PASSED 8-0

ORDINANCE 16-06

TO AMEND TITLE 12 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "STREETS, SIDEWALKS AND STORM SEWERS"
(Amending Chapter 12.04 "General Regulations," Chapter 12.08 "Excavations," and Adding a New Chapter 12.12 "Utilities in the Right-of-Way")

WHEREAS, Indiana Code § 36-1-3-4(b) provides that the City, within statutory and Constitutional limits, has the power necessary or desirable to conduct its affairs, even if said power is not granted by a specific Indiana Code provision; and

WHEREAS, Indiana Code § 36-1-3-9(a) states that the City has exclusive jurisdiction over the public grounds inside of its corporate boundaries; and

WHEREAS, the City has the authority, pursuant to Indiana Code § 36-9-6-13(b), to authorize a telegraph, telephone, electric light, gas, water, steam, railroad, or interurban company to use and erect necessary devices and/or appurtenances in any right-of-way in the City and is further permitted to prescribe terms and conditions for the use and erection of these utilities and their associated devices and/or appurtenances; and

WHEREAS, the City, via Indiana Code § 36-9-6-14 and Bloomington Municipal Code Chapter 12.08, is authorized to require a permit before any person or entity performs an excavation in any rights-of-way owned by the City; and

WHEREAS, the City desires to adopt standards concerning the placement, construction and modification of structures and related equipment in the City's rights-of-way, with said standards being located in a newly codified Chapter 12.12, entitled "Utilities in the Right-of-Way"; and

WHEREAS, the City desires to update Chapter 12.08, entitled "Excavations", with the creation of these new standards so as to ensure that the Chapters within the Bloomington Municipal Code are compatible; and

WHEREAS, the overarching goal of the revisions to Chapter 12.08 and the creation of Chapter 12.12 is to ensure that the City's rights-of-way are utilized in a prudent and safe manner, while not causing undue harm to Bloomington's citizens or to the overall vibrancy of the city;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA THAT:

SECTION 1. Whenever the phrase "Transportation and Traffic Engineer" is referenced in the sections below, the same shall be renamed to read as "Transportation and Traffic Engineer, or his or her designees,"

Section 12.04.010	"Repair of sidewalks – Duty of adjacent owner;"
Section 12.04.120	"Obstructing sidewalk – walkaround – approval of transportation a and traffic engineer;"
Section 12.04.150	"Moving buildings;"
Section 12.08.070	"Permit issuance," as re-numbered herein;
Section 12.08.110	"Tunneling," as re-numbered herein; and
Section 12.08.120	"Barricades," as re-numbered herein.

SECTION 2. Section 12.08.010, entitled "Compliance with chapter required", shall be amended by adding ", right-of-way" after the word "street".

SECTION 3. Section 12.08.030, entitled "Permit fee", shall be deleted in its entirety and replaced with the following:

12.08.030 Permit Fee.

The fee to make any opening or excavation contemplated by this Chapter is specified in Section 17.08.050 of the Bloomington Municipal Code and shall be paid to the City's Transportation and Traffic Engineer, or his or her designees, prior to making the opening or excavation. The following persons and entities are exempt from having to pay the opening or excavation fee required by this Section and by Section 17.08.050:

(a) City of Bloomington Utilities Department;
(b) Indiana University;
(c) Monroe County;
(d) State of Indiana;
(e) Not-for-Profit Agencies; and
(f) Any utility or entity performing work on a device or appurtenance owned or operated by the City of Bloomington.

SECTION 4. Section 12.08.040, entitled "Petition to be filed with transportation and traffic engineer" shall be deleted in its entirety and replaced with the following:

12.08.040 Permit Application and Site Plan Required.

Any person desiring to make any opening or excavation contemplated by this chapter shall file the following with the transportation and traffic engineer, or his or her designees:

(a) An application for excavation; the application shall contain all information deemed necessary by the transportation and traffic engineer; and
(b) A site plan which identifies the following:
  (1) The specific location of all utilities already located in the right-of-way;
  (2) The specific location of all signs already located in the right-of-way;
  (3) The specific location of all structures already located in the right-of-way;
  (4) The distance from all streets, alleys, driveways, entrances, intersections, and/or road cuts wherein the excavation will be made and the device or structure being installed as a result of the excavation will be located; and
  (5) The specific location of all proposed utilities.

SECTION 5. Section 12.08.050, entitled "Bond required—Amount—Conditions", shall be deleted in its entirety and replaced with the following:

12.08.050 Bond required—Amount—Conditions.

At the time of filing the application under the provisions of Section 12.08.040, the person desiring to make any opening or excavation shall also file a bond payable to the City.

