

ORDINANCE 20-21

**TO AMEND TITLE 12 (“STREETS, SIDEWALKS AND STORM SEWERS”) AND
TITLE 17 (“CONSTRUCTION REGULATIONS”)
OF THE BLOOMINGTON MUNICIPAL CODE**

**Re: Deleting Chapter 12.08 (Excavations) and Replacing it with Chapter 12.08 (Use of the
Right of Way) and Adding a New Chapter 12.10 (Enforcement and Penalties) and
Deleting Three Sections of Chapter 12.04 (General Regulations) and
Revising One Section of Chapter 17.08 (Administration and Enforcement)**

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

WHEREAS, the City desires to adopt standards concerning any closure, impediment, digging, cutting or excavating to any street, right of way, alley or public place in the City, as well as standards concerning investigation, issuing notices and securing remedies for any violation of those standards; and

WHEREAS, the goal of creating a new Chapter 12.08 and Chapter 12.10 is to ensure that the City’s rights of way are utilized in a prudent and safe manner and in a way that does not negatively impact the 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. Chapter 12.08, of the Bloomington Municipal Code entitled “Excavations,” shall be deleted in its entirety and replaced with a new Chapter 12.08 “Use of Right of Way”. The codifier shall insert the title in the Table of Contents for Title 12 “Streets, Sidewalks and Storm Sewers”. Chapter 12.08 shall read as follows:

CHAPTER 12.08 - USE OF THE RIGHT OF WAY

Sections:

12.08.010 Compliance with Chapter Required

12.08.020 Right of Way Use Permit Required

12.08.030 Application and Permit Fee

12.08.040 Fee Table

12.08.050 Permit Application and Site Plan Required

12.08.060 Bond Required – Amount - Conditions

12.08.070 Bond Amounts

12.08.080 Insurance and Indemnity

12.08.090 Permit Issuance

12.08.100 Traffic Control Devices

12.08.110 Obstructing Sidewalk – Walkaround Requirements

12.08.120 Location of Mains and Pipes – Supervision of Work

12.08.130 Excavation Materials and Backfill

12.08.140 Refilling of Excavations

12.08.150 Protection of Sides of Excavation – Injury to Adjoining Right of Way

12.08.160 Emergencies

12.08.010 Compliance with Chapter Required.

It is unlawful for any person to do, cause or permit to be done any closure, impediment, digging, cutting or excavating to any street, right-of-way, alley or public place, or into or through any pavement thereon, in the city except in accordance with and as provided for in this chapter.

12.08.020 Right of Way Use Permit Required.

Any person closing, prohibiting access to, digging, cutting or excavating on or causing the same to be made in pavements or adjacent to pavements shall apply for a right-of-way use permit as required by this chapter. A person shall not begin the aforementioned activities until a right-of-way use permit has been duly granted as provided in this chapter. The right of way use permit shall be kept on site in paper or digital form and be able to be produced as requested by city staff.

Work done at the direction of the Board of Public Works which includes, but is not limited to, maintenance and improvements to existing infrastructure, shall be exempt from the permitting process, however, shall follow all maintenance of traffic principles outlined within the chapter.

12.08.030 Application and Permit fee.

Any person desiring to close, prohibit access to, or make any opening or excavation contemplated by this chapter is subject to application and permit fees as described:

- (a) The application fee covers the cost of submitting an application for review. The fee does not guarantee the issuance of a permit upon review. The application fee is due upon submittal of the application for review and will not be refunded upon rejection of the application by City staff or cancellation of application by the applicant.
- (b) The permit fee is the cost associated with the issuance of the permit upon approval. The permit fee is due before the permit is issued to the applicant.

