

## ORDINANCE NO. 15-05

### AN ORDINANCE AMENDING AND RECREATING THE CODE OF ORDINANCES FOR THE CITY OF WINDSOR HEIGHTS, IOWA, BY REPLACING THE ENTIRETY OF CHAPTER 135, STREET EXCAVATION AND MAINTENANCE, AND PROVIDING FOR THE AMENDED TITLE OF EXCAVATION OF PUBLIC PROPERTY

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDSOR HEIGHTS, POLK COUNTY, IOWA:**

SECTION 1. Purpose. The purpose of this ordinance is to amend and recreate Chapter 135 of the Windsor Heights Code of Ordinances through the adoption and ordaining of the following language under the new title of Excavation of Public Property.

SECTION 2. Amended. Chapter 135 is hereby amended as follows:

Strikethrough the entirety of Chapter 135, Street Excavations and Maintenance, and replace with the following Excavations of Public Property:

#### Chapter 135

#### Excavations of Public Property

135.01	Definitions	135.07	Emergencies
135.02	Reservations	135.08	Work By Others
135.03	Permits, Fee, Inspection And Requirements	135.09	Utility Business Contractors
135.04	Utility Map, Plan And Specification	135.10	Powers Of The City
135.05	Conditions, Construction And Repair	135.11	Violations
135.06	Restoration	135.12	Liability, Indemnification And Insurance

**135.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Applicant” means any person making written application to the Clerk for an excavation permit under this chapter.
2. “City” means the City of Windsor Heights, Iowa, and where appropriate, shall include its officers, employees and agents.
3. “Excavation work” means the excavation and other work permitted under an excavation permit and required to be performed under this chapter.
4. “Permittee” means any person who has been granted and has in full force and effect an excavation permit issued under this chapter.
5. “Public Improvements” means any improvements on public property, including, but not limited to, paving, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, electric transmission lines and equipment related thereto.
6. “Public Property” means City owned property or City controlled easements.

7. "Public Rights-of-Way" means the area on, below or above a public roadway, highway, street, bridge, cart-way, bicycle lane or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and public easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcasts service.

8. "Street" means any street, highway, sidewalk, alley, avenue or other public right-of -way or public grounds in the City.

9. "Licensee" means a company providing utility services by wire, or through conduit, pipe or similar structure, device or apparatus, and all equipment owned, operated, leased or subleased in connection with the operation of the utility business, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables and other structures or appurtenances.

**135.02 RESERVATIONS.** A licensee or permittee shall construct, maintain, inspect, protect, repair, replace, retain a system in, under, upon, along and across the public rights-of-way or public property, subject to the federal, state and city regulatory powers, and subject to the conditions hereinafter set forth.

**135.03 PERMITS, FEE, INSPECTIONS AND REQUIREMENTS.**

1. No person shall make any excavation or fill any excavation in any city street, avenue, alley, sidewalk, public right-of-way and other similar property dedicated to public use without first obtaining a permit from the City. The application for a permit shall be in writing and completed by the applicant or their agent. A permit shall not be required for a single commercial or residential service connection within a public right-of-way for a franchise licensee. However, a permit shall be required if such connection requires a street cut, curb or sidewalk. A permit shall not be required for a single pole or single transformer change out, or a single street light change out.

2. After the City reviews, approves and issues a permit, the permittee shall provide the City with forty-eight (48) hour's notice, excluding Saturdays, Sundays and legal holidays, prior to the actual commencement of the work; shall not unnecessarily obstruct the use of streets, avenues, alleys or public places; shall not endanger the safety of workers or passerby; shall prevent traffic backup during construction; and shall comply with all provisions, requirements and regulations in performing such work. An applicant's installation shall not interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property.

3. The licensee or applicant shall submit its permit application and, maps, plans and/or specifications for a proposed utility plan, and other notices as may be appropriate, to the following city office for the initial permit review, permit findings (approval, denial, resubmission), fee assessment and other activities as may be appropriate:

Director of Public Services  
City of Windsor Heights  
6800 School Street  
Windsor Heights, IA 50324  
Phone: (515) 279-3662

4. The licensee or applicant shall pay the City the following rates:

a. A per permit fee, as set by resolution as approved by the City Council, for the review of the applications and proposed plans and specifications, is due at the time the permit application is submitted. Franchise licensees will only be required to pay if a hard surface is being cut such as a curb, street or sidewalk.

b. An hourly rate for any inspection services will be required in connection with the applicants work, including, but not limited to, the personnel cost of an inspector's salary and benefits, vehicle and mileage, administrative overhead, with payment due within 30 days of the City's submittal of an invoice to the applicant.

5. The applicants permit will show the exact location of the work including street or house number and the direction and length the trench will run.

