



MEMORANDUM

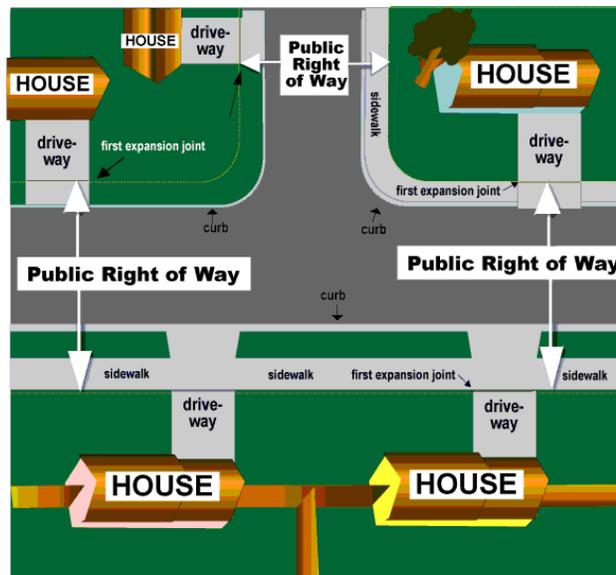
TO: Mayor Laurel L. Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: November 22, 2016
RE: Amendments to City Code Chapter 20 Right-of-Way Ordinance

Action Requested

A summary of proposed amendments to the City's Right-of-Way (ROW) ordinance is presented below. The Public Works Department recommends adoption of the attached amendments to Chapter 20 of the City Code on public ROW and other public places.

Background and Facts

Right of way is public property and includes any public thoroughfare, including streets, alleys, parkways, and sidewalks. As a general rule of thumb, the back of the sidewalk (side nearest to the residence) and the street are part of the ROW. Private property begins behind the ROW.



The City adopted an ordinance on public ROW and others public places (Ordinance No. 2014-01-004) on January 21, 2014, which provides regulations on managing the public ROW. After two years in use there is a need to revise and augment the ordinance.

The City had five companies installing fiber optic utilities in the public ROW in 2015. Based on public input and experiences that occurred during these utility installations (particularly on Florida Avenue), the Public Works Department initially recommended the following proposed amendments to the ROW ordinance:

1. Section 1 – Prohibit the deposition of excavation spoils in the ROW.
2. Section 2 - Require utility to notify adjoining properties of utility installation.
3. Section 2 - Require signage on utility installation.
4. Section 3 - Add a new section on one-dig utility coordination to limit repeated installation activities at a specific ROW location
5. Section 4 - Require City Arborist to be contacted before any tree root over 1-inch in diameter is cut or removed.
6. Section 5 – Reduce time that an excavation is allowed to remain open from ten days to 48 hours without the prior written approval of City Engineer.
7. Section 6 – Add requirement for a temporary surface for an excavation in the sidewalk or street that remains open for more than 48 hours.

Public Works contacted the Urbana-Champaign Sanitary District, Illinois-American Water, Ameren, Comcast, AT&T, Windstream, iTV3, Metro Communications, Gargoyle Technologies, Pavlov Media, and Consolidated Communications on October 14, 2016 by e-mail and U.S. mail regarding the proposed revisions to the ROW ordinance. Comments were due by Friday October 28, 2016.

Public Works received responses from or met with utility company representatives. A summary of comments from utilities regarding the proposed revisions to the ROW is presented in Attachment A. Based on input from the utility companies Public Works recommends the following changes to the ROW Ordinance.

1. Section 1 – Eliminate this section. Section 20-507 of Ordinance requires spoil removal and final landscape restoration with ten days of construction activities.
2. Section 2 – Add language triggering the notification and signage requirements if the utility installation or repair/replacement is over 400-feet long.
3. Section 3 – Recommend no revisions to this section.
4. Section 4 – Revise language so that notification of City Arborist is required if excavation is within the dripline of a tree in ROW or a root over one-inch diameter is cut or removed outside the dripline.
5. Section 5 – Increase the open excavation period to 96 hours (four days) for potable water utility installations.
6. Section 6 – Recommend no revisions to this section.

Financial Impact

There are no additional costs to the City for the proposed amendments to Chapter 20. No additional staff is required to implement the proposed amendments to Chapter 20.

Recommendations

It is recommended that the attached amendments to Chapter 20 of the City Code of Ordinances be adopted.

Attachments: Attachment A – Summary of Utility Company Responses
An Ordinance Amending Urbana City Code Chapter 20, Articles IV and V

ORDINANCE NO. 2016-11-111

**AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 20,
ARTICLES IV AND V**

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council heretofore did enact Urbana City Code Chapter 20 to regulate the public right-of-way and other public places within the City for the protection of the public health, safety, and welfare; and

WHEREAS, after due and proper consideration, the City Council finds that amending Chapter 20, as provided herein, will protect the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Article IV, "Right-of-Way Permits," Section 20-402, "Minimum general application requirements; required notices," is hereby amended with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

Sec. 20-402. - Minimum general application requirements; required notices.