(a) The bond shall be in a sum no less than one hundred dollars ($100.00) and not more than five thousand dollars ($5,000.00), as the transportation and traffic engineer, or his or her designees, may designate.
(b) In the alternative to Section 12.08.050(a), for projects where the projected cost exceeds five thousand dollars ($5,000.00), the transportation and traffic engineer, or his or her designees, may require a bond in an amount not to exceed the total projected cost of the project, plus twenty-five percent (25%), in the event such bond is deemed necessary to ensure performance of the contractor.
(c) Bonds shall be filed with the transportation and traffic engineer, or his or her designees.
(d) Bonds shall be conditioned to save the City harmless from any loss, cost or damage by reason of such proposed work, and that the same shall be done in all respects in conformity with the requirements of all laws regulating the same.
(e) A single or continuing bond may be required to embrace all work of an applicant for a period of time between the date of the execution of the bond and two years after the date of completion of the project.
(f) The City of Bloomington Utilities Department shall not be required to file a bond for excavation work.

SECTION 6. A new Section, Section 12.08.060, entitled "Insurance and Indemnity", shall be added to Chapter 12.08, reflected in the table of contents, and shall read as follows:

12.08.060 Insurance and Indemnity.

(a) Each applicant for a permit under this Chapter shall provide a certificate of liability insurance to the Transportation and Traffic Engineer, or his or her designees, upon a form approved by the Corporation Counsel of the City of Bloomington, insuring the applicant, and naming the City of Bloomington as co-insured, against the following liabilities and in the following amounts relative to such activity:
   (1) Personal injury: $100,000.00 per occurrence and $300,000.00 in the aggregate; and
   (2) Property damage: $50,000.00 per occurrence and $100,000.00 in the aggregate.

(b) Each applicant for a permit under this Chapter shall provide a document approved by the Corporation Counsel for the City of Bloomington, in which the applicant agrees to indemnify and hold harmless the City of Bloomington for losses and/or expenses arising from the opening and excavating work performed pursuant to a permit issued under this Chapter.

SECTION 7. Section 12.08.070, entitled "Restoration of surface to be accomplished by permittee", shall be deleted in its entirety and all remaining sections shall be renumbered accordingly.

SECTION 8. Section 12.08.080, entitled "Return of excess deposit after payment of cost—Liability permitted to continue for two years", shall be deleted in its entirety and all remaining sections shall be renumbered accordingly.

SECTION 9. The presently-numbered Section 12.08.120, entitled "Refilling of excavations", shall be deleted in its entirety and replaced with the following provision, to be numbered 12.08.100:

12.08.100 Refilling of Excavations.

After the work requiring the excavation has been properly completed, the person holding the permit under the provisions of this chapter shall refill that portion of the street, alley, right-of-way, or public place excavated, by thoroughly tamping all material which he or she fills into such excavation and restore the pavement in accordance with specifications and standards as set forth by the transportation and traffic engineer.

(1) In the event the permittee fails to follow the above requirements, the city may refill the excavation, or employ another contractor to do so, at the expense of the permittee, such expense shall be deducted from the bond required by Section 12.08.050.
(2) If it becomes necessary for the city to utilize the bond required by Section 12.08.050 to refill the excavation, and any portion of the bond remaining after covering the City's expenses shall be returned or released to the permittee. However, at any time within two (2) years after the excavation has been refilled, it becomes necessary for the City to refill the excavation due to settlement of the backfill material, the person to whom the permit was issued for the original excavation shall reimburse the City for any additional expenses incurred in making the refill permanent.
(3) In the event a second inspection of the refilled excavation is necessary as a result of noncompliance with any section herein, a reinspection fee of twenty-five dollars ($25.00) may be charged by the transportation and traffic engineer, or his or her designees, for each reinspection that occurs.

SECTION 10. A new Section, Section 12.08.150, entitled "Emergencies", shall be added to Chapter 12.08, and shall read as follows:

12.08.150 Emergencies.

A utility described in Section 12.12.010 may perform excavation work in the City's right-of-way without having a permit to do so under this Chapter in the event an emergency necessitates excavation work. An emergency is defined as a sudden and unexpected event that, if left uncorrected, will cause serious damage to property or jeopardize the safety and health of persons.

(a) In the event an emergency occurs, the affected utility shall contact staff from the Planning and Transportation Department and the Public Works Department to inform them of the excavation work being performed.

(b) When excavation due to an emergency occurs, the utility conducting such emergency excavation shall file an application for a permit no later than seventy-two (72) hours from the commencement of the said emergency work.

SECTION 11. The presently-numbered Section 12.08.170, "Violations" shall be re-numbered to 12.08.160.

