



City of Bloomington Common Council

Legislative Packet

Wednesday, 20 April 2016

Regular Session

For legislation and background material regarding
Appropriation Ordinance 16-03 and Ordinance 16-05,
please consult the

[06 April 2016 Legislative Packet](#)

All other material contained herein.

Office of the Common Council
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**City of
Bloomington
Indiana**



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To: Council Members
From: Council Office
Re: Weekly Packet Memo
Date: 15 April 2016

PACKET-RELATED MATERIAL

Memo

Agenda

Calendar

Notices and Agendas: *None*

Legislation for Second Reading:

- **App Ord 16-03** To Specially Appropriate from the Alternative Transportation Fund Expenditures Not Otherwise Appropriated (Appropriating Additional Funds for Certain Sidewalk Projects)
 - Memo to Council from Jeff Underwood, Controller
*Contact: Jeffrey Underwood at 812-349-3412 or underwoj@bloomington.in.gov
Dorothy Granger at 812-349-3409 or grangerd@bloomington.in.gov*

[Please see the Council [Legislative Packet issued in interest of the 6 April Regular Session](#) for legislation, summary, and associated materials.]

- **Ord 16-05** An Ordinance to Amend Ord 15-19 which Fixed Salaries for Certain City of Bloomington Employees for the Year 2016 (To Add Staff to the Department of Economic and Sustainable Development, the Office of the Mayor, and the Public Works Department to Meet Increased Need and to Revise Job Titles Within the Parks Department to Better Reflect the Nature of Those Positions)
 - Memo to Council from Caroline Shaw, Human Resources Director
*Contact: Caroline Shaw at 812-349-3578 or shawcaro@bloomington.in.gov
Jeffrey Underwood at 812-349-3412 or underwoj@bloomington.in.gov*

[Please see the Council [Legislative Packet issued in interest of the 6 April Regular Session](#) for legislation, summary, and associated materials.]

- **Ord 16-06** To Amend Title 12 of the Bloomington Municipal Code Entitled “Streets, Sidewalks and Storm Sewers” (Amending Chapter 12.04 “General Regulations,” Chapter 12.08 “Excavations,” and Adding a New Chapter 12.12 “Utilities in the Right-of-Way”)
 - Memo to Council from Patty Mulvihill, City Attorney and Anahit Behjou, Assistant City Attorney

*Contact: Patty Mulvihill at 812-349-3552 or mulvihip@bloomington.in.gov
Anahit Behjou at 812-349-3555 or behjoua@bloomington.in.gov*

Legislation and Background Material for First Reading:

Ord 16-06 – To Amend Title 12 of the Bloomington Municipal Code Entitled “Streets, Sidewalks and Storm Sewers” (Amending Chapter 12.04 “General Regulations,” Chapter 12.08 “Excavations,” and Adding a New Chapter 12.12 “Utilities in the Right-of-Way”)

Minutes from Regular Session:

- March 23, 2016 (*Consideration postponed from April 6, 2016 Regular Session*)

Memo

Three Ordinances for Second Reading One Ordinance for First Reading Wednesday, 20 April 2016

Three ordinances are scheduled for Second Reading at the Council meeting on 20 April 2016. Two of these ordinances come forward from the Committee of the Whole: App Ord 16-03 and Ord 16-06. App Ord 16-03 comes forward with a 8-0-0 “Do Pass” recommendation from the Committee and Ord 16-06 comes forward with a 8-0-0 “Do Pass” recommendation on Am01 and a 6-0-2 “Do Pass” recommendation on the ordinance, as amended. Recall that Am01 (attached hereto) is sponsored by Councilmember Piedmont-Smith and comes at the request of the Administration. The amendment is a change in job title, shifting the title of “Systems and Network Administrator” in the ITS Department to “Systems Administrator.” This change in title is made to better reflect the job description of this position and has no fiscal impact. The third item scheduled for Second Reading, Ord 16-06, is described below.

