

ORDINANCE NO. 091619

**AN ORDINANCE AMENDING SECTION 94.10, *ET SEQ* OF THE CITY OF FISHERS
CODE OF ORDINANCES**

WHEREAS, I.C. §8-1-26 provides a procedure for location of underground utilities prior to an excavation and provides independent evaluation by the Underground Plant Protection Advisory Committee who recommends penalties for excavators who fail to follow the procedures and/or damage underground utilities to the Indiana Utility Regulatory Commission;

WHEREAS, in addition to the penalties prescribed by the Underground Plant Protection Advisory Committee and the Indiana Utility Regulatory Commission, the City of Fishers ("City") has reasonable police power to protect the public health and safety of its citizens;

WHEREAS, the City may regulate the use of right-of-way through, under, or over public ways, pursuant to I.C §36-9-2-6;

WHEREAS, the legislative body of the City ("Council") is responsible for determining ordinance violations and penalties for violations including, without limitation, violations of §94.10, *et seq.*, which regulates excavations within City right-of-way and on City owned or controlled property; and

WHEREAS, Council now desires to adopt this Ordinance amending all sections of §94.10.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Fishers, Hamilton County, Indiana meeting in regular session as follows:

Section 1. Fishers Code of Ordinances, §94.10, *et seq.* is amended as follows:

§ 94.10 PERMIT REQUIRED; APPLICATION; FEE.

(A) Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

Excavate. Activity as defined in I.C. § 8-1-26-6, as may be amended from time to time.

Excavator. An individual, a corporation, a partnership, a limited liability company, an association, or other entity organized under the laws of any state that is performing an excavation.

Right-of-Way Permit. The permit issued by the City to an excavator, at the discretion of the City, after the application and posting of a bond, pursuant to the terms of this chapter.

(B) Any person, business entity, public utility, or private utility wishing to excavate any portion of any street, sidewalk, curb or public place, or to excavate beneath said surface for the construction, alteration or repair of any driveway, sewer, sidewalk, or water line or other buried facility, or for the installation of any such work, shall obtain a Right-of-Way Permit from the City and post a bond pursuant to the terms herein, prior to beginning any such work.

(C) All excavators shall provide the following information before the City will issue a Right-of-Way Permit:

1. Proof of registration with the State of Indiana to do business in Indiana (if applicable);
2. Proof of insurance;
3. Proof of IURC Pipeline Safety Division training or 811 excavation training for the excavator, and its executives, managers, and crews;
4. Internal Safety Plan; and
5. The communication service provider, broadband provider, public utility or private utility for whom excavator is performing the excavation.

(D) Applicants must pay a Right-of-Way Permit fee in the amount of fifty dollars (\$50) to the Engineering Department prior to the issuance of said permit.

(E) A Right-of-Way Permit covers only a single excavation.

(F) The City reserves the right to actively monitor and inspect excavation activities covered by the Right-of-Way Permit. Such inspection may include, but is not limited to: spot inspections, regular documentation review, random verification with vacuum excavation of projects, and all such other investigations as are appropriate for the excavation.

§ 94.11 CERTAIN THOROUGHFARES NOT TO BE OPEN CUT.

Open cut permits are required for an open cut on any street within the City of Fishers. The Allisonville Road, 96th Street, 116th Street, 126th Street and 136th Street thoroughfares within the corporate limits of the City shall not be open cut unless specifically authorized by the Public Works and Safety Board. All other streets shall not be open cut if the pavement is less than three years old or unless specifically authorized by the Public Works and Safety Board.

§ 94.12 INDEMNIFICATION.

Any excavator performing any work as described in this chapter and pursuant to a Right-of-Way Permit from the City shall also agree to indemnify the City and any other party interested in such work or its performance against all claims, demands, actions, judgments, losses and expenses which may arise from any injuries to person or persons or damage to any property resulting from such work, or from any conditions created by such work on the property, in the street, easement, public place, or right-of-way.

§ 94.13 BONDS REQUIRED OF PERMIT APPLICANTS.

The following shall be required of each applicant for a permit:

(A) Performance Bond. Every excavator shall post a performance bond with the Director of Engineering and the bond shall remain with the City until the

completion and acceptance of the work performed and the posting of a maintenance bond as hereafter set out.

