

ORDINANCE NO. 2012-11

AN ORDINANCE OF THE CITY OF BRYANT, ARKANSAS REPEALING ORDINANCE NO. 79-4 AND ESTABLISHING A POLICY AND PROCEDURES FOR WORK PERFORMED WITHIN THE CITY OF BRYANT RIGHT-OF-WAYS AND EASEMENTS WITHIN THE CITY LIMITS OF BRYANT, ARKANSAS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYANT, SALINE COUNTY, ARKANSAS:

SECTION 1: The City of Bryant, Arkansas finds that the city has experienced development, construction and maintenance operations by utility companies and other entities which require excavations, cuts, drilling, boring and auguring in public streets, alleys and other properties. It is necessary that any work performed on the City of Bryant right of ways or easements through franchise, contract or other legal authority shall require permits and shall adhere to City of Bryant requirements as described in Exhibit "A" attached hereto and made a part hereof for all purposes.

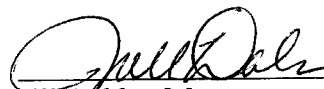
SECTION 2: Any person, firm or corporation violating any of the provisions of this ordinance, commits an unlawful act and shall be subject to the penalty as noted in Exhibit "A" attached hereto and made a part hereof for all purposes.

SECTION 3: That Ordinance No. 79-4 is hereby repealed and all ordinances of the city in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other ordinances of the city not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4: Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

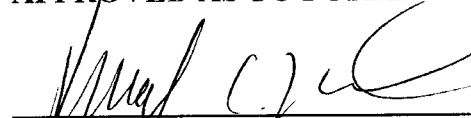
SECTION 5: This ordinance is necessary for the orderly development of the City of Bryant, Arkansas. Therefore, an emergency is declared and this ordinance shall become effective immediately upon its adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BRYANT, ARKANSAS, on this 26th day of April, 2012.



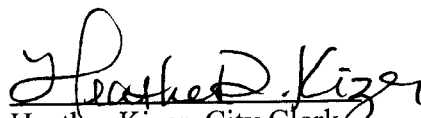
Jill Dabbs, Mayor

APPROVED AS TO FORM:



Richard C. Madison, Staff Attorney

ATTEST:



Heather Kizer, City Clerk

EXHIBIT “A”

CITY OF BRYANT, ARKANSAS RIGHT-OF-WAY AND EASEMENT POLICY AND PROCEDURES

PERFORMANCE OF WORK

Public and private utility companies are required to have agreements (Franchise, Contract, etc.) with the City of Bryant in order to utilize the City of Bryant easements, right-of-ways or real property. No authority shall be given by the City of Bryant, Arkansas without such agreement. Failure to have such agreements with the City of Bryant is immediate grounds for denial of a permit. Without such an agreement, applications/plans submitted to the City of Bryant, Arkansas shall be denied and no permits shall be issued.

Any performance of work upon, in, under, above or under any street, alley, curb, gutter, sidewalk, any public right-of-ways or any public easement within the City of Bryant, shall be included in an application and furnished to the City of Bryant Permit Department prior to the issuance of a permit.

I. Contractor’s Application to the City of Bryant Permit Department

An application to the City of Bryant shall include:

- a. A proposed performance of work plan reflecting the proposed work area.
- b. Indication of a work space within the right-of-way.
- c. Proposed barricade plan for the use of barricades, signals, signs, flags, flares and other traffic control and safety devices within the work area.
- d. A timeline and/or schedule for work.
- e. Applicable Permit Fee(s)

II. Utility Services

It is the preference of the city that boring or pushing of utility services under the streets, alleys or other public property occurs instead of excavations or cuts.

- a. All tunneling plans must be submitted with applicable application/permit fee and is subject to approval of the City of Bryant Code Enforcement and Public Works Department.
- b. Street closures shall be permitted after department approval and issuance of a permit.
- c. Notification of emergency and public service shall be the sole responsibility of the permittee.
- d. All excavations or cuts in paved surfaces shall have a minimum uniform width of twenty-four (24) inches unless the City of Bryant Public Works Department expressly authorizes a different width.

- e. All excavations or cuts in paved surfaces shall be smoothly cut or sawed and shall have a neat appearance. Any boring, excavation or cut made pursuant to the terms of this ordinance shall be restored.
- f. Temporary restoration shall occur immediately upon completion of work that require boring, excavation or cut. Gravel surfaces are strictly prohibited.
- g. The applicant shall complete permanent restoration within ten (10) business days.
- h. The applicant shall resurface the full width of any street lane and replace pavement markings in the public right-of-way where there has been an excavation or cut resurfacing may not be required for minor maintenance.

III. Temporary Restoration

No materials removed from the boring, excavation or cut shall be used as back-fill material. This limitation applies to pieces of broken concrete or asphalt. The top six (6) inches of back-fill material shall be compacted to ninety-five (95) percent of maximum density as determined by the modified proctor compaction test. The surface course shall consist of a two inch application of cold mix asphalt for asphalt streets, concrete streets or streets with single or double penetration surface treatments. The application is permitted to use any or all of the following as back-fill material:

- a. Crushed rock and natural fines uniformly mixed and so proportioned as to meet the specifications for Class 7 as reflected in the most recent edition of the Arkansas State Highway Commission Standard Specifications.
- b. Crushed rock or other selected material approved by the City of Bryant Public Works Department that is free of debris and excess moisture when compacted to a minimum of ninety (90) percent as determined by the modified proctor compaction test.
- c. Compacted River Sand or lean mix concrete if the use of this material has been previously approved by the City of Bryant Public Works Department.
- d. Material recommended by the permittee's engineer.
- e. A maximum of 3/4 inch +/- vertically per four (4) feet will be tolerated for a period of one year on asphalt and concrete streets.

IV. Permanent Restoration

The applicant shall make all permanent restorations of any street or alley pavement on which there has been a boring, excavation or cut made pursuant to the ordinance. Permanent restoration arterial and collector streets of concrete and asphalt streets designed as arterial and collectors by the master street plan shall be as follows:

- a. All back-fill and compaction requirements shall follow the guidelines of section 6 concerning temporary restorations.
- b. Back-fill material shall be removed to a minimum depth of eight (8) inches for concrete streets and ten (10) inches for asphalt streets.
- c. A maximum of 3/8 +/- vertically per four (4) feet will be tolerated for a period of one year on asphalt and concrete streets.
- d. Street cuts shall comply with the 3/8 inch tolerance for one year.

However; if the street repair fails to maintain its required tolerance, within ten (10) days after notification by the department, the permittee shall restore or reconstruct the street repair and shall guarantee the tolerance for another 6 months.

V. Sidewalks, driveways, curbs and drainage facilities

- a. All removed or undercut sidewalks, driveways, curbs or drainage facilities shall be restored by the permit holder in accordance with this ordinance and other applicable ordinances.
- b. The applicant shall be responsible for protecting any shoulders, ditches and other drainage structures in the work area, if damaged in any way whatsoever during the time of the permit, shall make all necessary repairs.
- c. Notification of completion shall be made to the City of Bryant Public Works Director or his or her designee.
- d. Sidewalks, curbs and gutters shall be constructed to original condition or near original condition acceptable to the City of Bryant Public Works Director or his or her designee.

VI. Grasses and Vegetation

- a. To the extent possible, the applicant shall restore or replace all planted grasses and vegetation, including trees of the same height or character.
- b. The City of Bryant Public Works Director or his or her designee shall permit modifications to this aspect of the restoration plan in appropriate cases.
- c. Notification of completion shall be made to the City of Bryant Public Works Director or designee.
- d. Also the permittee shall notify the affected homeowners in writing prior to the beginning of construction who will be working in their yard, which shall include contact name and numbers.

VII. Excess Material or Debris

- a. When any temporary or final restoration is completed, all excess material, debris, mud or other foreign material shall be removed from the street, alley or other public property involved in the permit, and the surface shall, to the satisfaction of the City of Bryant Public Works Department, be restored to its original condition.

VIII. Stop Work Order

In the event a stop work order is issued, the person holding the permit and engaging in the work shall restore the work area to its proper condition and permit upon demand by the City of Bryant and 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 and 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 running 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 permittee shall be as follows.

- a. Cut of up to one-half of width of street pavement \$ 750.00
- b. Cut of more than one half of width of street pavement \$1500.00
- c. Road Bore (applicant responsible for all work and cost) \$ 50.00
- d. Street cut made prior to the issuance of a proper permit \$ 350.00
- e. Administrative fees shall be in addition to penalties assessed by the court upon a finding of violation of this ordinance.

IX. Street Closures

The City of Bryant 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 right-of-way, is kept to a minimum. **Street closures are strictly prohibited without first obtaining approval from the Public Works Department.**

EXEMPTION

It shall be unlawful for an applicant, to make or cause to be made any excavation or cut in the public right-of-way without having first obtained a permit from the City of Bryant Code Enforcement Department. **However, a written permit is not required if, and only if, the excavation cut 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 City of Bryant permit and Code Enforcement Department shall be notified at the earliest possible moment, but in any event, no later than the end of the first business day after the excavation, cut or bore is made. The provision of this ordinance does not apply to minor maintenance work. Minor maintenance work is defined as work performed to existing utilities which does not include excavation of any material in the city right-of-way or damage to any street, alley, curb, gutter, sidewalk and vegetation.

PERMIT FEE

The fee schedule for obtaining a permit to excavate, cut or bore shall be \$50.00 a permit. A permit can include multiple cuts as shown on the application or plans.

SURETY BOND

A surety bond of \$2500.00 for street cuts and \$500.00 for bores shall be posted with the City of Bryant Code Enforcement and Permits Department. The bond shall insure that the street will be repaired according to the specifications and methods set out in this ordinance. The applicant shall post the required surety bond as an addition condition to the issuance of a permit to excavate cut or bore in the public right-of-way. The failure to post this bond in a timely manner shall be the basis for denying a permit. The bond

shall be renewed from year to year for continued coverage: in as far as the applicant continues to work within the city limits of the City of Bryant.

DEDICATIONS/LAND DEVELOPMENT

Land Development in the city frequently requires right-of-way dedications and boundary street improvements for public streets. Development within public right-of-way may include: street construction or reconstruction; street widening; street alignment and re-alignment; curb and gutter; alignment and re-alignment; standard drainage structures and piping; driveways; extension excavation for cuts or fill sections; extensive drainage structures (such as bridges or large culverts); and similar development that results in permanent construction.

Significant engineering design, utility and construction problems have resulted when development has occurred without associated right-of-way dedication and roadway and drainage improvements. Lack of right-of-way dedication and associated roadway and drainage improvements can result in costly relocation of utilities and costly redesign and reconstruction of roadway and drainage improvements. Lack of roadway and drainage improvements may result in inadequate access to abutting property, traffic congestion, unsafe traffic operations, and otherwise adversely affect the safety and general welfare of the city.

Therefore, this ordinance is intended to establish requirements for boundary street improvements within rights-of way; to establish requirements for dedication of rights-of-way for boundary street improvements; and to assure proper engineering design and construction boundary street improvements in the public right-of-way.