

ORDINANCE NO. 1-2023

BE IT ENATED BY THE CITY COUNCIL OF THE CITY OF HECTOR, ARKANSAS, AN ORDINANCE TO BE ENTITLED: “ AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF REGULATIONS RELATED TO THE EXCAVATION OF CITY STREETS AND RIGHT OF WAYS FOR THE CITY OF HECTOR, ARKANSAS AND FOR OTHER PURPOSES.”

WHEREAS, the City of Hector, Arkansas has limited revenue related to the construction and maintenance of city streets and roads.

WHEREAS, the City of Hector is determined to protect the safety and welfare of citizens and visitors traveling on city streets.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Hector, Arkansas

Section 1 Responsibility: Any entity which uses a public right of way through franchise or other legal authority, and in the course of furtherance of that use, causes excavations or cuts to occur. This ordinance sets forth the criteria for and requirements of such excavations or cuts.

Section 2 Definitions: The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person, firm, corporation, partnership, utility company, or association of any nature whatsoever, including governmental entity, seeking a permit to make, or cause to be made, any excavation, cut or boring in any city street, alley, or other city property.

Designated City Official (“DCO”) means the Mayor or city employee(s) designated by the Mayor to be responsible for enforcing the terms of this article.

Permit holder means any applicant that has been granted a permit pursuant to the terms of this article.

City street or road means any street or road owned and maintained by the municipality.

Public right-of-way means any city street, alley, or other public property

Street cut means an excavation in city right-of-way within or out of the pavement area. (Sometimes called a utility cut.)

Street cut repair means the repair to the location of the disturbed right-of-way caused by a street cut.

Street cut barricade means the barricade plan used during the time a street cut is being made and while the utility repair or work is being made.

Street cut repair barricade means the barricade plan in use after the completion of the utility repair work but prior to the final repair to the street.

Temporary street cut repair means that repair in place between the time the street cut is completed but prior to the completion of the final repair. If in the pavement area, this repair consists of a cap of cold mix asphalt flush with the existing pavement surface.

Section 3 General permit requirement

(A) Except as set forth in subsection (B) below, it shall be unlawful for any person, firm, corporation, partnership or association of any nature whatsoever, including any governmental entity, to make or cause to be made any excavation or cut in the public right-of-way without having first obtained a written permit.

(B) A written permit is not required prior to excavation, cut or boring of any public right-of-way if, and only if:

- (1) 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; and
- (2) The Designated City Official is notified and permits as required herein are obtained at The earliest possible moment, but in any event, no later than the first business day after the excavation, cut or bore is made; or
- (3) The excavation, cut, or bore is made by a department of the city or at the request of a City department for a city sponsored project under exigent circumstances as determined by the Designated City Official.

Section 4 General Standards

(A) The Designated City Official shall direct that a process for obtaining permits to make excavations, cuts or bores in the public right-of-way is established and published. This process shall include:

- (1) The city department to contact in order to obtain a permit, or to report an emergency excavation or cut.
- (2) The city department that will be responsible for the day to day administration and enforcement of this article.
- (3) The temporary and permanent restoration requirements to be met during the course of, Or the completion of, the excavation, cutting or boring, including, but not limited to, the type and grade of materials that shall be required.

Section 5 Restoration

(A) Restoration required. Any boring excavation, or cut, made pursuant to the terms of this article shall be restored. Temporary and/permanent restoration shall be made by the permit holder and shall occur immediately upon completion of the work that required the boring, excavation or cut, in accordance with the provision of this article.

(B) Markings and signs. The permit holder shall replace pavement markings and signs in the public right-of-way that have been disturbed by the excavation or cut.

(C) Temporary Restoration-Paved areas.

- (1) No materials removed from boring, excavation, or cut shall be used as backfill material. This limitation applies to pieces of broken concrete or asphalt.
- (2) The top six (6) inches of backfill material shall be compacted to ninety-five (95) percent of maximum density as determined by the modified Proctor compaction test.
- (3) The surface course shall consist of a two-inch application of cold mix asphalt for streets. For gravel streets, the top six (6) inches of backfill materials shall meet Class 7 of the most current Arkansas State Highway Commission Standard Specifications, and shall be compacted to conform to the surrounding surface.
- (4) The permit holder is permitted to use any or all of the following as backfill material: 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; Class 7 aggregate (SB-2)
- (5) The permit holder is wholly responsible for making and maintaining temporary restorations consistent with the standards set forth in this regulation. Any temporary restoration must be of sufficient quality, as determined by the Designated City Official, to bring the city street or road back to its original usefulness and must be capable of supporting normal traffic for a period of thirty (30) days.
- (6) Inspections may be made by the city of any temporary restoration. Permit holders must notify the Designated City Official of the restoration work schedule to facilitate inspection in the manner and time established by that official. If the temporary restoration does not meet the standards of this article, then the permit holder shall be required to correct the situation within the time frame established by the Designated City Official. If the restoration failure is deemed sufficiently hazardous to require the closure of the street or traffic lane and the permit holder does not immediately repair the deficiency, the city shall bring the temporary restoration back to standard and all costs for the work shall be assessed on the permit holder.
- (7) Any temporary restoration shall be replaced by the permit holder with the appropriate permanent restoration within 30 days of the date of issuance of permit. Any temporary restorations remaining after that time may be repaired by the city and the cost of such

repair shall be paid by the permit holder or shall be claimed from any surety bond required pursuant to this regulation. The Designated City Official may grant an extension of the thirty (30) days if a delay is caused by inclement weather. In such case, the permit holder will be responsible for temporary repairs until permanent restoration is in place.

