

ORDINANCE 2024-01

TO AMEND TITLE 12 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "STREETS, SIDEWALKS AND STORM SEWERS"

Re: Amending Various Chapters to Update References to the City Engineer, to Update References to the Comprehensive Plan and Transportation Plan, to Amend Language about Trees and Vegetation in Chapter 12.24, and Using this Occasion to Make Typographical and Grammatical Updates

WHEREAS, city staff from the Legal Department, Planning and Transportation Department, and the Department of Parks and Recreation have conducted a review of Title 12 of the Bloomington Municipal Code ("BMC") entitled "Streets, Sidewalks and Storm Sewers" and have determined that multiple chapters require maintenance and should be updated and amended;

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

SECTION 1. Title 12 of the Bloomington Municipal Code is hereby amended as provided in Appendix 1 to this Ordinance, which is attached hereto and made a part hereof. Amendments to chapter or section headings shall be reflected in the relevant table of contents.

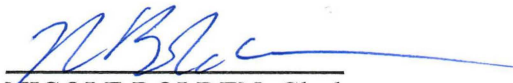
SECTION 2. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other part of this ordinance that can be given effect without the invalid part, and to this end the provisions of this ordinance are declared to be severable.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 14th day of February, 2024.



ISABEL PIEDMONT-SMITH, 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 15th day of February, 2024.



NICOLE BOLDEN, Clerk,
City of Bloomington

SIGNED and APPROVED by me upon this 15 day of February, 2024.



KERRY THOMSON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 12, “Streets, Sidewalks and Storm Sewers” of the Bloomington Municipal Code and comes forth at the request of city staff. The ordinance makes the following changes:

- Replaces references to the city’s transportation and traffic engineer with city engineer;
- Capitalizes department names (i.e. Department of Public Works), board and commission names (i.e. Board of Public Works), and legal document names (i.e. Comprehensive Plan, Transportation Plan, etc.);
- Removes references to “his or her” and replaces it with “their”;
- Removes references to the “Thoroughfare Plan” and its associated effective dates and replaces them with references to the “Transportation Plan” and its associated effective dates;
- Makes various other updates, including grammatical and typographical corrections; and
- Revises BMC Chapter 12.24 (Trees and Flora) to add or amend standards for appropriate tree protection, update terminology, and add relevant definitions.

Note: At the February 14, 2024 Regular Session, the Council adopted Amendment 01 to the ordinance, which replaced a reference to the transportation or traffic engineer with a reference to the city engineer and made a minor grammatical correction.

*Distributed to: CCA, Clerk, Mayor, Legal, Engineering, Parks, Planning,
Public Works,*

APPENDIX 1:

TITLE 12 AS MODIFIED BY THE PROPOSED ORDINANCE 2024-01 (Redline)

red underlined text = proposed additions

~~red strikethrough~~ = proposed deletions

TITLE 12 - STREETS, SIDEWALKS AND STORM SEWERS

Chapter 12.04 GENERAL REGULATIONS

Sections:

12.04.001 Reserved.

Editor's note(s)—Ord. No. 14-11, § 66, adopted July 2, 2014, repealed § 12.04.001 which pertained to sidewalks required for new buildings and derived from Ord. No. 72-20, § 1, 1972.

12.04.002 Reserved.

Editor's note(s)—Ord. No. 14-11, § 67, adopted July 2, 2014, repealed § 12.04.002 which pertained to waivers and derived from Ord. No. 72-20, § 2, 1972.

12.04.003 Reserved.

Editor's note(s)—Ord. No. 14-11, § 68, adopted July 2, 2014, repealed § 12.04.003 which pertained to sidewalks required for building permits and derived from Ord. No. 72-20, § 3, 1972.

12.04.004 Reserved.

Editor's note(s)—Ord. No. 14-11, § 69, adopted July 2, 2014, repealed § 12.04.004 which pertained to appeals and derived from Ord. No. 72-20, § 4, 1972.

12.04.005 Reserved.

Editor's note(s)—Ord. No. 14-11, § 70, adopted July 2, 2014, repealed § 12.04.005 which pertained to determinate variance—sidewalk construction deferred and derived from Ord. No. 72-20, § 5, 1972.

12.04.010 Repair of sidewalks—Duty of adjacent owner.

Every owner or occupant of any house or other building, and any owner of any vacant lot within the city, shall keep the sidewalks in front of such house, building or vacant lot in repair. Any person neglecting or refusing to comply with the provisions of this section, or neglecting or refusing to put the sidewalk in front of any house, building or vacant lot owned or occupied by him or her in repair after having received notice from the city engineer transportation and traffic engineer, or ~~their his or her~~ designees, to do so shall be subject to general penalty provisions of this code.

12.04.020 Discharge of water on sidewalk.

It is unlawful for any person owning or controlling any building in the city adjacent to an improved sidewalk to permit water to run from a downspout attached to such building onto and over such sidewalk.

12.04.030 Allowing filthy or noisome liquid to flow on streets.

It is unlawful for any person to cause or permit the flow or stagnation of any filthy or noisome liquid or substance upon any street, alley or other public place or into any stream.

12.04.050 Duty of abutting property owner to keep sidewalks clean.

It shall be the duty of every owner of real estate within the city to keep the sidewalk fronting upon such real estate reasonably clean and free from all dirt, filth or litter that may be washed or deposited thereon.

12.04.070 Reserved.

Editor's note(s)—Ord. No. 14-11, § 72, adopted July 2, 2014, repealed § 12.04.070 which pertained to duty of abutting property owner to remove snow and ice and derived from Ord. No. 04-35, § 1, 2004.

12.04.080 Reserved.

Editor's note(s)—Ord. No. 14-11, § 73, adopted July 2, 2014, repealed § 12.04.080 which pertained to failure to remove snow and ice and derived from § 23-10 of the prior code; Ord. No. 80-92, § 2, 1980; and Ord. No. 04-35, § 2, 2004.

12.04.085 Reserved.

Editor's note(s)—Ord. No. 14-11, § 74, adopted July 2, 2014, repealed § 12.04.085 which pertained to appeals and derived from Ord. No. 04-35, § 3, 2004.

12.04.090 Obstructing gutters.

It is unlawful for any person to obstruct any gutter, in any manner, with planks, timbers, pipe, bridge or any other material or design.

12.04.100 Pedestrian safety during razing or construction operations.

It shall be the duty of the owner of any property during the razing, remodeling or construction of any building or other facility to see that proper safety is provided at all times for pedestrians using the sidewalk adjoining such building or facility.

12.04.110 Reserved.

Editor's note(s)—Ord. No. 20-21, § 2, adopted Nov. 4, 2020, repealed § 12.04.110, which pertained to obstructing sidewalk—walkaround—to be provided and derived from prior code § 23-11.2; and Ord. No. 14-11, § 75, adopted July 2, 2014.