- (a) The application shall be made by the applicant or its duly authorized representative and shall contain, at a minimum, the information required on the right-of-way permit application promulgated by the city engineer, including a statement that the applicant does not have any unpaid administrative fees due to the city.
- (b) The applicant shall notify the city engineer twenty-four (24) hours in advance (Saturday, Sunday, and legal holidays excluded) of the following activities covered by the permit:
 - (1) Traffic control set up; and
 - (2) Readiness for concrete pour or backfill inspection.
- (c) The applicant shall notify the city engineer within twenty-four (24) hours when the work is completed (including landscape restoration) and is ready for final inspection.
- (d)

In addition to complying with the notice requirements contained in subsections (b) and (c) of this section, an applicant who has entered into a franchise, license, or similar agreement with the city, in accordance with article VI of this chapter for the installation, relocation, or removal of a facility exceeding the lesser of one city block or four-hundred (400) feet in length, shall give the notices set forth in this subsection (d) at least forty-eight (48) hours before constructing any facility or performing any work on, over, above, along, upon, under, across, or within any city or state right-of-way.

(1) Notice to owners of adjoining property. The applicant shall provide written notice to all owners of property that adjoins the public way at the location where the work is to be performed. Notice shall be given by first-class mail to, or by distribution of a door hanger notice at, each adjoining address. Each notice shall, at minimum, contain the following information: (i) the nature and extent of the work planned; (ii) the dates and hours of the intended work; (iii) the name and local telephone number of the applicant's representative who is qualified to answer questions concerning the proposed work; and (iv) instructions for reporting property damage caused by the work and for filing a claim for such damage. The applicant shall include with the right-of-way permit application a copy of the proposed notice.

(2) Notice by sign. The applicant shall erect or cause to be erected, in conspicuous positions at least every two-hundred (200) linear feet along the public way at the location where the work is to be performed, suitable signs giving notice of such work. Each sign shall, at minimum, contain the name of the project, the applicant's name, and the name and local telephone number of the applicant's representative who is qualified to answer questions concerning the proposed work. Signs shall be securely mounted to existing poles, posts, Type II or Type III barricades, or construction fences. The applicant shall maintain signs and sign structures at all times in good repair, with all braces, bolts, structural parts, and supporting frames and fastenings free from deterioration, rot, rust, and loosening. The applicant shall replace damaged or missing signs daily and shall remove the signs and mounting materials immediately after work has been completed. The applicant shall include with the right-of-way permit application a drawing of the face of each proposed sign, showing all dimensions, materials, and sign copy, along with sign location(s).

(e) Failure to provide a notice required under this section shall subject the applicant to an administrative fee in accordance with section 14-7 of the Code.

Section 2.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Article V, "Construction Standards," is hereby amended by the addition thereto

of a new section to be known and designated as Section 20-500.5, "Coordination of construction," and to read as follows:

Sec. 20-500.5. - Coordination of construction.

- (a) Coordination required. Except in an emergency, as defined in Section 20-200 of this chapter, each right-of-way user who has a license or franchise agreement with the city shall participate in such joint construction planning as the city engineer directs, including, but not limited to, advance notification of right-of-way work, schedule coordination, synchronization of construction, and consolidation of excavations. Licensees and franchisees shall cooperate with other public right-of-way users and the city to promote the best, most efficient, most aesthetic, and least obtrusive use of the right-of-way and to protect the public health, safety, necessity, and convenience.
- (b) Annual construction plan filing.
 - (1) By December 1 of each year, or the first regular business day immediately thereafter, each licensee and franchisee shall file an annual construction plan with the city engineer showing all work in the public right-of-way the licensee or franchisee anticipates it will begin in the next one (1) year that will include installation, relocation, or removal of a facility exceeding the lesser of one city block or four-hundred (400) feet in length. A licensee or franchisee who does not propose such work in the next one (1) year shall submit a plan with a statement that the licensee or franchisee anticipates no such work but thereafter shall report any such work to the city engineer as soon as it becomes reasonably foreseeable. The plan shall be in a format the city engineer specifies and shall include the locations, project schedule, general description of the proposed work, and other information the city engineer deems necessary to facilitate the coordination of right-of-way work. Each licensee or franchisee shall file with the city engineer any amendments to information contained in the annual construction plan no more than thirty (30) calendar days after approving the change necessitating the amendment.
 - (2) The provisions of subsections (b) and (c) of Section 20-401 of this chapter pertaining to confidential information shall apply to the annual construction plan.
- (c) Annual construction plan review. The city engineer shall review each annual construction plan and identify conflicts and opportunities for coordination of work. The city engineer shall notify licensees and franchisees of such conflicts and opportunities to the extent necessary to maximize coordination of work. Each licensee and franchisee shall coordinate, to the extent practicable, with others potentially affected to minimize disruption in rights-of-way.
- (d) Construction coordination meeting. At least once each year, the city engineer shall meet with licensees and franchisees to coordinate construction in public rights-of-way. Each licensee and franchisee shall make reasonable efforts to attend and participate in the meetings.

