

ORDINANCE NO. 2019-02

AN ORDINANCE AMENDING SECTION 90-149 AND REPEALING SECTIONS 90-150, 90-151, 90-152, AND 90-153 OF THE CODE OF ORDINANCES FOR THE VILLAGE OF UNION GROVE, RELATING TO PUBLIC RIGHTS-OF-WAY

The Village Board of the Village of Union Grove ordains as follows:

1. That Sections 90-149 of the Municipal Code of the Village of Union Grove be, and hereby is, amended to read as follows:

“Sec. 90-149 Excavations In public rights-of-way and village owned property regulated.

(a) Purpose and Findings.

- (1) In the exercise of governmental functions, the Village has priority over all other uses of the public Rights-of-Way. The Village desires to anticipate and minimize the number of obstructions and Excavations taking place therein and to regulate the placement of Facilities in the Rights-of-Way to ensure that the Rights-of-Way remain available for public services and safe for public use. The taxpayers of the Village bear the financial burden for the upkeep of the Rights-of-Way and a primary cause for the early and excessive deterioration of its Rights-of-Way is the frequent Excavation by Persons and Public Utilities who locate Facilities therein.
- (2) The Village finds increased use of the public Rights-of-Way and increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.
- (3) The Village finds that occupancy and Excavation of its property and Rights-of-Way causes costs to be borne by the Village and its taxpayers including, but not limited to:
 - a. Administrative costs associated with public Right-of-Way projects such as registration, permitting, inspection and supervision, supplies and materials.
 - b. Management costs associated with ongoing management activities necessitated by public users.
 - c. Repair or Restoration costs to the public property and/or Right-of-Way associated with the actual Excavation.
 - d. Degradation costs defined as depreciation caused to the public property and/or Rights-of-Way in terms of decreased useful life, directly and/or indirectly arising or resulting from such Excavations and related activities thereon.
- (4) The Village enacts this ordinance to regulate the temporary Excavation,

obstruction and/or occupancy of public property and/or the public Rights-of-Way. This ordinance imposes reasonable regulations on the placement and maintenance of equipment currently within its public property and/or Rights-of-Way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

- (5) This ordinance provides the Village with a legal, uniform and reasonable framework within which to regulate, manage, inspect, properly maintain, engineer and regulate Excavations, Repairs, Restorations and related effects and aftereffects of and into the Village's public properties and Rights-of-Way, and to provide for recovery of the reasonable associated costs, fees and expenses incurred by the Village in doing so.
- (6) This ordinance protects the health, safety and welfare of the residents of the Village as they use public properties and the Rights-of-Way of the Village, as well as to ensure the structural integrity of public property and the public Rights-of-Way.

(b) Definitions.

The following definitions shall apply in this Section. Defined terms remain defined terms whether or not capitalized. Words used in the present tense shall include the past and future tense. Words used in the singular form shall include the plural form. Words used in the plural form shall include the singular form. The word "shall" is mandatory and the word "may" is permissive.

Applicant. Any Person or Public Utility requesting permission to Excavate, cut into, bore into, obstruct and/or occupy public property and/or a public Right-of-Way.

Degradation. The decrease in the useful life of the public property and/or improved or paved portion of a Right-of-Way, excluding the sidewalk right-of-way, caused by an Excavation of the public property or Right-of-Way, resulting in the need to reconstruct such property and/or Right-of-Way earlier than would be required if the Excavation did not occur.

Department. The Village Department of Public Works.

Emergency. A condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

Excavate and/or Excavation. To dig, cut, bore into, remove, physically disturb, penetrate and/or in any manner affect the existing condition of any Village property, Right-of-Way or other land included in this ordinance.

Facilities. All equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

In. When used in conjunction with "public property" and/or "Right-of-Way", shall mean upon, over, above, within, on or under such public property and/or Right-of- Way.

Local Representative. A local person or persons, or designee of such persons or persons, authorized by an Applicant to accept service and to make decisions for that Applicant regarding all matters within the scope of this Section.

Obstruct. To place any object in a Right-of-Way so as to hinder free and open passage over that or any part of the Right-of-Way.