12.04.120 Reserved.

Editor's note(s)—Ord. No. 20-21, § 3, adopted Nov. 4, 2020, repealed § 12.04.120, which pertained to obstructing sidewalk—walkaround—approval of transportation and traffic engineer and derived from prior code § 23-11.3; Ord. No. 14-11, §§ 76, 77, adopted July 2, 2014; and Ord. No. 16-06, § 1, adopted April 20, 2016.

12.04.130 Reserved.

Editor's note(s)—Ord. No. 20-21, § 4, adopted Nov. 4, 2020, repealed § 12.04.130, which pertained to obstructing sidewalk—revocation of permit upon disregard of regulations and derived from prior code § 23-11.4.

12.04.140 Street assemblies.

It is unlawful for any person to hold or conduct, or cause to be held or conducted any meeting, speaking, or other gathering of people of any kind that will in any way tend to block the use of the streets or sidewalks or to congest crowds and travel over the streets and sidewalks of the city unless permission has first been obtained from the Board of Public Works ~~board of public works~~. This section shall not in any way be interpreted to infringe upon those rights guaranteed by the First Amendment to the United States Constitution.

12.04.150 Moving buildings.

Any person desiring to move any building within the city shall first obtain approval from the city engineer ~~transportation and traffic engineer~~, or their ~~his or her~~ designees, to do so. Such approval shall establish rules and regulations for the moving, including, but not limited to, time and route. As a prerequisite to this approval, the city engineer ~~transportation and traffic engineer~~, or their ~~his or her~~ designees, may require a bond for the protection of city property and the property of others in an amount deemed by the city engineer ~~transportation and traffic engineer~~ or their ~~his or her~~ designees to be sufficient.

12.04.160 Reserved.

Editor's note(s)—Ord. No. 14-11, § 80, adopted July 2, 2014, repealed § 12.04.160 which pertained to storm sewers and derived from Ord. No. 78-66, § 1, 1978.

Chapter 12.06 SIDEWALK SEATING AND MERCHANDISING ENCROACHMENTS

Sections:

12.06.010 Purpose of chapter.

The purpose of this chapter is to maintain aesthetically pleasing, accessible and vibrant sidewalks, and—through responsible encroachment practices—to balance the needs of citizens to use sidewalks with opportunities for businesses. It is further intended to assist with the enhancement of economic vitality of the City and to encourage the safe and orderly use of public property within the City. This chapter pertains specifically to the use of sidewalks by adjacent businesses for outdoor seating, merchandising and related purposes and does not remove from the Board of Public Works its authority to regulate other sorts of encroachments on the public right-of-way.

12.06.020 Definitions.

Whenever the following words are used in this chapter they shall be interpreted with the ascribed meaning:

"Block" means the distance between two cross streets on one side of the street. Alleys are specifically not considered cross streets.

"Board" means the Board of Public Works of the City of Bloomington.

"Clear straight pathway" or "clear zone" means an unobstructed straight walkway with a minimum width of 54 inches except where noted in this chapter.

"Department" means the ~~Engineering Planning and Transportation~~ Department of the City of Bloomington.

"Encroachment" means any private or public temporary or long-term use of a sidewalk for purposes other than movement of pedestrians and other ambulatory citizens or other use by the City of Bloomington in conducting its business.

"Merchandising" means any outdoor display of items intended for sale and/or decorative items including, but not limited to, flowers and plants, by the merchant whose business is located immediately adjacent to the sidewalk on which the items are being displayed.

"Obstruction" means any fixed object on the sidewalk including, but not limited to, street lights and their bases, sign posts, trees, tree and garden plots, tree grates, landscaping, fire hydrants and street furniture.

"Outdoor Seating" means seating outside of an established place of business whose primary or secondary business is the sale of food, or whose business desires to place outdoor seating for the convenience of their customers and the general public use and whose business location is immediately adjacent to the sidewalk space requested for use for said outdoor seating.

"Permittee" means the person or entity that receives a permit to encroach under the terms of this chapter.

"Sidewalk" means any walkway or pedestrian corridor within the City of Bloomington's legally platted right-of-way.

"Staff" means the city engineer ~~director of the planning and transportation department~~ and/or their ~~his/her~~ designees.

12.06.030 Standards for encroachment.

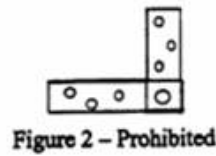
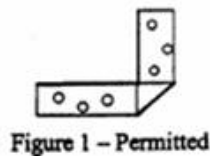
Sidewalk encroachments must be in full compliance with the following standards:

- (a) A clear straight pathway at least 54 inches wide must be maintained along blocks with the following exception: the north side of the 200 block of West Kirkwood Avenue, where a clear straight pathway at least 40 inches wide must be maintained. If and when there is a redesign and renovation of the sidewalk or streetscape on this side of this block, any encroachments will be required to accommodate a 54-inch straight clear path at that time.
- (b) The outermost (street side) edge of the clear straight pathway shall be at least one foot from the edge of the adjacent curb and shall be a straight line parallel to the curb and tangent to the innermost (building side) edge or point of the obstruction that is closest to its adjacent building anywhere on the same block as the requested encroachment. If there are no obstructions on the block, or if all obstructions on the block are within one foot of the edge of the curb, the outermost (street side) edge of the clear straight path shall be a line parallel to the curb at a distance one foot from the curb.
- (c) The following are exceptions to 12.06.030(b)
 - (1) For purposes of this chapter the City's tree/plant plots on the corners of the intersections at 6th and Walnut, and 6th and College, and Kirkwood and College, shall not be considered obstructions for the purposes of determining the clear straight pathway.
 - (2) On the east side of the 100 block of South College Avenue, the provisions of 12.06.030(b) shall not apply and encroachments shall extend no further west than parallel to the western edge of the wall that runs along the building side of the sidewalk just south of Kirkwood Avenue on the northern half of that block.
 - (3) On the west side of the 100 block of South Grant Street, the provisions of 12.06.030(b) shall not apply and encroachments shall extend no further east than parallel to the eastern edge of the wall that runs along the building side of the sidewalk just south of Kirkwood Avenue on the northern half of that block.
 - (4) On the east side of the 200 block of South Grant Street, the provisions of 12.06.030(b) shall not apply and encroachments shall extend no further west than parallel to the western edge of the wall that runs along the building side of the sidewalk just south of Fourth Street on the northern half of that block.
 - (5) On the north side of the 200 block of West Kirkwood Avenue, the poles supporting the railroad crossing signal on the northeast corner of the intersection of Kirkwood Avenue and Morton Street shall not be considered obstructions for purposes of this chapter.
 - (6) On the north side of the 200 block of West Kirkwood Avenue, the pole supporting the traffic signal on the northwest corner of the intersection of Kirkwood and

College Avenues, and the traffic control box just to the west of that pole, shall not be considered obstructions for purposes of this chapter.

