

ORDINANCE NO. 2023 - 42

AN ORDINANCE AMENDING THE SEARCY CODE OF ORDINANCES TO ADOPT REGULATIONS CONCERNING STREET AND CURB CUTS IN THE CITY OF SEARCY, ARKANSAS; ADOPTING A FEE AND PERMIT SCHEDULE FOR SAID CUTS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

WHEREAS, the Searcy City Council has been made aware that excavation of curbs and public streets, roads and ways within the City of Searcy, Arkansas, has contributed to a degradation of said streets, roads and ways; and

WHEREAS, the Searcy City Council seeks to reduce the number of cuts in curbs along the public street, roads and ways and limit and improve the manner in which such excavation takes place in an effort to reduce potential traffic hazards, regulate and maximize the value of real property within the City of Searcy and for the benefit the citizenry as a whole; and

WHEREAS, the Searcy City Council finds that the rate of the degradation of said public streets, roads and ways is increasing and that regulation of said curb cuts and cutting of public streets, road and ways is necessary for the immediate protection of the health, safety and welfare of the Citizens of Searcy, Arkansas, and to protect and regulate permitted land uses and declares that an emergency exists

NOW, THEREFORE, be it ordained by the City Council of the City of Searcy, Arkansas, that:

Section 1. The Code of Ordinances of the City of Searcy, Arkansas, Chapter 32 is hereby replaced in its entirety, and said Chapter shall read as follows:

CHAPTER 32

**EXCAVATIONS AND ALTERATIONS OF STREET, ROADS,
WAYS, SIDEWALKS AND CURBS**

- Art. I** Opening and Repair, Sections 32-1-1 to 32-1-8
- Art. II** Permits, Licensing and Application of Chapter, Sections 32-2-1 to 32-2-12
- Art. III** Fees, Section 32-3
- Art. IV** Penalties, Section 32-4

ARTICLE I. Opening and Repair

Sec. 32-1-1. Before any opening is made in the curb, gutter, or pavement of any street or in any unpaved street, or in any Right-of-Way, of the City of Searcy, Arkansas, for the purpose of laying, re-laying, removing, replacing, repairing, or servicing any line, pipe, cable, or other utility service facility which is, or is to become, the property of any utility company, the person, firm, or corporation desiring to make such opening shall apply to the City Engineer of the City of Searcy for a permit.

The person, firm, corporation, or utility company shall provide the City Engineer for approval a sketch detailing the location of and the scope of the proposed cut or excavation.

- Sec. 32-1-2.** If the opening contemplated by Sec. 32-1-1 is approved, the Contractor shall make an estimate of the cost of repairing the opening. Upon concurrence by the City Engineer, he shall issue such permit showing such estimate; provided, however, any emergency excavation that is required on weekends, between the weekday hours of 5:00 P.M. and 8:00 A.M., or on any legal holiday, may be commenced without the obtaining of a permit providing an application for a permit is made prior to 9:00 A.M. on the morning of the first business day following the commencement of the excavation. Should the contractor and the City Engineer not agree on the estimated cost of repairs, the City Engineer shall have the final authority to determine the estimated costs.
- Sec. 32-1-3.** The City Engineer or his representative, at their discretion, may require that a boring be made in lieu of an open cut where conditions warrant. Any such boring shall also require a permit and the approval of the Engineer or his representative. Any such boring shall not cause a rise in or a distress to any pavement surface. Any such rise or distress shall be cause for the contractor to cease boring immediately and contact the City Engineer and inform said official of such problem. Failure to notify the city of any such rise or distress shall be cause for immediate suspension of the permit. Further instances of failure to notify the city shall be cause for revocation of the permit. Repairs to the affected areas are the responsibility of the Permittee. The City Engineer shall have the right to make a final evaluation of all repairs and whether or not the repair is acceptable to the city.
- Sec. 32-1-4.** Any person, firm, corporation, or utility company making an excavation in any paved or unpaved street in the City of Searcy, Arkansas, shall within five (5) days after said excavation shall have been made, unless the time has been extended by the City Engineer or his representative, replace and relay the said street in accordance with the following:
- A. Where streets, sidewalks, right-of-ways, or alleys are cut, regardless of type of street, sidewalk, right-of-way, or alley, the excavation shall be repaired as follows:
 - i. Concrete pavement. The fill shall be SB2 or Class 7 gravel or other select material as approved by the City Engineer and tamped in six (6) inch layers so as to obtain maximum compaction. The fill shall be tamped to within seven (7) inches of the top of original pavement. The width of concrete replaced shall be at least twelve (12) inches wider than the trench width so as to allow at least six (6) inches overlap of slab over trench walls. The concrete replaced shall include one and one half pounds of fiberglass fibers (fiber-mesh) per cubic yard of concrete. The fiberglass fibers (fiber-mesh) shall be thoroughly mixed into the concrete before the concrete reaches the job site. The compressive strength of the

