

MEMORANDUM

April 15, 2021

TO: Mayor John P. Kahl and Members of City Council

FROM: City Attorney's Office (Scott A. Brunton)

SUBJECT: Ordinance Revising and Updating City Code Regulations of Excavations
in City Right-of-Way and Roads

DISCUSSION: City staff in the Streets Department of Public Works have experienced challenges dealing with utility companies and other contractors that excavate or disturb areas in the City right-of-way. Often times, these excavations and penetrations into the City right-of-way are done in City streets and roads, leaving a patchwork of small areas of repaired roadways that significantly degrade the street or roadway over time. This excavation work can also impact and degrade curbing, sidewalks, and the earthen portions of the City's right-of-way.

In working with Ric Semonski, the City's Superintendent of Streets, and Ty Livingston, the City's Director of Planning and Community Development, this Ordinance updates and revises the two divisions of Chapter 2 of Title 7 of the Village Code that govern excavations made in the City right-of-way and the construction of driveways that connect to City streets and roadways. Division I of Chapter 2 of Title 7 addresses excavations, which is being updated to establish better standards for repairing and restoring these excavations and penetrations into City streets, as well as standards for repairing and restoring disturbed portions of City curbing, sidewalks, and earthen portions of the City's right-of-way. Further, these revisions and updates to Division I require the entity, contractor, or person making the excavation or penetration into the City right-of-way to provide financial security to the City when obtaining the necessary permit for undertaking this type of work. This update allows this financial security be provided in several ways, but gives the City the authority to determine which type of financial security is most suitable and required for any particular project.

Division II of Chapter 2 of Title 7 addresses driveway construction, which requires the excavation or disturbance of the City right-of-way in order to connect a property to a City street or roadway. Division II has been updated to reference and require compliance with the permitting and financial security requirements established in Division I. Furthermore, Section 7-1-1.40 of the City Code that deals with damage to City streets is being updated to require restoration of the damaged street or right-of-way in compliance with the requirements of Division I.

The revisions and updates made by this Ordinance will allow the City to enforce the permitting and restoration requirements of the excavation and driveway regulations of the City Code better and more consistently.

RECOMMENDATION: Approval of this Ordinance.

ORDINANCE NO. 4569

**AN ORDINANCE UPDATING REGULATIONS FOR EXCAVATIONS
IN CITY STREETS AND RIGHTS-OF-WAY AND FOR ADDRESSING DAMAGE TO
CITY STREETS AND RIGHTS-OF-WAY UNDER THE EAST PEORIA CITY CODE**

WHEREAS, the City of East Peoria (the “City”) is a municipality under the laws of the State of Illinois and in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the City has the authority to adopt ordinances and to promulgate rules and regulations governing the use of public right-of-way and that protect the public health, safety, and welfare of its citizens; and

WHEREAS, City Officials seek to update and enhance the provisions of the City Code that address and regulate the making of excavations in City streets and City right-of-way; and

WHEREAS, the City uses the public rights-of-way within its corporate limits to provide essential public services to its residents and businesses, including traffic control signals, water, sanitary sewer and storm sewer; and

WHEREAS, other utility service providers, including electricity, telephone, natural gas, and cable television and video service providers, have placed, or from time to time may request to place, certain utility facilities in the public rights-of-way within the City; and

WHEREAS, legislatures and regulatory agencies at the State and federal levels have implemented changes in the regulatory framework to enhance competition in the providing of various utility services; and

WHEREAS, the combination of legislative and regulatory changes and the development of new technologies has led additional service providers to seek opportunities to provide services in the City; and

WHEREAS, these regulatory and technological changes have resulted in demands for access to and use of the public rights-of-way in the City as service providers, particularly in the video and communications services, attempt to provide new or additional services to compete with incumbent service providers; and

WHEREAS, unlike prior deregulations of utility services in which incumbent service providers have been required to make their transmission and/or distribution systems available to competitors, video and communications services seeking to compete with incumbent service providers are seeking to install their own facilities for delivering competing video and communications services; thereby increasing the number of service providers seeking access to and use of the public rights-of-way in the City; and

WHEREAS, the public rights-of-way within the City are a limited public resource held in trust by the City for the benefit of its citizens, and the City has a custodial duty to ensure that the City's public rights-of-way are used, repaired, and maintained in a manner that best serves the public interest; and

WHEREAS, the corporate authorities of the City find and determine that it is necessary to and in the best interests of the public health, safety, and general welfare to establish uniform standards and regulations for engaging in excavations and other disturbances in, upon, or under City streets and City public rights-of-way by utility service providers and other persons and entities that desire to place structures, facilities, or equipment in the street or public rights-of-way, so as to (i) prevent interference with the use of streets, sidewalks, alleys, and other public ways and places by the City and the general public, (ii) protect against visual and physical obstructions to vehicular and pedestrian traffic, (iii) prevent interference with the facilities and operations of the City's utilities and of other utilities lawfully located in public rights-of-way or property, (iv) protect against environmental damage, including damage to trees, from the installation of utility facilities, (v) preserve the character of the neighborhoods in which facilities are installed, (vi) prevent visual blight, and (vii) assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations; and