Permittee. Any person or Public Utility to whom a permit to occupy, Excavate or obstruct public property and/or Right(s)-of-Way has been granted by the Village under this Section of the ordinances

Person. A corporation, company, association, firm, partnership, limited liability company, limited liability partnership, joint venture, association, organization and individuals and their lessors, transferees, receivers, heirs, personal representatives, agents and all others acting on their behalf.

Property. The surface and space above and below an improved or unimproved part or whole of any and all Village owned or leased real property including, but not limited to, parks, vacant lots, open spaces, developed lands, green belts, parking lots, roads, sidewalks, terraces, rights-of-way, curbs, gutters, alleys, bicycle ways, bike trails, paths, beaches, river banks, easements, drainage ways, and other lands.

Public Utility. The meaning provided in Wis. Stats. 196.01(5), as from time to time amended or renumbered.

Public Works Director. The Village Public Works Director or his/her designee(s).

Repair. To perform construction work necessary to make the public property and/or Right-of-Way useable for appropriate and safe use and, if a Right-of-Way, in accord with the written and/or verbal requirements, specifications, rules and regulations of the Village and/or as promulgated from time-to-time by the Village Public Works Director; and/or, as applicable, to restore equipment to an operable and appropriate condition.

Restore or Restoration. That process by which an excavated public property and/or Right-of-Way and surrounding area, including pavement and foundation, is reconstructed in accord with the written and/or verbal requirements, specifications, rules and regulations of the Village and/or as promulgated from time-to-time by the Village Public Works Director.

Right-of-Way. The surface and space above and below an improved or unimproved public roadway, highway, road, bicycle lane and public sidewalk in which the Village has an interest, including other dedicated Rights-of-Way for travel purposes.

Site. The specific geographic location for a proposed Excavation accurately diagrammed and exactly described with particularity by the applicant in an application.

Village. The Village of Union Grove, a Wisconsin municipal corporation located in the County of Racine, Wisconsin.

(c) Prohibition -- Excavation permit required.

- (1) No cut, Excavation, or service connection shall be made by any Person or Public Utility in any Village property or Right-of-Way unless a permit under this Section is applied for, the fee paid for, the permit issued by the Village Public Works Director, obtained and held under this ordinance and then only in strict accord with all provisions and requirements of this ordinance.
- (2) No Person or Public Utility shall undertake to perform the work of making any connection with, installing or Repair of any Facilities, gas pipe, water pipe, sewer, communication, cable, or electric line or facility laid or constructed in any road or public ground, or to Repair or remove any such item without having obtained a permit under this Section authorizing him to do such work. No annual permit fee is required but individual permits and permit fees for each Excavation are required.
- (3) Every cut, Excavation and service connection in any Village property that is not a Right-of-Way shall also require, in addition to the permit, payment of fees and fulfillment of other requirements set forth in this ordinance, and separate permission, lease(s) and/or easement(s) from the Village Board, as applicable. Such additional permission is discretionary with the Village Board, is not a matter of right regardless of whether a permit has been applied for and/or issued under this ordinance and may be denied or withheld without cause. Compliance with this ordinance does not take the place of such additional required permission.

(d) Application for permit.

Written application for an Excavation permit shall be made to the Village Public Works Director prior to any Excavation. Permit applications shall contain and will be considered complete only upon compliance with each of the following requirements:

- (1) *Application Form.* An accurate and complete written Excavation Permit Application Form shall be submitted to the Public Works Director. The application shall be signed and dated by a duly authorized representative of the Applicant. The application form shall be in such form, content and requirements as the Village Public Works Director may determine and/or direct from time-to-time. The application form shall contain, at a minimum, the following information:

Each Applicant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

- a. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. The Local Representative or designee shall be available at all times. Current information regarding how to contact the Local Representative in an emergency shall be provided at the time of application.
- b. A detailed description of the scope and plan of the Excavation work and Repair/Restoration proposed, including a description of the property and name of the Right-of-Way if applicable, the

approximate location of the Excavation(s), the purpose for the Excavation, and the method by which the Excavation is to be made.