- (7) On the west side of the 100 block of North College Avenue (west side of the Courthouse square,) a line parallel to the street and tangent to the innermost (building side) edge of the tree grate in front of 125 North College Avenue shall serve as outermost (building side) edge of the clear straight pathway.
- (8) On the east side of the 100 block on North Walnut Street (east side of the Courthouse square,) a line parallel to the street and tangent to the innermost (building side) edge of the tree grate in front of 102 and 106 North Walnut Street shall serve as outermost (building side) edge of the clear straight pathway.
- (d) Encroachment must be a minimum of 54 inches, or the distance indicated for a specific location in 12.06.030(a), from the innermost edge (building side) of streetlights and their bases, signposts, trees, tree and garden plots, tree grates, street furniture or any other fixed sidewalk obstruction.
- (e) If an encroachment has fencing adjacent to the clear straight pathway, and an object or fixture, including but not limited to a flower box, is attached to the fencing, such objects or fixtures shall be considered part of the encroachment and included in the measurements pertinent to this chapter.
- (f) The streetside edge of an encroachment shall include any item or object that extends at any height into the right-of-way even if the base or surface level of the item or object is closer to the building side of the encroachment.
- (g) If a newsbox or movable bicycle rack, encroaches into what would otherwise be the clear straight path, the permittee may, with the written permission of the Department, relocate the object to a location specified by the Department.
- (h) Subject to the other requirements of this chapter, the encroachment may extend a maximum of 8 feet into sidewalk from building face or property line.
- (i) Encroachment may only extend along sidewalk directly adjacent to permittee's business (may not extend in front of any other property) unless agreed upon by all parties involved, with proof of agreement presented to the Department, and with approval of the Department.
- (j) Objects or items within the encroachment area shall not be placed in such a way that obstructs access to utility meters.
- (k) If a business is required by any other law, statute or regulation—such as, but not limited to, the rules of the Alcohol and Tobacco Commission—to enclose or separate the encroachment from the rest of the public right-of-way, then the method of enclosure or separation, such as a fence, shall be fixed and attached to the right-of-way in a manner prescribed by the Department.
- (l) If the fencing or partition that is part of an encroachment is solid or imporous or impermeable, then that fencing or partition shall be no greater than 36 inches in height from the ground. If the fencing or partition that is part of an encroachment is porous then that fencing or partition shall be no greater than 46 inches except at the corners of the encroachment and the entryway to the adjacent business.

- (m) Persons using seating within an encroachment granted for those purposes shall be visible at all times from the street and sidewalk adjacent on all sides of the encroachment.
- (n) As an exception to 12.06.030(m), that provision does not apply to the awning and the support poles for the awning at the business at 125 N College Avenue which may remain up year around, although the partitions between the support poles must be removed by the third Monday of November.
- (o) Any fencing or partition that is part of the encroachment shall not include a gate that swings out of the encroachment.
- (p) If an encroachment is to utilize the right-of-way on more than one side of a building, then the portion of the encroachment, if any, connecting the two sides the building—such as around the corner of the building—must do so at an angle to the street as depicted in Figure 1, and not parallel to the street, as depicted in Figure 2.



- (q) Materials including, but not limited to, outdoor carpeting shall not be affixed to the surface of the public right-of-way.

12.06.040 Applications for encroachments.

No business may encroach onto the public right-of-way for purposes of seating or merchandising without a permit granted through the provisions of this chapter. Encroachment for these purposes without a valid permit is a violation of the provisions of this chapter subject to authorized remedies and penalties described later in the chapter. Applications for encroachment shall be submitted to the Department using the prescribed form no sooner than ninety (90) days before the expiration of an existing permit and at least sixty (60) days prior to the date the applicant wishes the encroachment to begin. Applications approved by staff shall be submitted to the Board for final authorization.

- (a) Eligible sidewalks shall be all sidewalks where a minimum of 54 inches of clear straight pathway can be maintained.
- (b) Businesses eligible for outdoor seating encroachment permits shall be all businesses who sell retail food items as a primary or secondary part of their daily operations or whose business desires to place outdoor seating for the convenience of their customer and the general public use and whose businesses are housed adjacent to the area of sidewalk requested for outdoor seating use.
- (c) Businesses eligible for a merchandising encroachment permit shall be all businesses conducting retail sales as the major part of their daily operations and whose businesses are housed immediately adjacent to the area of sidewalk requested for merchandising use.

- (d) All requests for encroachments, accompanied by the appropriate application fee as provided in 12.06.090, shall be submitted to the department on a form prescribed by the department and shall for all applicants include the following information:
 - (1) Name, street address and phone number of applicant;
 - (2) Street address of the property where encroachment is requested;
 - (3) A drawing to scale of the proposed encroachment;
 - (4) Length of time requested for the encroachment; and
 - (5) Name and street address of property owner if property owner is not applicant.
- (e) Applications requesting outdoor seating permits should be submitted to the department at least sixty (60) days prior to the date the applicant wishes the encroachment to begin but no earlier than ninety (90) days prior to the expiration of an existing permit to encroach at the same location. In addition to the information required in Section 12.06.040(d), the applicant is required to submit a detailed site plan including, but not limited to the following:
 - (1) The proposed use, materials, colors and design;
 - (2) Relationship of the outdoor seating to the adjacent existing building with identified uses and entrances;
 - (3) Spatial relationship of the proposed outdoor seating to the existing sidewalk and to any existing public improvements, including, but not limited to, benches, lights, light poles, telephone/power poles, fire hydrants, planters, tree plots, tree grates, landscaping, sign posts, newspaper boxes, etc.;
 - (4) The exact dimensions and total square footage of the proposed outdoor seating area;
 - (5) The existing and proposed circulation pattern for pedestrians and other ambulatory citizens with exact dimensions of the clear straight pathway;
 - (6) Evidence that abutting property owners and/or lessees have been notified of the proposed encroachment; and,
 - (7) Plans for the operation of the outdoor seating, including, but not limited to, hours of operation, services to be provided, maintenance and cleaning.
- (f) Applications requesting merchandising permits should be submitted to the department at least sixty (60) days prior to the date the applicant wishes the encroachment to begin but no earlier than ninety (90) days prior to the expiration of an existing permit to encroach at the same location. In addition to the information required in Section 12.06.040(d), the applicant is required to submit a detailed site plan including, but not limited to, the following:
 - (1) The proposed use and items to be displayed;
 - (2) Relationship of display to the adjacent existing building with identified uses and entrances;

- (3) Spatial relationship of the proposed encroachment to existing sidewalk and to any existing public improvements including, but not limited to, benches, lights, light poles, telephone/power poles, fire hydrants, planters, tree plots, tree grates, landscaping, sign posts, newspaper boxes, etc.;
 - (4) The exact dimensions and total square footage and of the proposed encroachment;
 - (5) The existing and proposed circulation pattern for pedestrians and other ambulatory citizens with exact dimensions of the clear straight pathway;
 - (6) Evidence that abutting property owners and/or lessees have been notified of the proposed encroachment; and,
 - (7) Plans for the operation of the encroachment, including, but not limited to, hours of operation, services to be provided, maintenance and cleaning.
- ~~(g)~~ (e) The department may require any other information as part of the application that it deems useful in evaluating the application.