Section 6 Permanent Restoration

- (A) Unless otherwise agreed to in writing by the Designated City Official and the permit holder, the permit holder shall make all permanent restorations to any right-of-way in which there has been a boring, excavation, or cut made pursuant to this regulation.
- (B) The permanent restoration of surfaces shall be made as follows:
 - (1) Except as set forth in this subsection, all backfill and compaction requirements shall comply with the sections of this regulation concerning temporary restorations.
 - (2) If the surface is concrete, the top six (6) inches of backfill shall be removed and replaced with six (6) inches of three thousand (3000) psi concrete and then finished to conform with the surround surface.
 - (3) If the surface is asphalt, the top eight (8) inches of backfill shall be removed and replaced with six (6) inches of asphalt in two (2) inch lifts, with an additional final two (2) inches consisting of asphalt to conform with the surround surface.
 - (4) If the surface is gravel, gravel shall be added as required and compacted to conform to the surrounding surface.
- (C) Notice. Permit holders must notify the Designated City Official of the restoration schedule to facilitate inspection in the manner. The permit holder shall notify the Designated City Official on the first business day after completion of all restoration for each permit.
- (D) Sidewalks, driveways or curbs. All removed or undercut sidewalks, driveways and curbs shall be restored by the permit holder in accordance with this regulation and in compliance with the standards established by the Designated City Official. The permit holder shall be responsible for protecting any shoulders, ditches, and other drainage structures in the work area and, if damaged in any way whatsoever during the time of the permit, shall make all necessary repairs.
- (E) Grasses and vegetation. The permit holder shall restore or replace all planted grasses and vegetation, including trees.
- (G) Excess material or debris. When final restoration is completed, all excess material, debris, mud or other foreign material shall be removed from the street or other public property involved in the permit, and the surface shall, to the satisfaction of the Designated Public

official, be restored to its original condition.

Section 7 Signage required. The permit holder must post a clearly visible sign at least 16" x 24" Size at the excavation location from the time the work begins until final restoration is complete that contains the name of the permit holder and contractor, if different from the permit holder.

Section 8 FEES and Penalties.

(A) The Designated City Official shall issue all permits for boring, excavations, or cuts in the public right-of-way as follows:

(1) Applicant shall complete an application that indicates the following:

- (a) legal name of the permit holder
- (b) location of the street cut
- (c) the date(s) of the work
- (d) the emergency contact number of the permit holder.

(2) Separate permits shall be required for all service or work locations.

Section 9 Penalties

(A) Non-compliance or violation of any provision of this regulation shall result in penalties assessed as follows:

(1) 1st offense- No less than \$100 or more than \$500 per offense

(2) 2nd or any subsequent offense- No less than \$200 or more than \$1000 per offense

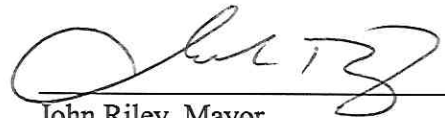
(B) In the event an excavation, street cut or street cut repair should become a hazard or danger to the public, and no one listed on the permit as a responsible party can be reached; or if the permit holder fails to respond and response be by the city is necessary due to hazard or danger, the City will:

- (1) Make whatever necessary repairs or changes are necessary to render the excavation, street cut, street cut repair, or work associated with the permit, safe and functional; and
- (2) The permit holder will be billed for the work done by the city at a rate of \$200.00 per hour for time spent at the city, plus the City's cost for material and equipment, or a minimum of \$500.00, whichever is higher

Section 10 Statement of Purpose- The purpose of this ordinance is to promote the public health, safety, and general welfare, and to prevent adverse impacts from excavations of city streets and public rights-of-way.

Section 11 Severability- If any court of competent jurisdiction finds that any section, clause, sentence, or phrase of this ordinance is invalid or unconstitutional, that finding in no way affects the validity of the remaining portions of this ordinance.

Section 12 Emergency Clause- It is hereby determined by the City of Hector, Arkansas that an emergency exist and this ordinance being necessary in order to protect the safety and welfare of the citizens and visitors in the City of Hector, Arkansas who travel on city streets and public rights-of-way. That an emergency is declared to exist and this ordinance will therefore be in full force and effect from the date of its passage.


John Riley, Mayor

Date: 8-21-23

ATTEST:


Sandra Barton, City Recorder/Treasurer

Date: 8-21-23

I, Sandra Barton, City Recorder/Treasurer of the City of Hector, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1-2023 passed by the City Council of the City of Hector, Pope County, Arkansas, on the 21 day of August, 2023.

For 5 Against 0
Abstain ✓ Present 5 Absent 0

Certificate

The undersigned, Recorder/Treasurer of the City of Hector, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 1-2023, passed at a meeting of the Hector City Council of Hector, Arkansas, held at the regular meeting place of the Hector City Council at 6:30 on the 21 day of August, 2023.