- c. Indemnification language protecting and holding harmless the Village and each and every of the Village's elected and appointed officials, officers, employees, agents, contractors and representatives from and against any and all injury, payments, penalties and damages arising from any and all intentional and negligent activities of the Applicant and the Applicant's appointed officials, officers, employees, agents, contractors and representatives.
 - d. The applications shall be signed by the Applicant's authorized representative or agent. If the work is not to be performed by the Applicant directly, the person engaged to do the work shall co-sign the application and the permit shall be issued in the name of the person performing the work along with the Applicant.
- (2) *Form and Drawings.* Submission of the completed permit application form as established by the Village Public Works Director, including all required attachments, drawings showing the location and area of the proposed Facilities, and the size of the cut, Excavation or service connection. The proposed Excavation must accommodate all existing underground Facilities within the proposed route.
- (3) *Insurance Certificate.* The applicant shall file Certificates of Insurance with the Village Public Works Director giving evidence of liability insurance in the following minimum amounts:

Worker's Compensation	Statutory Limits
Commercial Automobile Liability	\$2,000,000.00 per Accident for Bodily Injury and Property Damage Liability Combined.
Commercial General Liability	\$2,000,000.00 per Occurrence for Bodily Injury and Property Damage Liability Combined.

The Village Public Works Director may require higher amounts of liability insurance depending on the scope of the Excavation project. The Village and its officials, employees and agents shall be named as additional insureds on the commercial general and automobile liability policies. The insurance shall cover liability to third parties for the acts of the Applicant and Applicants officials and employees, agents, contractors, representatives and related others. The insurance shall cover bodily injury and property damage for the individual incidents and aggregates required by the Village Public Works Director. Such insurance shall not be cancelled or reduced without the insurer giving at least 10 days prior written notice to the Village Public Works Director. Cancellation or reduction of insurance shall automatically suspend the permit, and no further work shall be done

under such permit until a new certificate of insurance complying herewith is filed with the Village Public Works Director. The Certificate of Insurance shall remain in full force and effect for not less than one year from the date of the Village's final inspection after completion of the project. The insurance requirements under this subsection may be modified or waived by the Village Public Works Director when the applicant is a Public Utility and the Village Public Works Director has no reasonable grounds to question the financial responsibility or compliance ability of the Public Utility.

- (4) *Bond.* A bond in the form of cash, performance bond issued by a licensed company in Wisconsin or irrevocable letter of credit issued by a financial institution acceptable to the Village shall be deposited or filed with the Village Public Works Director and preserved by the Village Treasurer prior to the issuance of the permit. The Village Public Works Director shall determine the minimum amount of a cash bond and the form and the minimum dollar amount of the performance security bond and letter of credit based upon the estimated cost of the project and to Restore the area involved to a condition the same or similar to that prior to the cut and/or Excavation. The bond or letter of credit shall be payable to the Village upon demand by the Village Public Works Director for any actual or suspected violation of any provision of this ordinance. The Village Public Works Director shall be able to demand payment upon the bond or letter of credit in whole or in-part at any time and from time-to-time. The bond or letter of credit shall be in such further form, content and requirements as the Village Public Works Director and Village Attorney may determine necessary and/or desirable to effect the intent of the Village Board in this ordinance. The Village need not resort to any other remedy or provide any prior notice to the applicant or permittee before making demand upon, resorting to or receiving payment from the bond or letter of credit. In the event the cash bond, performance bond or letter of credit shall be insufficient for such purposes, the Permittee shall be liable to the Village for the excess cost over the amount of the bond or the amount collected by the Village on the irrevocable letter of credit. The bond or letter of credit shall remain in full force and effect for one (1) year from the date of the Village's final inspection after completion of the project. The bond requirements under this subsection may be modified or waived by the Village Public Works Director when the applicant is a Public Utility and the Village Public Works Director has no reasonable grounds to question the financial responsibility or compliance ability of the Public Utility.
- (5) *Certificate of Authority.* A copy of the applicant's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the Applicant is lawfully required to have such certificate from said commission or other state or federal agency.
- (6) *Corporate or Similar Certificate.* If the registration is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Wisconsin Department of Financial Institutions.
- (7) *Site Plan.* Each application shall contain, attached thereto, an accurate

diagram and description of the Excavation site.