Ord 16-06: A Measure Regulating Utilities in the Public Right-of-Way and Associated Changes

Ord 16-06 is a measure intended to better regulate utilities in the public right-of-way. It is a measure that is largely informed by a recent change in State law¹ requiring permitting authorities (in this context, the City) to treat wireless providers as it treats other utilities when it comes to access to rights-of-way.² Ord 16-06 treats the recent law change as an opportunity more closely regulate *all* utilities in the public rights-of-way.

As explained in the accompanying memo from City Attorney Mulvihill and Assistant Attorney Behjou, the legislation makes three primary changes to Title 12 “Streets, Sidewalks and Storm Sewers” of the Bloomington Municipal Code (BMC). The ordinance: 1) adds a new section to the BMC dedicated to regulation of utilities in the right-of-way; 2) amends an existing chapter of the BMC governing excavations; and, 3) makes clear that the Transportation and Traffic Safety Engineer may appoint a designee in certain contexts, including the review and issuance of permits. Of these changes, the addition of a new chapter governing utilities in the public right-of-way is perhaps the most significant.

¹ P.L.145-2015, SEC.3, eff. Jan. 1, 2016.

² I.C. § 8-1-32.3-17(a) provides:

A permit authority may not discriminate among communications service providers or public utilities with respect to the following:

- (1) Approving applications, issuing permits, or otherwise establishing terms and conditions for construction of wireless or wireline communications facilities.
- (2) Authorizing or approving tax incentives for wireless or wireline communications facilities.
- (3) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned or controlled by the permit authority.

New Chapter

The new chapter (Chapter 12.12, *Utilities in the Right-of-Way*) creates requirements where previously there were no standards for the placement, construction, and modification of structures in the right-of-way. The requirements of Chapter 12.12 attach to utilities that the City is authorized to regulate pursuant to the Indiana Code: telegraph, telephone, electric light, gas, water, steam, railroad, interurban company (passenger rail lines connecting urban areas), communication service providers, and, any other utility which may be regulated by the Indiana Utility Regulatory Commission (IURC). Please note that fiber/broadband is regulated by the IURC. Under the new chapter, any of the aforementioned utilities, and their attendant devices located in the public right of way will be subject to:

- **Non-Interference.** Utilities are not permitted to interfere with: streets; alleys; street trees; parking meters; signs or signals; sidewalks, bike lanes, or multiuse paths; accessible curb ramps; drainage patterns and facilities; or existing utilities.
- **Replacement.** Replacement of an existing device, one installed before the passage of Ord 16-06, triggers application of the new regulations.
- **Removal.** Utilities are required to remove devices or appurtenances within 45 days after the device is no longer used for the purpose for which it was installed.
- **Identification.** Utilities are required to provide a detailed inventory of all devices or appurtenances it currently owns in the public right-of-way by 01 June 2017. Utilities are further required to provide the City with an updated inventory upon any changes to its infrastructure. The updated inventory is due within 30 days of the infrastructure change.
- **Installation Standards.** Some of the most notable changes include the following:
 - All utility devices must be located near the intersection of property lines (this is intended to prevent a device being placed in the middle of a property).
 - Outside of the “clear zone.” The “clear zone” is the area along the roadway which is kept clear of devices in the event a vehicle leaves the roadway.
 - No higher than the maximum height permitted for a primary structure in the zoning district where the right-of-way is located, unless State or federal law provides otherwise.
- **Promulgation of Rules.** The City’s Transportation and Traffic Engineer has the authority to promulgate rules and regulations. Such rules and regulations are to be posted on the City’s webpage and available in the City’s Transportation and Engineering Department. Please note this is only the Engineer him/herself who can promulgate these rules and regulations. These duties are not delegable to a designee.
- **Penalty and Appeal.** Penalties for non-compliance include: fines (\$2,500 for first offense and \$7,500 for a second and subsequent offense); removal of the offending device or appurtenance; or, revocation of any permits. Non-financial penalties are appealable to the Board of Public Works. Financial Penalties are appealable to the Monroe County Circuit Court.