WHEREAS, the City has the authority to adopt this Ordinance pursuant to the provisions of (i) the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*), including, without limitation, Sections 11-20-5, 11-20-10, 11-42-11, 11-42-11.2, 11-80-1, 11-80-3, 11-80-6, 11-80-7, 11-80-8, 11-80-10, and 11-80-13; (ii) Section 4 of the Telephone Company Act (220 ILCS 65/4); (iii) the Illinois Highway Code (605 ILCS 5/1-101, *et seq.*), including, without limitation, Articles 7 and 9 thereof; (iv) the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/1, *et seq.*); and (v) the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100, *et seq.*); and

WHEREAS, this Ordinance establishes generally applicable standards for construction on, over, above, along, upon, under, across, or within City streets and the City's public right-of-way, and for the use of and repair of City streets and the City's public right-of-way; and

WHEREAS, in the enactment of this Ordinance, the City has considered a variety of standards for construction on, over, above, along, under, across, or within, use of and repair of City streets and the City's public right-of-way, including, but not limited to, the standards relating to Accommodation of Utilities on Right-of-Way of the Illinois State Highway System promulgated by the Illinois Department of Transportation (92 Ill. Adm. Code § 530.10, *et seq.*); and

WHEREAS, the City hereby finds that it is in the best interest of the City, the general public, and the utilities using City streets and the City's public rights-of-way to establish a comprehensive set of construction standards and requirements to achieve various beneficial goals, including, without limitation, enhancing the planning of new utility facilities; minimizing interference with, and damage to, rights-of-way and the streets,

sidewalks, and other structures and improvements located in, on, over and above City streets and the City's rights-of-way; and reducing costs and expenses to the public;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The City Council hereby adopts the findings and recitations hereinabove set forth.

Section 2. Chapter 2 of Title 7 of the East Peoria City Code is hereby deleted and replaced in its entirety as follows:

CHAPTER 2 – EXCAVATIONS

DIVISION I. IN GENERAL

7-2-1. Purpose and Scope.

- (a) *Purpose.* The purpose of this chapter is to establish policies and procedures for constructing facilities on rights-of-way within the city's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the city streets and rights-of-way and the city as a whole.
- (b) *Intent.* In enacting this chapter, the city intends to exercise its authority over the streets and rights-of-way in the city and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by utility facilities, including without limitation:
 - 1. prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;
 - 2. prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - 3. prevent interference with the facilities and operations of the City utilities and of other utilities lawfully located in rights-of-way or public property;
 - 4. protect against environmental damage, including damage to trees, from the installation of utility facilities;
 - 5. protect against increased stormwater run-off due to structures and materials that increase impermeable surfaces;
 - 6. preserve the character of the neighborhoods in which facilities are installed;

7. preserve open space and parkways in the city and the city's residential neighborhoods;
 8. prevent visual blight from the proliferation of facilities in the rights-of-way; and
 9. assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.
- (c) *Facilities subject to this chapter.* This chapter applies to all facilities on, over, above, along, upon, under, across, or within the streets and rights-of-way within the jurisdiction of the city.
- (d) *Franchises, licenses, or similar agreements.* The city, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the City rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the city may provide for terms and conditions inconsistent with this chapter.
- (e) *Effect of franchises, licenses, or similar agreements.* In the event of any conflict with, or inconsistency between, the provisions of this chapter and the provisions of any franchise, license, or similar agreement between the city and any utility, the provisions of such franchise, license, or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.
- (f) *Conflicts with other chapters.* This chapter supersedes all provisions of the City Code adopted prior hereto that are in conflict herewith, to the extent of such conflict.
- (g) *Conflicts with state and federal laws.* In the event that applicable federal or state laws or regulations conflict with the requirements of this chapter, the utility shall comply with the requirements of this chapter to the maximum extent possible without violating federal or state laws or regulations.
- (h) *Sound engineering judgment.* The city shall use sound engineering judgment when administering this chapter and may vary the standards, conditions, and requirements expressed in this chapter when the city so determines. Nothing herein shall be construed to limit the ability of the City to regulate its streets and rights-of-way for the protection of the public health, safety and welfare.

7-2-2. Definitions.

For the purposes of this chapter, the words and terms listed herein shall have the following meanings:

Applicant means any person who has applied for a permit under this chapter.

Construction or *construct* means the installation, repair, maintenance, placement, alteration, enlargement, demolition, modification, or abandonment in place of a facility or facilities.

Disruption or *disrupt* means any work that obstructs the street, right-of-way, sidewalk, or other city property or causes a material adverse effect on the use of street, right-of-way, sidewalk, or other city property for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil.

Emergency means any immediate maintenance to a facility required for the safety of the public using or in the vicinity of the right-of-way or immediate maintenance required for the health and safety of the general public served by the utility.