- (8) *Payment.* Payment of the permit fees and costs as set forth in this ordinance.
- (9) *Notice of Change.* The Applicant shall keep all of the information listed above current at all times by providing to the Village Public Works Director information as to changes within three (3) working days following the date on which the applicant has knowledge of any change.
- (10) *One Permit Per Site.* A separate permit must be applied for and held, and a separate fee paid, for each site, Excavation, cut and/or project. A separate permit is required for a new or emergency Excavation at a previously permitted site if the previous work or Excavation was completed.
- (11) *Permits Not Transferable.* Permits are not transferable to a different Person or Public Utility. Permits are not transferable from place to place.
- (12) *Permit Posting Required.* A photocopy of each issued Village Excavation Permit shall be conspicuously posted and maintained at the site until the project is completed.

(e) **Fees.**

- (1) Each Applicant shall pay a base application fee of \$35.00 to the Village. In addition, the following additional fees, as applicable, shall be calculated by the Village Public Works Director and paid to the Village by the Applicant at the time the written application is filed with the Village Public Works Department:

Proposed work in the Right-of-Way	Fee
Fiber Optic (Basic)	\$100.00
Road Opening Minimum	\$100.00
Bore Right-of-Law	\$25.00 per bore
Bore Sidewalks and Driveways	\$5.00 per bore
Standard Per 50' For Larger Jobs (overhead)	\$5.00 per 50'
Standard Per 50' For Larger Jobs (underground)	\$10.00 per 50'
Pole Installation	\$5.00 per pole
Cabinet and Pedestal	\$25.00 per cabinet/pedestal

- (2) *Fees non-refundable.* Permit fees are not refundable for any reason. The permit fees shall be in addition to any forfeiture provided elsewhere in this ordinance.

(f) **Costs Arising from Permittee Exceeding Specifications.**

- (1) ***Reimbursement Required.*** A Permittee exceeding the scope of the project reported in the written application shall fully and forthwith reimburse the Village for all additional Village costs incurred in addition to the fees otherwise applicable and/or paid for the entire project as established. Such additional costs shall include, but not be limited to, actual salaries and staff time, benefits, overhead, vehicle and equipment costs, copies, inspections and other similar costs as specified under Wis. Adm. Code Sec. 130.05.
- (2) ***Substantial Projects.*** For applications that provide for a substantial undertaking of Excavation within a public Right-of-Way attended by disruption of the general public and traffic, the Village Public Works Director may assess the actual costs of the Village employees' time engaged in review and inspection of the anticipated plans and work, multiplied by a factor determined by the Village Public Works Director to represent the Village's actual costs and expenses, benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.0, plus the costs of mileage, vehicle rental/use attributed to the work, plus all consultant fees associated with the work at the invoiced amount plus ten percent (10%) for administration.

(g) **Exemptions.**

- (1) The Village and its public works contractors shall not pay fees or post a bond for Excavations pertaining to general governmental functions and projects.
- (2) Plumbers who have applied for, paid the fee for, have been issued, and hold a connection permit for a particular site.

(h) **Revocations, Suspensions, Refusals to Issue or Extend Permit.**

- (1) The Village Public Works Director may refuse to issue a permit or may administratively revoke, suspend or refuse to extend an existing permit if the Village Public Works Director finds any of the following grounds:
 - a. The Applicant, Permittee or occupant has failed to obtain a permit, failed to pay the full required fee(s) for, and/or has not fully complied with any provision or requirement of this ordinance;
 - b. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;
 - c. Issuance of a permit would not be in the public's best interest;
 - d. Issuance of the permit would be contrary to the health, welfare, safety or good order of the public, community or Village;
 - e. There is a limitation of space as determined by the Village Public Works Director;