Changes to the Excavation Chapter

Ord 16-06 also makes changes to the City's existing chapter on excavations, Chapter 12.08. As the installation of a utility device or appurtenance under Chapter 12.12 (the new chapter) often requires an excavation permit, Ord 16-06 updates the excavation chapter to attach more requirements to an application for an excavation permit and to change the BMC to reflect the actual practice of permit review and issuance. The memo from Mulvihill and Behjou detail the updates to this chapter of the BMC. Some of the more notable changes include:

- **Site Plan Required.** The ordinance requires that a detailed site plan accompany an application for an excavation permit. The site plan must include the location of all utilities, signs, and structures currently located in the right-of-way. It must include the distance of the proposed utility from streets, alleys, driveways, entrances, intersections, and/or road cuts. It must also include the specific location of the proposed utility.
- **Increased Bond.** The ordinance increases the maximum bond required from \$1,000 to \$5,000. Note that City of Bloomington Utilities has historically been exempt from the bond requirement. This ordinance codifies that exemption.
- **Authoring a Designee.** The ordinance also makes clear that it is the Transportation and Traffic Engineer, or her or his designee, who may handle the permitting process. Again, authorizing a designee reflects current practice relative to the permitting process.
- **Governmental Entities and Not-for-Profits Exempt From Fee Requirement.** This codifies current practice.
- **Insurance and Indemnity.** The ordinance requires that an applicant provide proof of insurance and to sign an agreement holding the City harmless for losses and/or expenses arising from excavation work done pursuant to the permit. This is a typical requirement of other permits authorized in the BMC.
- **Emergency.** The ordinance creates a provision to address emergency situations, 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." These are situations in which, for example, a water main breaks, or a power line falls down. In such instances, Ord 16-06 authorizes the utilities to do the necessary excavation work without a permit, provided the utility files an application for an excavation permit within 72 hours of the emergency excavation work.
- **Return of Site to Original Condition.** This is not a change. The current BMC already requires restoration of the excavation site to its original condition. The ordinance consolidates previously-scattered provisions into one section.

Other Designee Contexts

In addition to the designee authorization described above, the ordinance also provides for a designee of the Transportation and Traffic Engineer when it comes to: issuing a notice to repair a sidewalk; approving the otherwise-prohibited act of obstructing a sidewalk; and, approving the moving of a building.

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL REGULAR SESSION
7:30 P.M., WEDNESDAY, APRIL 20, 2016
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.**

I. ROLL CALL

II. AGENDA SUMMATION

Anticipated Motion to Amend the Normal Order of Business (BMC § 2.04.380)

III. APPROVAL OF MINUTES FOR: March 23, 2016

IV. REPORTS (A maximum of twenty minutes is set aside for each part of this section.)

1. Councilmembers
2. The Mayor and City Offices
3. Council Committees
4. Public*

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR FIRST READING

1. Ordinance 16-06 – To Amend Title 12 of the Bloomington Municipal Code Entitled “Streets, Sidewalks and Storm Sewers” (Amending Chapter 12.04 “General Regulations,” Chapter 12.08 “Excavations,” and Adding a New Chapter 12.12 “Utilities in the Right-of-Way”)

VII. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Appropriation Ordinance 16-03 – To Specially Appropriate From the Alternative Transportation Fund Expenditures Not Otherwise Appropriated (Appropriating Additional Funds for Certain Sidewalk Projects)

Committee Recommendation: Do Pass: 8-0-0

2. Ordinance 16-05 – An Ordinance to Amend Ordinance 15-19 which Fixed Salaries for Certain City of Bloomington Employees for the Year 2016 - Re: To Add Staff to the Department of Economic and Sustainable Development, the Office of the Mayor, and the Public Works Department to Meet Increased Need and to Revise Job Titles Within the Parks Department to Better Reflect the Nature of Those Positions

Committee Recommendation: As Amended Do Pass: 6-0-2
Am 01 Do Pass: 8-0-0

3. Ordinance 16-06 – To Amend Title 12 of the Bloomington Municipal Code Entitled “Streets, Sidewalks and Storm Sewers” (Amending Chapter 12.04 “General Regulations,” Chapter 12.08 “Excavations,” and Adding a New Chapter 12.12 “Utilities in the Right-of-Way”)

Committee Recommendation: Do Pass: N/A

(over)

* Members of the public may speak on matters of community concern not listed on the agenda at one of the two *Reports from the Public* opportunities. Citizens may speak at one of these periods, but not both. Speakers are allowed five minutes; this time allotment may be reduced by the presiding officer if numerous people wish to speak.

