



211 Walnut Street  
Neenah, WI 54956

AN ORDINANCE: By Public Services & Safety Comm.  
Re: Amending and creating various sections in Ch.  
14, Art. II relating to street excavation permits.

ORDINANCE NO. 2013-11

Introduced: May 15, 2013

Committee/Commission Action:

**RECOMMENDED FOR PASSAGE**

## AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

**Section 1.** Section 14-29 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

**Sec. 14-29. - Permit required.**

No person shall install facilities, maintain facilities, occupy or break, dig up, excavate, remove or displace or cause to be broken, dug up, excavated, removed or displaced any pavement, ~~macadam,~~ gravel or earth within any street right-of-way, sidewalk, or alley, ~~park or other public ground~~ within the City without first obtaining a permit therefor.

**Section 2.** Section 14-30 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

**Sec. 14-30. - Application.**

(a) Application for a permit hereunder shall be made in writing to the Director of Public Works ~~stating the name and residence of applicant, the work for which such permit is desired and the location thereof~~ on an application form developed by the Department of Public Works. Such a permit shall be issued upon a showing that there will be compliance with all applicable ordinances, regulations and provisions of the permit.

(b) The work covered by such application shall not ~~be started~~ commence until the required permit ~~shall have~~ has been issued, except for emergency work by a public utility. When time does not allow making a written application for such work or awaiting the issuance of such permit in the ordinary course of business, a public utility may proceed immediately with such emergency work, pending its making a written application therefor as soon as practicable thereafter. Beginning non-emergency work prior to obtaining a permit shall result in doubling the fixed fee portion of the total permit.

- (c) Except in the case of public utilities (which are recognized as being sufficiently responsible financially to be self-insurers for this purpose), no permit shall be issued unless there shall be on file in the office of the City Clerk proof of insurance issued to the applicant in accordance with terms and limits as set for in the provisions and conditions of the permit representing a liability contract of insurance issued to the applicant, in the amounts determined by the Director of Public Works to be necessary based upon the potential liabilities involved. Such contract of insurance shall be approved as to form by the City Attorney and issued by an insurance company licensed to do business in this State, such policy to contain suitable provisions that the insurance company will pay all damages caused to private or public grounds by applicant and for all personal injuries suffered by persons, except employees of the applicant, caused by the applicant, his agents, employees or servants in the doing or execution of the work for which any permit may be granted, ~~and that it will keep and save~~ As a condition for granting the permit, the applicant shall indemnify and hold harmless the City, its elected and appointed officials, employees and agents free and harmless from any damages or claims against it by reason of the failure, fault or neglect by the applicant, ~~his it's~~ agents, officers or employees ~~or servants~~ in the execution of the work for which any permit is granted under this section.
- (d) ~~In the written application,~~ The applicant shall agree to pay to the City the fee amounts as set forth in the fee schedule of the permit. Total permit fee shall include the fixed permit fee, the City maintenance fee, the final repair fee, the street degradation fee and any other applicable fees as described in the permit. Fee rates shall be established periodically by the City Council, ~~when the proposed excavation is to be located in the surfaced roadway of a street surfaced with a material other than crushed rock, gravel or concrete sidewalk, to pay the City \$5.00 if the surface area of street surface area removed does not exceed four square feet, and if the actual street surface area removed exceeds four square feet to pay the City a sum to be determined by rates set annually by the Council. When the proposed excavation is to be in a roadway surfaced with Portland cement concrete, bituminous concrete or other permanent or semi-permanent pavement, and the proposed excavation is for a new installation or other than emergency repairs, the fees applicable under this subsection shall be increased by 100 percent if the pavement is less than two years old, by 50 percent if the pavement is less than three years old, and by 25 percent if the pavement is less than four years old.~~
- (e) No permit shall be issued to any person unless his account with the City for such fees is current to within 60 days of date of billing.
- (f) When it is necessary to excavate in any street in the City to repair a sanitary sewer lateral serving an existing structure to correct existing defects in such lateral, the contractor doing the work or the owner shall be billed by the City in the manner defined in the Sanitary Sewer Lateral Repair Policy, which shall be on file in the Department of Public Works, ~~for street repair at the per-square-foot rate currently in effect for an "oiled street" regardless of the type of pavement surface encountered in the work, and the Public Works Department shall cut the~~