Engineer means the City Engineer, or his or her designee, or the engineering firm contracted by the city to provide engineering services to the city.

Excavation means the making of a hole or cavity by removing material, laying bare by digging, or any other similar disturbance or disruption.

Facility means all structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located on, over, above, along, upon, under, across, or within city streets or rights-of-way, but excluding any such facility owned or operated by the city.

PCC means Portland cement concrete.

Permittee means the person to whom a permit has been issued pursuant to Section 7-2-3 through 7-2-6 of this chapter.

Person means any person, firm, partnership, entity, association, or corporation.

Restoration means the repair of a street, right-of-way, sidewalk, or other area disrupted by the construction of a facility.

Right-of-way or *rights-of-way* means any street, alley, other land or waterway, and adjacent land dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements, in which the city has the right and authority to authorize, regulate, or permit the location of facilities other than those of the city. Right-of-way or rights-of-way shall not include any city real or personal property that is not specifically described in the previous two sentences and shall not include city buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the right-of-way.

Sound engineering judgment means decisions consistent with generally accepted engineering principles, practices and experience.

Street means a street, roadway, highway, alley, or other right-of-way used for vehicular traffic under the jurisdiction of the city, including any adjacent shoulder, curbing, gutters, storm water detention facilities, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

Superintendent of Streets means the City's Superintendent of Streets in the Public Works Department, or his or her designee.

Utility means the person owning or operating any facility as defined in this chapter.

7-2-3. Permit required.

- (a) *Excavation permit.* It shall be unlawful for any person to make any excavation or opening in, dig on, construct on, alter, remove, add to, diminish, disrupt, or demolish any part or portion of any city street, right-of-way, sidewalk, or other public place within the city or to commence to excavate, open, dig, construct, alter, remove, add to, diminish, disrupt, or demolish any part or portion of any city street, right-of-way, sidewalk, or other public place within the city without having first submitted an excavation permit application to the city as provided in this chapter, obtained a written permit therefor from the Superintendent of Streets, and have met the financial/bonding requirements as set forth in this chapter.
- (b) *Exceptions to permit requirement.* This section shall not apply to persons making an excavation for the purpose of connecting any private drain or sewer with any public sewer pursuant to a properly issued written permit from the Superintendent of Streets or to any excavation made pursuant to a connection to City water service

pursuant to Chapter 5 of Title 7 of this City Code or to City sanitary sewer service pursuant to Chapter 4 of Title 7 of this City Code.

- (c) *Emergency excavations.* In cases of an emergency, the city must be provided notice of the excavation within 24-hours, or when such emergency occurs during a weekends or city holiday period, during the morning of the next business of the city.
- (d) *Permit Fee.* Before any permit required by the chapter is by the City, the applicant shall pay the City a permit fee of one hundred dollars (\$100.00) per excavation.

7-2-4. Financial security required.

Before any permit required by the preceding section shall be issued by the city, the applicant must provide financial security to the city as provided herein:

- (a) The applicant shall provide financial security to the city to assure the restoration or repair of the street, right-of-way, sidewalk, or any other city property for which a permit shall be issued.
- (b) The financial surety shall be a cashier's check, unless the city grants an exception to accept a payment, performance bond, or an irrevocable letter of credit based upon the scope of work and past performance of the applicant. When in the form of a cashier's check or payment, the financial security shall be deposited by the city until the city deems the project complete.
- (c) The amount of the financial security shall be determined by the Superintendent of Streets based upon the excavation permit application and the anticipated scope of work. The dollar amount of the financial security shall be sufficient to provide for the reasonably estimated cost to restore the street, right-of-way, sidewalk, or any other city property to at least as good a condition as that existing prior to the construction or excavation under the permit, as determined by the Superintendent of Streets, which shall also include reasonable, directly related costs that the City estimates are likely to be incurred if the permittee fails to perform the required restoration as provided in this chapter. Where the construction or excavation proposed under the permit will be performed in phases or in multiple locations in the City, the Superintendent of Streets may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction and excavation under the permit, and which shall be at least equal to the greatest amount that would have been required for any single phase of such project.

- (d) The city shall notify the applicant if the city intends to utilize the financial security for restoration or repair of the street, right-of-way, sidewalk, or any other city property for which a permit has been issued. Such notice to the applicant shall indicate that the applicant shall have five (5) days after notification by the city to restore or repair those areas noted by the city at the applicant's expense. If the applicant fails to complete the restoration or repair by the expiration of the five-day notice period, the City shall use the applicant's financial security for restoration or repair of the street, right-of-way, or any other city property for which a permit has been issued.
- (e) When the City grants an exception for use of a surety bond or letter of credit pursuant to this section, such surety bond or letter of credit shall, at a minimum, provide as follows:
 - 1. Provide that it will not be canceled without prior notice to the City and the permittee;
 - 2. Not require the consent of the permittee prior to the collection by the City of any amounts covered by it; and
 - 3. Shall provide a location convenient to the City and within the State of Illinois at which it can be drawn.

