

**ORDINANCE NO. 69**

**AN ORDINANCE GOVERNING ANY EXCAVATION OF A CITY STREET OR PUBLIC RIGHT-OF-WAY AND TO REQUIRE A CASH BOND; PROVIDING FOR THE IMPOSITION OF LIENS; AND TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES**

**WHEREAS**, persons or entities who excavate so as to install utilities or other improvements can adversely affect city streets or public rights-of-way; and

**WHEREAS**, the City of Goshen is presently without a means to be apprized of and effectively regulate such excavations; and

**WHEREAS**, there have been recent inquiries regarding upcoming planned projects which will require excavations in the public rights-of-way in Goshen making it vitally necessary to address this issue as soon as possible;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GOSHEN:**

**SECTION 1. Permit requirements.** Before any person shall dig, excavate in, bore under or remove any portion of any street, alley, curb, sidewalk or public right-of-way in the city, he shall obtain a permit issued by the Building Official. Each cut shall require a separate permit. At the time of making application for the permit, an inspection fee of \$100.00 shall be paid. An applicant for such permit shall deposit cash surety bond at the office of the Building Official before a permit shall be issued. The amount of the cash surety bond shall be equivalent to the estimated cost of properly repairing and replacing said city street or public right-of-way, as determined by the Building Official or his/her duly authorized representative, but shall not be less than \$5,000.00. The cash surety bond shall be forfeited for failure to comply with the rules of public safety, failure to close the opening as quickly as possible, failure to complete the backfill and repair in accordance with specifications, failure to complete the necessary cleanup, or causing unnecessary inconvenience or damage to vehicular or other traffic.

**SECTION 2. Jacking or boring.** The depth of bury on installations which are jacked or bored under any street shall have a minimum depth of bury of 2 1/2 feet below the low points of the street cross section to the top of the pipe or casing, or 3 1/2 feet below the bottom of the pavement structure (top of subgrade) to the top of the pipe or casing, whichever gives the greatest depth. If the pavement structure is damaged by the jacking or boring installation, it shall be repaired in accordance with Section 3 below.

**SECTION 3. Street cuts.** In addition to the requirements as set forth herein, all street cuts shall be made and repaired in accordance with methods approved by the Building Official or

his/her representative, depending on the type of street surfacing.

a. The person making the street cut (Permittee) shall saw-cut the pavement in a smooth straight line before any excavation commences. Flares, barricades, warning signs and other warning devices as required in the current edition of the MUTCD shall be used to protect the public from harm. The Building Official or his/her authorized representative shall inspect the street opening before any class 7 backfill is placed in the opening and during the backfill operation. The backfill shall be watered and compacted by machine tampers to a density of 95 percent of AASHTO T 180. A temporary patch of two inches of cold-mix asphalt may be used over the top of the backfill matching the existing grade of the street surface. The Permittee shall timely make the permanent repair in accordance with City of Goshen, Arkansas Standard Details for Street and Drainage Construction.

b. The Permittee shall be responsible for making any needed repairs due to settling of the cut or loss of cold mix asphalt for the period of time after the temporary patch is completed until the permanent repair is completed.

c. After the permanent repair is complete, the Building Official or his/her authorized representative shall make a final inspection. The cash surety bond deposited with the city shall be returned to the Permittee after the Permittee has completed and paid for the cost of the permanent repair, and the final cleanup of the trench cut is complete.

SECTION 4. If the Permittee shall fail or refuse to comply with the provisions hereof, in the manner and within the time therein prescribed, the city may contract with some suitable person for the construction, reconstruction or repair of such improvements, on the best terms that can be made and in the manner prescribed herein, after giving reasonable notice to the Permittee or the agent in charge of the project of an intention to do so.

SECTION 5. The city may pay any person so hired to construct, reconstruct or improve such improvements, and the amount so paid to such person by the city, together with six percent penalty added thereof, shall constitute a charge against the bond provided by the Permittee, and shall also be a lien on the improvements installed by the owner of the project from the date of the commencement of the work with the charge and lien to be enforced and collected by the city as provided by state law.

SECTION 6. In instances where strict enforcement of such requirements would cause undue hardship due to circumstances unique to the individual property under consideration, and the granting of a variance is demonstrated to be within the spirit and intent of the provisions of this chapter, the City Council may grant requests for variances of any requirements of this ordinance either by modifying or waiving such requirements to the extent deemed just and proper so as to relieve such difficulty or hardship, provided that such relief may be granted without detriment to the public interest.

SECTION 7. Following notification by the Mayor, the Building Official or their designated representative of the requirement of installation of certain improvements, a Permittee aggrieved by the decision of those city officials may appeal such action to the City Council provided that the appellant states specifically in writing to the city official who made the decision, the reasons why he/she considers the findings and decision to be in error. Such appeal shall be filed with the city recorder within 30 days from the date of the written notice of decision by the city official, and shall be scheduled for review at the next regular meeting of the City Council, at which time the decision may be affirmed, reversed or modified at the discretion of the City Council.

SECTION 8. EMERGENCY CLAUSE: Since no current system exists for the City to be apprized of or regulate excavations within streets or rights-of-way and there are projects anticipated in very near future, it is hereby declared that based on the conditions set forth herein, an emergency exists and this Ordinance, being necessary for the immediate protection of the health, safety, and welfare of the citizens of Goshen, Arkansas, shall be in effect immediately upon its passage, approval, and publication.

PASSED AND APPROVED this 14<sup>th</sup> day of November, 2006.



Andy Bethel, Mayor

ATTEST:



Fara Ferguson, City Recorder

APPROVED AS TO FORM:



Charles L. Harwell, City Attorney

ROLL CALL VOTE ADOPTING THE ORDINANCE

Names Of Those Voting YEA

Joe Benson  
Jamie Boyd  
John Meek  
Max Poye  
Dick Seddon

Names Of Those Voting NAY

Absent

Chuck Huskey

ROLL CALL VOTE ADOPTING THE EMERGENCY CLAUSE

Names Of Those Voting YEA

Joe Benson  
Jamie Boyd  
John Meek  
Max Poye  
Dick Seddon

Names Of Those Voting NAY

Absent

Chuck Huskey