12.06.050 Permit issuance and conditions.

Once an application has been reviewed and approved by the department, and payment of the application fee required by Section 12.06.090 has been confirmed, a permit shall be issued conditioned on the following:

- (a) The permittee has furnished the department with a certificate of insurance establishing proof of a comprehensive general liability policy naming the City of Bloomington as one of the insured to the extent of at least \$500,000 bodily injury and \$100,000 property damage, which shall be in effect during the term of this authorization.
- (b) Each permit shall be effective for one year of its date of issuance.
- (c) The permit issued is personal to the permittee only and is not transferable. Specifically, transfer of ownership of the business adjacent to the encroachment requires application for a new permit.
- (d) The board or department may require the removal, temporary or permanent, of the outdoor seating or merchandising encroachment when redevelopment of the street or sidewalk or utility repairs necessitates such action, or when the permittee fails to comply with any provisions of this chapter or section.
- (e) The permittee shall be responsible for expenses incurred in removing the outdoor seating or merchandising encroachment.
- (f) The city's officers and employees may immediately remove without notice all or parts of the outdoor seating or merchandising encroachments in an emergency situation. The city, its officers and employees, shall not be responsible for outdoor seating or merchandising components relocated or damaged during emergencies.
- (g) The permit covers only the area specifically described in the application.
- (h) All signage must be in compliance with the Bloomington Municipal Code.
- (i) Permittee acknowledges that seating and tables are not for the exclusive use of permittee's customers, but may be used by the general public.

- (j) The outdoor seating and merchandising area must be maintained and kept clean.
- (k) Any other conditions of approval which the Department deems appropriate.
- (l) The permit does not give the permittee a right to keep the boundaries of the outdoor seating and merchandising encroachment or maintain structures within such encroachment in the event there is a change in local, state, or federal law or regulation that would require a wider path along or other alteration of the city's right-of-way.

12.06.060 Revocation of a permit.

- (a) The department may revoke a permit at any time for any outdoor seating or merchandising encroachment if:
 - (1) Changing conditions of pedestrian or vehicular traffic necessitate the removal of the outdoor seating or merchandising encroachment;
 - (2) Proposed public improvements necessitate the removal of the outdoor seating or merchandising encroachment;
 - (3) Outdoor seating or merchandising encroachment no longer serves the public interest; or,
 - (4) Staff determines that a permittee's receipt of repeated notice of violations for failure to comply with the provisions of this chapter and/or the permit granted for encroachment indicates a general unwillingness to comply with the provisions of this chapter and/or the permit.
- (b) Upon determining that cause exists for revocation of a permit, the Department shall give written notice of such action to the permittee stating the action taken and the reason.
- (c) Upon official revocation by the department, the permittee shall have fourteen (14) days to remove the outdoor seating or merchandising encroachment and make any repairs to the sidewalk, if necessary, unless otherwise granted by the department. Failure to remove the encroachment in the time allowed by the department will result in removal of the encroachment by the department under the terms set forth in Section 12.06.110 below.

12.06.070 Permit renewal.

The permittee may file an application for permit renewal, accompanied by the appropriate renewal fee set forth in Section 12.06.090, no later than at least sixty (60) days prior to the date the applicant wishes the renewed encroachment to begin but no earlier than ninety (90) days prior to the expiration of an existing permit. The application for permit renewal shall be reviewed and processed by Department staff. If a permittee should have a record of failure to comply with the provisions of this chapter, this record shall be considered by staff in the decision to approve or deny renewal of the permit.

12.06.080 Duty to maintain.

Permittee agrees to operate and maintain outdoor seating or merchandising encroachment in a safe, secure and sanitary manner, and in full compliance with the provisions of this chapter and any conditions of approval set by the Department.

12.06.090 Application fees.

- (a) The fee to process an initial application for an outdoor seating or merchandising encroachment permit at a specific location shall be \$100.00.
- (b) The fee to process a renewal of an outdoor seating or merchandising permit shall be \$100.00. However, a permittee may renew its permit at a fee of \$50.00 if it agrees, as a provision or condition of the permit, that the permit will be valid only for the period beginning March 1 and ending the third Monday of November of the year for which the permit is issued. If the permittee agrees to this limited permit but encroaches at any time before March 1 or after the third Monday in November, the permittee must remit the additional \$50.00 to the Department before encroaching in the period excluded from the original permit, or be subject to the provisions of Section 12.06.110 in addition to being required to pay the additional \$50.00.
- (c) No fee shall be charged for processing applications for encroachments that will be limited to four days or less in a calendar year.
- (d) No refund shall be made where a permit is revoked or suspended for any reason.

12.06.100 Enforcement procedures.

- (a) If ~~staff the planning and transportation director, or his/her designee, collectively referred to as 'Staff'~~, find that any provision of this chapter is being, or has been, violated or that any condition of approval of a permit issued pursuant to Chapter 12.06 has not been met, said person shall issue a Notice of Violation (NOV) to the responsible party. For purposes of issuing notice of violation, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: the permittee(s); the property owner(s); persons with any possessory interest in the property; and/or any persons and/or their agents who have caused the violation.
- (b) This Notice of Violation (NOV) shall be in writing and shall be served on one or more of the responsible parties in one or more of the following manners: delivery in person; by First Class mail; and/or by placement in a conspicuous place on the property where the violation occurs. The notice shall state:
 - (1) The location of the violation;
 - (2) The nature of the violation;
 - (3) The period of correction (if any);
 - (4) The daily fine assessed for the violation during the correction period;
 - (5) The increase in fine if violation continues beyond the correction period, if any;
 - (6) That the city may seek additional remedies for violation, if any;
 - (7) That the fine may be paid at the City of Bloomington ~~Planning and Transportation Department~~; and,
 - (8) That the ~~NOV may be appealed to the Board of Public Works within 7 days fine may be contested in the Monroe County Circuit Courts.~~

- (c) If staff determines that the condition of the site causes danger to the health, safety, or welfare of the public, the city may enter upon the site to remedy the dangerous condition without notice to the responsible party or landowner, and the permittee shall be liable for all costs of removal and disposal of said encroachment and the city shall incur no liability for damages associated with removal of the encroachment.