The application and permit fees to close, prohibit access to, or make any opening or excavation contemplated by this chapter are specified in Section 12.08.040 ("Fee Table") of the Bloomington Municipal Code and shall be paid to the city's transportation and traffic engineer, or their designees, prior to closing, prohibiting access to, or making an opening or excavation. Application and permit fees may be adjusted or waived at the discretion of the Board of Public Works. The following entities, or their designees, are exempt from having to pay the fee required by this section and by Section 12.08.040 ("Fee Table"):

- (a) City of Bloomington Utilities Department;
- (b) Indiana University;
- (c) Monroe County;
- (d) State of Indiana;
- (e) Not-for-profit agencies with a 501(c)(3) designation; and
- (f) Any utility or entity performing work on a device or appurtenance owned or operated by and at the direction of the city.

12.08.040 Fee Table.

(a) The right of way use and excavation fees shall be as follows:

Application	Fee
Right of Way Use/ Excavation	\$100.00
Use Type	Fee
Street; asphalt or concrete	\$1.00 per square ft of surface disturbance
Pushorbore	\$0.10 per lineal ft
Replacement/Removal of poles	\$35.00 per pole
Residential Driveway installation	\$10.00
Grass, dirt, gravel, landscape area, or other unpaved surface	\$0.10 per square ft
Sidewalk, asphalt or concrete Reconstruction	\$0.10 per Square ft
Sidewalk asphalt or concrete new construction	\$0.05 per Square ft
Storage of Dumpsters or Construction Materials *non-metered location	\$50.00
Lane, Bike Lane, or Sidewalk Closure*	\$100.00 per week
Street Closure*	\$200.00 per week
Re-inspection Fee	\$25.00

*Each closure type will be charged individually. Each closure type located on a different block will be charged as a separate closure. All items related to the same project can be listed on the same application as to only charge one application fee.

12.08.050 Permit application and site plan required.

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

- (a) An application for right of way use, which shall contain all information deemed necessary by the transportation and traffic engineer;
- (b) A site plan which may identify the following and/or additional details, at the discretion of the transportation and traffic engineer:
 - (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, either privately or publically owned, 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;
 - (5) The specific location of all proposed utilities. (Prior code § 23-17); and
 - (6) A maintenance of traffic plan that is compliant with the Manual on Uniform Traffic Control Devices (MUTCD).
- (c) A bond in accordance with Section 12.08.060 (“Bond required-Amount-Conditions”); and
 - (d) A certificate of insurance in accordance with Section 12.08.080 (“Insurance and Indemnity”).

12.08.060 Bond required-Amount-Conditions.

At the time of filing the application under the provisions of Section 12.08.030 (“Application and Permit Fee”), the person desiring to close, prohibit access to, or make any opening or excavation shall also file a bond payable to the city with the transportation and traffic engineer, or their designees.

The bond shall be in a sum as shown in Section 12.08.070 (“Bond Amounts”) or as designated by the transportation and traffic engineer, or their designees. Bond amounts are per permit unless a larger bond is on file in an amount sufficient to encompass multiple active permits.

The transportation and traffic engineer, or their designees, may require a bond in an amount not to exceed the total projected cost of the project, plus twenty-five percent, in the event such bond is deemed necessary to ensure performance of the contractor.

Bonds shall be conditioned to hold 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.

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 as determined by the transportation and traffic engineer, or their designees.

Entities with a bonding agreement approved and filed with the Board of Public Works shall be exempt from this section. The following entities are eligible for this bonding agreement:

- (a) City of Bloomington Utilities Department;
- (b) Indiana University;
- (c) Monroe County Community School Corporation;
- (d) Monroe County;
- (e) State of Indiana;
- (f) Indiana Department of Transportation
- (g) Not-for-profit agencies with a 501(c)(3) designation; and
- (h) Any utility or entity performing work on a device or appurtenance owned or operated by and at the direction of the city.

Contractors hired by these entities are required to have a bond on file with the city unless otherwise approved in the agreement approved and filed with the Board of Public Works.

