

~~II~~

6.2

Subs. of Gen. Ord. No. 15 - 14 - 15. By Alderperson Heidemann.
July 7, 2014.

AN ORDINANCE repealing and recreating Article IV of Chapter 110 of the Municipal Code relating to right-of-way excavations.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Article IV of Chapter 110 of the Sheboygan Municipal Code entitled "Excavations" is hereby repealed and recreated to read as follows:

"Chapter 110 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

. . .

ARTICLE IV. EXCAVATIONS

Sec. 110-241. *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 requesting permission to excavate, obstruct and/or occupy the street right-of-way.

Department means the Department of Public Works of the City.

Department Inspector means any person authorized by the Department to carry out inspections related to the provisions of this chapter.

Diggers Hotline shall mean "the statewide one-call notification system," which was developed in order to provide excavators and the general public with the ability to inform multiple owners of underground facilities of intended non-emergency excavation via a single telephone call.

Director means the Director of Public Works of the City and his/her designee.

Emergency means a condition that (1) poses a clear and immediate danger to life or health, or a significant loss of property, or (2) requires immediate repair or replacement in order to restore service to a customer.

Excavation means any operation in which earth, rock, or other material in or on the ground is moved, removed or otherwise displaced by means of any

6.2



tools, equipment or explosives and includes grading, trenching, digging, drilling, auguring, tunneling, scraping, cable or pipe plowing, and driving and means any operation by which a structure or mass of materials is wrecked, razed, rendered, moved or removed within the street right-of-way or any City of Sheboygan property.

Permittee means a person who has obtained a permit as required by this Article.

Performance Bond means a bond, letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation repair and restoration work is completed in both a timely and quality manner, per Department specifications.

Sec. 110-242. *Permit required.*

- (a) Except as otherwise provided in this chapter or other chapters of the municipal code, no person shall excavate any right-of-way or place facilities in a right-of-way without first having obtained an excavation permit from the Department.
- (b) No person shall excavate the right-of-way or maintain an excavation in the right-of-way beyond the date or area specified in the permit unless such person makes a supplementary application before the expiration of the initial permit, and a new permit or permit extension is granted.
- (c) A copy of any permit issued under this chapter shall be made available at all times by the permittee at the indicated work site and shall be available for inspection by the Department upon request.

Sec. 110-243. *Excavation permit application.*

- (a) Application for a permit shall be made to the Department upon Department forms. To be considered complete, permit applications shall also include all required attachments and scale drawings showing the location and area of the proposed excavation and the location of all existing and proposed equipment in connection with the object of the excavation work, including, but not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.
- (b) Except as otherwise provided herein, applications must be submitted at least two (2) business days prior to permit issuance.

(1) The following types of projects shall require applications to be submitted at least fifteen (15) business days prior to permit issuance:

- a. Excavations involving 1000 lineal feet or more of underground installation.
- b. Excavations associated with major construction projects.
- c. Excavations that are expected to have conflicts with other utilities or facilities in the right-of-way.

Sec. 110-244. *Excavation permit fee.*

- (a) The excavation permit fee shall be \$100.00; provided, however, that permits for driveway openings and/or sidewalk repair/replacement shall be \$25.00.
- (b) For excavation work within the right-of-way started without a permit, except in emergency cases, the fees shall be calculated as follows, per calendar year:
 - (1) First incident, double the regular permit fee;
 - (2) Second incident, double the regular permit fee, plus \$250.00;
 - (3) Third and subsequent incidents, double the regular permit fee, plus \$500.00.

Sec. 110-245. *Permit issuance; suspension; revocation.*

- (a) No excavation permit shall be issued without payment of the permit fee and posting of a performance bond with the City in the amount of five thousand (\$5,000.00) dollars during the term of the guarantee period; provided, however, that permits limited to driveway openings and/or sidewalk repair/replacement shall not require posting of a performance bond.
- (b) Fees paid for a permit which has been issued by the Department are not refundable.
- (c) The Department may refuse to issue a permit or may suspend, revoke, or refuse to extend an existing permit if it finds any of the following grounds:
 - (1) Issuance of the permit for the requested date would interfere with an exhibition, celebration, festival, or other event;

- (2) Misrepresentation of any fact by the applicant or permittee;
 - (3) Failure of the applicant to post or maintain required bonds;
 - (4) Failure of the applicant or permittee to complete work in a timely manner;
 - (5) The proposed activity is contrary to the public health, safety or welfare;
 - (6) Where or to the extent that inadequate right-of-way space is available;
 - (7) Where there are competing demands for the particular space in the right-of-way;
 - (8) The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the applicant;
 - (9) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
 - (10) The condition and age of the right-of-way; and whether or when it is scheduled for total or partial reconstruction;
 - (11) The applicant or permittee is otherwise not in full compliance with the requirements of this chapter or state or federal law;
 - (12) Failure to submit a complete application or pay applicable permit fees;
 - (13) Failure to comply with the requirements of Section 2-872 of the municipal code.
- (d) Discretionary issuance. Notwithstanding subsections (a)-(c) above, the Department may issue a permit in its discretion where issuance is necessary:
- (1) to prevent substantial economic hardship to a customer of the applicant; or
 - (2) to allow a customer of the applicant to comply with state or federal law or city ordinance or an order of a court or administrative agency with appropriate jurisdiction.