12.06.110 Authorized remedies and penalties for violations.

- (a) No fine shall be assessed for a violation of this chapter, or a violation of a condition of approval, that is remedied within twenty-four hours after issuance of an NOV, provided that no NOV has been issued to the property owner, person with possessory interest, or responsible party within the prior twelve-month period. A fine of one hundred ~~dollars~~ **dollars** per day until remediation shall be assessed for any violation of this chapter that continues after the twenty-four-hour remediation period, or for any violation where an NOV has been issued to the property owner, person with possessory interest or responsible party in the prior twelve-month period. Each enumerated item of non-compliance shall be considered to be a separate violation, and each day the violation continues shall be considered to be a separate violation. In addition, staff may seek, with the assistance of the city ~~Legal Department~~ **legal-department**, one or more of the following remedies:
 - (1) Removal of the encroachment at the expense of the permittee, with permittee liable for all costs of removal and disposal of said encroachment and no liability on the part of the city for damages associated with removal of the encroachment; and/or
 - (2) A temporary restraining order, preliminary injunction or permanent injunction to restrain a person from violating the provisions of this chapter or a condition of approval, requirement or commitment imposed or made thereunder; and/or
 - (3) An injunction directing a person to perform a condition, requirement or condition imposed or made under this chapter or to remove a structure erected in violation of this chapter; and/or
 - (4) Suspend and withhold other approvals, certificates and/or permits relevant to use of the site on which the violation has occurred; and/or,
 - (5) Revoke the permit that has been violated.
- (b) The purpose of each of the foregoing administrative remedies is to encourage compliance with this chapter and the conditions, terms and provisions of the permit without having to resort to litigation. If used, the Staff shall apply the foregoing remedies in a measured and reasonable fashion to achieve their recognized purpose.
- (c) The remedies provided for in these regulations shall be cumulative, and not exclusive, and shall be in addition to any other remedies provided by law.

12.06.120 Appeal of citation ~~and fine~~.

Citations (NOVs) may be appealed to the ~~Board of Public Works~~ **board-of-public-works**, provided the appeal is submitted to the board, ~~via the department that issued the citation (NOV) planning and transportation department~~, within seven calendar days of the citation (NOV) being issued ~~and fines may be appealed to the Monroe County Circuit Courts.~~

Chapter 12.08 USE OF THE RIGHT-OF-WAY

Sections:

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~~ ~~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:

- (1) 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.
- (2) 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 engineer~~ ~~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~~ ~~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"):

- (1) City of Bloomington Utilities Department;
- (2) Indiana University;
- (3) Monroe County;
- (4) State of Indiana;

- (5) Not-for-profit agencies with a 501(c)(3) designation; and
- (6) 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 feet of surface disturbance
Push or bore	\$0.10 per lineal foot
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 foot
Sidewalk, asphalt or concrete reconstruction	\$0.10 per square foot
Sidewalk asphalt or concrete new construction	\$0.05 per square foot
Storage of dumpsters or construction materials* non-metered location	\$50.00
Use Type	Fee
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 ~~city engineer transportation and traffic engineer~~, or their designees:

- (1) An application for right-of-way use, which shall contain all information deemed necessary by the ~~city engineer transportation and traffic engineer~~;
- (2) A site plan which may identify the following and/or additional details, at the discretion of the ~~city engineer transportation and traffic engineer~~:
 - (A) The specific location of all utilities already located in the right-of-way;
 - (B) The specific location of all signs already located in the right-of-way;

- (C) The specific location of all structures, either privately or publicly owned, already located in the right-of-way;
 - (D) 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;
 - (E) The specific location of all proposed utilities; and
 - (F) A maintenance of traffic plan that is compliant with the Manual on Uniform Traffic Control Devices (MUTCD).
- (3) A bond in accordance with Section 12.08.060 ("bond required—amount—conditions"); and
 - (4) 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 city engineer ~~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 city engineer ~~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 city engineer ~~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 city engineer ~~transportation and traffic engineer~~, or their designees.

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

- (1) City of Bloomington Utilities Department;
- (2) Indiana University;
- (3) Monroe County Community School Corporation;
- (4) Monroe County;

- (5) State of Indiana;
- (6) Indiana Department of Transportation
- (7) Not-for-profit agencies with a 501(c)(3) designation; and
- (8) 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 ~~board of public works~~.

12.08.070 Bond amounts.

Permit	Bond Amount (per permit)
Street cut	\$20,000.00
Push or bore	\$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 city engineer 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:

- (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.

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 city engineer 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 ~~city engineer 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 ~~city engineer 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 ~~city engineer 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 ~~city 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 eight 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 ~~city engineer transportation and traffic engineer~~, or their designees, including, but not limited to, the following; concrete or water filled barricades on each side, railings five feet high on each side, electric lighting at night, overhead protection, rumble strips, changeable message signs, hazard identification beacons, flags, and warning lights. The ~~city engineer 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 ~~city engineer transportation and traffic engineer~~, or their designees.

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

- The city's Comprehensive Plan ~~comprehensive plan~~ and Transportation Plan ~~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 ~~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 ~~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 city engineer ~~transportation and traffic engineer~~ or their designees 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 city engineer transportation and traffic engineer or their designees 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 city engineer 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 city engineer 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 \$25.00 shall be charged by the city engineer 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 Engineering Department ~~planning and transportation department~~ and/or the Department of Public Works ~~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 hours from the commencement of the said emergency work.

Chapter 12.10 ENFORCEMENT AND PENALTIES

Sections:

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 city engineer ~~transportation and traffic engineer~~ and their designees 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~~ ~~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 ~~city engineer~~ ~~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 \$2,500.00 for each such violation, and not more than \$7,500.00 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 \$100.00 fine per the table will be subject to a \$200.00 fine for the second offense, a \$400.00 fine for the third offense, and so forth.)
- (c) [Fines for right-of-way use violations.]

Right-of-way Use Violation	Fine
Right-of-way closure or excavation without a permit	\$500.00 maximum not to exceed allowed under Section 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 ~~city engineer transportation and traffic engineer~~ or their designees 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; **and**
 - (7) That the notice of violation (**NOV**) may be appealed to the **Board of Public Works.**
~~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 city engineer ~~transportation and traffic engineer~~ or their designees 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 Monroe County Building Department ~~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 affect 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 ~~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.~~

