or in furtherance of, that use, causes excavation or cuts to occur. Therefore, the City

has a vested interest in assuring that any disruption of the flow of traffic, or the digging of any trench, excavation or cut, in the paved portion of the public rights-of-way, be kept to a minimum.

**SECTION 3: Incorporation of Recitals.** The recitals and findings in the Preamble are hereby incorporated and made a part of this Ordinance.

**SECTION 4: Authority.** This Ordinance is passed by the City pursuant to the authority granted to it by the State of Arkansas under A.C.A. §§14-43-602, 14-54-101(7), 14-54-104, 14-54-601, 14-54-301, 14-55-101, and 14-55-102.

**SECTION 5: Definitions.** The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

- (a) **ARDOT** – The Arkansas Department of Transportation, a State of Arkansas Department administered by the Arkansas State Highway Commission which was created by the passage of Amendment 42 to the Constitution of Arkansas.
- (b) **APPLICANT** – means any person making written application to the Transportation Department, seeking a permit to make, or cause to be made, any excavation, cut, work, boring or blockage in any public right-of-way.
- (c) **BORE** – To perform work which utilizes equipment that tunnels beneath the public rights-of-way, sidewalk, driveway, driveway apron or other areas under public property by the public rights-of-way.
- (d) **CITY** – The City of Conway, Arkansas, a municipal corporation incorporated under the state laws of the State of Arkansas as a city of the first class.
- (e) **CROSS CUT** – A roadway or street cut that crosses the total width of one or more lanes of a street.
- (f) **CURB CUT** – The total street curbing that is removed to place a driveway and slopes.
- (g) **TRANSPORTATION DEPARTMENT** – A department of the City that administers construction of public improvements on behalf of the City as well as regulates all construction involving or affecting public rights-of-way or other administrative or regulatory authority as granted to it by the Arkansas statutes or City ordinances.
- (h) **DETAILED PLAN OF THE WORK** – Written information submitted to the Transportation Department which the applicant for the R.O.W Permit shall furnish stating or showing;
  - (1) The purpose for which the excavation, cut, bore, work or blockage of the public right-of-way is to be made;
  - (2) The dimensions and location of the proposed excavation, cut, bore, work or blockage of the public right-of-way including the nearest cross streets where the excavation, cut, bore, work or blockage is considered;
  - (3) The full scope of work to be included in the project and the work area;
  - (4) The date or dates during which the requested excavation, cut, bore, work or blockage of the public right-of-way is to be permitted;
  - (5) The date by which such excavation, cut, bore or work is to be restored in the manner hereinafter prescribed and required in this Ordinance; and,
  - (6) A proposed barricade plan for the use of barricades, signals, signs, flags, flares and other traffic control and safety devices about the work area (in accordance with MUTCD standards).
  - (7) A timeline or schedule for work shall be submitted to the City prior to the issuance of the permit.