12.08.070 Bond Amounts.

Permit	Bond Amount (per permit)
Street Cut	\$20,000.00
Pushorbore	\$5,000.00
Placement/Removal of poles	\$5,000.00
Residential Driveway installation	\$5,000.00
Storage of Dumpsters or Construction materials:	\$5,000.00
Sidewalk Replacement	\$5,000.00
Commercial Driveway installation	\$10,000.00
Lane, Bike Lane, or Sidewalk Closure	\$5,000.00
Street Closure	\$5,000.00

12.08.080 Insurance and indemnity.

Each applicant for a permit under this chapter shall provide a certificate of liability insurance to the transportation and traffic engineer, or their designees, upon a form approved by the corporation counsel of the city, insuring the applicant, and naming the city as co-insured, against the following liabilities and in the following amounts relative to such activity:

- (a) Personal injury: one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate; and
- (b) Property damage: fifty thousand dollars per occurrence and one hundred thousand dollars in the aggregate.

Each applicant for a permit under this chapter shall provide a document approved by the corporation counsel for the city, in which the applicant agrees to indemnify and forever hold harmless the city for losses and/or expenses arising from the opening and excavating work performed pursuant to a permit issued under this chapter.

12.08.090 Permit issuance.

It shall be the duty of the transportation and traffic engineer, or their designees, upon the filing of the application, site plan, approved bond, proof of insurance, and the payment of a fee as required by this chapter, to issue to the petitioner a permit to close, prohibit access to, or make such excavation and do such work, and such permit shall describe the kind and location of the same. Staff may deny permits deemed incomplete or for work not in the public's interest as determined by the transportation and traffic engineer. The permit may also describe any restrictions or special instructions by which the responsible party to the permit must abide.

12.08.100 Traffic Control Devices.

Traffic control plans for all streets, sidewalks, bike lanes or other city right of way within the city shall be made in compliance with the Indiana Manual on Uniform Traffic Control Devices. Other specific safety precautions may be required by the transportation and traffic engineer, or their designees. All proper traffic control devices including but not limited to barricades, signage, lights, temporary markings, cones, and other safety precautions shall be maintained by the party to whom the permit was issued under the provisions of this chapter until construction has been inspected and approved by the transportation and traffic engineer, or their designees. Deviation from or failure to maintain approved traffic control plans shall be considered a violation of this chapter and shall be subject to penalty as described in chapter 12.10.

12.08.110 Obstructing sidewalk–Walkaround Requirements.

If it is necessary to obstruct or block a sidewalk for a period or periods totaling twenty-four hours or more, then the party who has applied for the right of way use permit shall provide a walkaround for such area. The transportation or traffic engineer, or their designees, may also require walkarounds for shorter time periods to facilitate access in high-use pedestrian areas or other contexts.

Where possible, the walkaround shall parallel the disrupted pedestrian access route on the same side of the street. The walkaround shall consist of a walk not less than five feet wide, be protected by continuous concrete or water filled barricades with impact attenuators at each end for oncoming traffic, and have Public Rights-of-Way Accessibility Guidelines (“PROWAG”) compliant access. Within the downtown overlay, a walkaround 8 feet in width should be provided when possible. All Indiana Manual on Uniform Traffic Control Devices (“IMUTCD”) guidelines must be followed including, but not limited to, advance warning signs. All Occupational Safety and Health Administration (“OSHA”) guidelines must be followed.

Other conditions for walkarounds may be required by the transportation and traffic engineer, or their designees, including, but not limited to, the following; concrete or water filled barricades on each side, railings 5 feet high on each side, electric lighting at night, overhead protection, rumble strips, changeable message signs, hazard identification beacons, flags, and warning lights. The transportation and traffic engineer may require a pedestrian detour or other accommodations instead of a walkaround if necessary in accordance with IMUTCD or OSHA guidelines. The walkaround shall remain unobstructed at all times unless otherwise approved by the transportation and traffic engineer, or their designees.