- (e) City's capital improvement plan. To facilitate coordination of proposed public infrastructure improvements within rights-of-way and to minimize the cost of such work, the city engineer shall send notice of proposed capital improvement plan projects to each licensee and franchisee at least six (6) months before undertaking such projects. If an economic development project or other opportunity justifies the undertaking of a capital improvement project not included in the city's capital improvement plan, the city engineer shall send notice of the project to each licensee and franchisee no more than thirty (30) calendar days after approving the unanticipated project.
- (f) Right-of-way permit applications.
 - (1) If a licensee or franchisee fails to include any work in its most current annual construction plan on file with the city, as required by this section, the city engineer may deny a right-of-way permit application for the work, unless he or she deems that the licensee or franchisee used commercially reasonable efforts to anticipate and plan for the work.
 - (2) Notwithstanding the requirements of Section 20-404 of this chapter, the city engineer may delay action for not more than one (1) year on a licensee's or franchisee's right-of-way permit application when the city engineer finds the following:
 - a. The work listed on the application is to be performed at the same location as work listed on any annual construction plan filed with the city in the current or previous calendar year;
 - b. All licensees and franchisees have completed the work listed on such annual construction plan or plans at the same location;
 - c. The work listed on the application to be performed at the same location consists of work other than point repairs of fewer than fifty (50) linear feet;
 - d. The work listed on the application to be performed at the same location is not due to an emergency, as defined in Section 20-200 of this chapter;
 - e. A delay will reduce the inconvenience to the public from such work; and
 - f. A delay will not create undue economic hardship for the applicant.
- (g) Right-of-way permit fee waiver. Whenever two or more licensees or franchisees coordinate construction work to allow for the installation, maintenance, repair, or removal of more than one facility using the same cut or cuts into the surface of the right-of-way, the city shall waive payment of its right-of-way permit fee for all such licensees or franchisees for the work at the location of the same cut or cuts.

Section 3.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Article V, "Construction Standards," Section 20-503, "Vegetation control," is hereby amended with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

Sec. 20-503. - Tree protection.

- (a) All construction, maintenance, or repair under this chapter shall be in accordance with the tree protection requirements contained in the city's right-of-way standards. Except in an emergency, as provided in section 20-508 of this article, a permittee shall give notice to the city arborist at least forty-eight (48) hours before performing any open excavation within the drip line of a tree in the public way. The city arborist shall evaluate the tree and, if feasible, may recommend less damaging alternatives. Any person who cuts or removes any root exceeding one-inch in diameter outside of the drip line of a tree located in the public way shall notify the city arborist. Any person who damages a tree or other plant without the approval of the city arborist shall be subject to a fine in accordance with this code and shall compensate the city for the actual cost of treatment or replacement, as the case may be.
- (b) An electric utility shall conduct all tree-trimming and vegetation control activities in the right-of-way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the city as permitted by law.
- (c) Violations of this section may result in the issuance of a stop work order until the city arborist can perform an assessment to determine the health, stability, and safety of the affected tree or other plant and until corrections have been made to the satisfaction of the city engineer.

Section 4.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Article V, "Construction Standards," Section 20-504, "Additional requirements," subsection (d), "Time limit on open excavation," is hereby amended with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

Sec. 20-504. - Additional requirements.

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- (d) Time limit on open excavation. No excavation in any street, sidewalk, or other public way or place shall be allowed to remain open for a period longer than forty-eight (48) hours without prior written approval of the city engineer, with the exception of potable water utilities. Potable water utility installation

shall be permitted to have an open excavation for up to ninety-six (96) hours.

Section 5.