7-2-5. Permit application.

When applying for an excavation permit under this chapter, the applicant must submit an application to the Superintendent of Streets as follows:

- (a) The application for an excavation permit shall briefly describe the proposed project, and shall submit such information, drawings, plans, and specifications as may be reasonably required by the Superintendent of Streets to assess such proposed project.
- (b) The application shall be made by the owner, lessee, or agent of either, including the architect, engineer, or contractor employed in connection with the proposed project, and shall contain the full names, contact information (including cell phone numbers and email addresses), and addresses of the applicant and the owner, lessee, or agent of either, and if the applicant is a corporate body or organization, the full names, contact information (including direct contact or cell phone numbers and email addresses), and addresses of its responsible officers.
- (c) An applicant shall utilize the excavation permit application form prepared by the city, which may require such other information as deemed appropriate and necessary by the Superintendent of Streets.

7-2-6. Insurance and indemnification.

Before any permit required by under this chapter shall be issued by the city, the applicant must provide evidence of the necessary insurance coverages and indemnification of the city as provided herein:

- (a) The applicant must comply with all respects of Section 1-8-4.13 of the East Peoria City Code (“Contractor Insurance and Hold Harmless Requirements”) regarding insurance requirements and hold harmless and indemnification of the city before being issued an excavation permit under this chapter. Before undertaking any work covered by the chapter and a permit issued under this chapter, the applicant must furnish proof that satisfactory liability insurance policies will be valid and in force at no less than in the minimum amounts established under Section 1-8-4.3, as amended from time to time, to cover such work. Accordingly, the applicant shall provide a certificate of insurance demonstrating the required minimum coverage amounts with the application materials when seeking a permit under this chapter.
- (b) The applicant must list the city and its elected and appointed officials and officers, employees, agents and representatives (including the Engineer) as additional insureds on the insurance policies referred to in this section. All such policies shall provide that the issuing insurance company will not cancel the policy without thirty (30) days’ prior notice to the city and permittee. All such policies shall be taken out and maintained with generally recognized and responsible insurance companies qualified to do business in the State of Illinois, subject to city approval.
- (c) No work covered by this chapter in, on, or under a city street, right-of-way, sidewalk, or any other city property shall be commenced until such certificate of insurance is on file with the city. Further, the insurance policies required by this section shall be maintained throughout the duration of work permitted by the permit issued to the permittee.
- (d) By (i) occupying or constructing facilities in a city street, right-of-way, sidewalk, or any other city property, (ii) undertaking any work covered by this chapter, or (iii) being issued a permit in accordance with this chapter, a utility, person, or permittee shall be deemed to agree to defend, indemnify, and hold the city and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney’s fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts,

omissions, failures to act or misconduct of the utility, person, permittee or its affiliates, officers, employees, agents, contractors, or subcontractors in the construction of facilities or occupancy of the city street, right-of-way, sidewalk, or any other city property, and in providing or offering service over the facilities or undertaking such work, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise, license, or similar agreement; provided, however, that the utility's or permittee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct, or breach of this chapter by the city, its officials, officers, employees, agents or representatives.

7-2-7. Restoration.

Any person making or causing to be made any excavation, disruption, or opening for any purpose in any street, right-of-way, sidewalk or any other city property within the city, shall cause the same to be repaired as follows:

(a) *Streets:*

1. In general, the permittee shall construct a permanent patch consisting of a minimum of eight inches of PCC for concrete streets and four inches of bituminous concrete for bituminous surfaced streets on all excavation openings. The surface of the restored area shall have a minimum two percent (2.0%) transverse slope, and the surface of the restored area shall be of positive drainage with no standing water on the restored area or any immediately adjacent areas. Further, any patch over fifty (50) feet long shall be completed with a paving machine.
2. If surface repairs constitute more than fifty percent (50%) of a fifty (50) foot segment of a street as measured from the beginning of any repair to the end of any other repair, the permittee, at its expense, shall resurface that entire section of the street. The section of the street shall be determined by the Engineer based on the disturbance, which at the minimum shall mean the full width of the traffic lane or to the seam of the original overlay, and at the maximum shall mean the entire width of the street. Resurface shall require a minimum of 1.5 inches mill and 1.5 inches hot mix asphalt across the restoration area or as otherwise determined by the Engineer. Resurfacing shall be completed with a paving machine. The resurfaced area shall have a minimum two percent (2.0%) transverse slope, and the resurfaced area shall be of positive drainage with no standing water on the resurfaced area or any immediately adjacent areas.