- (8) No work may begin until a permit is issued.
- (i) **TRANSPORTATION DIRECTOR** – The top administrative person of the Transportation Department who is a department head subject to administrative authority of the Mayor as defined in A.C.A. §14-42-110.
- (j) **DRIVEWAY** – Any private road or means of entry or exit adjacent to or abutting a public right-of-way intended or available for access to a public right-of-way.
- (k) **EXCEPTIONAL CIRCUMSTANCE** –
- (1) Any persons aggrieved with the literal enforcement of this Ordinance, due to unreasonable hardship because of peculiar conditions pertaining to the excavation, cut, bore or blockage and the public right-of-way in question, shall submit in writing grounds for such unreasonableness or hardship on which the waiver request is based. Any such waiver requests shall not be contrary to public interest and the spirit of these regulations and shall afford the minimum modification necessary. Economic hardship alone shall not be sufficient grounds for a waiver to be granted to for profit persons. Such requests shall be acted upon by the Transportation Director. Any person denied a waiver by the Transportation Director may appeal to the Mayor’s Office. All waiver requests shall stay any excavations, cuts, bores or blockages in the public right-of-way by the person applying for the waiver in order that sufficient time is allowed for the Transportation Director or the Mayor to make their decision.
- (2) Economic development may qualify for waiver of a permit fee and surety bond if the economic development is sponsored, in part or in whole, by the City and funded in part or in whole, by the City. The procedure for obtaining a waiver from permit fees and surety bonds for economic development purposes shall follow the same process as outline in (j)(1).
- (l) **EMERGENCY** – A situation or event such as breakage of a utility line, which presents an imminent hazard to the public health, safety and welfare, which requires a necessary utility repair that involves a cut, excavation, boring or blockage of a public right-of-way. Not included in this definition are the routine placement or replacements of service facilities which are being constructed or replaced as part of normal expansion or routine maintenance activities.
- (m) **EXCAVATION** – Any work in the surface or subsurface of the public rights-of-way, including, but not limited to opening the public rights-of-way; installing, servicing, repairing or modifying any facility(ies) in or under the surface or subsurface of the public rights-of-way, and restoring the surface and subsurface of the public rights-of-way.
- (n) **MAYOR** – The chief executive office of the City as defined by A.C.A. §§14-43-504 and 14-43-401 14-43-304.
- (o) **MINOR MAINTENANCE WORK** – Work performed to existing utilities which does not include excavation, cutting or boring of any material in the public right-of-way or damage or blocking to public right-of-way or vegetation in the public right-of-way. Routine tree trimming within the public right-of-way for safety, operation or maintenance, that does not include excavation, of existing utilities is classified as Minor Maintenance Work and therefore exempt from the permit requirements of this Ordinance.
- (p) **NON-RESIDENTIAL** – Any area in the City not defined as Residential.
- (q) **OSHA** – the federal Occupational Safety and Health Administration or the Arkansas state agency responsible under a plan approved under Section 18 of the Occupational Safety and Health Act of 1970 for the enforcement of occupational safety and health standards in Arkansas.

- (r) **PERMIT HOLDER** – A person who under the provisions of this Ordinance has, or is required to apply for and obtain, a permit from the Transportation Department before cutting, excavating, boring, working on or blocking a public right-of-way in the City.
- (s) **PERSON** – Any public or private natural person, individual, partnership, company, firm, sole proprietorship, association, trust, estate, limited liability company, corporation, business entity, political subdivision, commission, board, public or private institution, utility cooperative, or other legal entity.
- (t) **PUBLIC RIGHT(S)-OF-WAY** – Any area within the City that is across, along, beneath, in, on, over (above), under, upon, and within the dedicated public alleys, boulevards, bridges, courts, freeways, highways, avenues, lanes, parks, parkways, rivers, roads, sidewalks, spaces, streets, tunnels, viaducts, ditches, curbs, gutters and any other place, area, or real property, including real property owned in fee, easement, lease or license by the City.
- (u) **RESIDENTIAL** – An area with inhabitable standalone single dwelling structures that have sleeping, cooking and plumbing facilities, which are designed, intended to be and/or are being used for human occupancy by a family or individuals for residency or domicile dwelling purposes.
- (v) **RESTORATION** – The process by which an excavated public right-of-way and surrounding area, including pavement and foundation, is returned to the same or better condition that existed before the work.
- (w) **STREET CUT** – Any excavation, cut, bore or blockage on a public right-of-way in the City which removes surface or underground material within the public right-of-way and requires restoration work within the public right-of-way to return the public right-of-way to the same or better conditions than existed before the work.
- (x) **SURETY BOND** – Security submitted to the City which guarantees that all work required as part of an approved permit will be satisfactorily completed. At the option of the City, an acceptable security can be a letter of credit, certified check, cashier’s check or escrow agreement with institutions authorized to provide such securities in the State of Arkansas. Said security must be made payable to the City.
- (y) **TRENCH** – An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
- (z) **UTILITY EASEMENT** - An easement obtained for or by a utility for the purpose of placing utilities and or an easement with no improved City surface, street, curb, sidewalk, or other City managed infrastructure within the easement. Separate utility easements outside the public street right-of-way are exempt from the requirements of this ordinance.
- (aa) **UTILITY EXCAVATOR** – Any owner whose facility or facilities in the public right-of-way are used to provide electricity, gas, information services, sewer service, telecommunications, traffic controls, transit service, video, water, or other services to customers.
- (bb) **UTILITY SERVICE** – A business or service engaged in regularly supplying the public with some commodity or service that is of public consequence and need, which includes, but not limited to:
  - (1) Those services provided by a public utility as defined in respective Arkansas statutes;
  - (2) Services provided by or the transporting of voice or data information by a telecommunications right-of-way user as defined in respective Arkansas statutes;
  - (3) Services provided by cable communications systems as defined in respective Arkansas statutes;
  - (4) Natural gas, electric energy or telecommunications service provided by a person;