Chapter 12.12 UTILITIES IN THE RIGHT-OF-WAY

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 ~~the~~ 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 engineer ~~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 engineer ~~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 engineer ~~city's transportation and traffic engineer~~;
- (e) No closer than two feet behind the edge of the pavement, unless specifically approved by the city engineer ~~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 ~~the 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 ~~the 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 engineer ~~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 ~~the a~~ city right-of-way no later than June 1, 2017. Additionally, each utility listed in Section 12.12.010 shall provide the city engineer ~~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 engineer ~~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 Engineering Department ~~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 for a first offense and seven thousand five hundred dollars for a second and each subsequent offense. Each day a violation occurs is considered ed 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 engineer ~~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 ~~board of public works~~.
- (1) Any such appeal shall be submitted to the city's Engineering Department ~~planning and transportation department~~, in writing, within seven days of the order or penalty being issued.
 - (2) The Board of Public Works ~~board of public works~~ shall consider the appeal within thirty days of the filing of an appeal.
 - (3) The Board of Public Works ~~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 ~~board of public works~~ may be appealed to the Monroe County Circuit Court, provided any such appeal is filed with the court within sixty thirty days of the Board of Public Works ~~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 days of the financial penalty being issued.~~

Chapter 12.20 TRANSPORTATION THOROUGHFARE PLAN

Sections:

12.20.010 Designation.

There is ~~an~~ adopted ~~an~~ official Transportation Plan thoroughfare plan for the city ~~and its extra-territorial planning jurisdiction~~, such plan having been adopted by Resolution MP-28-18 MP-02-02 of the Bloomington City Plan Commission on June 10, 2019 ~~December 16, 2002~~, with an effective date of July 17, 2019 ~~December 19, 2002~~.

12.20.020 Incorporation by reference—Description.

The official Transportation Plan is incorporated herein by reference, ~~thoroughfare plan is shown on the map entitled "Master Thoroughfare Plan, 2002" and chart entitled "Master Thoroughfare Plan,"~~ two copies of which are on file in the Office ~~office~~ of the City Clerk ~~city clerk~~ and the Planning and Transportation Department ~~planning and transportation department~~, ~~which are by this reference made a part of this code~~, showing location, alignment, functional classification, width of roadway, and minimum developed cross-section of existing and proposed facilities ~~thoroughfares~~.

12.20.030 Transportation facility ~~Thoroughfare~~ development.

The development, expansion, extension or realignment of new or existing transportation facilities ~~thoroughfares~~ shall be undertaken only in accordance with the Transportation Plan ~~thoroughfare plan~~ and recommended cross-sections as described in Section 12.20.020 and incorporated by this chapter. Proposals for deviation from any of the criteria contained in Section 12.20.020 shall require approval by the city Plan Commission ~~plan commission~~ before they shall be deemed to conform to the Transportation Plan ~~thoroughfare plan~~.

Chapter 12.24 TREES AND OTHER VEGETATION FLORA

Sections:

12.24.000 Purpose and intent.

It is the purpose of this chapter to regulate ~~any and all the~~ work, care, enforcement, ~~on and planting~~ and maintenance of all flora ~~boundary trees and trees~~ on public property and in the public rights-of-way. ~~("trees subject to these provisions") and flora on public property and in the public rights-of-way, to encourage proper selection and planting, and to assure compatibility with other urban infrastructure such as utilities, sidewalks and streets.~~

It is the intent of this chapter to establish the responsibilities of the city and its residents regarding all ~~toward~~ flora ~~and trees~~ subject to these provisions and to assure ~~those~~ regulations and policies maintain and increase the tree canopy within the city.

12.24.010 Definitions.

Whenever in this chapter the following words are used, they shall have the meanings respectively ascribed to them in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular number. The term "shall" is always mandatory and not merely directory. Terms not defined in this section shall have the meanings customarily assigned to them.

"Approved street tree species list" means a list of ~~proven~~ trees deemed adaptable to the street conditions of the city of Bloomington. The list is located in Bloomington Municipal Code Section 20.04.080(d)(1). ~~the "City of Bloomington Tree Work Manual."~~

"Board" means the Board of Park Commissioners ~~board of park commissioners~~ of the city of Bloomington, Indiana.

"Boundary tree" means a tree that meets one or more of the following criteria:

- (1) The stem of the tree straddles the actual property line between the public right-of-way ~~city public property~~ and the adjoining property;
- (2) The city and the adjoining property owner have previously agreed that the tree will identify the property boundary;
- (3) The city and the adjoining property owner have previously agreed to share the cost of maintaining the tree.

A boundary tree is the common property of both landowners.

"City" means the city of Bloomington, Indiana, including, but not limited to, the Board of Park Commissioners ~~board of park commissioners~~, the urban forester, or the board's designated agent.

"City of Bloomington Tree Care Work Manual" means the ~~official~~ arboricultural specifications manual ~~for of tree~~ care work as adopted by the city which specifies the policies and recommended practices of urban forestry ~~and which includes recommendations of size, spacing, and species of trees in urban forestry.~~

"Commission" means the tree commission as established in Bloomington Municipal Code Section 2.20.150.

"Critical root zone" means a circular region measured outward from the tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. Critical root zone is one foot in radial distance for every inch of tree diameter at breast height ("DBH"), with a minimum distance of eight feet. For specimen trees, the formula changes to one and one-half feet for every inch of tree DBH.

"Crown," also referred to as "canopy," means the above ground parts of a tree consisting of the branches, stems, buds, fruit and leaves.

"Department" means the Parks and Recreation Department ~~department of parks and recreation~~ of the city of Bloomington, Indiana.

"Flora" means all plants, including public trees shrubbery, but expressly excluding weeds and turf grass.

"Maintenance" means the trimming, care, pruning, protection, treating, and preservation of trees and other vegetation flora.

"Notice of violation" means a written notice of ordinance violation, as described in Section 12.24.110.

"Owner" means the person ~~in~~ who whom is vested with the ownership, dominion or title of property.

"Park trees" means trees on city-owned platted park areas.

"Person" means an individual, partnership, limited-liability company, corporation, firm, any other association or its agents or organization of any kind.

"Public street" means the entire area between the boundary lines of every dedicated right-of-way platted for and open to the use of the public, as a matter of right, for the purpose of vehicular and pedestrian traffic within the corporate limits of the city.

"Right-of-way" means a strip of land reserved for, occupied, or intended to be occupied by transportation facilities, public utilities or other special public uses. Right-of-way may be held in the form of easement or fee.

"Shrub" means a woody plant which is characteristically below twenty feet in height and is multi-stemmed supporting mainly leafy growth.

"Specimen tree" means any tree or grouping of trees that has been determined by the urban forester to be of high value because of its species, size, age, form or historical significance.

"Street tree" means a tree on real estate abutting a public street or right-of-way that is owned or controlled by the city.

"Topping" means the severe cutting back to stubs of limbs larger than three inches in diameter within the tree's crown so as to remove the normal canopy and disfigure the tree.

"Tree" means a perennial woody plant, ordinarily with one main stem or trunk, which develops many branches, and which ordinarily grows to a height of twenty feet or more.

"Tree Drip Line" means an imaginary line trending from the outmost circumference of the tree canopy/crown straight down to the ground.

"Tree lawn," also referred to as "tree plot area," means the land lying between the boundary of the public street and private property except such portion covered by sidewalk or used as a walkway.