SECTION 12. The table of contents for this chapter shall be amended to reflect the aforementioned title and numbering changes such that the table of contents for Chapter 12.08 shall read as follows:

Chapter 12.08 Excavations

12.08.010 Compliance with chapter required.
12.08.020 Permit required.
12.08.030 Permit fee.
12.08.040 Petition to be filed with transportation and traffic engineer.
12.08.050 Bond required—Amount—Conditions.
12.08.060 Insurance and Indemnity.
12.08.070 Permit issuance.
12.08.080 Location of mains and pipes—Supervision of work.
12.08.090 Taking up pavement—Piling of material along curb.
12.08.100 Refilling of excavations.
12.08.110 Tunneling.
12.08.120 Barricades—Danger lights.
12.08.130 Protection of sides of excavation—Injury to adjoining pavements.
12.08.140 Excavation permit required.
12.08.150 Emergencies
12.08.160 Violations.

SECTION 13. A new chapter, Chapter 12.12, entitled "Utilities in the Right-of-Way" shall be adopted and shall read as follows:

Chapter 12.12 Utilities in the Right-of-Way.

12.12.010 Applicability.
12.12.020 Devices and appurtenances.
12.12.030 Compliance with other Laws.
12.12.040 Interference.
12.12.050 Installation Standards.
12.12.060 Replacement.
12.12.070 Removal.
12.12.080 Identification.
12.12.090 Rules and Regulations.
12.12.100 Penalty and Appeal.

12.12.010 Applicability.

This Chapter shall apply uniformly to the following utilities:
(a) Telegraph;
(b) Telephone;
(c) Electric light;
(d) Gas;
(e) Water;
(f) Steam;
(g) Railroad;
(h) Interurban company;
(i) Communication service providers, as said term is used in Indiana Code Chapter 8-1-32.3; and
(j) Any other utility which may be regulated by the Indiana Utility Regulatory Commission.

12.12.020 Devices and appurtenances.

All devices and appurtenances owned by any of the entities described in Section 12.12.010 that require a location in a right-of-way owed by the City are subject to the terms and conditions of this Chapter. The devices and appurtenances subject to regulation under this Chapter include, but are not meant to be limited to, the following:
(a) Poles;
(b) Lights;
(c) Guy wires;
(d) Transformers;
(e) Above-ground meters;
(f) Regulator stations;
(g) Pedestals;
(h) Hydrants;
(i) Marker posts;
(j) Test posts;
(k) Telecommunication towers; and
(l) Any equipment necessary for a utility described in Section 12.12.010 to operate and provide service.

12.12.030 Compliance with Other Laws.

All utilities listed in Section 12.12.010 shall comply not only with this Chapter, but shall also comply with all other applicable laws, rules, and regulations, including, but not limited to:
(a) The Bloomington Municipal Code, including Chapter 12.08 and Title 20; and
(b) The laws and regulations of the United States Government and any rules, regulations, or guidelines of an agency of the United States Government; and
(c) The laws and regulations of the State of Indiana and any rules, regulations, or guidelines of an agency of the State of Indiana; and
(d) The Manual on Uniform Traffic-Control Devices; and
(e) The Department of Justice, Americans With Disabilities Act Guidelines and Public Rights-of-Way Accessibility Guidelines; and
(f) Any rules and regulations promulgated by the City's Transportation and Traffic Engineer as authorized by this Chapter.

12.12.040 Interference.

No utility listed in Section 12.12.010, or any device or appurtenance listed in Section 12.12.020, shall be installed in the City's rights-of-way which may interfere with any of the following:

(a) Street or alley travel lanes;
(b) Street trees;
(c) Street parking spaces;
(d) Parking meters;
(e) Signs or signals;
(f) Sidewalks, bike lanes, or multiuse paths;
(g) Accessible curb ramps;
(h) Drainage patterns and facilities;
(i) Existing underground utilities; and
(j) Existing above-ground utilities.

Interference shall not include the temporary removal or relocation of any of the above-listed items when said removal or relocation is needed in order to ensure the installation of a utility device or appurtenance listed in Section 12.12.020. The applicability of this exception shall be determined by the City's Transportation and Traffic Engineer.

12.12.050 Installation Standards.

All utility devices and appurtenances installed under this Chapter shall be subject to the following standards:

(a) In accordance with generally accepted industry standards;
(b) In accordance with the laws, regulations and rules noted in Section 12.12.030;
(c) Located near the intersection of property lines;
(d) Outside of the clear zone, unless specifically approved by the City's Transportation and Traffic Engineer;
(e) No closer than two feet behind the edge of the pavement, unless specifically approved by the City's Transportation and Traffic Engineer or required by any applicable law referenced in Section 12.12.030;
(f) No higher than the maximum height permitted for any primary structure in the zoning district where the right-of-way is located, as described in Chapters 20.02 and/or 20.03 of the Bloomington Municipal Code, unless an applicable law, rule, regulation, or guideline of Section 12.12.030 requires the device or appurtenance to be higher than the maximum listed in the Bloomington Municipal Code; and
(g) Separated from all pre-existing utility devices and/or appurtenances, either above-ground or below-ground, in accordance with the separation requirements of each pre-existing utility device and/or appurtenance, unless an encroachment is permitted by the existing utility or is located in a designated joint-use area.

