

ORDINANCE NO. 19- 51

AN ORDINANCE MAKING CERTAIN AMENDMENTS TO THE CODE OF ORDINANCES OF THE CITY OF ROGERS, ARKANSAS FOR PURPOSES OF PREVENTING DAMAGE TO PUBLIC AND PRIVATE PROPERTY; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, the Rogers Water Utilities ("RWU") has recently experienced frequent incidents of damage to water lines and sewer lines caused by persons conducting excavations, particularly by persons conducting directional boring; and

WHEREAS, line breaks endanger the public and repairing line breaks and other damages is costly and occupies RWU personnel and equipment; and

WHEREAS, to address these problems, The Rogers Waterworks and Sewer Commission and the Rogers Water Utilities have recommended certain amendments to the Code of Ordinances of the City of Rogers for the purpose of preventing damage to public and private property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROGERS, ARKANSAS:

Section 1. Chapter 54, Article II, Section 54-43 of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add the definitions as shown on the attached Exhibit 1 and Municode Corporation is hereby instructed to make said amendment.

Section 2. Section 54-45 of Chapter 54 of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to read as shown on the attached Exhibit 1.

Section 3. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-55, to read as shown on the attached Exhibit 1.

Section 4. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-56, to read as shown on the attached Exhibit 1.

Section 5. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-57, to read as shown on the attached Exhibit 1.

Section 6. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-58, to read as shown on the attached Exhibit 1

Section 7. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-59, to read as shown on the attached Exhibit 1.

Section 8. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-60, to read as shown on the attached Exhibit 1.

Section 9. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-61, to read as shown on the attached Exhibit 1.

Section 10. Chapter 54, Article II, of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to add an additional section, Section 54-62, to read as shown on the attached Exhibit 1.

Section 11. Section 14-513 of Chapter 14 of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to read as shown on the attached Exhibit 1.

Section 12. Section 14-514 of Chapter 14 of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to read as shown on the attached Exhibit 1.

Section 13. Section 14-519 of Chapter 14 of the Code of Ordinances of the City of Rogers, Arkansas is hereby amended to read as shown on the attached Exhibit 1.


Section 14. Emergency Clause-The need to amend the Code of Ordinances of the City of Rogers, Arkansas as provided herein above is immediate and in order to protect the public peace, health, safety and welfare an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from the date of its passage and approval.

Section 15. Severability Provision- In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

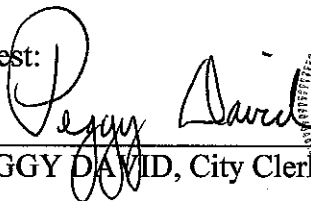

Section 16. Repeal of Conflicting Ordinances and Resolutions- All ordinances, resolutions or orders of the City Council, or parts of ordinances, resolutions or orders of the City Council in conflict herewith are hereby repealed to the extent of such conflict.

PASSED this 13th day of August 2019.

APPROVED:


C. GREG HINES,
Mayor

Attest:


PEGGY DAVID, City Clerk-Treasurer


Requested by: Rogers Water Utilities and the Rogers Waterworks and Sewer Commission
Prepared by: Robert A. Frazier, Counsel for Rogers Water Utilities and Rogers Waterworks and Sewer Commission
For Consideration by the Public Works Committee

Exhibit 1**Definitions to be added to Section 54-43**

Auger Boring means the process of forming a linear horizontal bore by jacking steel casing through the earth from a main shaft to a reception shaft. Spoil is removed from inside the encasement by means of a rotating auger. The term "auger boring" includes, without limitation, and shall be used interchangeably with the term "jack and bore".

Bore- a single bore is defined as the drilling path from the surface entry point to its corresponding surface exit point. A single bore crosses no more than one public right of way and/or utility easement.

Boring means a method of digging characterized by penetration of earth, rock, or other materials in the ground by a turning or twisting movement. Boring, includes, but is not limited to, *directional boring* and *auger boring*.

Damage includes the substantial weakening of structural or lateral support of water lines or sewer lines, including any water facilities or sewer facilities, other penetration or destruction of any protective coating, housing, or other protective device of any such lines or facilities, the partial or complete severance of any such lines or facilities, and the rendering of any such line or facility inaccessible.

Directional boring means any mechanized process of excavating underground without open trench excavation and with the ability to directionally control the bore path. The term "directional boring" includes, without limitation, and shall be used interchangeably with, the terms "horizontal directional drilling," "horizontal drilling," "horizontal boring technique," and "micro-tunneling."

Person means any individual, any corporation, partnership, association, improvement district, property owners' association, property developer, public agency, or any other entity organized under the laws of any state or any subdivision or instrumentality of a state, and any employee, agent, or legal representative thereof.

Rogers Water Utilities means the municipal water and sewer utility of the City of Rogers, Arkansas, consisting of the Water Department and the Sewer Department, operated under common management, and being supervised by the Rogers Waterworks and Sewer Commission of the City of Rogers, Arkansas ("the Commission"), a combined waterworks and sewer commission established by City of Rogers Ordinance No. 86-10, codified at Section 54-1, *et. seq.* of the Code of Ordinances of the City of Rogers, Arkansas.