"Tree Protection Barrier" means temporary fencing used to protect existing trees, including roots and crown, from damage during construction. The fence used as the Tree Protection Barrier shall be installed three feet outward from the tree drip line to delineate the Tree Protection Zone and be at least 4 feet tall, highly visible, sturdy, and have warning signs on or near it for the duration of any construction activity.

"Tree Protection Zone (TPZ)" means a zone of protected space surrounding a tree or group of trees extending from the topmost branch or leader downward to 36 inches below the

surrounding ground surface level. The outer limits of the TPZ shall be determined by measuring three feet outward from the tree drip line and include the critical root zone.

"Tree work" means the planting, pruning, removal, treating, spraying, and any other tree maintenance or horticultural work intended for the enhancement or preservation of trees, and the removal and prevention of any and all damages to any trees caused by tree pests, blights and diseases. Tree work shall also include excavation within any tree drip line. ~~near trees and the planting of shrubs within the public tree lawn.~~

"Utilities" means both public and private utility companies.

12.24.020 City authority.

- (1) The city shall have the authority, control, supervision and direction over all flora and trees subject to these provisions.
- (2) The city shall have all the right and authority to order the removal of any tree or part thereof on private property which is deemed to be in an unsafe condition or which by the reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, telecommunication lines, or other public improvements, or is affected with any injurious fungus, insect or other pest which constitutes a potential threat to other trees within the city, or which constitutes a threat to public health or safety.
- (3) The city shall prepare and publish guidelines and specifications for tree planting, care, maintenance, and removal in a document titled entitled the "City of Bloomington Tree Care Work Manual" for reference and use by property owners, developers, consultants and the general public in furtherance of the requirements and intent of this chapter. The Manual shall be developed and maintained with the assistance of the commission.
- (4) The city shall review all applications for permits for any planting, removal and/or pruning trimming or cutting of trees subject to these provisions and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

12.24.025 Replacement of the urban tree stock.

It is the policy of the city to maintain and expand the tree cover of the city as a whole and of individual streets and neighborhoods in particular by planting trees in accordance with practices observed by certified urban foresters. Overall, the city's annual goal shall be to plant at least twenty percent more trees than it removes, in order to maintain a planting to removal ratio of at least one point two to one. Once a tree has been removed, it shall be replaced, wherever possible, at or near its original location as soon as the planting season permits. Further, an ongoing program of replacing previously removed trees and of planting in new areas shall be conducted.

12.24.030 Tree lawn area maintenance.

- (1) The city shall have all the right and authority granted to municipalities under law to require the owners of parcels of land adjacent to a public street to maintain and improve the street tree lawn area. Such maintenance and improvement shall include, but is not limited to, leaf raking, turf grass mowing, brush collection, ~~and~~ landscape ~~bed~~ maintenance, and prohibited plant species removal.

- (2) The surface of tree lawn areas shall be as level as practicable, and the grade thereof shall be the top lines of the sidewalk and curb. No person shall pave, gravel, remove or otherwise convert existing grassed tree lawn areas.

12.24.040 Public safety and required clearances.

- (1) Vegetation Flora planted on public property or in the public rights-of-way and trees subject to these provisions shall follow all stipulations set forth be sited as not to impede traffic visibility line of sight, at distances from street intersections as regulated by the city of Bloomington Unified Development Ordinance 20.04.050(c)(4) and recommended practices in the "City of Bloomington Tree Care Work Manual."
- (2) Every owner shall remove or have removed all dead, diseased, or dangerous trees or vegetation flora, or broken or decayed limbs which overhang or may fall upon public property and which constitute a hazard to public safety. In addition, every owner shall properly prune or have properly pruned the branches of such tree(s) or other vegetation flora so that the branches shall not obstruct any traffic control signs or devices, the view of any street intersection, or light from any street lamp. Pruning shall be conducted following recommended practices in the City of Bloomington Tree Care Manual. There shall be a clearance standard space of fifteen feet above any highway or street surface and eight feet above any sidewalk surface to the bottom of the tree canopy.

12.24.050 Tree removal.

- (1) Except in emergency situations described in Section 12.24.070(3)(b), any tree subject to these provisions that is scheduled for removal by the city shall have an informational placard placed on the tree a minimum of ten working days before tree removal. The placard shall specify the reason for tree removal, projected removal date, and contact information.
- (2) If removal of a tree subject to these provisions is necessary for construction purposes, the property owners shall pay for complete tree removal at their own costs and a replacement tree or trees of equal value equal to current standards shall be planted on site or at a location owned or controlled by the city, and determined by the urban forester or their designee city.

12.24.060 Removal of stumps.

In the process of tree removal, stumps of trees subject to these provisions shall be ground to 24 six inches or more below ground level to make room for a replacement tree and the cavity filled with soil and leveled. Stump removal shall include removing the entirety of the the chipping of all limbs and removal of the stump as well as any surface roots. The urban forester may authorize stump grinding to a shallower depth where utilities are present or other conflicts exist.

12.24.070 Tree work permits.

- (1) All tree work, performed on trees subject to these provisions, shall follow the standards as set forth in this chapter and in the "City of Bloomington Tree Care Work Manual."

- (2) Except for the city and its agents, no person shall, unless otherwise noted herein, take the following actions without having first secured a tree work permit:
- (a) Plant, cut, remove, or treat with pesticide any tree subject to these provisions, except as otherwise noted herein; or
 - (b) Excavate any ditches, tunnels, boring pits, vaults, or trenches, lay any drive, install underground utilities, or store any substance within the tree protection zone a ten-foot radius of any tree subject to these provisions. When excavating, constructing or performing any street work within the tree protection zone a ten-foot radius of any tree subject to these provisions, all protective measures from BMC 12.24.075 the tree shall be followed. guarded with a fence, frame, or box, not less than four feet high and eight feet by eight feet square and all building material, dirt, or other debris shall be kept outside the barrier. Where heavy equipment will pass repeatedly over the tree's critical root zone a temporary layer of at least three inches depth of shredded bark or wood chips shall be placed and maintained on the ground.
- (3) No permit shall be required in the following situations:
- (a) The pruning trimming, by a property owner, of limbs less than two three inches in diameter of any tree subject to these provisions in the tree plot adjoining the owner's property, which does not exceed twenty thirty percent of the tree's canopy. Property owners shall follow recommended practices in the Tree Care Manual;
 - (b) During emergency situations, the city or public utilities may prune trim or remove any trees which endanger the public, inhibit the passage on city streets, or interfere with utilities and public infrastructure. Topping and the severe cutting back of limbs may be allowed under emergency conditions. The city may act without prior notification to the property owner;
 - (c) Any tree work performed by a city department or its agents; ~~or~~
 - (d) During road, curb, or sidewalk construction or utility installation or repair it may be necessary for the city to remove a non-hazard tree or trees. Trees in such situations shall be evaluated by the urban forester as to preservation potential; ~~or-~~
 - (e) For directional boring that passes close to or under trees, unless boring pits or vaults must be installed as described in BMC 12.24.070(2)(b).
- (4) Tree work permits are available without a charge from the department. All permit applications shall be reviewed by the department. The granting or denial of these permits shall be made in accordance with the policies and principles of urban forest management set forth in this chapter or as otherwise adopted by the board.
- (5) Any tree work related to matters pending before the Board of Zoning Appeals board-of zoning appeals, the Plan Commission plan-commission, or the Common Council common council shall be accompanied by a completed tree work permit application. If the Board of Zoning Appeals board-of zoning appeals, the Plan Commission plan-commission, or the Common Council common-council approves matters which will impact trees subject to these provisions, the tree work permit is deemed automatically granted and shall be forwarded to the department. Decisions by the Board of Zoning Appeals board-of zoning appeals, the Plan Commission plan-commission, or the Common Council common-council