3. If two pavement repairs are made in any fifty (50) foot section of a street or three or more pavement repairs are made in any one hundred (100) foot section of a street, the permittee, at its expense, shall resurface that section of the street. The section of the street shall be determined by the Engineer based on the disturbance, which at the minimum shall mean the full width of the traffic lane or to the seam of the original overlay, and at the maximum shall mean the entire width of the street. Resurface shall require a minimum of 1.5 inches mill and 1.5 inches hot mix asphalt across the restoration area or as otherwise determined by the Engineer. Resurfacing shall be completed with a paving machine. The resurfaced area shall have a minimum two percent (2.0%) transverse slope, and the resurfaced area shall be of positive drainage with no standing water on the resurfaced area or any immediately adjacent areas.
4. Restoration work may include, but is not limited to, repairing entrances and side streets as determined by the Superintendent of Streets. The permittee shall restore street surfaces using materials and methods approved by the Engineer to the standards set forth in Chapter 3 of Title 6 of this City Code for streets or other applicable standards approved by the Superintendent of Streets. Restoration work shall be completed with five (5) business days after the excavation project is completed unless otherwise approved by the Superintendent of Streets. All excavated areas shall be backfilled or replaced with comparable materials as approved by the Engineer before resurfacing the street.
 - (b) *Sidewalks.* Restoration of sidewalks shall consist of a minimum of a four-inch aggregate base course under a minimum of four inches of PCC. All sidewalks shall comply with current standards utilized in public rights-of-way. All excavated areas shall be backfilled or replaced with comparable materials as approved by the Engineer before resurfacing the sidewalk. The permittee shall restore sidewalk surfaces using materials and methods approved by the Engineer, and shall be completed with five (5) business days after the excavation project is completed unless otherwise approved by the Superintendent of Streets.
 - (c) *Rights-of-way.* All permittees shall remove all excess material and restore all non-paved portions of rights-of-way, turf, and terrain and other property within five (5) business days after any portion of the rights-of-way are disturbed, damaged, or destroyed. Such areas shall be restored to a condition substantially equivalent to that which existed prior to the commencement of the excavation work or related project.

Restoration the right-of-way surface shall be made using materials and methods approved by the Superintendent of Streets. The Superintendent of Streets, in consultation with the Engineer as needed, shall have sole authority to determine if the restoration work is satisfactory. Restoration work may include, but is not limited to, backfilling, regrading, reseeding, and resodding.

- (d) *Optional payment.* The City has the option to require the permittee to make a payment to the City rather than performing the restoration. The amount of such payment shall be the amount of the cost estimate obtained by the City from a contractor of the City's choice, plus engineering costs equal to ten percent of the cost estimate.

7-2-8. Financial obligation.

All work undertaken as provided in this chapter, including any excavation or restoration work, shall be at the sole cost of permittee, and the city shall not be responsible for any such costs.

7-2-9. Authority to Inspect.

- (a) The Superintendent of Streets shall have authority to inspect any work performed on or to any city street, right-of-way, sidewalk, or any portion thereof at any time before, during, or after a project that is governed by the chapter. The permittee may be charged under the financial surety provisions of this chapter for any inspection services undertaken by the city.
- (b) If the Superintendent of Streets finds, after inspection, or at any time before or upon final inspection, that the work performed does not meet the construction standards applicable to City streets or rights-of-way, that the plans or specifications under which the application was submitted are not being followed, that appropriate safety standards are not being utilized, or that any laws, rules, or regulations are being violated, the Superintendent of Streets may order the work stopped and re-performed in accordance with such standards, plans, specifications, laws, rules, or regulations and may revoke or suspend the permit issued for such work as provided in this chapter.
- (c) All work shall be performed in compliance with the applicable laws, regulations, and ordinances of any governmental body, including, but not limited to, Manual on Uniform Traffic Control Devices and Illinois Department of Transportation requirements.

7-2-10. Liability of permittee.

- (a) The permittee shall maintain all such excavations, disruptions, or openings in a safe condition from the time the permittee begins the excavation or makes the excavation, disruption, or opening until the permittee properly restores and repairs the street, right-of-way, sidewalk, or other city property as required in this chapter, and the permittee shall be liable and responsible for any and all accidents or damages of any nature occasioned by any such excavation, disruption, or opening until the same is properly restored and repaired and the written approval is received from the Superintendent of Streets.
- (b) All such restoration and repairs made pursuant to the provisions of this chapter shall be of such character that the pavement and restored area will be and remain in good repair and condition for a period of one year from and after the completion thereof. In case any sign of disintegration appears, or any defects or depression occur within such period in the pavement or restoration area, except such as are without the fault of the permittee or its agents, such permittee shall be liable for and responsible to repair such defects and to put the pavement or restored area in a smooth, satisfactory, and good condition.

7-2-11. Excavations left open; barriers, lights required.