Sec. 110-246. *Appeals.*

Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review by the public works committee. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the committee may affirm, reverse or modify the decision of the Department.

Sec. 110-247. *Other obligations.*

- (a) Compliance with other laws. Obtaining a permit to excavate and/or occupy the right-of-way does not relieve a permittee of its duty to obtain all other necessary permits, licenses and approvals, and to pay all fees required by any other city, county, state or federal laws, rules or regulations. A permittee shall comply with all requirements of local, state and federal law. A permittee shall perform all work in conformance with all applicable codes, rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- (b) Prohibited work. Except in an emergency, or with the approval of the Department, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Sec. 110-248. *Reservation of Regulatory and Police Powers.*

The City, by granting of a permit to excavate, obstruct and/or occupy the right-of-way under this chapter does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights which it has or may hereafter be granted under the constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way under this chapter agrees that all lawful powers and rights, regulatory authority, or police power, or otherwise as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A permittee is deemed to acknowledge that its rights are subject to the regulatory authority and police powers of the City to adopt and enforce general ordinances necessary to the safety, health and welfare of the public and is deemed to agree to comply with all applicable general laws, ordinances and resolutions enacted by the City pursuant to such powers.

Sec. 110-249. *Deposit of material.*

All sand, gravel, stone and other material and supplies and all refuse at the site of an excavation or opening in a street, alley, sidewalk or other public place shall be deposited in a manner to cause the least inconvenience for pedestrian and vehicular traffic and shall provide for the passage of water along the gutters.

Sec. 110-250. *Lights and barriers; liability.*

Each contractor or other person making any excavation, opening, repair, grading or other work which shall in any manner obstruct or render unsafe any street, alley, sidewalk or public place shall erect and maintain adequate barriers and lights to prevent accidents and shall be liable for all damages for failure to do so. Such contractor or person shall also be liable for all damages caused by the negligent digging in streets, alleys, sidewalks or public places or which may result from his carelessness in the prosecution of such work.

Sec. 110-251. *Restoring surface.*

- (a) Where a paved street has been evacuated by the city or its water utility or a private contractor with a permit granted by the city for purposes of repair of sewer or water laterals in the street right-of-way serving owner-occupied one- or two-family residential properties, the department of public works shall rebuild and restore the street pavement, and the costs of such restoration shall be borne by the city.
- (b) Except as provided in (a), every contractor or other person authorized to make an excavation or opening in any street, alley, sidewalk or public place for laying any drain, sewer, gas or water pipes, or other utilities, or for any other purpose shall rebuild and restore such to as good, substantial and permanent a condition as existed prior to commencement of the work, in accordance with the standards and methods for excavation and backfilling adopted by the City and on file with the Department, or as otherwise directed by the Department.

Sec. 110-252. *Technical standards.*

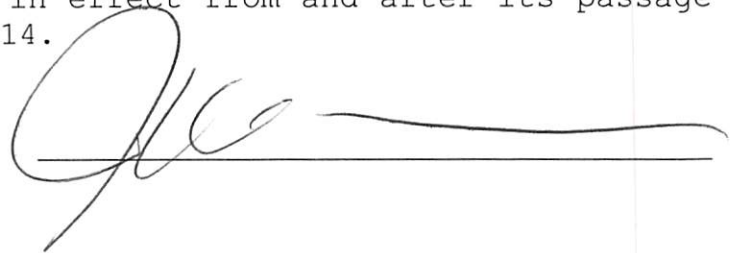
A permittee shall be fully responsible for restoring the right-of-way and appurtenances in complete compliance with the City's technical street right-of-way excavation, backfilling, restoration and repair standards and methods on file with the Department, adopted by the Common Council, and as amended from time to time. Copies of such standards and methods shall be made available by the Department to any permittee.

Sec. 110-253. *Guarantee Period.*

- (a) A permittee shall guarantee all street excavation repairs and restoration conform to the requirements of this chapter for a minimum of eighteen (18) months from completion of the repair or restoration work under the permit.
- (b) The guarantee period shall terminate if the repair or restoration work under the permit is disturbed by street rehabilitation work performed by the City prior to the expiration of the permittee's guarantee period."

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication and as of August 1, 2014.



I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the 7th day of July, 2014.

Dated July 10, 2014. Susan Richards, City Clerk

Approved July 10, 2014. Michael J. Vanderhaar, Mayor

Proceedings Published July 15, 2014.

Ordinances Published July 15, 2014.

Certified July 11, 2014 to - Atty.; Fin. Dir./Treas.; Dep. Fin. Dir./Treas.; DPW; Bldg. Insp.; Eng.; MSB; Municipal Ct.