- f. Misrepresentation of any fact by the Applicant, Permittee or occupant, or anyone on their behalf;
- g. Failure of the Applicant, Permittee or occupant to obtain, maintain or show proof of required bonds and/or insurance;
- h. Failure of the Applicant, Permittee or occupant to complete work in a timely or appropriate manner on any current or past Excavation project in the Village;
- i. Any current or past violation, breach or non-conformity with any provision of this ordinance by the Applicant, Permittee or occupant;
- j. The competing demands for the particular space in the Right-of-Way or other public property.
- k. The availability of other locations in the Right-of-Way or in other public property for the Facilities of the Permittee or Applicant;
- l. The applicability of ordinances or other regulations of the Right-of-Way or other public property that affect location of Facilities in the Right-of-Way; and
- m. The Excavation is proposed for a road, sidewalk, bike way, alley or other Right-of-Way or portion thereof newly installed, or recently resurfaced or reconstructed, and the Applicant chose not to Excavate and/or Repair/replace the utility before such new installation, resurfacing or reconstruction activities were completed. No excavation shall be allowed in newly installed or recently repaired or resurfaced public property and/or Rights-of-Way for five (5) years from completion of such new installation or recent repair or resurfacing. The Village Public Works Director may make exceptions to this rule for extraordinary circumstances and emergencies.

- (2) *Discretionary Issuance.* The Village Public Works Director may waive a particular requirement and issue a permit where issuance is necessary: (a) to prevent substantial economic hardship to a customer of the Permittee or Applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or Applicant to comply with state or federal law or Village ordinance or an order of a court or administrative agency.

(i) Reporting Obligations.

It is in the best interests of all affected parties to attempt to coordinate construction in public property and/or the public Right-of-Way whenever it is reasonably possible. Therefore, periodic reporting by the Public Utility or the Applicant to the Village Public Works Director of known or projected construction plans shall occur and will be useful to achieve this objective.

(j) Location of Facilities Underground.

The permittee shall endeavor to install Facilities underground or within buildings or other structures in conformity with applicable codes and requirements of the Village Public Works Director, unless in conflict with state or federal law, existing above-ground Facilities are used, or otherwise approved by the Village Public Works Director. The Village Public Works Director may direct that the installation be made underground if the public health, safety, or welfare so require.

(k) Limitation of Space.

The Village Public Works Director may prohibit or limit the placement of new or additional Facilities within public property and/or public Rights-of-Way if, in his determination, there is insufficient space to accommodate all of the requests of Persons or a Public Utility to occupy the site, public property and/or Right-of-Way. In making such decisions, the Village Public Works Director shall strive to the extent reasonably possible to accommodate all existing and potential users of the public property Right-of-Way, but may prohibit or limit the placement of new or additional Facilities when s/he determines such is required to protect, safeguard and/or facilitate the public health, safety, or welfare. In reaching this conclusion, the Village Public Works Director may consider the Public Utility's or Person's obligation to serve.

(l) Attachment to bridges.

Whenever an Applicant requests permission to attach pipes, conduits, cables, or wires to any village bridge structure, the Applicant shall pay all costs associated with the granting of such permission, including, but not limited to, administrative expenses in the analysis and inspection of such installation and Applicant's plans. The owner of such pipes, conduits, cables, or wires shall be entitled to no compensation for removal or relocation of the same in case of repair, removal, or replacement of said bridge structure by the Village or others on the Village's behalf, and/or any consequential damages directly and/or indirectly arising therefrom.

(m) Standards; Construction, Repair and/or Restoration of paved or improved areas.

All Excavations shall comply with the following:

- (1) *Surrounding Area; Precautions; Notices.* All paving and excavated materials shall be removed with the least possible damage to the surrounding area, and shall be placed where it will cause the least inconvenience to the public and where the same will not interfere with drainage or traffic. All Excavations shall be enclosed with sufficient barricades, and flashers shall be maintained upon said location during the hours of darkness. The Permittee shall provide and maintain proper barricades, signs, flags and flagmen at its expense. The Village may order the placement or use of additional safety devices and the Permittee shall pay all costs associated with their placement. All other necessary precautions to guard the public against accidents shall be taken by the permittee. If necessary to protect the health, safety and public welfare, in addition to repairing its own work, the Permittee shall repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Village. Permittee shall provide notice to all public and private individuals, firms and corporations affected

by the work and Digger's Hotline at least three (3) working days before such work is to start. Permittee shall notify the Village Public Works Director prior to the commencement of work and again at various stages of the work in the timeframes as specified by the Village Public Works Director.