concrete shall be at least three thousand (3000) psi. The City Engineer may, at his discretion, require any tests to be made that he believes are necessary for the protection of the city including but not limited to density tests on compacted soils or base material, slump tests and compressive strength tests on concrete.

- ii. Asphalt pavement. The fill shall be SB2 or Class 7 gravel or other select material as approved by the City Engineer and be tamped in six (6) inch layers so as to obtain the maximum compaction. The fill shall be tamped to within seven (7) inches of the top of original pavement. Then five (5) inches reinforced concrete shall be placed on the fill. The concrete replaced shall conform to the same requirements as outlined in sub-section (i) concrete pavement above. After the concrete has been placed on the fill, then two (2) inches of hot mix asphalt shall be placed on the concrete so as to conform to the proper grade and alignment. Cold mix asphalt may be used with the permission of the City Engineer. In the event that asphalt is unavailable, the cut may be filled to the top with concrete. The concrete will must be colored to closely match the surrounding asphalt pavement by mixing a dye with the concrete while it is still in the truck.
- iii. Gravel and/or dirt streets. The fill shall be tamped in six inch (6") layers so as to obtain maximum compaction. The fill shall be tamped to within twelve (12) inches of the top of original road bed. The remaining twelve (12) inches must be compacted red clay gravel or crushed SB2 stone.
- iv. Alleys. Alleys shall be treated the same as streets with comparable surface. When the alley is unopened and unused by the public, the provisions of this regulation shall not apply.
- v. Parking areas/ Shoulders. Cuts made within the public right-of-way and outside of asphalt or concrete surface shall be back filled and tamped in six (6) inch layers to within seven (7) inches of surface and then filled with SB2, or in lieu of the foregoing, the complete excavation shall be filled with SB2 material and rolled.
- vi. Sidewalks/Paved trails. Cuts made in sidewalks or paved trails within a public right-of-way shall be backfilled and tamped in six (6) inch layers to the proper grade and the surface shall be replaced with material(s) of a strength and thickness corresponding to the original material(s) including any base material. The minimum thickness for asphalt shall be three (3) inches. The minimum thickness for concrete shall be four (4) inches.
- vii. Vegetative areas. For vegetative areas, the excavation shall be filled with native materials and compacted to within at least eight (8) inches of the original surface and finished to the original grade with topsoil and vegetative material(s) matching those removed.

B. Any cut or excavation in a pavement section shall be protected from traffic by positioning an appropriately sized steel plate over the affected area until the repair is complete.

Sec. 32-1-5. If any person, firm, corporation or utility company makes an excavation during the day, they must if at all possible, repair the excavation the same day. If, however, it is impossible to finish repairs the same day, they must leave said excavation properly lighted and barricaded. Said barricades and lights shall bear an identification mark identifying the person, firm, or corporation excavation and repairing said street. Said identification mark of each person, firm, or corporation shall be registered with the City Engineer, and said barricades and lights shall be approved by the City Engineer. Said barricades and lights shall be maintained without interruption until the repair has been completed and approved by the City Engineer. If it becomes impossible to finish repairs on the same day, a street that the City deems necessary for the proper and continued flow and maintenance of traffic, the City Engineer may require any person, firm, or corporation repairing said street to provide steel plating of adequate strength and rigidity to be placed across the entire excavation or any part thereof. All such plating shall be firmly anchored in place and shall meet with the approval of the City Engineer.