The proposed alternative path must be approved by the transportation and traffic engineer, or their designee. The transportation and traffic engineer or designee shall consider the following factors when reviewing pedestrian walkarounds, detours, or other pedestrian accommodations:

- The City’s Comprehensive Plan and Transportation Plan, that both state the City must “Provide a safe, efficient, accessible, and connected system of transportation that emphasizes public transit, walking, and biking to enhance options to reduce our overall dependence on the automobile.”
- The Transportation Plan's Modal Priorities, which state that in considering tradeoffs between modes, including in the context of construction, pedestrians should receive the greatest priority, as the most vulnerable and most space-efficient road users. Pedestrian priority is followed by bicyclist and transit user priority, followed by single-occupancy vehicle drivers with the lowest priority.
- If a pedestrian detour is used then appropriate advance warning must be provided;
- Pedestrian accommodations should avoid additional street crossings and added travel distance;
- Options for detours, diversions, road narrowing and road closures for automobiles, in order to maintain connectivity for pedestrians;

When feasible, construction site entrances and exits should be located in areas that minimize impacts to walkarounds in order to make walkarounds a feasible option.

When approval for a sidewalk closure is required from the Board of Public Works, the Board may require a pedestrian detour in place of a walkaround based on the context of the construction site and the factors listed above. Deviation from or failure to maintain approved walkaround shall be considered a violation of this chapter and shall be subject to penalty as described in Chapter 12.10.

12.08.120 Location of mains and pipes -- Supervision of work.

It shall be the duty of the responsible party in connection with all work contemplated by this chapter, through its duly authorized agents, to determine the proper location for all utilities including, but not limited to, water, gas, storm and sanitary sewer. It shall also be the duty of the responsible party to coordinate repair and incur expenses if there are damages to existing utilities due to their work. The transportation and traffic engineer or their designee may supervise the replacement of the excavation and pavements and see that all work in connection therewith is completed and in compliance with all federal, state, and local safety requirements and specifications required hereunder. The following persons shall be considered responsible parties, in connection with all work contemplated by this chapter:

- (1) The property owner;
- (2) Persons with any possessory interest in the property; and
- (3) Any person who, whether as property manager, principal agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who, either individually or in concert with another, took part in the work.

12.08.130 Excavation materials and backfill.

Any responsible party receiving a permit under the provisions of this chapter shall pile any excavation material in a neat pile within the approved right of way use construction area in such a manner as does not present safety or erosion control hazards. All unused backfill shall be hauled away the same day unless approved by the transportation and traffic engineer or their designee for later removal.

12.08.140 Refilling of excavations.

After any work requiring excavation has been properly completed, the responsible party to the permit under the provisions of this chapter shall refill that portion of the street, alley, right-of-way, or public place excavated and restore the excavated area in accordance with specifications and standards as set forth by the transportation and traffic engineer. Excavation done on a street that has been paved in the last three years shall require mill and pave of the full traffic lane or lanes as determined by the transportation and traffic engineer.

In the event the responsible party fails to follow the above requirements or the refilling of the excavation fails, the city may refill the excavation, or employ another contractor to do so, at the expense of the responsible party. Such expense may be deducted from the bond required by Section 12.08.060 ("Bond required-Amount-Conditions"). Fines may also be assessed per the fine schedule in Section 12.10.040 ("Penalty") for non-compliance.

In the event a second inspection of the refilled excavation is necessary as a result of noncompliance with any section herein, a re-inspection fee of twenty-five dollars shall be charged by the transportation and traffic engineer, or their designees, for each subsequent inspection that occurs.

12.08.150 Protection of sides of excavation-Injury to adjoining right of way.

Any person making excavations or causing the same to be made in pavements or adjacent to pavements, shall so protect the sides of the excavation that the adjoining soil shall not cave in. It is unlawful for any person to excavate so as to undermine or injure any adjoining right of way including, but not limited to, curbs, streets, tree plots and sidewalks.