- (5) Services provided by a cooperative electric association organized under the provisions of respective Arkansas statutes; and,
- (6) Water, sewer, electricity, gas, cable, telephone, video service, information services, or other telecommunications.

(cc) **WORK** – Any excavation, cut, bore or blockage on, in or affecting a public right-of-way in the City.

**SECTION 6: Permit Required.** (a) It shall be unlawful for a person, to make or cause to be made any excavation, cut, bore or blockage in or on the public right-of-way without having first obtained a written permit from the Transportation Department and complying with this Ordinance and regulations issued hereunder.

(b) It shall be unlawful for a person to construct, improve, modify or alter in any way a driveway, in the area where said driveway enters a public right-of-way, without first obtaining a written permit from the Transportation Department and complying with this Ordinance and regulations issued hereunder.

(c) A written permit is not required prior to an excavation, cut or boring of any public right-of-way **if, and only if**, the excavation, cut, work, blockage or bore is made as a result of an emergency situation in which the destruction of life or property is imminent or is necessary to restore basic service. The Transportation Department shall be notified at the earliest possible moment, but in any event, no later than the end of the first (1<sup>st</sup>) business day after the excavation, cut, blockage or bore is made.

(d) A written permit to block a public right-of-way shall also be required for persons engaging in demolition, maintenance or construction work affecting a public right-of-way. A temporary traffic control plan (TTC) shall be submitted for review. The TTC shall be prepared in accordance with the Manual on Uniform Traffic Control Devices (latest edition).

(e) Typically, each excavation, cut, work, bore or blockage of the public right-of-way shall require a separate permit; however, permits may be grouped together to simplify the permitting and record keeping process. The City may, in its sole discretion, deny any portion of a permit request grouped together or reject the group permit request and require submittal of separate permits.

(f) The provisions of this Ordinance does not apply to minor maintenance work.

**SECTION 7: Boring Requirement.** (a) It is the requirement of the City that boring or pushing of utility services under the public rights-of-way or public property, occur instead of excavations or cuts. The permitting process as set forth in this Ordinance shall be met, and all boring plans shall be subject to the approval of the Transportation Department. Street closures may be permitted after a permit from the Department has been approved. Notification of emergency and public service agencies shall be the sole responsibility of the permit holder or person responsible for the boring of the public right-of-way.

(b) If in the determination of the Transportation Director, boring or pushing of utility services under the public rights-of-way or other public property is not feasible, then the permit holders or persons may engage in excavations, cuts, work or blockages upon going through the permitting process as set forth in this Ordinance once the requirements for obtaining a permit are met and the person has a valid permit for the excavation, cut, work or blockage of the public right-of-way. Notification of emergency and public service agencies shall be the sole responsibility of the permit holder or person responsible for the excavation, cutting, working on or blocking the public right-of-way.

**SECTION 8: Public Rights-of Way Excavation Execution Plan.** (a) Prior to any excavation, cut, bore, work or blockage performed by a permit holder or person upon, in, under, above or about any public rights-of-way or any public street easement within the City, that person or applicant for a permit shall furnish to the Transportation Department, prior to issuance of a permit, a Detailed Plan of the Work. Separate utility easements outside the public street right-of-way are exempt from the requirements of this ordinance.