- (2) *Style of Cut.* All Excavations in permanently improved Right-of-Way, roads and/or parking lots, sidewalks, bike trails, and the like, shall be made by final saw cuts around the perimeter of the Excavation in accordance with the specifications established by the Village Public Works Director.
- (3) *Boring; Backfilling.* Wherever feasible, boring under rather than excavating the paved portion of the Right-of-Way, shall be the method used in the case of paved, hard surface, highways. If boring is not feasible, the paved portion of Village Rights-of-Way may be open cut provided slurry fill shall be used to backfill the trench. If, at the discretion of the Public Works Director, an exception is made to allow granular fill, backfill material shall be placed in lifts not to exceed two (2) feet in depth and compacted in place with a boom mounted hydraulic compactor.

If an Applicant wishes to vary the requirements of this subsection so as to employ an equal or more effective method of compaction, the Applicant shall first obtain the written permission of the Village Public Works Director. If such permission is received and it later appears that the alternate method being employed is not, in the judgment of the Village Public Works Director, equally or more effective than the provisions of this subsection, the contractor shall revert to the means specified in this subsection.

- (4) *Trench Flooding Prohibited.* In no case will flooding of the trenches be allowed as a compaction method.
- (5) *Pavement Restoration.* After filling of the trench is completed to the satisfaction of the Village Public Works Director, the Permittee shall Restore the pavement of the highway so as to conform to the surrounding pavement as soon as such repavement is practical and feasible. Unless otherwise required by the Village Public Works Director, disturbed pavement shall be replaced by the Permittee, or an authorized contractor retained by the Village, at the Permittee's sole cost and expense. The Permittee shall use only materials approved by the Village Public Works Director. The site shall be fully and timely restored by the Permittee to a condition better than it was immediately prior to the Excavation and in full accord with each and every specification of the Village as from time-to-time supplemented, amended or otherwise modified. However, when a Permittee is a Public Utility, the Right-of-Way shall be restored to at least its original condition.
- (6) *Restoration of Unpaved Areas.* All Excavations in areas which are not paved shall be backfilled with natural material compacted in 12" layers with mechanical compaction equipment. The surface shall be restored to its original condition, subject to the approval of the Village Public Works Director. The Permittee shall guarantee this work for twenty-four (24)

months from the date of Village final inspection after project completion.

- (7) *Maintenance.* The Permittee shall be responsible for all costs associated with maintaining the temporary and permanent Repairs and Restorations in accordance with Village Public Works Director specifications until the Repairs/Restorations are accepted by the Village. Upon acceptance, the guarantee provisions under subsection (n) below are applicable. In all cases, the permittee shall be required to Repair the site to Village specifications and standards subject to inspection and acceptance by the Village.
- (8) *Inspections and Acceptance.* At the beginning and at the end of the project, the Permittee shall immediately notify the Village Public Works Director. The Village Public Works Director shall inspect the area of the work and accept the work at the end when the Village Public Works Director determines that proper Repair and/or Restoration has been made in accord with all specifications and requirements of the Village. The Permittee shall make the work site available to the Village Public Works Director and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (9) *Failure to Repair/Restore.* In the event that the Village Public Works Director determines that the initial or any subsequent Repair and/or Restoration work or work area have not been timely or otherwise not Repaired or Restored as required or directed, then the Village Public Works Director shall inform or notify the Permittee who shall then forthwith perform and/or re-do the required work solely at Permittee's cost and expense. Permittee shall then notify the Village Public Works Director of the remedial work completion. The Village Public Works Director shall then reinspect the work. If the Permittee fails to restore the worksite to its specified condition within fourteen (14) days of being notified to do so, the Village Public Works Director shall have the right to do any and all necessary restoration work. The Permittee shall be liable for the actual cost thereof plus twenty-five percent (25%) of such cost for overhead and administrative expenses, including but not limited to those expenses identified under Adm. Code. Sec. 130.05. The costs of said work shall be deducted from the cash deposit, drawn on the bond or letter of credit or billed directly to the Permittee. Should the costs of repairs exceed the cash deposit, bond or letter of credit posted, the additional amount shall be billed. Any billed costs shall be paid within thirty (30) days of the billing date. No future Excavation permits shall be issued to the Applicant until such invoices are paid in full. At any time after the fourteen (14) day notice and opportunity to cure as specified above, the Village Public Works Director may demand and/or draw upon the Permittee's bond to cause the work to be performed adequately. In addition to all of these steps and remedies, and in addition to and not in lieu of any enforcement, forfeitures, penalties, injunctive and/or other relief, the Village Public Works Director may use Village crews and/or contract with third parties to perform and/or complete the Repairs and/or Restoration, and charge/invoice the Permittee for the costs and expenses of such work. The Permittee shall forthwith pay in full such invoice to the Village within thirty (30) days of the billing date.