- (a) It shall be unlawful for any person or permittee making an excavation or placing any obstruction in any street, right-of-way, sidewalk or other city property or upon any lot or premises adjoining or bounded by any street, right-of-way, sidewalk or other city property within the city to leave the same open and unprotected by barriers and lights as hereinafter provided, adequate to protect the safety of persons, vehicles, or animals passing upon such public ways.
- (b) All railings, fences or other barriers erected pursuant to this section shall in each case be erected and maintained subject to the satisfaction of the Superintendent of Streets.
- (c) When required by the Superintendent of Streets, each such excavation shall be provided with a red light or lantern or other adequate warning signal at each approach to said excavation or obstruction, which can be easily seen from each direction. Such lights shall be of a type and in locations approved by the Superintendent of Streets, and shall be maintained in continuous operation at all times when said excavation is open or said obstruction present.

7-2-12. Removing earth without permission.

- (a) It shall be unlawful for any person to dig, remove, or carry away, for private purpose, any earth, gravel, rock, sod, or other material from any street, right-of-way, sidewalk or other city property without the express permission of the Superintendent of Streets, and any such person in violation of this provision shall be subject to a penalty of not less than one hundred dollars (\$100.00) nor more than seven hundred fifty dollars (\$750.00) for each such offense.
- (b) Any city officer or employee who shall use, sell, or dispose of any such material from any street, right-of-way, sidewalk or other city property for his own private gain or benefit shall be subject to a penalty of not less than five hundred dollars (\$500.00) nor more than seven hundred fifty dollars (\$750.00) for each such offense.

7-2-13. Transfer or assignment.

No excavation permit issued under the provisions of this chapter shall be transferred or assigned, nor shall any right or privilege thereunder be transferred or assigned, without the written consent of the Superintendent of Streets.

7-2-14. Revocation or suspension of permit.

If any person obtaining an excavation permit required under the provisions of this chapter shall at any time fail or neglect to comply with the provisions of this chapter, then such permit may be suspended or revoked by the Superintendent of Streets as provided herein:

- (a) The city may revoke or suspend a permit issued pursuant to this chapter for one or more of the following reasons:
 - 1. Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;
 - 2. Non-compliance with any provision of this chapter;
 - 3. Permittee's physical presence or presence of permittee's excavation or facilities on, over, above, along, upon, under, across, or within the streets or rights-of-way presents a direct or imminent threat to the public health, safety, or welfare;
 - 4. Permittee's failure to construct the excavation or facilities substantially in accordance with the permit and approved plans; or
 - 5. Defaulting under the terms of a security bond or letter of credit.

- (b) The city shall send written notice of its intent to revoke or suspend a permit issued pursuant to this chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee as provided in this section.
- (c) Upon receipt of a written notice of revocation or suspension from the city, the permittee shall have the following options:
 - 1. Immediately provide the Superintendent of Streets with evidence that no cause exists for the revocation or suspension;
 - 2. Immediately correct, to the satisfaction of the Superintendent of Streets, the deficiencies stated in the written notice, providing written proof of such correction to the city within five (5) working days after receipt of the written notice of revocation or suspension; or
 - 3. Immediately remove the facilities or restore the area subject to excavation located on, over, above, along, upon, under, across, or within the streets or rights-of-way and restore the streets or rights-of-way to the satisfaction of the Superintendent of Streets by providing written proof of such removal to the Superintendent of Streets within ten (10) days after receipt of the written notice of revocation or suspension.

The Superintendent of Streets may, in his discretion, for good cause shown, extend the time periods provided in this section.

- (d) In addition to the issuance of a notice of revocation or suspension, the Superintendent of Streets may issue a stop work order immediately upon discovery of any of the reasons for revocation or suspension set forth in subsection (a) of this section.
- (e) If the permittee fails to comply with the provisions of section, the city may, at the option of the city: (i) correct the deficiencies; (ii) upon not less than twenty (20) days' notice to the permittee, remove the subject facilities or equipment; or (iii) after not less than thirty (30) days' notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the city. The permittee shall be liable in all events to the city for all costs of removal.

7-2-15. Violation and penalty.

- (a) Except in the case of an emergency excavation when the Applicant has timely applied for an excavation permit as required under this chapter, any person who undertakes an excavation project governed

by this chapter without first obtaining the required permit, paying the required permit fee, and providing the required financial security as provided in this chapter shall be assessed five hundred dollars (\$500.00) by the Superintendent of Streets for each calendar day in which the violation continues until an application is properly submitted as provided under this chapter for up to a maximum period of seven (7) days, which assessment shall be added to the permit fee.

- (b) Any person who in violation of this chapter by submitting a fraudulent bond, letter of credit, cashier's check, or personal check, or who stops, cancels, revokes, or voids any bond, letter of credit, cashier's check, or personal check may be assessed a \$500 fine plus the costs incurred by the City as a result of the violation.
- (c) Except as otherwise provided in this chapter, any person who violates any other provision of this chapter shall be punished by a fine not less than one hundred dollars (\$100.00) nor more than seven hundred fifty dollars (\$750.00). Each day in which a violation continues shall constitute a separate offense. No person shall be subject to a fine under this provision if such person has paid the required assessment under any other provision of this section.

DIVISION II. DRIVEWAYS

7-2-16. Definitions.