(b) The permit holder or person shall coordinate their activities with the Transportation Department. The Transportation Department will regulate time of the opening or work, barricades, lighting and flagmen. If, during the course of construction, any City owned sewer, underdrain, manhole, catch basin, curb, guardrail, sidewalk, or other facility or appurtenance is damaged, destroyed or disturbed, such condition shall be reported immediately to the Transportation Department, and utility provider, which shall then prescribe, direct, supervise, and inspect the necessary corrective action, with inspection costs being borne by the permit holder or person.

(c) The size and type of the excavation, cut, bore, work or blockage of the street or curb cut in, on or affecting the public right-of-way may require information in addition to what is prescribed by this Ordinance. All necessary information shall be furnished to the Transportation Department when requested by the Transportation Director in writing before the Transportation Department shall issue a permit for the work.

(d) This Section shall not apply to the City when engaged in work involving overhead traffic signals, communications, electric circuits, fiber optics or telecommunications equipment.

**SECTION 9: No Public Property for Private Use.**

(a) It shall be unlawful for private persons to use public property for private purposes. Private persons developing and constructing commercial, retail, professional or industrial establishments or residential property shall not be allowed to utilize public rights-of-way except for the purpose of ingress and egress onto the private property. Other than ingress and egress, parking lots shall not be constructed on public rights-of-way or property.

(b) Nothing in this Section shall prevent the City from entering into a license or land agreement with a person if approved by a resolution passed by a majority vote of the City Council.

**SECTION 10: Permitting Process.**

(a) Permit requests for excavations, cuts, bores, work or blockage on, in or affecting public rights-of-way shall be made to the transportation department.

(b) A minimum of three (3) business days, prior to excavation is required for the City to review the planned excavation. At the discretion of the Transportation Director, a pre-construction meeting may be required, particularly for larger projects requiring multiple street cuts.

(c) The permit fee shall be \$75.00 for any work within the public street right-of-way not involving a street cut.

(d) Street cuts shall be billed at \$10.00/square foot. The minimum charge for any street cut over 5 square feet is \$500.00. For street cuts under 5 square feet, the charge is \$200.00. Except in the case of an emergency, streets paved within the past 5 years shall not be cut. In rare cases of a non-emergency situation where it is deemed necessary to cut a street less than 5 years old, the charges listed above are doubled. This fee shall be in addition to the permit fee.

(e) If a hardship shall result from the collection of a permit fee, the Transportation Department may issue a written waiver or written reduction of the fee, after obtaining written permission from the Mayor. A typical exemption to be considered is for a senior citizen on a fixed income.

(f) For-profit persons shall be ineligible for a permit fee waiver or reduction except in exceptional circumstances.

(g) Permits shall not be issued to any person that caused direct, consequential or incidental damages to be incurred by the City from a previously issued permit to that person.

(h) All permits shall have a time requirement in which the permit holder shall complete the excavation, cut, bore, work or blockage of the public right-of-way and the restoration of the public right-of-way.

(i) If an extension of time beyond the permit expiration date is necessary for the permit holder to complete the excavation, cut, bore, work or blockage of the public right-of-way and restoration work on the public right-of-way, then a written application shall be submitted and signed by the permit holder to the Transportation Director prior to the expiration date on the permit.

- (1) Permit time extensions shall only be granted upon the timely submission of the permit extension application.
- (2) Any permit holder that fails to request and receive an extension for permitted work and continues to work shall be in violation of this Section of this Ordinance and subject to the provisions of the Penalties Section of this Ordinance.

**SECTION 11: Bonding Requirements.** (a) All persons who block or cut public rights-of-way or obtain a permit for doing so may be required to post a surety bond to ensure that requirements of this Ordinance are met.

(b) In lieu of a surety bond, a cash bond may be posted.

(c) The minimum amount of the surety or cash bond shall be \$500.00 for a residential curb cut and \$1,000.00 for non-residential street cut or blocking of public rights-of-way.