Sec. 32-1-6. The work of making all repairs as herein provided shall be done under the supervision and direction and to the satisfaction of the City Engineer or his representative who may proscribe by regulations the manner of such refilling and repairs. Inspections by the City Engineer or his representative during filling/compaction, concrete pours, and asphalt laying are mandatory and must be applied for at least 24 hours prior to said operations.

Sec. 32-1-7. The person, firm, corporation, or utility company responsible for such street excavations shall be responsible for excess fill dirt, dust, or any foreign matter caused by said excavation. The person, firm, corporation, or utility company that has made an excavation shall control the above mentioned items by whatever means that are necessary in order to preserve the health, safety and peace of the citizens of Searcy, Arkansas.

Sec. 32-1-8. Any person, firm, corporation, or utility company having secured a permit and having the same approved as provided for under said provisions shall, before commencing said work of excavation, file with the clerk/treasurer a bond to the City of Searcy in double the amount of the estimate approved by the City Engineer or his representative of the cost of making such repair. The said bond shall be approved the City Attorney and shall be conditioned that the said street shall, within five (5) days after such excavation shall have been made, or within any extension of such time by the City Engineer, as herein provided, be repaired in manner as outlined above, and said repair shall thereafter be maintained in good condition for a period of one (1) year after it is replaced as provided herein. Said bond shall be a corporate surety bond.

A. The bond provided for above may be made for a specified term and shall cover the replacing and maintenance of all streets in which excavation may be made during the term thereof by the person, firm or corporation

filing said bond, and, in that case, the said bond shall be in double the amount of the estimated cost of all repairs which may be made by such person, firm or corporation at any one time during the said term, and in such case said bond must be a corporate bond.

- B. In lieu of filing a bond as herein provided, any person, firm or corporation to whom a permit is issued to make repairs, may deposit with the clerk/treasurer of the City an amount of money equal to the amount of the bond required.
- C. The City may waive the requirements for a bond or a deposit provided that previous work has been performed to all applicable standards and any previous deficiencies have been corrected in a manner acceptable to the City Engineer.

ARTICLE II. Permits, Licensing and Application of Chapter

- Sec. 32-2-1.** In the event that any person, firm, corporation, or utility company cuts the street without the necessary permits and / or bond, the city may, in addition to the amount of the proscribed fine, render to said applicant a complete statement of all costs and charges incurred and/or expended for labor and materials in making any necessary repairs to the pavement section, and such person, firm, corporation, or utility company shall pay the same forthwith.
- Sec. 32-2-2.** It is the intention of this regulation that no person, firm, or corporation other than the City of Searcy or its duly designated agents, servants, or employees shall make or attempt to make any street opening or to repair or attempt to repair the same, except as is specifically set forth in this Chapter.
- Sec. 32-2-3.** Nothing in this Chapter shall limit application of Subdivision Regulations of the City of Searcy to areas outside the City Limits of, but within the Planning Area Boundary for, the City of Searcy, Arkansas.
- Sec. 32-2-4.** The form of the Permit referenced in this Chapter shall be in a form created by the City Engineer.
- Sec. 32-2-5.** The fees for the permits required by this Chapter and penalties for non-compliance herewith shall be as set forth in Article III of this chapter of the Searcy Code Ordinances, as may be amended from time to time.
- Sec. 32-2-6** The permittee for the installation of new utility lines shall be the utility having the new facilities installed. The application shall be signed by a duly authorized agent of the utility.