Urbana City Code Chapter 20, "Public Right-of-Way and Other Public Places," Article V, "Construction Standards," Section 20-504, "Additional requirements," is hereby amended by the addition thereto of a new subsection to be known and designated as subsection (e), "Excavation of sidewalk or roadway," and to read as follows:

- (e) Excavation of sidewalk or roadway. Whenever any excavation of a sidewalk or roadway remains open for a period longer than forty-eight (48) hours, the permittee, as a condition of any of the permits authorized by this chapter, shall install a temporary surface over the open pavement consisting of CA6 road gravel, a metal plate or plates meeting or exceeding AASHTO H-20 specifications, or such other material as approved by the city engineer.
 - (1) Loose temporary surfaces shall be compacted, rolled smooth, and sealed to prevent degradation of the repair during the excavation period.
 - (2) Plates shall be sufficiently secured in place so as not to become dislodged or in any way cause a hazard to pedestrians or traffic. Asphalt transitions shall be placed on streets as required to provide a smooth riding surface. Plates shall be marked with the name and local telephone number of the permittee, unless a sign identifying the permittee is posted at or in close proximity to the work site.
 - (3) The permittee shall maintain temporary surfaces at all times in good repair and free from defects which would inhibit the public safety and use thereof. The permittee shall monitor surface conditions and perform needed maintenance daily until a permanent surface is installed and accepted by the city engineer.
 - (4) The city engineer may cause to be removed any temporary surface that fails to provide a non-deteriorating riding surface or otherwise fails to meet the requirements of this subsection. The city may replace the temporary surface at the permittee's expense.
 - (5) The permittee shall backfill and restore the surface of all sidewalks or roadways, broken into or damaged as a result of the excavation work, to their original condition or better in accordance with the specifications of the city.

Section 6.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to

repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 7.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 8.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

Attachment A – Summary of Utility Company Responses

Section 1- Removal of Spoil Piles

Utility	Comments
Illinois-American Water Company	N/A*
Pavlov Media	N/A*
Gargoyle Technologies	Concerned about costs of hauling away spoil material and bringing in topsoil if settlement occurs from utility trench.
Ameren	N/A*
Urbana-Champaign Sanitary District	N/A*

* Based on September 2016 presentation to Council on the proposed revisions to the ROW ordinance it was decided not to pursue the removal of spoil piles. The comments from Gargoyle Technologies regarding the spoil piles were received in August 2016 during their application for a license agreement.

Section 2- Notification and Signage Requirements

Utility	Comments
Illinois American Water Company	Requested that notification and signage not be required for exercising hydrants or valves. They typically provided door hangers for communicating utility work information to residents. Illinois American Water already requires signs for their major projects.
Pavlov Media	No comments.
Gargoyle Technologies	Concerned about the size of signs required. Wants to use signs the size of political ad signs.
Ameren	Requested that notification and signage not be required for point repairs and small replacement jobs. Suggested a threshold trigger of a full block of half a block of utility installation or replacement as a trigger for the signage and notification requirements.
Urbana-Champaign Sanitary District	Requested that notification and signage not be required for point repairs and small replacement jobs. Suggested a threshold trigger of a full block of half a block of utility installation or replacement as a trigger for the signage and notification requirements.

Attachment A – Summary of Utility Company Responses

Section 3- One Dig Policy

Utility	Comments
Illinois American Water Company	Policy must recognize that there are always situations that make coordination not feasible. Not opposed to coordination of utility installations or repairs.
Pavlov Media	No comments
Gargoyle Technologies	Concerned that the One Dig Policy requirements would limit utilities from providing service to new customers. Suggests having the City bear the costs of pavement restoration on coordinated utility projects. Wants administrative approval of license agreements in exchange for one-dig policy.
Ameren	Policy must recognize that there are always situations that make coordination not feasible. Not opposed to coordination of utility installations or repairs.
Urbana-Champaign Sanitary District	Policy must recognize that there are always situations that make coordination not feasible. Not opposed to coordination of utility installations or repairs.

Section 4- Tree Protection

Utility	Comments
Illinois American Water Company	As written it is impossible to comply with this section. Suggest making notice to City Arborist if excavation is within the drip line of the tree.
Pavlov Media	Would the tree protection requirements apply to directional boring? Who must be contacted if a tree root over 1-inch in diameter is cut? Concerned about the time it takes for arborist to evaluate the tree for damage delaying the utility installation work.
Gargoyle Technologies	No comments.
Ameren	As written it is impossible to comply with this section. Suggest making notice to City Arborist if excavation is within the drip line of the tree.
Urbana-Champaign Sanitary District	As written it is impossible to comply with this section. Suggest making notice to City Arborist if excavation is within the drip line of the tree.

Attachment A – Summary of Utility Company Responses

Section 5- Time Limit on Open Excavations

Utility	Comments
Illinois American Water Company	48 hours is too short. Suggest a 72 to 96 hour limit on open excavations.
Pavlov Media	No comments.
Gargoyle Technologies	48 hours is too short. Suggest a 72 hour limit on open excavations.
Ameren	No comments.
Urbana-Champaign Sanitary District	No comments.

Section 6- Sidewalk and Roadway Excavation Requirements

Utility	Comments
Illinois American Water Company	Suggest waving the 48 hour requirement if the temporary surface or plates are provided.
Pavlov Media	No comments.
Gargoyle Technologies	No comments.
Ameren	No comments.
Urbana-Champaign Sanitary District	No comments.