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call (812) 349-3409 or e-mail council@bloomington.in.gov.

Posted: April 15, 2016

VIII. LEGISLATION FOR THIRD READING

1. Ordinance 16-04 – To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code - Re: Amending 20.09.230 (“Demolition and Demolition Delay”) and 20.11.020 (“Defined Words”) to Expedite the Review of Partial Demolition Requests for “Contributing” Structures in Residential Zoning Districts

Committee Recommendation (March 30, 2016):	Do Pass	1-0-5
Second Reading (April 6, 2016):	<i>Postponed to a Third Reading on April 20, 2016</i>	
Am 05:	Passed	9-0-0
Am 01:	Passed	9-0-0
Am 03:	<i>Postponed to April 20, 2016</i>	
Am 04:	<i>Postponed to April 20, 2016</i>	

Note: It is anticipated that the Council will move to postpone Third Reading of this item and of Am 03 and Am 04 to the Council’s next Regular Session on May 4, 2016.

IX. ADDITIONAL PUBLIC COMMENT* (A maximum of twenty-five minutes is set aside for this section.)

X. COUNCIL SCHEDULE

XI. ADJOURNMENT

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**City of Bloomington
Office of the Common Council**

To Council Members
From Council Office
Re Weekly Calendar – 18 – 23 April 2016

Monday, 18 April

12:00 pm Bloomington Entertainment Arts District Advisory Committee, McCloskey
12:00 pm Board of Public Works – Work Session, Kelly
5:00 pm Utilities Service Board, Utilities
5:30 pm Farmers’ Market Advisory Council, Parks

Tuesday, 19 April

2:00 pm Housing Network, Hooker Room
4:00 pm Board of Park Commissioners, Chambers
4:00 pm Board of Public Safety, McCloskey
5:30 pm Animal Care Commission, Kelly
5:30 pm Bloomington Public Transportation Corp, Board of Directors, Transit
5:30 pm Commission on the Status of Children & Youth, Hooker Room

Wednesday, 20 April

9:30 am Emergency Management Advisory Council, Chambers
9:30 am Tree Commission, Rose Hill Cemetery Office, 930 W. 4th St.
2:00 pm Hearing Officer, Kelly
2:30 pm Affordable Care Act Committee, McCloskey
4:00 pm Board of Housing Quality Appeals, McCloskey
5:30 pm 4th – Rogers Intersection Project, Public Information Meeting, Chambers
6:00 pm Council of Neighborhood Associations, Hooker Room
7:30 pm Common Council – Regular Session, Chambers

Thursday, 21 April

8:00 am Bloomington Housing Authority, Bloomington Housing Authority, 1007 N. Summit Rd.,
Community Room
5:15 pm Monroe County Solid Waste Management District, Courthouse, Judge Nat. U. Hill, III Room
5:30 pm Board of Zoning Appeals, Chambers
7:00 pm Environmental Commission, McCloskey

Friday, 22 April

12:00 pm Common Council – Work Session, Council Library

Saturday, 23 April

8:00 am Bloomington Community Farmers’ Market, Showers Common, 401 N Morton St
8:00 am Environmental Commission Eco-Heroes Awards, Chambers
2:30 pm Autism in Love, Chambers

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Legislation

***** Amendment Form *****

Ordinance: 16-05
Amendment: Am 01
Submitted By: Councilmember Piedmont-Smith
Date: April 13, 2016

Proposed Amendment:

1. Ord 16-05 shall be amended to add the following position to the Information and Technology Services Department:

<u>Department/Division (followed by Job Title)</u>	<u>Grade</u>
<u>Information and Technology Services</u> Systems Administrator	8

2. Ord 16-05 shall be amended by deleting the following position from the Information and Technology Services Department:

<u>Department/Division (followed by Job Title)</u>	<u>Grade</u>
<u>Information and Technology Services</u> Systems and Network Administrator	8

Synopsis

This amendment is sponsored by Councilmember Piedmont-Smith and comes forward at the request of the Administration. The amendment is a change in job title, shifting the title of “Systems and Network Administrator” in the ITS Department to “Systems Administrator.” This change in title is made to better reflect the job description of this position and has no fiscal impact. This change is best made through this ordinance, rather than a subsequent salary ordinance, as this position has been recently vacated.