The permittee for the repair of existing utility lines or building sewer lines may be the utility company, the property owner or their contractor.
- Sec 32-2-7** Permits shall include a drawing or sketch with sufficient detail to identify the area(s) of work. Permits for the large scale installation of utilities shall include such drawing or sketch on an aerial image of a sufficient scale, suitable to the City Engineer, so as to easily identify the individual utility lines.

- Sec 32-2-8 The permittee is responsible for all work zone signage. All work zones must meet MUTCD standards and be set in place before work begins. A traffic control plan must be submitted and approved by the City before any road closure is approved. A 24 hour notice will be needed before a road closure is allowed.
- Sec 32-2-9 The permittee shall guarantee the base material or pavement affected by the bore or cut against settlement for a period of one year.
- Sec 32-2-10 Any street cut permit granted by the City of Searcy is only valid for work within street right-of-ways or easements. Nothing in such permit allows the permittee or his contractor to enter onto private property outside such right-of-way or easement.
- Sec 32-2-11 Permits are not required for work undertaken by the City of Searcy Street Department or by any Board or Commission of the City of Searcy. Any such work shall adhere to the materials and methods required elsewhere in this chapter and be subject to approval by the City Engineer.
- Sec 32-2-12 In the exercise of governmental functions, the city has first priority over all uses of the right-of-way. The city reserves the right to, among other things, to lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in street facilities in across, along, over or under a public street, alley or right-of way occupied by an agency or right-of-way user, and to change the curb, sidewalks, or the grade of streets.

The right-of-way user must relocate its facilities, at its own expense prior to the start of construction of a city project or project in which the city is participating in financially either through a development agreement or other form of agreement.

ARTICLE III. Fees

- Sec 32-3-1 The permits and fees for excavations and alterations of street, roads, ways, sidewalks and curbs shall apply to all areas of the city street rights-of way. Permits shall be obtained by the utility for which the work is being done or by the person or entity causing the work to be done.
- Sec 32-3-2 Permit Fees shall be paid at the following rate:
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|---|------------------|
| R.O.W. Cut or Bore (new installation) | \$25.00 per job |
| Street Bore | \$25.00 per bore |
| Street Cut | \$50.00 per cut |
| Maintenance of existing utility outside
Of paved areas (permit still required) | No Charge |

Article IV. Penalties

Failure to comply with the requirements of this Chapter will result in the following penalties, which shall be in addition to administrative fees as otherwise may be provided for in this Chapter:

- A. Upon the first finding of non-compliance with any requirement of this Chapter, the City shall issue a written warning to the non-complying person, firm or entity.
- B. Upon the second finding of non-compliance the city may assess a fine of not to exceed \$100.00 per day.
- C. Upon the second finding of non-compliance the city may assess a fine of not to exceed \$200.00 per day.
- D. Upon the third finding of non-compliance the City the city may assess a fine of not to exceed \$400.00 per day may pause or revoke any or all permits held by the permit holder.
- E. Payment of the fines imposed by this Article shall be paid to the Searcy District Court Clerk and remitted to the City and the sums collected shall be in addition to any court costs imposed.
- F. In the event that any person, firm or entity elects not to pay such fine as imposed pursuant to this Article, a hearing shall be set by the Searcy District Court Clerk at which any party in interest may call witnesses and any decision may be appealed to the Circuit Court.
- G. The appeal of any decision to bar any person, firm or entity from obtaining a permit under this Chapter or directing the removal of the offending improvement or revocation or denial of the issuance of any certificate of occupancy may appeal such decision of the Department to the Searcy District Court and any decision of the Searcy District Court maybe appealed to Circuit Court.

EMERGENCY CLAUSE. The Searcy City Council has determined that an emergency exists and that the immediate adoption and enforcement of the ordinance being necessary for the public peace, health, safety and welfare, the provisions hereof shall be in full force and effect from and after this passage.

PASSED AND ADOPTED THIS 12TH DAY OF SEPTEMBER, 2023

/s/ Mat Faulkner

Mayor of Searcy

ATTEST:

/s/ Jerry Morris

City Clerk