

## CHAPTER 146

# EXCAVATIONS

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**146.01 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. "Excavation work" means the excavation and other work permitted under an excavation permit and required to be performed under this chapter.
3. "Permittee" means any person who has been granted and has in full force and effect an excavation permit issued under this chapter.
4. "Street" means any street, highway, sidewalk, alley, avenue or other public right-of-way or public grounds in the City.

**146.02 EXCAVATION PERMIT.** It is unlawful for any person to dig up, break, cut, excavate, tunnel, undermine or in any manner break up any street or to make or cause to be made any excavation in or under the surface of any street for any purpose or to place, deposit or leave upon any street any earth or other excavated material obstructing or tending to interfere with the free use of the street, unless such person shall first have obtained an excavation permit therefor from the Clerk as provided in this chapter.

**146.03 APPLICATION.** No excavation permit shall be issued unless a written application for the issuance of an excavation permit is submitted to the Clerk on forms provided by the Clerk. The application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations if required, of both the existing ground prior to the excavation and of the proposed excavated surfaces, the location of the excavation work, and such other information as may be reasonably related to the above and location of the excavation work, and such other information as prescribed by the City Engineer.

**146.04 FEES.** A permit fee shall be charged by the Clerk for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in an amount varying with the type of surface to be opened, dug or excavated under the permit issued per opening as follows: The nonrefundable fee for applying for an excavation permit shall be established by Council resolution to reflect the current costs of issuing the permit and supervising, regulating, and inspecting the work. *(Ord. 08-14 – Aug. 08 Supp.)*

**146.05 SURETY BOND.** Before an excavation permit is issued pursuant to this chapter, each applicant, except public utility companies, shall deposit with the Clerk a surety bond in the amount of \$5,000 payable to the City. The required surety bond must be:

1. With good and sufficient surety;
2. By a surety company authorized to transact business in the State;
3. Satisfactory in form and substance to the City Attorney;
4. Conditioned upon the permittee's compliance with this chapter and to secure and hold the City and its officers harmless against any and all claims, judgments, or other costs arising from the excavation and other work covered by the excavation permit or for which the City, the Council or any City officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting

from the negligence of the permittee, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition, and to maintain any street where excavation is made in as good condition for the period of four (4) years after said work shall have been done, usual wear and tear excepted, as it was in before the work shall have been done.

Any settlement of the surface within said 4-year period shall be deemed prima facie evidence of defective backfilling by the permittee. Nothing in this chapter shall be construed to require the permittee to maintain any repairs to pavement made by the City if such repairs should prove defective. Any owner of real estate, repairing or engaging another to repair his or her own sidewalk, shall not be required to give such bond. Recovery on such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the City by reason of the negligence or default of the permittee, upon the City's giving written notice to the permittee of such suit or claim, any final judgment against the City requiring it to pay for such damage shall be conclusive upon the permittee and the permittee's surety. An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above and in other respects as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from the date.

**146.06 ROUTING OF TRAFFIC.** The permittee shall take appropriate measures to assure that during the performance of the excavation work traffic conditions, as nearly normal as practicable, shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public. However, the City Engineer may permit the closing of streets to all traffic for a period of time prescribed by the City Engineer if in the Engineer's opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the City Engineer. The following steps shall be taken before any street may be closed or the traffic restricted in any way:

1. The permittee must receive the approval of the City Engineer for the permit.
2. The permittee must notify the Chief of the Fire Department of any street so closed;

3. Upon completion of construction work, the permittee shall notify the City Engineer and Fire Department before traffic is moved back to its normal flow for any necessary adjustment to be made.

4. Where flagmen are deemed necessary by the City Engineer, they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible; in instances in which this would not be feasible, the City Engineer shall designate detours. The City shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee. However, if there are no existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the City Engineer. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment.

**146.07 CLEARANCE FOR FIRE EQUIPMENT.** The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within fifteen (15) feet of fire hydrants. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of piles of material or other obstructions. The Chief of the Fire Department shall interpret this provision in each case so as to insure free access for fire-fighting equipment as so provided.

