

**City of Fayetteville Staff Review Form**

**2020-0110**

**Legistar File ID**

**2/18/2020**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Jonathan Ely

1/31/2020

ENGINEERING (621)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

AN ORDINANCE TO AMEND CHAPTER 158.02 EXCAVATION IN PUBLIC RIGHT OF WAY OF THEY UNIFIED DEVELOPMENT CODE TO ALLOW ADDITIONAL FORMS OF BONDING, AND ESTABLISH GUIDELINES FOR PERSONS PERFORMING WORK IN THE RIGHT OF WAY.

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	<b>Current Budget</b> \$            -
	<b>Funds Obligated</b> \$            -
	<b>Current Balance</b> <span style="border: 1px solid gray; padding: 2px;">\$            -</span>
<b>Does item have a cost?</b> <u>No</u>	<b>Item Cost</b>
<b>Budget Adjustment Attached?</b> <u>NA</u>	<b>Budget Adjustment</b>
	<b>Remaining Budget</b> <span style="border: 1px solid gray; padding: 2px;">\$            -</span>

V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF FEBRUARY 18, 2020**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff  
Garner Stoll, Development Services Director  
Chris Brown, City Engineer

**FROM:** Jonathan Ely, Development and Construction Manager

**DATE:** January 31, 2020

**SUBJECT: Ordinance to amend UDC Chapter 158.02 Excavation in Public Right of Way**

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**RECOMMENDATION:**

Staff recommends approval of an amendment to the Unified Development Code, Chapter 158.02 Excavation in Public Right of Way to allow surety bonds, and letters of credit in addition to cash bonds, and establish guidelines for persons performing work within the right of way.

**BACKGROUND:**

Currently, Chapter 158.02 requires cash bonds only in an amount to be determined by the Mayor or his representative, which in this case is the City Engineer. Recent enforcement of this ordinance has stirred some discussions for change to allow other acceptable bonding forms from franchise utility companies, their contractors, and other persons requesting to perform excavation in City Right of Way.

**DISCUSSION:**

Over the past several years, there has been a significant increase in the amount of work being performed in City Right of Way. As technology changes, infrastructure ages, and the city continues to grow, many franchise utility companies have been upgrading their services. As a result, there has also been a significant increase in the number of permits being processed for excavation in public right of way to accommodate these changes.

As a part of the Right of Way Excavation Permit, applicants are currently required to provide a cash bond to ensure completion and repairs of work in the right of way. In the instance City Infrastructure is damaged and not repaired, the City would then use this bond to complete repairs.

This amendment is proposed to allow more flexibility in the types of bonds that would be accepted, and to establish a frame work for how the bonds should be accepted, used and/or released. A performance surety, as well as a letter of credit is proposed to be allowed, which

corresponds to bonding types allowed throughout the UDC, and is more consistent with peer cities throughout the region and state.

Members of city staff and the attorney's office have meet with representatives from the franchise utility companies, and the proposed amendment is the result of a combined effort to allow more flexibility, while still maintaining protection for city infrastructure.

**BUDGET/STAFF IMPACT:**

None

**Attachments:**

Current and Proposed Amended Language

### Current Language

158.02 - Cash Bond. No person shall make any excavation of a street or public right-of-way unless a cash bond is first deposited with the city for the purpose of guaranteeing repair and replacement of said street or public right-of-way. Said cash bond shall be in an amount equivalent to the estimated cost of properly repairing and replacing said street or public right-of-way, as determined by the Mayor, or his duly authorized representative.

### Proposed Amended Language

158.02 - Excavation In Public Rights-Of-Way; Cash or Surety Bond Required

- (a) No person or contractor shall make any excavation in a public right-of-way unless a bond is first deposited with the city for the purpose of guaranteeing repair and replacement of city infrastructure in the public right-of-way. Said bond shall be in an amount equivalent to the estimated cost of properly repairing and replacing city infrastructure in the public right-of-way, as determined by the Mayor, or his duly authorized representative. To satisfy this requirement, the person or contractor may provide a cash bond, surety bond, or irrevocable letter of credit. Permanent bonds or letters of credit held by the city under the terms of an existing franchise agreement shall be considered sufficient to fulfill the surety requirements for any person or contractor acting as an agent for the franchise holder. The franchise holder shall submit a letter or other document verifying that the person or contractor is the franchisee's agent and is covered by the franchise holder's standing bond or letter of credit.
- (b) A person or contractor in the business of performing utility construction and/or maintenance that requires excavation in the public right-of-way or is engaged in a contract to perform work that includes excavation in the public right-of-way may provide a standing bond sufficient to cover the scope of the expected number of permits applicable to each and every site upon which to work is scheduled to take place and where a permit will be required. The standing bond will remain in place until the completion of all permitted work and all permitted work is fully inspected by the City and deemed to be satisfactory.
- (c) The bond shall be forfeited, all or in part thereof, if within sixty (60) days after written notice, the person or contractor fails to reimburse the city for documented expenses incurred for its failure to comply with the rules of public safety, failure to close the opening within 24 hours after the work has been completed, failure to complete the backfill and repair in accordance with specifications, failure to complete the necessary cleanup, or repair of damage to public property including but not limited to the street subgrade, asphalt surface, concrete surface, curb and gutter, sidewalk, and/or all infrastructure located within the public right-of-way or causing damage to vehicular or other traffic.
- (d) Bond release: Upon completion of work within the public right-of-way, the person or contractor who obtained the permit shall contact the City to schedule an inspection. The City will inspect the work within 5 business days to determine if work is complete and if any damages were caused.
  - a. If damage to the public right-of way has occurred due to permitted work, the City will provide the person or contractor a list of required repairs. All repairs must then be completed within 30 days.
    - i. Once repairs are completed, the City shall be notified for a follow up inspection. Once repairs have been confirmed, the bond will be released.
    - ii. If repairs are not completed within 30 days and the person or contractor has failed to compensate the city for the city's expenses incurred in making such repairs within sixty (60) days after written notice, the bond will be forfeited.
  - b. If no damages were caused, the bond will be released.