For the purposes of this chapter, these additional words and terms listed herein shall have the following meanings:

Driveway approach means any place improved for vehicular or pedestrian traffic on street rights-of-way which connects the traveled portion of the street with a driveway or pedestrian walkway.

Driveway; non-residential means any passageway for vehicle ingress or egress to private property, used in whole or in part for other than residence or dwelling house purposes.

Driveway; residential means any passageway for vehicle ingress or egress to private property, used exclusively for residence or dwelling house purposes.

Off-street parking area means any area of a residential lot upon which a vehicle is or may be parked. As used in this chapter, the term vehicle shall be defined as set forth in the Illinois Vehicle Code.

Sidewalk means that portion of the street right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians and generally separated from the curb or roadway surface by a utility strip or grassplot.

7-2-17. Permit required; driveway.

It shall be unlawful for any person to construct, build, erect, establish, or maintain any driveway over, across, or upon any public curbing, sidewalk, or parkway within the city without having first obtained a permit therefor authorized by the Superintendent of Streets.

7-2-18. Residential driveway and off-street parking areas; application for permit, fee, specifications, required deposit.

- (a) Any person desiring to construct, build, establish, or maintain a residential driveway or an off-street parking area in the city shall make application to the Superintendent of Streets for a driveway permit. Such application shall contain the name and address of the applicant, the location and dimensions of the proposed driveway or off-street parking area, and whether, in the building or construction thereof, it will be necessary to cut down or alter a street or curb or elevate or depress the existing grade of the sidewalk or parkway.
- (b) No permit shall be issued hereunder until the applicant therefor shall have paid to the city the fee required under section 7-2-3(d) of this chapter and has provided such deposit as may be required for financial security under section 7-2-4 of this chapter.
- (c) No permit shall be authorized by the Superintendent of Streets unless the proposed driveway or off-street parking area is to be constructed in conformance with the following limitations and all other applicable requirements of this chapter:
 - 1. Driveway or off-street parking area widths measured at any point on the property line shall not exceed twelve (12) feet for a single driveway, or twenty (20) feet for a double or joint driveway. In the event the sidewalk is not separated from the curb by a utility strip or grassplot, then the point at which the above measurement is made will be determined by the Superintendent of Streets in accord with good engineering practices.
 - 2. A circular return connecting the driveway approach and the street may be used, except where the driveway crosses a curb line sidewalk. The minimum radius of return, when used, shall be three (3) feet and the maximum shall be seven (7) feet. No portion of the

approach shall be constructed within six (6) feet of the property line extended. The Superintendent of Streets may waive this requirement, but such waiver shall not permit the removal of curbing in front of adjoining property.

3. The sidewalk portion of the driveway or an off-street parking area shall be of PCC with a minimum thickness of six (6) inches.
4. The approach shall be either six (6) inches of rock base with a one and one-half (1-1/2) inch bituminous surface, or a six (6) inches thickness of PCC.
5. All driveways or off-street parking areas must be continuously paved (without any portions of unpaved areas) from the street along the driveway and to the parking area, including the entire parking area, unless otherwise expressly permitted to be constructed in a different manner under another provision of the City Code.

7-2-19. Non-residential driveway; application for permit, fee, specifications, required deposit.

- (a) Any person desiring to construct, build, establish, or maintain a non-residential driveway in the city shall make application to the Superintendent of Streets for a permit. Such application shall contain the name and address of the applicant, the location and dimensions of the proposed driveway, and whether, in the building or construction thereof, it will be necessary to cut down or alter a street or curb or elevate or depress the existing grade of the sidewalk or parkway.

No permit shall be issued for any work to be done in or about the construction of driveways until plans and specifications therefor have been submitted to and approved by the Superintendent of Streets, who shall at all times keep on file in his office a copy of such plans and specifications.

- (b) No permit shall be issued hereunder until the applicant therefor shall have paid to the city the fee required under section 7-2-3(d) of this chapter and has provided such deposit as may be required for financial security under section 7-2-4 of this chapter.
- (c) No permit shall be authorized by the Superintendent of Streets unless the proposed driveway is constructed in conformance with the following limitations and all other applicable requirements of this chapter:

1. Driveway widths measured at any point on the property line shall not exceed thirty (30) feet, with the following exceptions:
 - a. Where the distance from curb lines to property line is less than seven (7) feet, the driveway width may be thirty-five (35) feet at the property line and no return will be required.
 - b. Driveways designed for one-way operation to or from parking areas shall not exceed thirteen (13) feet in width at the property line.
2. A circular return connecting the driveway approach and the street may be used for all driveways, except those across curb line sidewalks. The maximum radius of return, when used, shall be seven (7) feet. When constructing a depressed curb, the amount of curb opening allowed shall be computed, using the allowable return radius.
3. No portion of a driveway approach shall be constructed within five (5) feet of the property line extended. The Superintendent of Streets may, upon due consideration for pedestrian safety and where unusual conditions prevail, waive or alter this requirement; provided, however, this shall not permit the removal of curbing in front of adjoining property.
4. Where more than one driveway approach is to serve a single parcel of land, there shall be an island between the driveway approaches of at least ten (10) feet along the sidewalk.
5. Where more than one driveway approach serves a single parcel of land, there may be no more than one such approach for every sixty-five (65) feet or any fraction thereof, of frontage along the right-of-way line.
6. The approach shall be of PCC of a minimum depth of six (6) inches and where it adjoins the gutter line, shall be faced with a raised vertical lip of not less than one and five-eighths (1-5/8) inches, which shall be rounded off in finishing.
7. The sidewalk portion of the driveway shall be of PCC with a minimum thickness of six (6) inches.
8. The right-of-way area adjacent to and between the driveway approaches shall not be surfaced with asphalt, concrete, bituminous cement binder pavement or gravel, unless the permittee shall

construct a sidewalk in accordance with the provisions of sections 7-1-1.5 et seq. of this Code.

9. To prevent any part of any vehicle using any parking area from projecting over or crossing the public sidewalk, except at points designated, there shall be installed on the property inside the property line a curb or other suitable barrier to be approved by the Superintendent of Streets.

7-2-20. Street or curb alterations or disturbances.

If the city determines that in the building or construction of the driveway, it will be necessary to cut down or alter a street or curb or elevate or depress the existing grade of the sidewalk or parkway, the applicant must further comply with the provisions of Division I of this chapter when obtaining the required permit and building or constructing the driveway. The determination whether the building or construction of a driveway will cut down or alter a street or curb or elevate or depress the existing grade of the sidewalk or parkway shall be made in the exercise of sound discretion by the Superintendent of Streets.

7-2-21. Permit to increase width of approaches and cuts.

Any person desiring a driveway approach or curb cut of a greater width than provided for in this Division II of this chapter, must receive permission to do so from the city council.

7-2-22. Certain restrictions; ramps, driveway approaches, drainage water.

- (a) It shall be unlawful for any owner or occupant of any property to erect or permit to be erected any wooden or metal ramp from the gutter line to the top of the curb.
- (b) It shall be unlawful for any person to place dirt, ashes, drainpipes, or other material in the gutter for the purposes of building up an approach for a driveway.
- (c) It shall be unlawful, in the case of non-residential driveways, to permit surface or roof drainage water to flow over that portion of the driveway that is on the public right-of-way.

7-2-23. Nonconformance to curb cut provisions.

In any case of nonconformance with the curb cut provisions of this chapter, where construction work such as widening, resurfacing, or other substantial alterations or extensions are to be made, the improvements shall be designed so as to comply with these limitations.

7-2-24. Locations where driveway approaches and driveways are prohibited.

No driveway approach nor any driveway, either residential or non-residential, shall be located on or enter the public right-of-way from any of the following locations:

Along the south side of Eckley Avenue beginning at the most westerly point of Outlot A of Ville Lumiere Subdivision as shown on a plat recorded in the office of the Tazewell County Recorder of Deeds at Book JJ, pages 145 and 146 and continuing thence along the south side of Eckley Avenue in a westerly direction to the intersection of Eckley Avenue with Fondulac Drive.

It shall be unlawful for any person to enter any public right-of-way by motor vehicle from any location where the location of driveways or driveway approaches is prohibited by this section.

Section 3. Section 1.40 of Chapter 1 of Title 7 of the East Peoria City Code is hereby deleted and replaced in its entirety as follows:

7-1-1.40. Destruction of, tearing up or removal of city streets, sidewalks.

- (a) It shall be unlawful for any person to tear up, cut, break out, disrupt (as defined in chapter 2 of title 7 of this city code), or remove any city street, alley, sidewalk, curb along the same, or any sod or earth therefrom an adjacent right-of-way within the city without the written consent of the Superintendent of Streets or issuance of a permit under chapter 2 of title 7 of this city code; provided, however, that such consent is hereby expressly given where a new street, alley, sidewalk or curb is ordered to be put down by ordinance.
- (b) Should any person tear up, cut, break out, disrupt, or remove any city street, alley, sidewalk, curb along the same, or any sod or earth therefrom on an adjacent right-of-way within the city, such person shall be required to comply with the provisions of chapter 2 of title 7 of this city code for restoring or repairing the street, alley, sidewalk, curb along the same, or any sod or earth therefrom on an adjacent right-of-way. If the person has already received a permit and provided the required financial security under chapter 2 of title 7 of this city code in relation to the damage or disruption to the city street, alley, sidewalk, curb, or right-of-way, no additional permit, permit fee or financial security shall be required under this provision of the city code.

- (c) As used herein, the term “person” means any person, firm, partnership, entity, association, or corporation.

Section 4. This Ordinance is hereby ordered to be published in pamphlet form by the East Peoria City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

Section 5. This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

Section 6. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 7. This Ordinance shall be in full force and effect from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS _____ DAY OF _____, 2021.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel