

**CHAPTER 9.04**

**EXCAVATIONS AND ALTERATIONS**

**Sections:**

9.04.01	Definitions
9.04.02	Prohibition
9.04.03	Permits
9.04.04	Permit issuance, expiration and renewal
9.04.05	Protective measures
9.04.06	Clearance for fire equipment
9.04.07	Repairs
9.04.08	Inspection or repair and/or restoration work
9.04.09	Deposit or surety bond refund
9.04.10	Penalty

**9.04.01 Definitions** For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. The word “shall” is always mandatory and not merely directory.

**Applicant** is any person making application for an excavation or alteration permit issued hereunder.

**City** is the city of Centerton, Arkansas.

**City Inspector** is the Street Superintendent (or other duly authorized official) of the city of Centerton, Arkansas. (Ord. No. 2008-8, Sec. 1.)

**Excavate or Excavation or Alteration** shall include but not be limited to digging, trenching, cutting, drilling, tunneling into or under the surface, modification, removal or moving of surface structures or structures or property below the surface, removal of dirt, topsoil, rock, or other geological materials from their position prior to said removal, or in any other manner disturbing the surface of any right-of-way within the city for the purpose of installing or maintaining public utilities.

**Permittee** is any person who has been granted and has in full force and effect an excavation or alteration permit issued hereunder.

**Person** is any individual, firm, partnership, association, corporation, company, public utility, public entity or organization of any kind.

**Public utilities** means any line, system and appurtenance or facility used for producing, storing, conveying, transmitting or distributing communications, electricity, gas, heat, water, steam and sewage.

**Repair and/or restoration** is the return of the right-of-way and/or the existing public utilities to their original condition.

**Right-of-way** means any area along which public utilities are located. (Ord. No. 2001-18, Sec. 1.)

9.04.02 Prohibition It shall be unlawful for any person to excavate right-of-ways within the city, unless such person meets the requirements for obtaining a permit hereunder and has been granted and has in full force and effect an excavation or alteration permit issued hereunder, and notice has been given as prescribed hereunder. (Ord. No. 2001-18, Sec. 2.)

9.04.03 Permits Permits may be issued to persons who, in the opinion of the City Inspector, and properly qualified to make the excavations and repairs.

- A. Application for permit: An application for an excavation or alteration permit shall be made, in writing, to the City Inspector and shall contain the following:
1. The name, address and telephone number of the person or entity making application and proposing to perform the excavation.
  2. The qualifications and experience of the party performing the work.
  3. The location and purpose of the proposed excavation.
  4. The name, address and telephone number of the owner(s) of the property to be excavated, if other than the city.
  5. A plan or description of the excavation proposed, including, but not limited to:
    - a. the number of lineal feet to be excavated,
    - b. the manner in which the excavation will be accomplished,
    - c. the anticipated damage to right-of-ways, as well as the estimated costs of repair and/or restoration,

- d. a plan or description of the measures intended to restore the excavated right-of-way to its original condition.
  6. Such other information as the City Inspector shall find reasonably necessary to make a determination of whether the permit should be issued.
- B. Permit fees:
1. Filing fees the fee for a permit required hereunder shall be \$10.00, which shall accompany the application; provided, however, that utility companies franchised by the city may be billed monthly for all permits issued to them during the previous month.
  2. Inspection fee The City Inspector shall charge a fee for all inspections and engineering services done on behalf of an applicant or permittee hereunder. The inspection and engineering fees shall be computed from a schedule of charges based on anticipated actual costs.
- C. Cash deposit of bond: No person shall make any excavation for which a permit is required by this ordinance unless such person has deposited with the City Inspector cash or sufficient surety bond for the purpose of guaranteeing the repair and/or restoration of the right-of-way. The amount of the cash or surety bond required shall be determined by the City Inspector based upon the estimated cost of the repair and/or restoration, but in any instance shall not be less than Five Hundred Dollars (\$500.00).
1. Forfeiture The cash or surety bond shall be forfeited for failure by permittee to a)complete the repairs and/or restoration, b) complete the necessary cleanup, c) for causing unnecessary inconvenience or damage to vehicular or other traffic, of d)failure to otherwise adhere to the requirements of this ordinance.
  2. Exemption The public utilities operated by companies franchised by the city shall be exempt from the cash deposit or surety bond requirements of this ordinance.
- D. Notice No person shall make any excavation or alteration for which a permit is required by this ordinance unless such person has given notice of the issuance of the permit to the city's water and sewer department, street department, and has complied with the requirements of the Arkansas Underground Facilities Damage Prevention Act. (Ord. No. 2001-18, Sec. 3.)