12.08.160 Emergencies.

A utility described in Section 12.12.010 (“Applicability”) may perform a closure of and excavation in the city's right-of-way without having a permit to do so under this chapter in the event an emergency necessitates closure and 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.

Any emergency closure in city right-of-way shall be done in compliance with the Indiana Manual on Uniform Traffic Control Devices temporary traffic control guidelines. Excavations must be repaired to city standard for temporary or final repair as described in City standard drawings.

In the event an emergency occurs, the affected party shall contact staff from the planning and transportation department and/or the public works department to inform them of the excavation work being performed.

When closure and excavation due to an emergency occurs, the contractor conducting such emergency closure and excavation shall have current bonding and insurance on file with the city per requirements in Sections 12.08.060 (“Bond required-Amount-Conditions”) and 12.08.080 (“Insurance and indemnity”). The contractor conducting such emergency closure and excavation shall file an application for a permit no later than seventy-two (72) hours from the commencement of the said emergency work.

SECTION 2. Section 12.04.110 entitled “Obstructing sidewalk – Walkaround to be Provided” shall be deleted in its entirety and all remaining sections shall be renumbered accordingly.

SECTION 3. Section 12.04.120 entitled “Obstructing sidewalk – Walkaround – Approval of transportation and traffic engineer” shall be deleted in its entirety and all remaining sections shall be renumbered accordingly.

SECTION 4. Section 12.04.130 entitled “Obstructing sidewalk – Revocation of permit upon disregard of regulations” shall be deleted in its entirety and all remaining sections shall be renumbered accordingly.

SECTION 5. Section 17.08.050 entitled “Fees” shall be revised to delete Right-of-way borings and Right-of-way cuts.

SECTION 6. A new chapter, Chapter 12.10, entitled “Enforcement and Penalties” shall be adopted. The codifier shall insert the title in the Table of Contents for Title 12 “Streets, Sidewalks and Storm Sewers”. Chapter 12.10 shall read as follows:

CHAPTER 12.10 - ENFORCEMENT AND PENALTIES

Sections:

12.10.010 Authority

12.10.020 Penalties and Remedies for Violations

12.10.030 Administration

12.10.040 Penalty

12.10.050 Enforcement Procedures – Notices of Violation

12.10.060 Appeals

12.10.010 - Authority.

All departments, officials and public employees of the city that are vested with the duty or authority to review and/or issue permits shall conform to the provisions of this title of the Bloomington Municipal Code (BMC) and shall issue no permit for any use, excavation, activity or purpose which would be in conflict with the provisions of this title. Any permit issued in conflict with the provisions of this title shall be null and void. The transportation

and traffic engineer and their designee are designated enforcement officials with full authority to investigate, issue notices of violation, and secure remedies, including but not limited to injunctive relief, for any violation of this title.

12.10.020 - Penalties and remedies for violations.

(a) For the purposes of this chapter, a violation shall be defined as violation of or failure to comply with:

(1) Any provision or requirement of Chapter 12.08 or 12.10; or

(2) The required elements of the submission on the basis of which any permit or approval has been rendered hereunder.

(b) Any violation as defined herein is hereby declared a common and public nuisance, and any person who is a responsible party as defined in Section 12.10.050(a) with respect to such violation shall, in addition to any other penalty or remedy provided herein, be liable for maintaining a common and public nuisance.

(c) Any violation, as defined in subsection (a) above, shall be subject to the penalties and remedies provided in this chapter, and the city shall have recourse to any remedy available in law or equity.

(d) Each day that any violation continues shall be considered a separate violation for purposes of the penalties and remedies specified in this chapter. A violation continues to exist until corrected. Correction includes, but is not limited to:

(1) Cessation of an unlawful practice;

(2) Removal of a building, structure, or other improvement;

(3) Faithful or otherwise-approved restoration or replacement of a building, structure, site, excavation, traffic control devices, walk around, or natural feature;

(4) Any other remedy specified in this title; and/or

(5) Other remedy acceptable to the city.

