

**ORDINANCE OF CAPITAL IMPROVEMENTS & STREET  
MAINTENANCE COMMITTEE**

Repealing and recreating Chapter 12.40 Street Excavations

Committee Action: Approved 3-0

**Ordinance Number:** 61-5832

Fiscal Impact: None

**File Number:** 74-1126

**Date Introduced:** March 10, 2020

The Common Council of the City of Wausau do ordain as follows:

Section 1. That Chapter 12.40 Excavations, is hereby repealed and Chapter 12.40 Street Excavations is hereby recreated to read as follows:

Chapter 12.40

STREET EXCAVATIONS

Sections:

- 12.40.010 Definitions
- 12.40.020 Permit Required
- 12.40.030 Permit-Exemption
- 12.40.040 Permit Application Requirements
- 12.40.050 Permit Fee
- 12.40.060 Regulations Governing Excavations
- 12.40.070 Excavation in New Streets Limited
- 12.40.080 Excavation in Winter Limited
- 12.40.090 Emergency Excavations Authorized
- 12.40.100 Settlement of Pavement and Surfacing
- 12.40.110 Reservation of Regulatory and Police Powers
- 12.40.120 Severability Clause
- 12.40.130 Revocations, Suspensions, Refusals to Issue or Extend Permits
- 12.40.140 Denial of Permits

12.40.010 Definitions. In this chapter, the following words and phrases shall have the meanings designated as follows, unless the context clearly indicates otherwise:

- (a) "Alley" means the right-of-way dedicated or reserved for alley purposes.
- (b) "Block" means the distance along a street lying between center lines of intersections.

- (c) "Department" means the department of engineering.
- (d) "Director" means the director of engineering or their designee, which may include the city engineer.
- (e) "Excavation" means any operation in any alley, street or public place in which earth, rock or any other material in or on the ground is moved, removed or otherwise displaced by means of any tool, equipment or explosive, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving.
- (f) "Installation" means either an individual storm sewer, sanitary sewer, water main and associated services, public utility facility, or any combination thereof, laid simultaneously, in a single excavation or in more than one excavation, or in a tunnel, through a bored or jacked operation.
- (g) "Light pole" means a raised source of light located in the right-of-way, that is owned, leased, operated or maintained by the city or otherwise provides a source of safety lighting, as shall be determined by the director of engineering or his or her designee.
- (h) "Pavement" means the surface of any street, alley, or public place, regardless of the type of material utilized in its construction.
- (i) "Public place" means any property owned by the city and dedicated or reserved to the city for public purposes.
- (j) "Street" means the right-of-way dedicated or reserved for street purposes, which may include such surface improvements as pavement, sidewalk, curb, gutter, grassed or landscaped terrace and boulevard.
- (k) "Surfacing" means any improvement other than pavement lying on or within a street, alley or public place, such as sidewalk, curb, gutter, turf, grass and landscaping.

12.40.020 Permit Required. No person shall make or cause to be made any excavation in any street, alley or public place in the city, without first obtaining a permit from the department. The application for permit shall be in a form as prescribed by the department and may further consist of any additional information required by the department.

- (a) A separate permit shall be obtained for each excavation. No person shall excavate right-of-way or maintain an excavation in the right-of-way beyond the date specified in the permit unless circumstances beyond the control of the Permittee occur and the Department approves of an extension, pursuant to 12.40.060(a).
- (b) All permits shall expire 30 days from the date of issuance, subject to Section 12.40.060(a).

12.40.030 Permit - Exemption. Contractors performing excavation or installation work while under city contract or performing work otherwise requested by the city are not required to obtain a permit under this chapter for such work unless a permit is specifically required by the city. Excavations performed by the Department of Public Works are also not required to obtain a permit under this chapter.

12.40.040 Permit Application Requirements. (a) A permit application form shall be made available by the department to include but not limited to the following: Name of company, purpose of excavation, mailing address, and contact information. The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

- (b) All Registrants and Permittees shall comply with Digger's Hotline requirements set

forth in Wis. Stat. 182.0175, if applicable.

- (c) **Excavation Plan Submittal Requirements:** The applicant shall identify in detail the location of the proposed project and the affected right-of-way. Plans shall be scaled drawings showing all existing and proposed facilities within the project area in addition to installation details. Plans shall also show horizontal and vertical separation distances from all other utilities and identify all conflicts and other details as requested by the Department. Minimum separation distances shall be set by the Department. Each permit application and plan shall meet these separation distances.
- (d) **Bond Requirements:** Before the issuance of a permit the applicant shall execute and file with the Department and keep in effect a corporate surety bond in the minimum sum of five thousand dollars (\$5,000) conditioned upon the timely and faithful performance of all requirements and conditions of this chapter and of any permit issued to the applicant. The effective period of the bond or security shall be a minimum of two years.
- (e) **Insurance Requirements:** Before the issuance of a permit the applicant shall file a certificate of insurance with the Department. The limits of the insurance shall be at least five hundred thousand dollars each person, five hundred thousand dollars per each occurrence, five hundred thousand dollars for property damage, and ten thousand dollars medical expense (any one person). In addition, coverage shall include a one million dollar excess limit umbrella policy. Finally, the certificate of insurance shall name the City of Wausau as an additional insured.
- (f) **Indemnification Requirement:** By registering with the City, or by accepting a permit under this section, a Registrant or Permittee, as the case may be, agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collectively, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Registrant's or Permittee's acts or omissions in the exercise of its rights under this Ordinance, whether caused by or contributed to by the City or its agents or employees.