(d) If a hardship shall result from the collection of a bonding requirement, the Transportation Department may issue a written waiver or written reduction of the bonding requirement, after obtaining written permission from the Mayor. A typical exemption to be considered is for a senior citizen on a fixed income.

(e) For-profit persons shall be ineligible for a bonding requirement waiver or reduction except in exceptional circumstances.

(f) All bonds as required by this Ordinance shall be held by the Transportation Department or the Finance Department and not released to the permit holder until the time period for the Guaranty of Work as stated in this Ordinance has expired.

**SECTION 12: Excavation and Restoration Standards.** (a) All excavations or cuts shall have a uniform width of not less than twelve inches (12") unless specifically authorized by the Transportation Director. Excavations shall be smoothly cut or severed and shall have a neat appearance.

(b) If the public right-of-way is unpaved, tamping of backfill shall be accomplished by mechanical means to achieve a compaction of ninety-five percent (95%) as determined by the Modified Proctor Compaction Test. Backfill material shall be Class 7 per current ARDOT Specifications or other material approved by the Transportation Director.

(c) If the public right-of-way is paved, restoration of the excavation or cut shall conform to the City of Conway Standard Details for Roadway and Drainage Construction (latest revision). The permit holder shall be responsible for the restoration of the cut and shall schedule all work to allow for any required inspections.

(d) The permit holder is required to backfill the excavation or cut immediately upon completion of work. When backfilling, the permit holder shall schedule an inspection with the Transportation Department. Failure of the permit holder to notify the Transportation Department shall constitute a violation of the permit and this Ordinance. Exceptions for Emergency repairs or other specifically approved instances by the Transportation Director shall not constitute a violation.

(e) If the repairs do not meet the standards of this Ordinance, the permit holder shall be required to correct the repair work within forty-eight (48) hours after receiving notice from the Transportation

Department of the inspection results. The notice shall outline the substandard work to be addressed by the permit holder or person and the required corrective action the permit holder or person needs to take in order to bring the work into compliance with the standards as set forth in this Ordinance.

(f) In the opinion of the Transportation Director, if the excavation, cut, bore or work substantially reduces the anticipated life of a street surface, the permit holder may be required to resurface the entire block or some lesser portion thereof, so the entire surface shall be restored to substantially the same condition it was in prior to the time said excavations or cuts were made. In this case, all other fees will be waived.

(g) In the opinion of the Transportation Director, if the repair work to the excavation, cut, bore or work by the permit holder or person cannot be adequately completed by the permit holder or person to the standards required by this Ordinance, the Transportation Director may have the Transportation Department complete the repair and restoration work to the excavation, cut or bore. The Transportation Department shall then bill or invoice the permit holder or person who made the excavation, cut or bore the costs and expenses to repair and restore the public right-of-way to the standards required by this Ordinance.

(h) Failure of the permit holder or person to pay the bill or invoice within thirty (30) day after being sent to them by the Transportation Department for repairing and restoring the excavation, cut, bore or work made by the permit holder or person, shall be deemed to be in violation of this Ordinance and subject to the provisions of the Penalties Section of this Ordinance.

**SECTION 13: Disturbing Curb, Gutter and Drainage Ditch Public Rights-Of-Way.** (a) No public rights-of-way that are curbs, gutters or drainage ditches shall be removed or undercut for a distance greater than twenty-four inches (24") along the curb line unless said work is required due to existing utility line location or specifically approved by the Transportation Director.

(b) If such work is necessary, notice shall be given at the time of obtaining the permit.

(c) When public rights-of-way curbs, gutters, drainage ditches, or culvert sections are disturbed, the permit holder shall remove items from the site and replace in accordance with the Transportation Department direction.

(d) Any public right-of-way drainage ditch shall not be disturbed without first obtaining a permit from the Transportation Department.

(e) The permit holder shall:

- (1) return the drainage ditch to its original contour so that there shall be no disturbance on the flow of water and,
- (2) restore the vegetation to the disturbed area.