04/13/16 Committee Action: 8-0-0
04/20/16 Regular Session Action: *pending*

(April 13, 2016)

ORDINANCE 16-06

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

- WHEREAS, Indiana Code § 36-1-3-4(b) provides that the City, within statutory and Constitutional limits, has the power necessary or desirable to conduct its affairs, even if said power is not granted by a specific Indiana Code provision; and
- WHEREAS, Indiana Code § 36-1-3-9(a) states that the City has exclusive jurisdiction over the public grounds inside of its corporate boundaries; and
- WHEREAS, the City has the authority, pursuant to Indiana Code § 36-9-6-13(b), to authorize a telegraph, telephone, electric light, gas, water, steam, railroad, or interurban company to use and erect necessary devices and/or appurtenances in any right-of-way in the City and is further permitted to prescribe terms and conditions for the use and erection of these utilities and their associated devices and/or appurtenances; and
- WHEREAS, the City, via Indiana Code § 36-9-6-14 and Bloomington Municipal Code Chapter 12.08, is authorized to require a permit before any person or entity performs an excavation in any rights-of-way owned by the City; and
- WHEREAS, the City desires to adopt standards concerning the placement, construction and modification of structures and related equipment in the City’s rights-of-way, with said standards being located in a newly codified Chapter 12.12, entitled “Utilities in the Right-of-Way”; and
- WHEREAS, the City desires to update Chapter 12.08, entitled “Excavations”, with the creation of these new standards so as to ensure that the Chapters within the Bloomington Municipal Code are compatible; and
- WHEREAS, the overarching goal of the revisions to Chapter 12.08 and the creation of Chapter 12.12 is to ensure that the City’s rights-of-way are utilized in a prudent and safe manner, while not causing undue harm to Bloomington’s citizens or to the overall vibrancy of the city;

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

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

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

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

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

12.08.030 Permit Fee.

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

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

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

12.08.040 Permit Application and Site Plan Required.

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

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

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

12.08.050 Bond required—Amount—Conditions.

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

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

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

12.08.060 Insurance and Indemnity.

- (a) Each applicant for a permit under this Chapter shall provide a certificate of liability insurance to the Transportation and Traffic Engineer, or his or her designees, upon a form approved by the Corporation Counsel of the City of Bloomington, insuring the applicant, and naming the City of Bloomington as co-insured, against the following liabilities and in the following amounts relative to such activity:
 - (1) Personal injury: \$100,000.00 per occurrence and \$300,000.00 in the aggregate; and
 - (2) Property damage: \$50,000.00 per occurrence and \$100,000.00 in the aggregate.
- (b) Each applicant for a permit under this Chapter shall provide a document approved by the Corporation Counsel for the City of Bloomington, in which the applicant agrees to indemnify and hold harmless the City of Bloomington for losses and/or expenses arising from the opening and excavating work performed pursuant to a permit issued under this Chapter.

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

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

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

12.08.100 Refilling of Excavations.

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

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

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

12.08.150 Emergencies.

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

- (a) In the event an emergency occurs, the affected utility shall contact staff from the Planning and Transportation Department and the Public Works Department to inform them of the excavation work being performed.
- (b) When excavation due to an emergency occurs, the utility conducting such emergency excavation shall file an application for a permit no later than seventy-two (72) hours from the commencement of the said emergency work.

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

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

Chapter 12.08	Excavations
12.08.010	Compliance with chapter required.
12.08.020	Permit required.
12.08.030	Permit fee.
12.08.040	Petition to be filed with transportation and traffic engineer.
12.08.050	Bond required—Amount—Conditions.
12.08.060	Insurance and Indemnity.
12.08.070	Permit issuance.
12.08.080	Location of mains and pipes—Supervision of work.
12.08.090	Taking up pavement—Piling of material along curb.
12.08.100	Refilling of excavations.
12.08.110	Tunneling.
12.08.120	Barricades—Danger lights.
12.08.130	Protection of sides of excavation—Injury to adjoining pavements.
12.08.140	Excavation permit required.
12.08.150	Emergencies
12.08.160	Violations.