A minimum performance bond shall be posted in an amount not less than \$2,000. In the event that an excavation is within five feet of the pavement and/or runs lengthwise on such street, the applicant shall be required to post a performance bond on the basis of \$10 per square foot of pavement cut or \$5 per foot if outside of the actual pavement; provided, however, the performance bond shall be in an amount not less than \$2,000. A blanket bond in the amount of \$25,000 may be accepted at the discretion of the Director of Engineering.

The performance bond shall be cancelled only after the completion of the work, inspection and approval by the Director of Public Works or Director of Engineering, or their designee, and the posting of a maintenance bond in the amount hereafter set out. Such approval shall be based on completed satisfactory restoration. In the event that the property has not been restored to a condition as good or better than it had existed prior to the beginning of the work, the City may call upon the surety company to perform such work or may perform the work itself and invoice the excavator for the restoration.

(B) Maintenance Bond. A maintenance bond required under this chapter shall be in the amount of \$2,000 plus 10% of the construction costs itemized in the permit, to the extent construction costs exceed \$2,000. Excavator shall notify the City Department of Engineering when the work is complete and post a maintenance bond; said maintenance bond shall be for a period of three (3) years from the date of posting. Three years after the date of posting, said maintenance bond shall be cancelled.

§ 94.14 PERMIT AND BOND REQUIRED OF UTILITIES.

All excavators, including communication service providers, public utilities and private utilities shall be required to have a Right-of-Way Permit and post a performance and a maintenance bond.

§ 94.15 UPON VIOLATION DOUBLE APPLICATION FEE CHARGED; OTHER REMEDIES.

Any person or firm who commences any of the work prior to the time application for a Right-of-Way permit is made shall be charged an application fee double that which would otherwise be required. Should any person or firm cut a pavement without a Right-of-Way permit, they shall be subject to the penalties provided in § 94.99. This provision is without prejudice to the right of the City to seek any other available remedy for violation of this chapter.

§ 94.16 UNACCEPTABLE SURETIES AND CONTRACTORS.

Any surety company that, when called for performance on the bond does not perform, shall be placed on a list of unacceptable sureties and will not be accepted for bonds for a period of three years. Furthermore, any person or firm with three calls on their bonds in a period of two years shall be placed on a list of unacceptable excavators and shall not be granted a Right-of-Way Permit for a period of three years.

§ 94.17 UNDERGROUND UTILITY HITS.

(A) Excavators shall comply with I.C. §8-1-26, *et seq.*

(B) Excavators shall contact known underground utilities in advance of excavations so that both excavator and the utility operator know in advance of the location of the excavation to ensure adequate location resources are made available.

(C) All underground utility locates must be examined and crossings confirmed (pursuant to I.C. 8-1-26), via hand digging or hydro vacuum excavation. Excavators shall expose underground utility facilities with hand digging, vacuum excavation, or similar means, depending on the best conditions for the site. Hydro vacuum is strongly advised and preferred for gas, water and sewer facilities.

(D) If an excavator has three (3) hits to an underground utility line in one (1) month period or two (2) underground utility line hits in one (1) week, the City may, in its sole discretion, require the excavator to utilize hydro vacuum excavation for gas, water and sewer utilities for any Right-of-Way permit that excavator has in place or for which excavator subsequently applies within the City.

(E) If an underground facility hit occurs, excavator will ensure that 911, 811, the underground utility and the City Engineering Department are notified.

(F) If excavator is found at fault by the Indiana Underground Plant Protection Advisory Committee or other state or federal administrative body for an underground utility line hit, the excavator shall be responsible for reimbursement of costs incurred by City due to the hit, including but not limited to inspection fees and emergency response personnel costs.

(G) In the event that excavator has three (3) hits to underground utility lines in a one (1) month period or two (2) underground utility line hits in one (1) week, the City may, in its discretion, impose a temporary or permanent stop work order against the excavator and impose a \$250 fine. This provision does not prevent City from seeking other available remedies.

(H) In the event the City has exercised its powers under subsection (G) by issuing a temporary or permanent stop work on more than one excavator performing work for the same communications service provider, broadband

provider, public utility or private utility within a thirty (30) day period, the City may additionally, in its discretion, impose a temporary or permanent stop work order against the communications service provider, broadband provider, public utility or private utility directing the excavation work to be performed. This provision does not prevent City from seeking other available remedies.