(e) The city legal department may institute appropriate action to impose and collect fines and/or other penalties; to enforce or defend any action taken pursuant to Section 12.10.050(d) of this chapter; and to prevent, enjoin, abate, remove or correct any violation of or noncompliance with this title or any condition, requirement, or commitment established in connection with this title or any development approval hereunder.

(f) The remedies provided for in this title shall be cumulative, and not exclusive, and shall be in addition to any other remedies available in law or equity.

12.10.030 - Administration.

The transportation and traffic engineer or their designee shall maintain a record and tabulation of all complaints and investigations, and the resolutions of those complaints, whether made by citizens or by staff; communicate with citizen complainants about the progress being made in investigating and resolving their complaints; and report to pertinent boards or commissions on an as-needed basis.

12.10.040 - Penalty.

(a) Any violation that is subject to this chapter shall be subject to a civil penalty of not more than two thousand five hundred dollars for each such violation, and not more than seven thousand five hundred dollars for the second and any subsequent violation, in addition to any and all other remedies available to the city, except where a lesser fine is specified herein.

(b) The following violations of this title shall be subject to the fines listed in the table below for the first offense. In addition, if a responsible party commits a second or subsequent violation of the same provision within three years of the first such violation, regardless of whether the second or subsequent violation is on the same property as the first such violation, the listed fine for such second or subsequent offense shall be twice the previous fine, subject to the maximum set forth in subsection (a) above. (For example, a violation that is subject to a one hundred dollar fine per the table will be subject to a two hundred dollar fine for the second offense, a four hundred dollar fine for the third offense, and so forth.)

(c)

Right of Way Use Violation	Fine
Right of Way Closure or Excavation without a permit	\$500.00 maximum not to exceed allowed under (12.10.040)
Unrepaired damage to right of way following excavation	\$100.00
Failure to comply with city standards and specifications for right of way repairs	\$100.00
Right of way use without approved maintenance of traffic plan	\$500.00
Failure to maintain approved maintenance of traffic plan; including but not limited to maintaining compliant traffic control devices	\$500.00
Failure to have permit on site	\$100.00
Failure to reopen right of way per approved dates for right of way use permit	\$250.00

12.10.050 - Enforcement procedures—Notices of violation.

(a) If the transportation and traffic engineer or their designee finds that any violation subject to this chapter is occurring, or has occurred, a notice of violation (NOV) may be issued to the responsible party. Any person charged with violating any provision(s) of this chapter may, in the sole discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this chapter's provisions. For purposes of issuing a notice of violation, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation:

- (1) The property owner;
- (2) Persons with any possessory interest in the property; and
- (3) Any person who, whether as property manager, principal agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who, either individually or in concert with another, causes, maintains, suffers or permits the violation to occur and/or to continue.

(b) The notice of violation (NOV) shall be in writing and shall be served on all of the responsible parties in one or more of the following manners: delivery in person or by first class mail. The notice of violation shall state:

- (1) The location of the violation;
- (2) The nature of the violation;
- (3) The date the violation was observed;
- (4) The daily fine assessed for the violation;
- (5) Additional remedies the city may seek for violation;
- (6) That the fine is paid to the city of Bloomington;
- (7) That the notice of violation may be appealed to the board of public works; and
- (8) That the fine may be contested in the Monroe County Circuit Courts.

(c) Each item of noncompliance enumerated on the notice of violation shall be considered to be a separate violation, and each day that each such item of noncompliance continues shall be considered to be a separate violation. Fines shall accrue from the date the violation commenced.