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

Chapter 12.12	Utilities in the Right-of-Way.
12.12.010	Applicability.
12.12.020	Devices and appurtenances.
12.12.030	Compliance with other Laws.
12.12.040	Interference.
12.12.050	Installation Standards.
12.12.060	Replacement.
12.12.070	Removal.
12.12.080	Identification.
12.12.090	Rules and Regulations.
12.12.100	Penalty and Appeal.

12.12.010 Applicability.

This Chapter shall apply uniformly to the following utilities:

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

12.12.020 Devices and appurtenances.

All devices and appurtenances owned by any of the entities described in Section 12.12.010 that require a location in a right-of-way owed by the City are subject to the terms and conditions of this Chapter. The devices and appurtenances subject to regulation under this Chapter include, but are not meant to be limited to, the following:

- (a) Poles;
- (b) Lights;
- (c) Guy wires;
- (d) Transformers;
- (e) Above-ground meters;
- (f) Regulator stations;
- (g) Pedestals;
- (h) Hydrants;
- (i) Marker posts;
- (j) Test posts;
- (k) Telecommunication towers; and
- (l) Any equipment necessary for a utility described in Section 12.12.010 to operate and provide service.

12.12.030 Compliance with Other Laws.

All utilities listed in Section 12.12.010 shall comply not only with this Chapter, but shall also comply with all other applicable laws, rules, and regulations, including, but not limited to:

- (a) The Bloomington Municipal Code, including Chapter 12.08 and Title 20; and
- (b) The laws and regulations of the United States Government and any rules, regulations, or guidelines of an agency of the United States Government; and
- (c) The laws and regulations of the State of Indiana and any rules, regulations, or guidelines of an agency of the State of Indiana; and
- (d) The Manual on Uniform Traffic-Control Devices; and
- (e) The Department of Justice, Americans With Disabilities Act Guidelines and Public Rights-of-Way Accessibility Guidelines; and
- (f) Any rules and regulations promulgated by the City’s Transportation and Traffic Engineer as authorized by this Chapter.

12.12.040 Interference.

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

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

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

12.12.050 Installation Standards.

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

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

12.12.060 Replacement.

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

12.12.070 Removal.

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

12.12.080 Identification.

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

12.12.090 Rules and Regulations.

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

12.12.100 Penalty and Appeal.

- (a) Penalty. The penalties for violating any provision of this Chapter shall include, but may not be limited to, the following:
 - (1) Fines which shall not exceed two thousand five hundred dollars (\$2,500.00) for a first offense and seven thousand five hundred dollars (\$7,500.00) for a second and each subsequent offense. Each day a violation occurs is consider a separate and distinct offense for purposes of fines.
 - (2) Removal of any device or appurtenance whose installation is in violation of this Chapter.
 - (3) Revocation of any permits issued by the City that may relate to this Chapter, especially a permit issued under Chapter 12.08 or Title 20.
- (b) Appeal. Any person who is aggrieved by any order issued by the City, a penalty other than a financial penalty issued by the City's Transportation and Traffic Engineer, a decision regarding an application for a permit, or the revocation of a permit, shall have the right to appeal said order or penalty to the City's Board of Public Works.
 - (1) Any such appeal shall be submitted to the City's Planning and Transportation Department, in writing, within seven (7) days of the order or penalty being issued.
 - (2) The Board of Public Works shall consider the appeal within thirty (30) days of the filing of an appeal.
 - (3) The Board of Public Works shall issue its decision in writing with said decision including findings of fact.
 - (4) The decision of the Board of Public Works may be appealed to the Monroe County Circuit Court, provided any such appeal is filed with the court within thirty (30) days of the Board of Public Works issuing its written findings of fact.
- (c) The appeal of any financial penalty shall be taken directly to the Monroe County Circuit Court and shall be appealed within thirty (30) days of the financial penalty being issued.