**146.08 PROTECTION OF TRAFFIC.** The permittee shall erect and maintain suitable barriers to confine earth from trenches or other excavations in order to encroach upon streets as little as possible. The permittee shall construct and maintain adequate and safe crossings over excavations and across streets under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Pedestrian crossings shall be not less than three (3) feet in width and shall be provided with a railing as required by the City Engineer.

**146.09 REMOVAL AND PROTECTION OF UTILITIES.** The permittee shall not interfere with any existing utility without the written consent of the City Engineer and the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the City shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall likewise be borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires, or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across the work. In case any of the pipes, conduits, poles, wire or apparatus should be damaged as a result of permittee's negligence, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and the permittee's bond shall be so liable. The permittee shall be responsible for the permittee's damage done to any public or private property by reason of the permittee's negligently breaking any water pipes, sewer, gas pipe,

electric conduit or other utility, and its bond shall be liable for such damage. The permittee shall inform itself as to the existence and location of all underground utilities and protect the same against damage. Nothing in this provision shall be construed as preventing permittee from recovering damages from a legally responsible party.

**146.10 PROTECTION OF ADJOINING PROPERTY.** The permittee shall at all times and at the permittee's own expense protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain permission from the owner of such private property for such purpose. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or streets resulting from its failure properly to protect and carry out the work. Whenever it may be necessary for the permittee to trench through any established lawn area, the existing sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this chapter. New sod may be used or seeding with approval of the City. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before the work began. The permittee shall not remove even temporarily any trees or shrubs which exist on public property without first notifying and obtaining consent of the appropriate City department or City official having control of such property.

**146.11 SIDEWALK EXCAVATIONS.** Any excavation made in or under any sidewalk shall be provided with a substantial and adequate footbridge over the excavation on the line of the sidewalk. This bridge shall be at least three feet wide and securely railed on each side so that foot passengers can pass over safely at all times.

**146.12 PROTECTIVE MEASURES.** The permittee shall erect such fence, railing or barriers about the site of the excavation work as shall prevent damage to persons using the City street or sidewalks. These protective barriers shall be

maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets, suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions.

**146.13 CARE OF EXCAVATED MATERIAL.** All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such a manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining properties. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the City Engineer shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

**146.14 DAMAGE TO EXISTING IMPROVEMENTS.** All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered, the permittee fails to furnish the necessary labor and materials for such repairs, the City Engineer shall have the authority to cause the necessary labor and materials to be furnished by the City. The cost of the necessary labor and materials shall be charged against the permittee, and the permittee shall also be liable on the permittee's bond.

**146.15 PROPERTY LINES AND EASEMENTS.** Property lines or curb lines and limits of easements shall be indicated on the plan of excavation submitted with the application for the excavation permit. It is the permittee's responsibility to confine excavation work within these limits.

**146.16 CLEANUP.** As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from the work. All clean-up operations at the location of the excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the City Engineer. From time to time as may be ordered by the City Engineer and in any event immediately after completion of the work, the permittee shall at the permittee's expense, clean up and remove all refuse and unused materials of any kind resulting from the work.

Upon failure to do so within 24 hours after having been notified to do so by the City Engineer, the work may be done by the City and this cost charged to the permittee. The permittee shall also be liable for such under the surety bond provided by this chapter.

**146.17 PROTECTION OF WATER COURSES.** The permittee shall provide for the flow of all water courses, sewers or drains intercepted during the excavation work and shall replace the same in as good condition as it found them or shall make such provisions for them as the City Engineer may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations. The permittee shall be responsible for any damage resulting from its failure to so provide.