(f) The permit holder shall notify the affected property owners and/or business owners in writing prior to the beginning of construction. Notification shall include who will be working adjacent to their property along with contact name and numbers.

**SECTION 14: Revocation of Permit.** All permits for street and curb cuts are subject to revocation at any time by the Transportation Department upon notice served to who the permit was granted, their agent or employee.

1. A violation of any condition of the permit.
2. A violation of this Ordinance or any other applicable City ordinance relating to street or curb cuts on, in or affecting a public right-of-way.
3. The creation or failure to eliminate a condition or action that constitute a nuisance or endangers the lives, property or welfare of City residents or other persons.



**SECTION 15: Guaranty of Work.** (a) The permit holder shall guarantee and maintain the street cut, curb cut or any related work for twelve (12) months from the completion and approval by the Transportation Department of the final restoration. Within this twelve (12) month period, the permit holder shall correct or cause to be corrected all restoration work in the manner determined necessary by the Transportation Director within five (5) calendar days of receipt of notification by the Transportation Department.

(b) Failure of the permit holder or person to perform the additional restoration work as identified by the Transportation Director within five (5) calendar days shall allow the Transportation Director to elect to have the Transportation Department complete the restoration work and invoice the permit holder or person for all costs incurred in performance of completing the restoration work.

(c) Payment not made within thirty (30) days of the invoice date shall be enforceable against the posted surety bond, including any fees and costs involved in the collected thereof.

**SECTION 16: Stop Work Order.** In the event a stop order is issued, the permit holder engaging in the work shall restore the work area to its proper condition, and permit, upon demand by the City, the City entry to the work site. In the event such is not done within twenty-four (24) hours from receipt of notice to do so, the City shall be authorized to and may, at its election, take charge of work and restore the premises to the condition called for in this Ordinance. The City is entitled to receive from the contractor the actual expense incurred by the City in so acting including, but not limited to, cost of labor, materials, overhead and reasonable rental of any equipment used by the City in restoring the site and for such purposes, the City shall have a right of action against any bond in effect from the holder of the permit to the City conditioned upon compliance with the ordinances of the City in the performance of the work. If the City has to restore the street cut, the fees to be charged to the permit holder or person shall be based on the actual cost to restore the damages to the street right-of-way as deemed necessary by the Transportation Director.

**SECTION 17: Safety.** (a) Proper devices shall be positioned and displayed, per the Manual of Uniform Traffic Control Devices for Streets and Highways (MUTCD) published by the Federal Highway Administration (FHWA), to warn motorists and pedestrians of the excavation, cut, bore, work or blockage.

(b) Where deemed necessary by the Transportation Department, amber lights shall be maintained on excavations from dusk to daybreak. Such equipment shall be located at each end of the excavation, cut, bore, work or blockage. Lights shall also be maintained on other equipment or machinery in public rights-of-way.

(c) Permit holders shall conform to boring or trenching methods approved by OSHA.

(d) Permit holders shall place temporary signage at the location of the excavation work within the right-of-way identifying the company performing the work and including 24-hour contact information for that company.

**SECTION 18: Grasses and vegetation.** The permit holder shall restore or replace all planted grasses and vegetation, including trees and other landscape materials of the same height and character. The Transportation Department may permit modifications to this aspect of the restoration plan in appropriate cases. Notification of completion shall be in compliance with the standards established by the Transportation Department.

**SECTION 19: Temporary Driveways.** Whenever an excavation, cut, blockage or bore requires the movement of a vehicle or vehicles from the property during the construction period, it shall be the responsibility of the permit holder to install and maintain a stone-based, or other suitable material, driveway on the premises so as to prevent the tracking of mud and other debris onto the public right-of-way. In the event that mud or other debris is transmitted onto the public right-of-way, it shall be the responsibility of the permit holder to remove said mud and debris immediately from said public right-of-way.

**SECTION 20: Excess Material or Debris.** When any temporary or final restoration is completed, all excess material, debris, mud or other foreign materials shall be removed from the public right-of-way or other public property involved in the permit, and the surface shall, to the satisfaction of the Transportation Director, be restored to its original condition.