6. If the applicant plans to do extensive digging, a blanket permit may be issued, however, the party performing the work must notify all other utilities concerned as to the location and time that work will take place so that the others may locate their property.

7. The applicant shall post with the City a surety bond in the amount of ten thousand dollars (\$10,000.00) or one and a half times the estimated cost of the excavation and restoration, whichever is greater, issued by a surety company authorized to issue such bonds in the State before excavating or opening any public street, sidewalk, ditch, alley or public right-of-way. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section. In lieu of a surety bond, a cash deposit of \$10,000.00, or one and a half times the estimated cost of the excavation and restoration, whichever is greater, may be deposited with the City. Duration of the bond or cash deposit shall be for a period of one (1) year commencing with the completion of the excavation and restoration. Upon approved completions of the excavation the cash deposit may be substituted for a one-year maintenance bond and upon satisfactory completion of a one (1) year period, the City shall release any and all bonds and deposit requirements.

8. The applicant shall file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:

a. Bodily Injury - \$1,000,000.00 per person; \$1,000,000.00 per accident.

b. Property Damage - \$2,000,000.00 per accident.

9. All work shall be subject to inspection by the City. Backfill of openings shall not be deemed completed, and no resurfacing of any improved street or alley surface shall begin, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least twenty-four (24) hours prior to the time when inspection of backfill is desired.

10. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours or in the event the work is improperly done, the City has the right to finish or correct the excavation work, keep an account of the expense thereof, and charge such expenses to the permit holder/property owner. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

11. All work by permittee shall be performed in accordance with the current standard specifications adopted by the City at the time. Any damaged curb, gutter, sidewalk or grass covered area shall be restored to the same or better condition prior to damage.

12. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permittee and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation. The applicant will fill up and place in good and safe condition all excavations and openings made in the street, and will replace and restore the pavement over any opening they may make to the same or better condition than it was prior to excavation to the satisfaction of the Director of Public Services for a period of one (1) year.

13. The applicant will pay all fines or forfeitures imposed upon them for any violation of any rule, regulation or ordinance governing street openings or drain laying adopted by the Council and will repair any damage done to existing improvements during progress of the excavation in accordance with the ordinances, rules and regulations of the City. Such bond shall also guarantee that, if the City shall elect to make the street repair, the applicant opening the street will pay all costs of making such repair and of maintaining the same for one (1) year, recovery on such bond for any accident, injury, violation of law, ordinance, rule or regulation shall not exhaust the bond but it shall cover any and all accidents, injuries or violation of law during the period of excavation for which it is given.

14. Faulty work or materials shall be immediately replaced by the permittee upon notice by the City. Failure to correct deficiencies in a timely manner shall result in a minimum one (1) year revocation of the right to obtain a street opening permit. The Director of Public Services shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus administration costs.

15. The permittee who does such restoration shall be responsible therefor for one (1) year from the date of the completion of the work and shall file a written guarantee from a banking institution or surety bond to that effect with the City.

16. If the Council shall find that any such work has become defective within one (1) year of the date of completion of the said project, it shall give written notice thereof to the applicant or to their surety stating the defect, the work to be done, the cost thereof and the period of time deemed by the Council to be reasonably necessary to complete said work. After receipt of such notice, the applicant or the surety must, within the time specified, repair the defect or indemnify the City for the cost of doing the work as set forth in the notice.

17. All excavation and restoration shall be completed in a prompt manner as determined by the Director of Public Services.

#### **135.04 UTILITY MAP, PLAN AND SPECIFICATION.**

1. Before commencing any extension or expansion of its Utility system, or any major repair work, or the installation of any new system in the City's public rights-of-way or public property, the applicant shall file with the City a written statement verifying the public rights-of-way or public property under which or upon which it proposes to extend, expand, install or repair its system. The City shall require that the statement be accompanied by a map, plan or specifications showing the proposed location of the system components with reference to streets and alleys, the size and dimensions of all public utilities, and the distance beneath the surface of the ground.

2. All existing public utilities must be shown on the map, plan or specifications. If the proposed locations of any facilities shall interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility

system component, or other structure upon or under public property, the City shall within a reasonable time after the filing of such plan, map or specifications, note the changes necessary, eliminate all interference with a public improvement or existing City owned public utility system facility and refer the same back to the utility business for amendment.

3. Maps, plans or specifications, when properly changed and corrected, shall be filed with the City and, after the approval of the same by the City, a permit shall be issued authorizing utility business to proceed in accordance with the approved maps, plans or specifications.

4. No such excavation, construction or erection shall be commenced before the issuance of the permit herein provided for, unless it is an emergency as described in section 135.07, and all work shall be in accordance with the approved maps, plans or specifications, or work being performed by a licensed franchise not requiring a permit.

