

ORDINANCE NO. 21 - \_\_\_\_\_

**AN ORDINANCE  
REGARDING PERMIT FEE REQUIREMENTS  
AND ESTABLISHING A FUTURE PAVEMENT RESTORATION FEE  
AMENDING ARTICLE A (GENERAL PROVISIONS) AND  
ARTICLE J (ENCROACHMENTS AND OBSTRUCTIONS) OF  
CHAPTER 1 (STREETS AND SIDEWALKS) OF  
TITLE 9 (PUBLIC WAYS AND PROPERTY) OF  
THE NAPERVILLE MUNICIPAL CODE**

**Recitals**

1. **WHEREAS**, when persons or entities perform excavation work for private purposes in City right-of-way, construction patches are applied to the roadway over the surface of the area excavated in order to provide the City with a serviceable roadway on an interim basis; and
2. **WHEREAS**, because pavement patches commonly begin to fail before it is time to resurface the roadway, the City is forced to re-patch the original pavement patches at taxpayer expense in order to maintain the City roadway network to City standards; and
3. **WHEREAS**, to offset the costs caused by private use of City right-of-way, it has been determined that a “Future Pavement Restoration Fee” should be charged to persons or entities that perform work in City right-of-way which requires patching of City roadway pavement where the City is not otherwise compensated for use of its right-of-way; and
4. **WHEREAS**, the Future Pavement Restoration Fee will be calculated based on the type and age of the roadway in question as provided herein; and

5. **WHEREAS**, as a home rule municipality under the laws and Constitution of the State of Illinois, the City of Naperville is authorized to enact regulations for the purpose of improving and protecting the public health, safety, and general welfare of the people, including but not limited to protection of taxpayer funds; and
6. **WHEREAS**, the City Council has determined that it is appropriate to amend Title 9 (Public Ways and Property) Chapter 1 (Streets and Sidewalks) Article A (General Provisions) and Article J (Excavations) of the Naperville Municipal Code by deleting Section 1.7 of Section 11 (Encroachments and Obstructions) and by amending Article J (Excavations) by deleting the stricken language and adding the underlined language to Sections 1J-1 through 1J-5 as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority, as follows:**

**SECTION 1:** The Recitals set forth above are incorporated herein in this Section 1 as though fully set forth herein.

**SECTION 2:** Title 9 (Public Ways and Property), Chapter 1 (Streets and Sidewalks) Article A (General Provisions) is hereby amended by deleting the stricken language and adding the underlined language set forth below:

**ARTICLE A. – GENERAL PROVISIONS**

SECTION:

**9-1A-1: - PURPOSE AND INTENT:** through

**9-1A-10: - BUILDING OPERATIONS, USE OF STREETS:**

\* \* \* \*

**9-1A-11: - ENCROACHMENTS AND OBSTRUCTIONS:**

1. Encroachments:

- 1.1. Except as provided by this Subsection or Section 7-4-3 of this Code permitting the construction of driveways along front lot lines, it shall be unlawful to erect or maintain any "building" or "structure" as defined in Section 6-1-6 of this Code, which encroaches upon any public street, way, or property.
- 1.2. Mailboxes and necessary appurtenances thereto may be erected and maintained in the parkway of any street or right-of-way adjacent to the postal patron's property, subject, however, to the provisions of Section 9-1A-11:1.3 of this Article.
- 1.3. No part of any mailbox or any appurtenance thereto shall be located or maintained closer than eight (8) inches to the back of the curb or edge of pavement on streets without curbs on the parkways. Support structures which hold the mailboxes shall be forty (40) inches in height from the ground to the bottom of the mailbox. Support structures for mailboxes shall be constructed of break-away material, either four-inch by four-inch (4" x 4") lumber or two-inch in diameter, thin wall steel pipe with a wall thickness less than 0.155". The support structure shall be buried no more than twenty-four (24) inches into the ground. Any other mailbox support structure is not acceptable. Unacceptable support structures include, but are not limited to, brick, block, stone or concrete masonry columns, wagon wheels, steel pipes in excess of the previously defined two-inch diameter 0.155" thickness and lumber posts in excess of four (4) inches by four (4) inches (4" x 4"). Support structures which do not conform with this Section and are in existence at the time of enactment are exempt from this provision.
- 1.4. No person shall install or maintain any aboveground or underground lawn sprinkling system within a City right-of-way, parkway or easement without having secured a permit from the City. Such systems shall be subject to the regulations specified in Section 8-2A-2 of this Code.
- 1.5. It is the owner's sole responsibility to maintain and repair the lawn sprinkling system. The owner shall indemnify and defend the City from any and all liability for damages or injury arising from the installation, operation or location of the sprinkling system.
- 1.6. The lawn sprinkling system and heads shall not be placed within four (4) feet of the back of the curb or within four (4) feet of the edge of the sidewalk and shall be so installed and operated as not to spray water onto the sidewalk, curb, gutter or street.
- ~~1.7. The permit fee shall be one hundred twenty dollars (\$120.00) for right-of-way permits requiring engineering review and eighty dollars (\$80.00) for permits not requiring engineering review. A forty-five dollar (\$45.00) fee is due for all permits requiring a resubmittal.~~