12.40.050 Permit Fee. Before the issuance of a permit, the applicant shall submit a fee in accordance with section 3.40.010.

12.40.060 Regulations Governing Excavations. (a) **Timing of Work and Repair/Restoration:** The work to be done under the excavation permit, and the repair or restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee, as approved by the department. In no case shall the repair extend beyond the length of the permit.

- (b) **Repair or Restoration Required:** The Permittee shall be required to repair the excavation to the specifications of the Department. Specifications will be on file and maintained by the department.

- (c) Standards: The Permittee shall perform repairs or restoration according to the Standard Specifications for Public Works Construction, the plans and specifications of the Department, and in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair or restoration and may do so in written procedures of general application or on a case-by-case basis.
- (d) Traffic Control: All signing and barricades shall be in accordance with the latest version of the Manual of Uniform Traffic Control Devices (MUTCD). All road lane or road closures must be approved by the Department in advance of the closure. It shall be the responsibility of the Permittee to notify all emergency services of approved lane or road closures.
- (e) Protection of Site and Equipment: All necessary precautions must be taken by the Permittee to protect the public during the excavation. All barricades and fencing shall be the responsibility of the Permittee.
- (f) Notification of Work: The Permittee shall notify the Department a minimum of 48 hours prior to any excavation. The Permittee shall also provide a schedule of the work at the time of notification.
- (g) Inspection of Work: The Permittee shall make the work site available for inspection by the City at any time during the excavation. The Permittee shall keep a copy of the permit on site.
- (h) Repair/Restore: The contractor responsible for the restoration of any asphaltic or concrete surface must be licensed and bonded to perform this work in the right-of-way. A list of the approved asphalt and concrete contractors is maintained by the Department.
- (i) Acceptance of Work: Upon completion of the work, the Department shall inspect the area of the work and accept the work when it determines that proper repair or restoration has been made.
- (j) Guarantees: The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During either period, the Permittee shall, upon notification from the Department, correct all repair and restoration work to the extent necessary, using the method required by the Department. Said work shall be completed within thirty (30) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.
- (k) Failure to Repair/Restore: If the Permittee fails to repair and/or restore the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all work required by the Department, the Department, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing and/or restoring the right-of-way. If the work associated with the permit is directly attributable to a specific property, or properties, the unpaid bill shall become a special charge against the properties served by the repair and/or restoration work.
- (l) Compliance with Federal/State laws and regulations: Obtaining a permit does not relieve the Permittee of any obligations or rules, laws or regulations required by State or Federal

agencies.

12.40.070 Excavation in New Streets Limited. After completion of any permanent improvement or repaving of any street, alley or public place, no permit shall be issued to open, cut or excavate said pavement for a period of 5 years after the date of completion of the pavement improvement or repair unless, in the opinion of the director, an emergency exists which makes it essential that the permit be issued.

12.40.080 Excavation in Winter Limited. In order to protect the integrity of the streets and the safety of the public, excavation during the winter months when frost exceeds two feet, generally from January to April, shall be limited. Considerations to the condition of the street and the functional classification of the street will be considered. Approval must be obtained from the department. If approval is granted, the department will set procedures for compaction and restoration.

12.40.090 Emergency Excavation Authorized. In the event of an actual, bona fide emergency, any person owning or controlling any sewer, water main, conduit or utility in or under any street or alley, or such person's agents or employees, may take immediate, appropriate emergency measures to remedy conditions endangering property, life, health or safety without obtaining a permit under this chapter. Such person shall apply for an excavation permit not later than the end of the next working day following the undertaking of such measures.

12.40.100 Settlement of Pavement and Surfacing. Regardless of who installed the same, the Permittee shall be responsible for the cost of replacement and restoring the grade of pavement or surfacing which has settled within three (3) years from the date of completion of backfilling. If following notice thereof by the city, the Permittee fails to replace the inferior work, the city shall perform the work and charge the Permittee for the actual costs thereof, plus an administrative charge for liquidated damages of \$500. Each successive replacement by the Permittee shall be subject to the requirements of this section.

12.40.110 Reservation of Regulatory and Police Powers. The City, by granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this chapter does not surrender or to any extent lose, waive, impair, or the lawful powers and rights, which it has now or maybe hereafter granted to the City under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the Permittee; and the Permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.

12.40.120 Severability Clause. If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or constitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

12.40.130 Revocations, Suspensions, Refusals to Issue or Extend Permits. (a) Grounds. The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

- (1) Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;

- (2) Misrepresentation of any fact by the applicant or Permittee;
- (3) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
- (4) Failure of the applicant or Permittee to complete work in a timely manner;
- (5) The proposed activity is contrary to the public health, safety or welfare;
- (6) The extent to which space is available in the right-of-way for which the permit is sought;
- (7) The competing demands for the particular space in the right-of-way;
- (8) The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant;
- (9) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
- (10) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or
- (11) The applicant or Permittee is otherwise not in full compliance with the requirements of this section or state or federal law.

12.40.140 Denial of Permits. If any contractor fails to comply with the requirements of this chapter, such performance shall be considered by the department before further excavation permits are granted. If the record indicates substantial or repeated disregard for the provisions of this chapter, further excavation permits may be denied, following provisions for adequate notice and hearing as may be required under Wisconsin Statutes Chapter 68.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall be in full force and effect on the day after its publication.

Adopted: 3/10/20  
Approved: 3/11/20  
Published: 3/15/20  
Attest: 3/11/20

Approved:

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Robert B. Mielke, Mayor

Attest:

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Leslie M. Kremer, Clerk