- (n) *Guarantee.* The Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During this period it shall, upon notification from the Village Public Works Director, immediately correct, repair, restore and/or re-do any and all work and portions thereof to the extent required or directed by the Village Public Works Director, using the method and within the time required by the Village Public Works Director. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Village, not including days during which work cannot be done because of circumstances constituting force majeure. If the repair and/or replacement pavement or material settles or cracks within five (5) years of the date of the permit and if failure of the repair and/or replacement is due to improper backfill, compaction or materials, the pavement and backfill in the Excavation area shall be forthwith removed and replaced at the expense of the Permittee.
- (o) *Relocation of Facilities.* An occupant must promptly and at its own expense permanently remove and relocate its Facilities in the public property or Right-of-Way whenever the Village and/or Village Public Works Director, jointly or severally acting in his/her or its governmental capacity, and having determined that the public health, safety, or welfare so requires, requests such removal and relocation. Notwithstanding the forgoing, an occupant shall not be required to remove or relocate its Facilities from any Right-of-Way or other public property that has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the occupant therefor.
- (p) *Interference With Other Facilities During Municipal Construction.* When the Village performs work in the Right-of-Way or other public property and the Village Public Works Director finds it necessary to maintain, support, shore, or move an occupant's Facilities, the Village Public Works Director shall notify the Local Representative. The occupant shall meet with the Village's representative within twenty-four (24) hours and coordinate the protection, maintenance, supporting, and/or shoring of the occupant's Facilities. The occupant shall accomplish the needed work within seventy-two (72) hours, unless the Village agrees to a longer period. In the event that the occupant does not proceed to maintain, support, shore, or move its Facilities within such time, the Village may arrange to do the work and bill the occupant, said bill to be paid within thirty (30) days of the billing date.
- (q) *Abandoned and Unused Facilities.*
- (1) *Discontinued Operations.* An occupant or Permittee who has decided to discontinue its operations must either:
- a. Timely provide information satisfactory to the Village Public Works Director that the occupant's or Permittee's obligations under this ordinance for its Facilities have been lawfully assumed by another occupant or Permittee; or
 - b. Submit to the Village Public Works Director a proposal and instruments for transferring ownership of its Facilities to the Village. If an occupant proceeds under this clause, the Village may, at its option:

1. Accept the dedication for all or a portion of the Facilities; or
 2. Require the occupant, at its own expense, to remove the Facilities; or
 3. Require the occupant to forthwith post a bond or provide payment in an amount determined by the Village Public Works Director sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the Facilities.
- (2) *Abandoned Facilities.* Facilities that remain unused for two (2) years shall be deemed abandoned. Any occupant or Permittee having abandoned equipment in any public property and/or Right-of-Way shall remove it within two years, unless the Village Public Works Director waives this requirement. Abandoned Facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option, abate the nuisance, take possession of the Facilities, or require the removal of the Facilities by the occupant or the occupant's successor in interest, or exercise any of its other rights under this ordinance. A determination by the Village Public Works Director that a facility is abandoned shall be conclusive, final and binding on the occupant and/or Permittee.
- (r) *Emergency situations.* Each occupant, Permittee and/or their agent shall immediately notify the Village Public Works Director by verbal notice on an emergency phone number provided by the Village Public Works Director of any event regarding its Facilities that it considers to be an emergency. The occupant, Permittee and/or their agent may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the occupant, Permittee and agent shall apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this ordinance.
- (s) *Compliance with Village Public Works Director Directions.* An Applicant, Permittee and occupant shall forthwith comply with each and every lawful verbal and written direction and requirement of the Village Public Works Director consistent with advancing the intended purposes of the ordinance.
- (t) *Compliance with Other Laws.* Obtaining a permit to Excavate and/or occupy the Right-of-Way or other Village property does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other Village, County, State, or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.
- (u) *Vicarious Liability.* Each Applicant, Permittee and occupant is vicariously responsible and liable under this ordinance for the actions of the respective Applicant's, Permittee's and occupant's employees, contractors and agents, and is liable for violations by them, jointly and severally.