### **135.05 CONDITIONS, CONSTRUCTION AND REPAIR.**

1. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15th and April 15th except where it is determined by the Director of Public Services or their designee to be an emergency excavation.

2. In the process of location, construction, reconstruction, replacement or repair of any system component, the excavation or obstruction made or placed in public property at any time or for any purpose by the utility business or permittee shall, protect the public and to assure the safe and efficient movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the *Uniform Manual for Traffic Control*. Sufficient warning lights shall be kept on from sunrise to sunset. No open flame warning devices shall be used. Except by special permission for the Director of Public Services, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet from where pipe or conduit has been laid. All pavement removed or damaged shall be properly and speedily replaced in accordance with the City's specifications, which may be obtained at the Public Works Department.

3. Upon request, a licensee agrees to assist in locating underground facilities which are part of its system prior to excavation. As a condition of this chapter, a licensee shall enroll as a member of the "Iowa One-Call System" and shall respond to all requests and notifications placed to the toll free "One-Call" number.

4. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of work. Each permittee making such openings shall be held liable for all damages, including costs incurred by the City in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or their employees of any necessary precaution against injury or damage to persons, vehicles or property of any kind.

5. Unless otherwise approved, a minimum of one (1) lane of traffic in each direction shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to their project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area and the City must be notified regarding the dates/times applicable.

6. Removal of existing pavement shall be to neat, straight lines. The permittee shall make a final saw cut in the existing pavement after backfilling. Excavations shall be kept to the minimum possible and acceptable for the convenience and safe performance of the permittee's work and in accordance with all applicable codes and regulations.

7. If the pavement is damaged during excavation beyond the original saw cut lines, it shall be saw cut again along neat, straight lines. The finished saw cut shall leave a regular rectangular section for pavement replacement. Should the street opening occur within adjacent or close to an existing patch or require more than one (1) opening within a short distance, the permittee shall identify and locate the existing patches or additional openings on the permit application form. The Director of Public Services or their designee shall, on the basis of an on-site inspection, approximate the boundaries of the pavement replacement area.

8. Pavement replacement areas with the long dimension in the direction of travel shall have the long dimension parallel with the curb line or the direction of travel. Pavement replacement areas in concrete pavements shall be parallel with or at right angles to the direction of travel.

9. The Director of Public Services or their designee may order the permittee to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.

10. All excavated material shall be piled in a manner such that pedestrian and motor traffic is not unnecessarily disrupted. Gutters shall be kept clear or other satisfactory provisions made for street drainage, and natural watercourses shall not be obstructed. As little as possible of the trench must be dug until the slant of junction-piece of the sewer, water, gas main, electric cables, telephone lines or fuel line is found. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the City shall have the authority to require the permittee to haul the excavated material to a storage site and then re-haul it to the trench site at the time of backfilling.

11. All conduits, sewers, pipes, wires or other means of transmission of utility services within the City, if to be placed underground, shall, in addition to all of the requirements of this Section, be dug at least thirty (30) inches below the normal ground level whenever said utility service will cross under a highway, City street, sidewalk, alley or other public right-of-way within the City of Windsor Heights.

12. Excavated material to be used for backfilling of the trench must be so handled and placed as to be of as little inconvenience as practical to public travel and adjoining tenants.

13. All backfill material shall be free from cinders, hot mix fragments, ashes, refuse, vegetable or organic matter, boulders, rocks or stones greater than eight (8) inches in their greatest dimension, frozen lumps or other material which in, in the opinion of the Director of Public Services or their designee, is unsuitable. All non-compactable material will be placed, upon excavation, in an area where removal from site will be made readily possible.

14. In refilling the excavation, if there is not sufficient material excavated suitable for refilling, the deficiency shall be made up with material, approved prior to use by the Director of Public Services or their designee, hauled in, or refilled by the City.

15. Wherever an excavation crosses an existing utility, pipe or other structure, backfill shall be carefully compacted in stages from the bottom of the excavation. Any sanitary sewer, storm sewer, water, telephone, natural gas or other service shall not be interrupted by the permittee. It shall be

the permittee's responsibility to have the various utilities locate and mark their facilities prior to excavation.

16. Mechanical compaction or puddling shall be used on all materials used for trench backfill. Each layer (12-inch maximum) shall be uniformly compacted. Compaction or consolidation by flooding shall not be permitted. Earth must be puddled or laid in layers not more than twelve (12) inches in depth and each layer rammed and tamped to prevent settling. The Public Works Department will test the fill to meet the City's specifications. Contractors will be instructed by the City's inspector, if they meet the specifications, to proceed to fill the opening.

17. All excavations shall be subject to testing by the City. Backfilled material not achieving the above compaction requirements shall be removed and re-compacted by the permittee. The cost of any retesting shall be paid by the permittee.