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

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

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

ANDY RUFF, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

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

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2016.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

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

MEMO:

To: City of Bloomington Common Council

From: Patty Mulvihill, City Attorney

Anahit Behjou, Assistant City Attorney

Date: April 11, 2016

Re: Ordinance Amending Title 12 – Excavation Changes & Regulation of Utilities

The ordinance does three key things.

First, any time the “Transportation and Traffic Engineer” is referenced in Title 12 of the Bloomington Municipal Code said phrase has been deleted and is replaced with “Transportation and Traffic Engineer, or his or her designees”. The purpose behind this change is to ensure that all parties know that it is not just the Engineer himself who can review and issue permits under Title 12, or make inspections under the same, but rather that his staff is permitted to do so as well.

Second, several modifications to Chapter 12.08, entitled “Excavations”, have been made. The reason for the changes are twofold: (1) to facilitate in regulating the installation of devices in the City’s rights-of-way; and (2) to update the overall Chapter so that it is more current with today’s practices and standards. The changes to Chapter 12.08 include the following:

- Specifically state that an excavation permits is needed for work being done in the right-of-way;
- Specifically exempt certain entities from having to pay a permit fee¹;
- Streamline the application procedure and add in a requirement that all applications for an excavation permit shall be accompanied by a site plan²;
- Increase the bond amount from \$1,000 to \$5,000 and specifically exempt the City of Bloomington Utilities Department from having to file a bond;
- Add in a requirement that all applicants need to supply the City with proof of insurance in specified amounts and sign an indemnity agreement;
- Condense three separate sections on returning the site to its previous condition into one section for simplicity; and
- Create a new section on how and what utilities must do when an emergency arises—work can be done without a permit for no more than 72 hours provided the emergency is one that would cause serious damage to property or jeopardize the safety and health of persons.

Third, a new chapter, Chapter 12.12, entitled “Utilities in the Right-of-Way” is proposed for adoption. The overall purpose behind this Chapter to give the City some ability to regulate how

¹ We already waive these fees in practice. This provision would codify our current practice of exempting the following from paying a fee: City of Bloomington Utilities Department; Indiana University; Monroe County; State of Indiana; Not-for-Profit agencies; and any entity performing work on a device owned or operated by the City.

² The site plan shall include the location of all existing utilities; the location of all existing signs; the location of all existing structures; the distance from all streets, alleys, driveways, entrances, intersections, and/or road cuts; and the location of the proposed utility device.

and where utility devices, particularly above-ground devices, are installed in the City's rights-of-way. With the State's adoption of new regulations that give substantial leeway to wireless service providers the City is only permitted to regulate said providers in its right-of-way if the regulations are uniformly imposed on all other utility service providers. Highlights of this new Chapter include the following:

- Applies to all utilities listed in the Indiana Code and those regulated by the Indiana Utility Regulatory Commission;
- Lists examples of the types of devices the ordinance is intended to regulate;
- Specifies that in addition to complying with this ordinance, the companies are still required to comply with other applicable laws (the U.S. Code, the ADA, etc...);
- That no new installation shall be permitted to interfere with something that is already existing in the right-of-way, with a notation that interference does not include the temporary removal of some device in order to make the installation when the existing device will be reinstalled;
- Provides standards for the actual installation of any new device³;
- Replacement of existing devices will have to comply with this ordinance;
- Devices no longer in use must be removed in 45 days of the use stopping;
- Each utility with devices in our rights-of-way shall be required to supply the City with a location of each device by June 1, 2017.
- Rules to effectuate the ordinance can be adopted by the Transportation and Traffic Engineer; and
- Penalty and Appeal rights are explained.

³ New devices must be installed near intersecting property lines in order to avoid a pole being placed in the middle of someone's property. All devices must be outside of the clear zone (which is the area along a roadway that is generally required to be kept clear of devices and structures in a case a vehicle leaves the roadway). The maximum height for an installed device is the maximum height permitted for a primary structure in whatever zoning district is at issue, unless the provider can point to some other State or Federal regulation that necessitates the device be higher. And all devices must be separated from all pre-existing utility devices in accordance with the separation requirements of those pre-existing devices unless an encroachment is permitted by the existing utility or the area is a designated joint-use area.