**SECTION 3:** Title 9 (Public Ways and Property), Chapter 1 (Streets and Sidewalks)

Article J (Excavations) is hereby amended by deleting the stricken language and adding the underlined language set forth below:

**ARTICLE J. – EXCAVATIONS**

SECTION:

**9-1J-1: - PERMIT REQUIRED:**

It shall be unlawful for any person to tunnel under or to make any excavation in any street, alley or other public place in the City without having obtained a permit as is herein required, or without complying with the provisions of this Article or in violation of, or variance from, the terms of any such permit. All excavations within public streets pavements, under curbs, sidewalks or other improvements shall be made by tunnel or boring unless otherwise permitted by the Director of TED ~~the Department of Public Works~~.

**9-1J-2: - APPLICATIONS FOR PERMIT; ISSUANCE:**

Applications for such permits shall be made to the Director of TED ~~the Department of Public Works~~ and shall describe the location of the intended excavation or tunnel, the size thereof and the purpose thereof; the person doing the actual excavating work; the name of the person for whom or which the work is being done; and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done.

No such permit shall be issued except by the Director of TED ~~the Department of Public Works~~.

Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground; or until the refill is made ready for the pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the Director of TED ~~the Department of Public Works~~.

**9-1J-3: - PERMIT FEES:**

~~Fees for such permits, excluding public and quasi-public utilities operating under franchise with the City, shall be one dollar (\$1.00) per lineal foot for excavations not in excess of three (3) feet in width and as determined for widths in excess of three (3) feet. The fee for street surface replacement shall be as set forth in the following schedule or as mutually agreed upon by the applicant and the City.~~

	<u>Openings Of 25 Square Feet Or Less</u> <u>Price Per Opening</u>	<u>Openings Between 25 And 150 Square Feet</u> <u>Price Per Square Foot</u>
Concrete pavement		
8 inches thick	\$45.00	\$1.60
10 inches thick	50.00	1.70
12 inches thick	55.00	1.80
Bituminous surfaced macadam	30.00	1.20
Concrete walks and drives	35.00	1.30
Concrete curb	50.00 per opening of 12 lineal feet or less	4.00 per lineal foot for openings more than 12 feet
Concrete curb and gutter	50.00 per opening of 12 lineal feet or less	4.00 per lineal foot for openings more than 12 feet

**9-1J-4: - SUPERVISION:**

The Director of the Department of Public Works shall from time to time inspect all excavations and tunnels being made in or under any public street, alley or other public place in the City to see to the enforcement of the provisions of this Article. Notice shall be given to him at least ten (10) hours before the work of refilling any such excavation or tunnel commences.

**9-1J-35: - REQUIREMENTS FOR EXCAVATING:**

1. Barricades And Lights: Any person making or maintaining any excavation in any street or alley shall keep the same adequately guarded by barricades and lights to protect persons and property.

2. Blocking Sidewalks: If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users.
3. Manner Of Excavating:
  - 3.1. It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground; and in excavations the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.
  - 3.2. No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any pipes, cables or conduits or to the Director of TED ~~the Department of Public Works~~, which are or may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.
4. Backfilling: When an existing street is to be opened for purposes of construction, when tunneling or boring is not possible, the contractor shall be responsible for removing all excavated material and replacing with trench backfill in accordance with the latest edition of "Standard Specifications for Road and Bridge Construction". Trench backfill shall be completely backfilled and compacted to the top of the trench to the satisfaction of the Director of TED ~~the Department of Public Works~~.
5. Required Pavement Restoration ~~Restoring Surface~~:
  - 5.1. Any person making any excavation or tunnel in, on, or under public street pavement, alley or other paved improvements within the public ~~street~~ right-of-way shall restore the tunnel, trench or excavation to the existing surface elevation by approved trench backfill, tamped, compacted and jetted in accordance with then current City of Naperville Construction Details which may be found on the City website. ~~approved methods on file with the City Clerk.~~
  - 5.2. Any opening in a paved or improved portion of the street, sidewalk or other improvement shall be backfilled and patched as required and said surface shall be repaired by the applicant in accord with then current City of Naperville Construction Details which may be found on the City website. ~~and said surface shall be placed by the City. After backfilling has been approved by the Director of the Department of Public Works, the City shall then make the necessary surface restoration.~~