- (v) *No Repeal of Tree Requirements.* Nothing herein shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain a tree lawn in the area of the Right-of-Way between their property and the road curb or pavement, construct sidewalks or driveways or other similar activities. Persons performing such activities shall not be required to obtain any permits under this ordinance.
- (w) *Raising or lower road grade or surface prohibited.* No Person or Public Utility, unless duly authorized in writing by the Village Public Works Director or by formal action of the Village board, shall raise or lower the surface of any road above or below the established grade, or remove any earth or soil from any road, or interfere with the surface or soil of any road in any manner whatsoever.
- (x) *Double Fees.*
- (1) Any Person or Public Utility who commences any activities for which a permit is required under this ordinance without first having applied for, paid the fee for and/or holding the required permit shall still be required to apply for, pay the fees for and hold the requisite permit before continuing any Excavation or other activities upon the site.
- (2) Such Person or Public Utility shall also be required to pay double the fees otherwise applicable.
- (y) *Appeal of Decisions.* Any Applicant, Permittee, occupant or other person aggrieved by a decision of the Village Public Works Director under this ordinance may file a written appeal with the Village Public Works Director requesting review before the Village Plan Commission. An appeal shall be filed within ten (10) days of the decision or direction. The Plan Commission shall commence a hearing within sixty (60) days of the filing of the appeal. The determination of the Plan Commission shall be subject to review and approval by the Village Board. The appeal shall be signed and dated by a person authorized to appeal or to act on behalf of such person. The appeal form shall require such other information as the Village Public Works Director may from time-to-time require.
- (z) *Severability.* If any subsection, sentence, clause, phrase or portion of this Section is held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.
- (aa) *Violations -- Penalty -- Injunctive and Other Relief.*
- (1) Any person, employee, officer or principal of any Person or Public Utility who violates, causes or permits to be violated any provision of this ordinance, requirement or specification of the Village or Village Public Works Director, upon conviction thereof, shall pay a forfeiture to the Village of not less than One Hundred Dollars (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00), together with the costs of prosecution and in default of payment thereof, shall be imprisoned in the Racine County Jail for not less than five (5) days nor more than ninety (90) days, or dealt with as otherwise provided by law.

- (2) It shall be the ongoing responsibility of the offender to timely abate the violation(s) as quickly as possible.
- (3) Each and every violation constitutes a separate punishable offense.
- (4) Each and every day that a violation continues constitutes a separate punishable offense.
- (5) The Village, in addition to the above penalties, may institute and seek injunctive relief through circuit court and/or may commence, maintain and prosecute one or more related or additional actions to achieve compliance and/or enjoin, abate or remove the violation(s); and the Village Board may also revoke or suspend any permit issued hereunder. The Village Public Works Director may deny the issuance of a permit to an Applicant who has been convicted of a previous violation of this ordinance, or who has violated, or is violating any provision of this ordinance as determined in the sole discretion of the Village Public Works Director.
- (6) If a permit were issued, such issuance shall not constitute a defense for the offender, nor shall any error, oversight, previous non-enforcement of a similar or separate violation, or dereliction of duty on the part of any Village official, board or body constitute any defense."

2. That Sections 90-150, 90-151, 90-152, and 90-153 of the Municipal Code of the Village of Union Grove be, and hereby are, repealed.

3. That this ordinance shall become effective upon adoption and publication as provided by law.

Adopted by the Village Board of the Village of Union Grove, Racine County, Wisconsin, this 14th day of January, 2018.

VILLAGE OF UNION GROVE

By: Michael Aimone
Michael Aimone
Village President

Attest: Elizabeth Schwertfeger
Elizabeth Schwertfeger
Village Deputy Clerk/Treasurer