~~hole and remove the pavement in any street paved with Portland cement or bituminous concrete the day following a request in writing by the owner or his contractor to have the work done, except no work will be done on Saturdays or Sundays. When City employees cannot be made available to do the work without interruption of essential municipal services or work that cannot be stopped without detriment to the City interests, the Director of Public Works may agree with the person filing the request for the latter to contract for the work and receive an agreed sum in consideration thereof.~~

**Section 3.** Section 14-31 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

**Sec. 14-31. - ~~Barriers, etc.~~ Traffic Control and Protection of the Work and the Public.**

The Permittee shall have sole responsibility to furnish, erect and maintain substantial barricades and shall furnish, install and maintain warning signs and other necessary traffic control prior to commencement of activity in accordance with the requirements set forth in the latest edition of the Manual of Uniform Traffic Control and Devices (the "MUTCD") and the Wisconsin Dept. of Transportation Supplement thereto. ~~Any person to whom a permit is issued hereunder shall enclose or cause to be enclosed, on all sides, any excavation, hole or other depression, passageway, trench, drain, sewer, open area, opening, building material, broken up sidewalk, pavement, macadam, gravel, earth or other obstruction within the City by guards, fences or barriers at least three feet in height. At night, red lights shall be placed and kept so as to cast a light on such obstruction, and in case of other openings, a red light shall be placed and kept at each end and every 50 feet along the entire side of length thereof.~~

**Section 4.** Section 14-32 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

**Sec. 14-32. - Repairs.**

(a) The ~~person to whom a permit is issued hereunder~~ Permittee shall replace, rebuild, relay or make, or cause to be replaced, rebuilt, re-laid or made, any such excavation in as good, safe and permanent condition as before the excavation and shall install a temporary patch as described in the permit. ~~except t~~ The City shall maintain the temporary patch, rebuild and ~~relay~~ install the ~~surfacing material~~ of final repair on any street, sidewalk, crosswalk or alley which may have been disturbed or displaced by such excavation, trench or obstruction.

(b) With prior approval of the City, the Permittee may make the final repair subject to conformance with the conditions listed in the Street Excavation Fee Schedule. Permit fees as defined in Section 14-30(d) and listed in the City of Neenah Fees for Services Schedule shall be adjusted to include only the fixed permit fee and the street degradation fee.

**Section 5.** Section 14-33 of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

**Sec. 14-33. - Obstructions.**

~~Any person to whom a permit has been issued to excavate~~ The Permittee excavating in any major or minor arterial street so designated by the Council ~~may not occupy more than~~ shall at all times provide one safe traffic lane in each direction, ~~or parking lane with equipment, excavating material or debris while engaged in work on the street,~~ except in cases of emergency repairs when danger to life or property exists. ~~In circumstances of emergency repairs,~~ The permittee shall provide, install and maintain adequate ~~barricades, direction signs, lights or watchmen~~ traffic control devices and/or flag person to direct vehicular traffic to those lanes not occupied by the operation. ~~on the street, and~~ Permittee shall keep all traffic and parking lanes, except those occupied by the ~~permittee~~ Permittee hereunder, clear of all obstructions, free of hazards and open for the free flow of vehicular traffic. All traffic control and signing shall be in accordance with the latest version of the MUTCD and the Wisconsin Dept. of Transportation Supplement thereto.

**Section 6.** Section 14-34 of the Code of Ordinances of the City of Neenah is created to read as follows:

**Sec. 14-34. Detours**

No street shall be closed and traffic detoured without the written approval of the Director of Public Works.

**Section 7.** Section 14-35 of the Code of Ordinances of the City of Neenah is created to read as follows:

**Sec. 14-35. Fees Exception**

The permit and all permit fees shall be waived for all work done under City contract on any street, right-of-way or other public land.

**Section 8. Severability.** In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

**Section 9. Repeal and Effective Date.** All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Stevenson/Pollnow  
Adopted: May 15, 2013  
Approved: May 15, 2013  
Published: May 20, 2013

Approved:



George Scherck, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:  
City Attorney James G. Godlewski  
211 Walnut Street  
Neenah, WI 54956  
State Bar No. 1005210