12.12.060 Replacement.

The replacement of any utility device or appurtenance already located in a City right-of-way at the time of adoption of this Chapter shall be subject to the standards of this Chapter as if the replacement was a newly requested installation.

12.12.070 Removal.

The owner or person having control of any utility device and/or appurtenance located in a City right-of-way shall remove said device and/or appurtenance within forty-five (45) days after the device and/or appurtenance ceases to be used for the purpose for which it was erected.

12.12.080 Identification.

Each utility listed in Section 12.12.010 shall be required to provide the City's Transportation and Traffic Engineer, in an approved format such as a GIS shapefile, a detailed inventory identifying the location of each device or appurtenance it has presently located in a City right-of-way no later than June 1, 2017. Additionally, each utility listed in Section 12.12.010 shall provide the City's Transportation and Traffic Engineer an updated inventory upon any changes to its infrastructure; this updated inventory shall be due within thirty (30) days of the infrastructure being updated.

12.12.090 Rules and Regulations.

The City's Transportation and Traffic Engineer shall have the authority to establish reasonable Rules and Regulations in order to effectuate the terms and fulfill the purpose of this Chapter. Any such Rules and Regulations will be posted on the City's website and available for viewing in the City's Planning and Transportation Department.

12.12.100 Penalty and Appeal.

(a) Penalty. The penalties for violating any provision of this Chapter shall include, but may not be limited to, the following:
  (1) Fines which shall not exceed two thousand five hundred dollars ($2,500.00) for a first offense and seven thousand five hundred dollars ($7,500.00) for a second and each subsequent offense. Each day a violation occurs is consider a separate and distinct offense for purposes of fines.
  (2) Removal of any device or appurtenance whose installation is in violation of this Chapter.
  (3) Revocation of any permits issued by the City that may relate to this Chapter, especially a permit issued under Chapter 12.08 or Title 20.

(b) Appeal. Any person who is aggrieved by any order issued by the City, a penalty other than a financial penalty issued by the City's Transportation and Traffic Engineer, a decision regarding an application for a permit, or the revocation of a permit, shall have the right to appeal said order or penalty to the City's Board of Public Works.
  (1) Any such appeal shall be submitted to the City's Planning and Transportation Department, in writing, within seven (7) days of the order or penalty being issued.
  (2) The Board of Public Works shall consider the appeal within thirty (30) days of the filing of an appeal.
  (3) The Board of Public Works shall issue its decision in writing with said decision including findings of fact.
  (4) The decision of the Board of Public Works may be appealed to the Monroe County Circuit Court, provided any such appeal is filed with the court within thirty (30) days of the Board of Public Works issuing its written findings of fact.

(c) The appeal of any financial penalty shall be taken directly to the Monroe County Circuit Court and shall be appealed within thirty (30) days of the financial penalty being issued.

SECTION 14. If any section, sentence, chapter or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any other section, sentence, chapter, provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 15. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor, and after any required publication, waiting, and/or notice periods under Indiana law.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 20th day of April, 2016.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 21st day of April, 2016.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 21st day of April, 2016.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance does three key things. First, it changes all references in Title 12 (specifically Chapters 12.04, 12.08 and the newly created 12.12) to the "Transportation and Traffic Engineer" to read instead "Transportation and Traffic Engineer, or his or her designees". The reason for this change is to ensure that other members of the Planning and Transportation Department who regularly and consistently work with and for the Transportation and Traffic Engineer are given authority under the Bloomington Municipal Code to continue performing their normal job assignments. Second, it makes amendments to Chapter 12.08, entitled "Excavations". The changes to Chapter 12.08 include the following: (1) amending the Chapter so it is clear that excavation work in a right-of-way also requires a permit; (2) requiring the submittal of a site plan at the time an application for an excavation permit is submitted; (3) consolidating and streamlining several existing sections so that the Chapter is more efficient and reader-friendly; (4) exempting governmental and not-for-profit entities from paying for excavation permit fees and exempting City of Bloomington Utilities from the requirement to file a bond; (5) increasing the bond limit and adding in an insurance and indemnity requirement; and (6) establishing a protocol for how utilities companies are allowed to conduct excavation work in emergency situations. Third, it establishes a new Chapter of the Bloomington Municipal Code, Chapter 12.12, entitled "Utilities in the Right-of-Way. The purpose of this new Chapter is to establish some very basic standards and guidelines regarding how and where utility devices and appurtenances can specifically locate.

Distributed to: Planning and Transportation, Public Works, Utilities, Legal, Mayor, CCA