Superintendent of the Rogers Water Utilities is the chief administrator and manager of the Rogers Water Utilities appointed by the Commission. In some places in this Code, the Superintendent is referred to as the "Manager of Water Utilities," "Rogers water utilities Manager," "Superintendent of the Water and Sewer Department," or similar titles.

Section 54-45.-Enforcement

The Superintendent of the Rogers Water Utilities and the Superintendent's duly authorized representatives shall be responsible for the enforcement of all provisions of this Chapter 54.

Section 54-55.- Damage to Water Facilities or Sewer Facilities

(a) Any person negligently breaking or causing damage to any public water lines, public sewer lines, other public water facilities or other public sewer facilities of the Rogers Water Utilities, shall be liable to the Rogers Water Utilities for the cost of repairing the break or damage. Violation of the Arkansas Underground Facilities Damage Prevention Act shall be considered evidence of the person's negligence. In the event the break or damage is caused by the person's reckless, or intentional actions or omissions, the person causing the break or damage shall be liable for three times the cost of repairing the break or damage (treble damages). If the damages prescribed herein are not paid when due, Rogers Water Utilities may bring an action in any court of competent jurisdiction to collect such damages, including, without limitation, an action to collect on any bond posted with the Rogers Water Utilities or any bond (including, without limitation, street cut or curb cut bonds) posted with any other department of the City of Rogers, the Rogers Water Utilities being an intended obligee of such bonds.

(b) The Rogers Water Utilities may bring an action at any time in a court of competent jurisdiction to enjoin persons from breaking or causing damage to any public water lines, public sewer lines, other public water facilities or other public sewer facilities of the Rogers Water Utilities.

(c) If a person breaking or causing damage to any public water lines, public sewer lines, other public water facilities, or other public sewer facilities of the Rogers Water Utilities is operating under a permit or permission of another department of the City of Rogers, the Rogers Water Utilities may request that the other city department having jurisdiction issue a stop work order or take other appropriate actions to prevent damage to Rogers Water Utilities lines or facilities.

(d) The remedies listed herein are cumulative and do not limit the ability of the Rogers Water Utilities to prevent damage to its lines and facilities. The Rogers Water Utilities may pursue any and all legal or equitable remedies available to it.

Section 54-56 –Bores without permit unlawful

It shall be unlawful for any person to conduct boring of any type, including, without limitation, directional boring or auger boring, in the City for the purposes of installing service lines or utility lines or for any other purpose except in the case of an emergency, until a permit for such boring has been issued by the Rogers Water Utilities.

Section 54-57. – Boring Permits; deposits

(a) *Permits to Bore.* The Rogers Water Utilities shall and is hereby authorized and directed to issue permits, upon proper application, to conduct boring within the City for the purposes of installing utility lines or service lines or for such other purposes as may be approved by the Superintendent of the Rogers Water Utilities. Such permits allow boring operations only within the public ways of the City, including public rights of way and utility easements, as specified in the permit or otherwise provided in any applicable franchise agreement. Such permit does not allow the permittee to conduct boring on private property without the permission of the owner or owners of the private property.

(b) The Rogers Water Utilities may deny the boring permit application if the applicant is indebted to the Rogers Water Utilities for damages to Rogers Water Utilities' water lines, sewer lines, or other property, and the applicant is in arrears for such debts. Upon denial of any permit application, the Rogers Water Utilities shall communicate the reason for denial to the applicant and shall provide documentation to the applicant supporting its denial.

(c) Persons applying for a permit to bore shall coordinate with the Rogers Water Utilities, including attending a preconstruction meeting with the Rogers Water Utilities, prior to the permit being issued and prior to the work commencing, in order to prevent damage to Rogers Water Utilities' water lines, sewer lines, and other property, and to prevent damage to privately owned water lines and privately owned sewer lines.

Section 54-58. – Applications for Boring Permits

(a) A person applying for a permit to bore shall make written application to the Superintendent of the Rogers Water Utilities upon a form furnished by the Rogers Water Utilities. The application shall state the exact location of the work, the required information in subsection (b) below, and such other information as the Superintendent of the Rogers Water Utilities shall require.

(b) Required Information. Applications for permits must

- (1) Show the applicant to be 21 years of age or older, or if the applicant is an entity, show that the principal of the entity is 21 years of age or older;
- (2) Designate the street, alley, or other location of the proposed bore;
- (3) Provide a map or drawing of the proposed bore;
- (4) Indicate the purpose of the bore;
- (5) State the nature of the surface of the street, alley, or other location;
- (6) Contain an agreement to comply in all things with the applicable provisions of this Article and other applicable provisions of this Code.

(c) Issuance. The Superintendent of the Rogers Water Utilities shall approve a permit pursuant to the provisions of this Article if the applicant and proposed work comply with all applicable provisions of this Article and all other applicable portions of this Code.