**SECTION 21: Multiple Road Cuts.** If more than two (2) cross cuts are made in a public right-of-way within one (1) block or less than three hundred feet (300'), the permit holder or person must overlay entire section, curb to curb or full public right-of-way width.

**SECTION 22: Approval by City Inspector.** Approval by the City's Transportation Department inspector(s) of all or part of any permitted Work shall not act as a release of the permit holder or person, or waiver by the City of its right to seek performance or restitution from the permit holder or person.

**SECTION 23: Emergencies.** A permit is required for an emergency excavation, cut, blockage or bore. The permit shall be obtained from the Transportation Department by the end of the first (1<sup>st</sup>) business day after the Transportation Department opens to the public following the emergency excavation, cut, blockage or bore. A signed statement describing in detail the nature of the emergency and the reasons for the excavation, cut, blockage or bore shall be submitted at the time a representative of a utility company or a contractor applies for a permit from the Transportation Department. Initiating public rights-of-way excavations, cuts, blockage or bore without a permit, shall be a violation of this Ordinance. In the opinion of the Transportation Director, if the excavation, cut, blockage or bore was not of an emergency nature as herein defined, the Transportation Department shall not issue a permit, but initiate such procedures as are appropriate to exercise under the Penalties Section of this Ordinance.

**SECTION 24: Penalties and Enforcement.**

- (a) The City shall have the authority to administer and enforce provisions of this Ordinance as may be required by governing law. Any permit holder or person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for a violation of this Ordinance.
- (b) Any permit holder or person violating any provision of this Ordinance shall be declared to have committed a violation and, upon conviction, be fined a sum not exceeding one thousand dollars (\$1,000.00), or double the sum for each repetition of such offense or violation plus court costs and applicable fees. Each day that a provision of this Ordinance is violated shall constitute a separate offense. If it is found that the violation of this Ordinance is continuous in nature with respect to time, the fine or penalty for allowing the continuance thereof shall not exceed five hundred dollars (\$500.00) for each day that it is unlawfully continued plus court costs and applicable fees.
- (c) Nothing in this Ordinance shall be construed as a waiver of the City's right to file a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including but not limited to the following:
  - (i) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance.
  - (ii) Other available relief.
- (d) Code Enforcement and the Transportation Department of the City of Conway are hereby granted the authority to enforce this Ordinance by issuing a citation to or obtaining a warrant for the permit holder or any person who violates the provisions of this Ordinance.

- (e) Citations issued by Code Enforcement Officers shall be filed with and adjudicated in Faulkner County District Court, City of Conway Criminal Division.
- (f) Warrants obtained by the Code Enforcement Officers or Transportation Department shall be filed with and adjudicated in Faulkner County District Court, City of Conway Criminal Division.
- (g) A violation may be sentenced as either a criminal violation or a civil violation. If the violation is sentenced as a criminal violation, then the fine shall be not less than \$500.00.

**SECTION 25: Severability.** In the event that any portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other portion of this Ordinance.

**SECTION 26: Repealer.** All ordinances in conflict herewith are repealed to the extent of the conflict.


**SECTION 27: Implementation Schedule.** This Ordinance shall go into full effect on January 1, 2024.

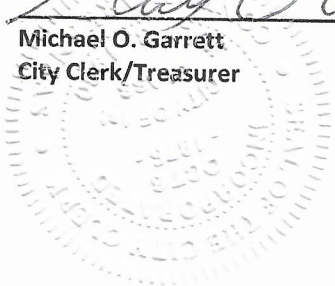
PASSED, this 14<sup>th</sup> day of November, 2023.

Approved:

  
\_\_\_\_\_  
Mayor Bart Castleberry

Attest:

  
\_\_\_\_\_  
Michael O. Garrett  
City Clerk/Treasurer



**CERTIFICATE**

**STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 14<sup>th</sup> day of November, 2023 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 28<sup>th</sup> day of November, 2023.

  
**CITY CLERK-TREASURER**