that impact trees subject to these provisions shall be made in accordance ~~aeoord~~ with the policies and principles of urban forest management set forth in this chapter or as otherwise adopted by the board.

- (6) When filing an application for a tree work permit, the ~~person~~ responsible party for performing any and all tree work removal, pruning, stump removal, or trenching near trees shall also file a single or continuous bond payable to the city in a sum, as the department may designate. Bonds shall be filed with the department and 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 to the requirements of this code and all other ordinances of the city regulating same. The applicant must be able to demonstrate to the city's satisfaction that it is of sound financial condition and is adequately bonded and insured. Unless otherwise mandated by the board, posting a bond for tree planting activity is not required during the tree permit application process.

12.24.075 Tree Protection

- (1) Any existing public tree subject to these provisions, shall be protected by a Tree Protection Zone for the duration of construction and/or land-disturbing activities.
- (2) The Tree Protection Zone shall be surrounded by a tree protection barrier at least 4 feet tall, highly visible, sturdy, that restricts entry, and has warning signs that specify the financial penalties possible if encroachment occurs.
- (3) Tree Protection Zones shall be depicted on the site plans to avoid conflict with utilities or structures during construction.
- (4) The Tree Protection Barrier shall be installed by the responsible party and inspected by the city or its designees prior to land-disturbing activities.
- (5) The following activities are prohibited within the Tree Protection Zone:
- (a) Construction or land-disturbing activities,
 - (b) Equipment or supply storage,
 - (c) Equipment movement,
 - (d) Stockpiling,
 - (e) Rest or picnicking,
 - (f) Altering soils, including grade changes, surface treatment, compaction, or foot traffic.
- (6) If there are impediments to achieving a compliant Tree Protection Zone, the city's urban forester or their designees shall be consulted regarding a site-specific plan for alternative tree protection practices or exemptions. At this time, the responsible party shall submit a tree work permit application.
- (7) The following is an inclusive but not exhaustive list of potential impediments:
- (a) Access to project area
 - (b) Impervious surface construction or maintenance within the tree protection zone
 - (c) Unforeseen circumstances that may alter a project's scope of work

(d) Utility infrastructure maintenance

12.24.080 Prohibited actions.

- (1) No person shall in any manner obstruct or interfere with the agents or employees of the city while carrying out the provisions of this chapter or the orders issued by the board.
- (2) No person shall do any of the following to trees subject to these provisions:
 - (a) Damage, cut, carve or deface;
 - (b) Attach any wires, nails, chains, cables, advertising posters or any other contrivance;
 - (c) Allow contact with any harmful gaseous, solid or liquid substance; or
 - (d) Set fire or allow to burn.

12.24.090 Tree topping banned.

It is unlawful for any person to top any tree subject to these provisions. Topping is defined in Section 12.24.010. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning methods are impractical, may be exempted from this practice by a written determination by the department.

12.24.100 Public nuisance.

All vegetation trees or flora within the city which has been are determined by the city to constitute a public hazard or threat to health, safety, life, or property may be declared to be a public nuisance. The board may order removal of any such nuisances or other violations of this chapter.

12.24.110 Notice of violation.

- (1) If the board or its designee determines that there is a violation of this chapter or a public nuisance, the board or its designee shall issue a notice of violation (NOV) to the responsible party. For purposes of issuing a NOV, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: property owner(s); and persons who have caused the violation.
- (2) The NOV shall be served upon the responsible party by mailing a copy to that person's last known mailing address.

The notice shall include:

- (a) The address by legal description or street address of the location or premises of the trees or other vegetation flora;
- (b) The kind of tree or vegetation flora in violation of this chapter;
- (c) The sections of this chapter for which the responsible party is in violation;
- (d) Any actions that the responsible party may undertake to abate such violation and the time period specified to abate such violation;

- (e) The fact that a penalty may be assessed pursuant to Bloomington Municipal Code Section 12.24.120; and
 - (f) The date after which the city may abate the nuisance or violation.
- (3) The city shall, upon order of the board, take steps to remedy the violation. If the responsible party fails to remedy the violation cited in the NOV during the correction period, the city Legal Department ~~legal department~~ may bring suit in a court of competent jurisdiction to collect the accumulated fines, and any other costs associated with the remedy of the violation as are allowed by law, and any other remedies available, including but not limited to injunctive relief.
- (4) If a property owner fails to abate the violation cited in the NOV and the city remedies the violation, the controller shall make a certified statement of the actual cost incurred by the city for the action. The statement shall be served on the landowner by certified mail. The landowner shall pay the amount in the statement to the city legal department within ten working days of receiving it. If the property owner should fail to pay within the ten-day period, a certified copy of the statement of costs shall be filed in the offices of the county auditor. The auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected as taxes are and disbursed to the general fund of the city.

12.24.120 Violation and penalties.

- (1) Any person violating any of the provisions of this chapter may be issued an official warning.
- (2) Any person violating any of the provisions of this chapter shall, upon a written notice of violation (NOV), be subject to a penalty up to the statutory limit as described in Indiana Code Section 36-1-3-8, as amended.

12.24.130 Appeal.

Any person aggrieved by the department's denial of a tree work permit, the issuance of a notice of violation, or the city's notice of tree removal, shall have the right of appeal to the board. No appeal is allowed for emergency tree removal, described in Bloomington Municipal Code Section 12.24.070(3)(b). Appeals shall be made within ten working days after the action complained of, or for notice of tree removal, within seven working days of the posting of notice of tree removal. An appeal is made by filing a written statement with the board setting forth fully the grounds for the appeal. The board shall convene at a public meeting to review their initial decision in light of the appeal, and shall issue written findings. The decision and order of the board on such appeal shall be final and conclusive.

All appeals from written findings of the board shall be made to a court of competent jurisdiction within sixty ten ~~ten~~ working days of the issuance of the findings.