#### **9-1J-4: - RIGHT-OF-WAY PERMIT FEES:**

Right-of-way permit fees shall be one hundred and twenty dollars (\$120.00) for right-of-way permits for work to be performed in or impacting use of the roadway and eighty-eight dollars (\$88.00) for permits for work to be performed in the parkway or on public sidewalks which will not impact use of the roadway. Permits for work for public sidewalk construction, replacement, or repair shall be subject to the provisions of Chapter 5, Article C (Sidewalk Contractors) of the Code. A forty-five dollar (\$45.00) fee is due for all permits requiring a resubmittal. Future Pavement Restoration Fees as set forth in Section 9-1J-5 below will be added to the right-of-way fees set forth above if the right-of-way work includes roadway patches. Additional fees for private use of the right-of-way are set forth in Article E of this Chapter.

#### **9-1J-5: - FUTURE PAVEMENT RESTORATION FEE:**

1. Right-of-way work requiring installation of pavement patches degrades the overall quality of the pavement and causes adjacent pavement to degrade more quickly. Because pavement patches often fail before it is time to resurface the roadway, the City is forced to replace and/or repair prior pavement patches in order to maintain the City roadway network to City standards.
2. To reduce the financial burden to the City for costs resulting from right-of-way patch work performed on City right-of-way for private purposes where the City is not otherwise compensated for use of its right-of-way, the City will charge a Future Pavement Restoration fee as provided herein.
3. When applying for a right-of-way permit on pavement maintained by the City that the applicant knows will result in a pavement patch, the applicant shall indicate the size of the patch they anticipate will result from the work as part of their submittal. As part of its review of the application the City will confirm that the size of the proposed patch is appropriate for the work and will then calculate and assess the Future Pavement Restoration fee as part of the right-of-way permit fees. If an applicant did not anticipate having to perform pavement patching and the project resulted in a patch, then the fee will be assessed to the applicant following the applicant's completion of their work.
4. Future Pavement Restoration Fee Calculation. The Future Pavement Restoration Fee will be calculated based on the following three factors: (i) the street classification since the thickness of the patch needed depends on the street classification; (ii) the age of the roadway; and (iii) the average cost of each type of patch (per street classification) based on the City's low bid prices for the prior three (3) years.
  - 4.1. Street classification: Every street in the City falls into one of the following classifications: arterial, collector or neighborhood connector, and local. These different classifications of streets have their own roadway widths,

speed and volume of vehicles, permitted weight of vehicles, and types of maintenance performed on them. Because of this, individual schedules have been prepared for each type of roadway to match the type of repair and timing of when it would be expected.

4.2. Age of Roadway: There is a greater probability of repairing a roadway patch in a recently resurfaced roadway than a patch in a roadway that has used up half of its life until it is resurfaced again since a pavement patch in a new roadway has to last twice as long.

4.3. Average Cost. The average cost of each type of patch will be based on the City's low bid prices for the prior three (3) years. Those prices are available for viewing in the office of the City Engineer.

The first chart below reflects the different types of roadway classifications along with the anticipated repair schedule based on the age of the roadway. The second chart below is an example of City pricing based on the required thickness of the patch for each roadway classification (e.g. 2021 City patch costs based on low bid prices from 2018, 2019 and 2020).

<b>Local</b>	<b>Collector/ Connector</b>	<b>Arterial</b>
0 to 4 Years: 100%	0 to 4 Years: 100%	0 to 3 Years: 100%
5 to 10 Years: 67%	5 to 10 Years: 67%	4 to 8 Years: 67%
11 to 20 Years: 33%	11 to 20 Years: 33%	More than 8 Years: 33%
More than 20 Years: 0%	More than 20 Years: 0%	

	<b>Local 2" Thick Patch Cost (\$/SY)</b>	<b>Collector/ Connector 4" Thick Patch Cost (\$/SY)</b>	<b>Arterial 6" Thick Patch Cost (\$/SY)</b>
<b>2020</b>	\$31.65	\$63.00	\$103.00
<b>2019</b>	\$36.00	\$68.00	\$100.00



<b>2018</b>	\$33.00	\$72.00	\$106.00
<b>Total</b>	\$100.65	\$203.00	\$309.00
<b>3 Year Average</b>	<b>\$33.55</b>	<b>\$67.67</b>	<b>\$103.00</b>

**SECTION 4:** If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance, resolution, or provision of the Naperville Municipal Code.

**SECTION 5:** This Ordinance shall be in full force and effect upon its passage and approval as required by law.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

AYES:

NAYS:

ABSENT:

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Steve Chirico  
Mayor

ATTEST:

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Pam Gallahue, Ph.D.  
City Clerk