18. When the sides of the trench will not stand perpendicular, sheathing and braces shall be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. At no time shall any street pavements, be permitted to overhang the excavation. When caving occurs, all the street support thus disturbed must be restored to the same or better condition prior as though it was an excavation or a trench.

19. Concrete pavement shall be placed to the full depth of the existing pavement or seven (7) inches, whichever is greater. Concrete used shall not contain calcium chloride. The surface shall be given a light broom finish. The edges shall be tooled to prevent spalling at the saw cut edge. The surface shall be evenly and completely sealed with a white pigmented curing compound. The surface shall be protected from traffic for a minimum of three (3) days. Tie bars shall be installed as directed by the Director of Public Services or their designee.

20. All permanent restoration of street, curb and gutter shall be of the same type and thickness as the curb and gutter which abuts. The grade of the restored curb and gutter shall conform with the grade of the existing adjacent curb and gutter.

21. All permanent restoration of driveways and sidewalks shall conform to the manner of construction as originally placed and to the lines and grades as given by the City Engineer. No patching of concrete driveway areas will be allowed between joints or dummy joints.

### **135.06 RESTORATION.**

1. As a condition of the permit, the permittee shall at its own expense, repair or cause repair to any private property, public utility system component, public improvement, vegetation, public rights-of-way or public property damaged by such location, construction, reconstruction, replacement or repair work, to the same or better condition than it was prior to the excavation.

2. The permittee shall restore with sod (unless seed is approved by the City) all such property to its previous condition at its expense. If multiple utilities are involved in the restoration, the City Engineer or Director of Public Services shall assess the restoration cost equally or proportionately to the parties involved.

3. If the permittee fails to repair or arrange with the City for the proper repair of any public property after excavations or damage to the surface has been made, and after 30 days' notice in writing to do so given to its designated representative, then the City may make such repairs at the expense of the permittee. The City shall keep an account of all such expenses and invoice the permittee for the same. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no

further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

### **135.07 EMERGENCIES.**

1. In the event of any emergency, the permittee shall remove or relocate its installations within forty-eight (48) hours of notification from the City.

2. In emergencies which require immediate excavation to remedy dangerous conditions for the protection of property, life, health or safety, a licensee may proceed with the work without first applying for or obtaining the permit, provided, however, that the utility business shall apply for and obtain the permit within forty-eight (48) hours after commencing such emergency work.

### **135.08 WORK BY OTHERS.**

1. The City reserves the right to lay, and permit to be laid, wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do, or permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over or under any public property occupied by utility business, and to change any curb or sidewalk or the grade of any street.

2. In permitting others to do such work, the City shall not be liable to utility business for any damages arising out of the performance of such work by other parties, except those arising out of or resulting from negligence of the City.

3. Nothing in this chapter shall be construed as to relieve any other person or corporation from liability for damage to utility business' facilities.

**135.09 UTILITY BUSINESS CONTRACTORS.** The requirements of this chapter shall apply to all persons, firms or corporations performing work for a utility business under a contract, subcontract or other type of work order.

**135.10 POWERS OF THE CITY.** Nothing in this chapter shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alley and public grounds by anyone using the same for the erection and maintenance of utility systems.

### **135.11 VIOLATIONS.**

1. Upon evidence being received or observed by the City that a violation or breach of this chapter or codes lawfully regulating utility business in the operation of its facilities, or in the use of public property therefore, is occurring, or has occurred, the City shall cause an investigation to be made.

2. If the City finds that a violation exists or has occurred, the City may take appropriate steps to secure compliance with the terms of this chapter.

3. The City shall notify the utility business or permittee of the violation and the utility business or permittee shall cure such violation within 30 days after receipt of such notice.

4. If a permittee fails to cure a violation within the time allowed, the City shall have the right to:

- a. Revoke the permit;
- b. Seek specific performance;
- c. Seek damages for such default; and/or
- d. Any combination of division (4)(a) and (4)(c) above.

**135.12 LIABILITY, INDEMNIFICATION AND INSURANCE.** The permittee covenants to indemnify, defend and save the City and its officers, agents and employees, harmless from any and all damages arising directly from the exercise of the rights granted herein, except those arising out of or resulting from negligence of the City. The permittee agrees to require contractors and subcontractors engaged in work for the permittee with the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City.

SECTION 3. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. Severability. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall be effective after the final passage, approval and publication as provided by law.

Passed and Approved this 3rd Day of August, 2015

1<sup>st</sup> Reading: \_\_\_\_\_

2<sup>nd</sup> Reading: \_\_\_\_\_

3<sup>rd</sup> Reading: \_\_\_\_\_

Publish Date: \_\_\_\_\_

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Diana Willits, Mayor

(SEAL)

ATTEST:

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Brett Klein, City Administrator