(d) In addition to issuing a notice of violation (NOV), the transportation and traffic engineer or their designee may utilize and/or seek through legal proceedings one or more of the following remedies:

- (1) Revoke or withhold other approvals, certificates and/or permits relevant to the site on which the violation has occurred or to the parties committing the violation; and/or
- (2) Issue a stop work order; and/or
- (3) Request the county building department to issue a stop work order and request the building official to suspend and withhold all building code inspections relevant to the development or use of the site on which the violation has occurred; and/or
- (4) Draw on a performance or maintenance surety, as necessary, to effect any remedial actions required to abate the violations; and/or

(5) Revoke the permits, certificates and/or approvals that have been violated; and/or

(6) Any and all penalties and remedies listed in Section 12.10.020 (“Penalties and remedies for violations”).

12.10.060 - Appeals.

(a) Intent. The purpose of this section is to outline the procedure employed by the city in order to afford citizens an avenue of appeal when there is some doubt that an administrative official, staff member, administrative board or other body, has rendered a correct interpretation of the applicable ordinances and regulations while administering or enforcing any part of this title.

(b) Applicability. An administrative appeal may be made by any person aggrieved by an order, requirement, decision, or determination made by an administrative official, staff member, administrative board or other body, charged with the administration or enforcement of any part of this title.

(c) Application. Filing Deadline. An administrative appeal must be filed with the Public Works Department within seven days of the order, requirement, decision, or determination that is being appealed.

(d) Review. At its next regularly scheduled public meeting, the Board of Public Works shall review:

- (1) The written statement and supportive material submitted by the appellant;
- (2) The record of action supplied by the administrative official or body from which the appeal is taken;
- (3) The written and oral testimony of the public;
- (4) The testimony of the appellant; and
- (5) The testimony of the administrative official or body from which the appeal is taken;


(e) Decision. The Board shall issue its decision to uphold or deny the appeal to waive or adjust fines;

(f) Fines levied for violations may be challenged in the Monroe County Circuit Court and must be filed within seven days.

SECTION 7. If any section, sentence, chapter or provision of this ordinance, or the application 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 8. 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 4th day of NOVEMBER, 2020.


STEPHEN VOLAN, 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 5 day of November, 2020.


NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 9th day of November, 2020.


JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance updating Title 12 and Title 17 does four (4) things. First, Chapter 12.08, titled "Excavations," is repealed and replaced with a new Chapter 12.08 titled "Use of the Right of Way". The purpose behind this change is to ensure that language has been added to each section of this chapter that encompasses excavation in the right of way as well as use of the right of way. Use of the right of way includes storage of equipment or materials and closing a street, sidewalk, bike lane, or other lane of traffic. Second, it deletes three (3) sections of Chapter 12.04 which deal with walkarounds, as that topic is included in the new Chapter 12.08. Third it deletes a portion of section of Chapter 17.08, which includes permit fee provisions, as the deleted items are included in the new Chapter 12.08. Fourth, it establishes a new Chapter of the Bloomington Municipal Code, Chapter 12.10, entitled "Enforcement and Penalties," which provides more efficient and specific enforcement procedures.

Note: This ordinance was revised after release in the Legislative Packet but before introduction at the October 7, 2020 Regular Session. The revisions affected the following proposed sections:

- *12.10.020(a)(1) – by deleting “title” and replacing it with “Chapter 12.08 or 12.10”;*
- *12.10.020 – by deleting (f) and (g) and re-lettering remaining subsections accordingly;*
- *12.10.040 – by inserting a new subsection (b) and re-lettering remaining subsections accordingly;*
- *12.10.040(c) – by changing the amount for “Failure to maintain approved maintenance of traffic plan; including but not limited to maintaining compliant traffic control devices” from \$100 to \$500; and*
- *12.10.050(a) – by revising language related to issuance of official warnings.*

Also note: At the November 4, 2020 Regular Session, the Council adopted two amendments to Ordinance 20-21:

- *Am 01 – Modified section 12.08.110 to provide for safer passage of pedestrians in construction zones; and*
- *Am 02 – Changed all binary gender pronouns to gender neutral pronouns throughout the ordinance.*

Distributed to Clerk, Council Attorney, Legal, Mayor, and Planning and Transportation.