**146.18 CONSTRUCTION STANDARDS.** All removals, construction and restoration shall be in conformance with the latest edition of SUDAS as approved by the City Council.  
*(Ord. 15-24 – Feb. 16 Supp.)*

**146.19 CITY’S RIGHT TO RESTORE SURFACE.** If the permittee shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the City, if the City Engineer deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the total actual cost of the work, including general overhead and administrative expenses. The City shall have a cause of action for all fees, expenses and amounts paid out and due it for this work. The City shall also enforce its rights under the permittee’s surety bond provided pursuant to this chapter. It shall be the duty of the permittee to guarantee and maintain the paved portion of the street in the same condition it was prior to the excavation for four (4) years after restoring it to its original condition.

**146.20 PROMPT COMPLETION OF WORK.** The permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit. The permittee shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit. This provision shall not be construed as prohibiting temporary closings.

**146.21 URGENT WORK.** If in the City Engineer’s judgment traffic conditions, the safety or inconvenience of the travelling public or the public interest require that the excavation work be performed as emergency work, the City Engineer shall have full power to order, at the time the permit is granted, that a crew of workers and adequate facilities be employed by the permittee twenty-four (24) hours a day to the end that the excavation work may be completed as soon as possible.

**146.22 EMERGENCY ACTION.** In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise, is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit under this chapter, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, the person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the Clerk's office is open for business, and shall not proceed with permanent repairs to the street paving without first obtaining an excavation permit under this chapter.

**146.23 NOISE, DUST AND DEBRIS.** Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris. During the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. the permittee shall not use, except with the express written permission of the City Engineer or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

**146.24 PRESERVATION OF MONUMENTS.** The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the City Engineer.

**146.25 INSPECTIONS.**

1. It shall be the duty of the person doing the work authorized by a permit to provide timely notification to the Engineering Department that such work is ready for inspection. The City Engineering Department may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone, at the option of the Engineering Department. No work shall be completed without inspection by the City Engineering Department. The Engineering Department may require the person doing the work to uncover or redo uninspected work at the person's cost so that proper and thorough inspection can be made.
2. It shall be the duty of the person requesting inspections required by this chapter to provide access to and means for proper inspection of such work.
3. In addition to the inspections required by this chapter, the City Engineering Department may require other inspections of any work to ascertain compliance with the provisions of this Code and other laws which are enforced by the Engineering Department.

4. A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when required corrections have not been made. This provision is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this chapter, but as controlling the practice of calling for inspections before the job is ready for inspection or reinspection. The reinspection fee shall be equal to the cost of the original excavation permit fee for the work. In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

5. Inspections requested outside of normal business hours shall be charged as additional fee. The fee shall be based upon the actual cost to the City for supervision, overhead, equipment, hourly wages and fringe benefits of all the employees involved.

6. The provisions of this chapter shall not apply to projects or work contracted directly with the City, or work accomplished by City departmental employees as a part of authorized City projects or work.

**146.26 MAINTAIN DRAWINGS.** Users of sub-surface street space shall maintain accurate drawings of such installations. A utility shall locate and mark locations of their installations upon the request of the City Engineer or other permittee at no charge. Corrected drawings shall be made available to the City Engineer after new installations, changes or replacements are made, if requested.

**146.27 NOT APPLICABLE TO CITY WORK.** The provisions of this chapter shall not be applicable to any excavation work of the City under the direction of the City Engineer or Public Services Director at the request of the City for the convenience of the City or by any contractor of the City performing work for and on behalf of the City, necessitating openings or excavations in streets.

**146.28 INSURANCE.** A permittee, prior to the commencement of excavation work pursuant to this chapter, shall furnish the Clerk with satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and duration of the permit, insurance of not less than \$500,000 combined single limit, duly issued by an insurance company authorized to do business in the State of Iowa. Owners of real estate repairing their own sidewalks shall be required to furnish the Clerk with satisfactory evidence that the owner has in effect personal liability coverage of not less than \$300,000. This provision shall not apply to public utility companies.

**146.29 LIABILITY OF CITY.** This chapter shall not be construed as imposing upon the City or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued pursuant to this chapter; nor shall the City or any City official or City employee

be deemed to have assumed any such liability or responsibility by reason of inspections authorized, the issuance of any permit or the approval of any excavation work.

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