§94.18 OTHER EXCAVATION STANDARDS.

(A) On Site Personnel. Excavator shall have an employee and/or inspector(s) readily available at each excavation site that can effectively communicate with property owners, residents and City staff about excavator's excavation, construction and restoration activities.

(B) Restoration and Complaints. Within a reasonable amount of time, any property disturbed during the excavation shall be restored in as good or better condition than was its condition prior to the beginning of the excavation and in compliance with City standards.

Borings shall be restored within three (3) business days of the boring and shall be subject to an inspection by the City. Excavator shall give consideration to the amount of restoration needed with each boring and the boring shall be conducted in a manner which requires the least amount of restoration (i.e. using streets and sidewalks for equipment rather than lawns, etc.). Directly after any boring under any street, curb, or sidewalks, excavator shall inspect for any heaving that may have occurred from the boring process, advise the City of the damage and put on a high priority list to repair.

(D) Handholes, pedestals and flower pots. Handholes, pedestals, and flower pots shall be installed at grade (as applicable), level, and square with sidewalks, curbs, drives, and streets.

(E) Notification to Property Owners.

1. Within a Subdivision. If excavator will be excavating within a subdivision, excavator shall notify each property owner that it will be entering the property no more than thirty (30) days prior to entering the property for any excavation. Notice shall be sent via letters and yard darts stating at a minimum that (a) excavator will be on their property, (b) dates of excavation, (c) what work will be completed on their property, and (d) contact information for excavator.

At the City's sole discretion, excavator may also be required to notify the homeowners' association (if one exists) of its presence within the neighborhood no more than thirty (30) days prior to entering the neighborhood for any excavation. With the permission of the

homeowners' association, excavator shall place signs at the entrances of neighborhoods stating that excavator will be doing work in the neighborhood. Proof of notifications shall be provided to the City upon request of the City.

2. Outside a subdivision. If excavator will be entering onto property or excavating outside of a subdivision, excavator shall notify the adjacent property owner no more than thirty (30) days prior to entering the property that (a) excavator and/or its contractor will be in their area and on their property, (b) dates of excavation, (c) what work will be completed on their property and (c) contact information for excavator.

§ 94.99 PENALTY.

(A) Any excavator who violates any provision of this chapter for which another penalty is not specifically provided shall be subject to a fine not exceeding \$2,000, nor less than \$200, per offense. A separate offense shall be deemed committed upon each day during which a violation occurs or continues. This provision does not prohibit the City from seeking other available remedies.

(B) The City may revoke the Right-of-Way Permit and/or may issue one or more temporary or permanent stop work orders against the excavator and/or the communications service provider, broadband provider, public utility or private utility for which excavator is performing the excavation, at City's discretion, for violation of any provision of this Chapter.

(C) The City's Director of Engineering, or their designee, shall have authority to enforce all provisions of this Chapter.

(D) The penalties provided for in this Chapter are separate and distinct from any penalties assessed to the excavator under Indiana Code 8-1-26.

Section 2. All other ordinances or provisions thereof not specifically changed shall remain in full force and effect.

Section 3. If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of the same can be given the same effect.

Section 4. This ordinance is and shall be effective as of the date of passage and upon notice provided pursuant to Indiana law.

PASSED by the Common Council of the City of Fishers, Indiana, on this 16th day of September, 2019.

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

09/16/19

YAY

NAY

ABSTAIN

YAY		NAY	ABSTAIN
<i>Richard W. Block</i>	Richard W. Block, President		
<i>Eric Moeller</i>	Eric Moeller, Vice President		
	David George, Member		
<i>C. Pete Peterson</i>	C. Pete Peterson, Member		
<i>John Weingardt</i>	John Weingardt, Member		
<i>Cecilia C. Coble</i>	Cecilia C. Coble, Member		
<i>Brad DeReamer</i>	Brad DeReamer, Member		
<i>Selina M. Stoller</i>	Selina M. Stoller, Member		
<i>Todd Zimmerman</i>	Todd Zimmerman, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the 16th day of September 2019, at 8:30 p m.

ATTEST:
Jennifer L. Kehl, City Clerk

MAYOR'S APPROVAL

Scott A. Fadness, Mayor

DATE

9/16/2019

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." Christopher P. Greisl