9.04.04 Permit issuance, expiration and renewal A permit shall expire six (6) months from the date of issuance, but may be renewed upon application. The procedure for renewal applications shall be in the same manner and with the same fees as required in 9.04.03 for original application. (Ord. No. 2001-18, Sec. 4.)

9.04.05 Protective measures Every person performing excavation or alteration governed by this ordinance shall place and maintain proper and adequate caution lights, guards, and other appropriate protective measures around the same for the protection of the public. Such protective measures shall comply with state rules and regulations. (Ord. No. 2001-18, Sec. 5.)

9.04.06 Clearance for fire equipment

- A. The excavation or alteration work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within ten (10) feet of fire hydrants. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of piles of material or other obstructions.
- B. The permittee shall construct and maintain adequate and safe crossing over excavations to accommodate fire-fighting and emergency equipment as well as pedestrian and vehicular traffic of the general public. (Ord. No. 2001-18, Sec. 6.)

9.04.07 Repairs

- A. Each person performing excavation or alteration under this ordinance shall repair the right-of-way upon which excavation or alteration was made, at such person's own expense and under the direction and supervision of the City Inspector to the following standards:
  - 1. All excavations or alterations in non-paved areas shall be backfilled and tamped with the same type of materials excavated.
  - 2. Any grass or vegetation shall be replaced or re-seeded, per the specifications of the City Inspector.
- B. The permittee shall notify the City Inspector prior to the beginning of such repair and/or restoration work and obtain the approval of the City Inspector prior to the beginning of such repair and afford the City Inspector the opportunity of being present during the progress of such repair until completed. (Ord. No. 2001-18, Sec. 7.)

9.04.08 Inspection of repair and/or restoration work After the repair and/or restoration work required by 9.04.07 has been completed, the permittee shall notify the City Inspector that such work has been completed. The City Inspector shall make an inspection to insure that the work has been done in accordance with the requirements of 9.04.07 and the other reasonable specifications provided to the permittee by the City Inspector. In the event any part of the work is not done in a satisfactory manner or not in conformity with this ordinance or such specifications, the City Inspector shall notify the permittee or owner in writing of the non-acceptance of the repair and/or restoration work. All such rejected work shall be removed, and replaced as required in 9.04.07 within the time designated by the City Inspector. (Ord. No. 2001-18, Sec. 8.)

9.04.09 Deposit or surety bond refund When the repairs and/or restoration required by this ordinance are satisfactorily completed and approved and paid for, the City Inspector shall authorize the return of any sum deposited as provided in this ordinance. In the event that the permittee shall fail, refuse or neglect to make such repairs and/or restoration, or shall fail, refuse or neglect to remove and replace any rejected work, the city may make such repair and/or restoration, or cause such repair and/or restoration to be made, and deduct the cost therefrom from the amount on deposit with the city, and the balance, if any, shall be paid to the permittee. In any case where the cash deposit or surety bond is not sufficient to cover the cost incurred by the city in making the required repairs, the city may recover the excess cost from permittee. Failure of any permittee to pay the excess cost shall be grounds for refusal of any future permit applications. (Ord. No. 2001-18, Sec. 9.)

9.04.10 Penalty Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00), and such violation shall be stopped until a proper permit has been issued. Each day such violation continues shall constitute a separate offense and shall be punishable as such hereunder. (Ord. No. 2001-18, Sec. 10.)