Section 54-59. – Deposits

(a) A person who is required by the provisions of this Article to obtain a permit shall pay to the Rogers Water Utilities a \$5,000 deposit for each bore. (Example: if there are four bores, the deposit amount shall be \$20,000.) The Superintendent of the Rogers Water Utilities may require a deposit in a greater amount for each bore in the event of an unusually large project or if the project presents an unusually high degree of risk to any public water lines, public sewer lines, other public water facilities, other public sewer facilities, or other critical infrastructure. The deposit must be sufficient for the scope of the work. An applicant cannot receive a permit for work greater than is secured by the deposit amount. The deposit shall be in the form of a cashier's check or bond. The bond shall be executed by a surety company authorized to transact business in the state. This deposit requirement shall not apply to utility companies operating under franchise or under congressional grant in the City. If the work is sublet to a contractor, either the contractor will be required to deposit a cashier's check or bond, or the utility company shall deposit a cashier's check or bond.

(b) In the event the permittee negligently, recklessly, or intentionally breaks or causes damage to any public water lines, public sewer lines, other public water facilities or other public sewer facilities of the Rogers Water Utilities, the deposit shall be forfeited and applied to the damages caused by and assessed against the permittee pursuant to Section 54-55 above, including, without

limitation, any treble damages. In the event the deposit is insufficient to reimburse the Rogers Water Utilities for such damages, the permittee shall pay the difference to the Rogers Water Utilities in accordance with Section 54-55 above.

Section 54-60. – Violations

(a) In addition to any other criminal penalties that may be prescribed by state law, noncompliance with the provisions of this Article shall constitute a violation.

(b) The following acts shall be treated as offenses separate and apart from any other violations of this article:

- (1) Conducting boring without a permit therefor;
- (2) Falsification of the application for a permit to bore;
- (3) Failure to post a cashier's check or bond as required in section 54-59 or posting a fraudulent cashier's check or bond thereunder;
- (4) Failure to comply with other specifications and requirements imposed by this Code.

Any person violating any of the provisions in this Section shall be liable to the Rogers Water Utilities for any expense, loss or damage to the Rogers Water Utilities caused by the violation.

Section 54-61. – Appeal

Any person aggrieved by any decision of the Rogers Water Utilities concerning any provisions of Sections 54-55 through Section 54-60 of this Chapter, including, without limitation, any assessment of damages or treble damages, denial of a permit to bore, or forfeiture of a deposit, may, within thirty (30) days of written notice of the decision, appeal the decision to the Rogers Waterworks and Sewer Commission. A decision of the Rogers Waterworks and Sewer Commission upholding the decision is a final administrative decision for purposes of appeal pursuant to Rule 9 (f) of the Arkansas District Court Rules.

Section 54-62. – Forms and Procedures

The Superintendent of the Rogers Water Utilities shall prescribe forms and procedures for implementing the provisions of Sections 54-55 through Section 54-61 of this Chapter, including, without limitation, prescribing forms and procedures for assessing damages and treble damages, processing applications for permits to bore, forfeiture or release of deposits, and other matters, such forms and procedures to be approved by the Rogers Waterworks and Sewer Commission.

Section 14-513. – Cuts or breaks without permit unlawful

Hereafter it shall be unlawful for any person to bore or break the surface of any street or alley in the City for the purposes of installing service or utility lines or for any other purpose except in the case of an emergency, until a permit for such boring or breaking has been issued by the appropriate authority. Applications for permits to cut or break streets shall be directed to the Department of Community Development in accordance with Section 14-514 below. Applications for permits for bores shall be directed to the Rogers Water Utilities in accordance with Section 54-57 of this Code. Copies of such permits are to be filed with the City police department and City fire department, by the contractor. Getting a permit does not relieve the contractor from being responsible for any damages to the street or ROW. If a curb cut is part of a project with a building permit, the building permit will serve as a street cut permit, but shall not release the builder from the responsibility of contacting the City and

coordinating with the City regarding the street cut. The street cut shall be repaired in conformance with the then current City street standards.

Section 14-514. - Permits; deposits

(a) *Permits for Street Cuts or Breaks.* The Department of Community Development shall and is hereby authorized and directed to issue permits, upon proper application, to cut, or break streets or alleys within the City for the purposes of installing utility or service lines or for such other purposes as may be approved by the Street Superintendent and the Department of Community Development. Such permits allow cutting, or breaking operations only within the public ways of the City as specified in the permit or otherwise provided in any applicable franchise agreement. Such permit does not allow the permittee to conduct cutting, or breaking operations on private property without the permission of the owner or owners of the private property.

Section 14-519. - Deposit

(a) A person who is required by the provisions of this division to obtain a permit shall pay to the City a \$500.00 deposit for a curb cut or a \$5,000.00 deposit for a street cut. The deposit shall be in the form of a check or bond. The bond shall be executed by a surety company authorized to transact business in the state. A deposit shall not apply to utility companies operating under franchise or under congressional grant in the City. If the work is sublet to a contractor, either the contractor will be required to deposit a check or bond or the utility company shall deposit a check or bond.

(b) The permit deposit charged in cases where a cut is made larger than that contemplated in the permit shall be based on the scale of a continuous cut.