

**ORDINANCE NO. 177-20**

**AN ORDINANCE AMENDING MILLERSBURG  
MUNICIPAL CODE TITLE 14**

**WHEREAS**, the City of Millersburg has jurisdiction and exercises regulatory control over all public rights-of-way within the City under the authority of the City charter and State law; and,

**WHEREAS**, the City of Millersburg desires to protect the health and safety of the public within the public rights-of-way; and,

**WHEREAS**, the City of Millersburg desires to preserve the integrity of facilities within the public rights-of-way through the regulation of activities and work; and,

**WHEREAS**, the City of Millersburg desires to facilitate the orderly conduct of work within the public rights-of-way and set forth uniform requirements for work;

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MILLERSBURG DO ORDAIN AS FOLLOWS:** Millersburg Municipal Code Chapters 14.11, 14.12, 14.16, and 14.28 are hereby adopted; and,


**FURTHERMORE**, Millersburg Municipal Code Chapters 14.20 and 14.40 are hereby repealed; and,

**FURTHERMORE**, Millersburg Municipal Code Section 14.30.010 is hereby repealed and replaced with the following:

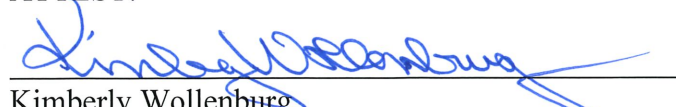
“It is the duty of all owners of land adjoining any street or sidewalk or right-of-way in the City to conform with the requirements of Millersburg Municipal Code Section 7.30.130 for maintenance of vegetation.”

This Ordinance becomes effective thirty (30) days from the date of passage.

**PASSED by the Council this 8th day of September, 2020.**

  
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Jim Lepin  
Mayor

ATTEST:

  
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Kimberly Wollenburg  
City Recorder

**Title 14**  
**STREETS AND SIDEWALKS**

**Chapters:**

**14.04 ENCROACHMENTS**

- 14.04.010 Conditions of license.
- 14.04.020 Limitations.
- 14.04.030 Notices.
- 14.04.040 Liens.

**14.11 USE OF STREETS FOR CONSTRUCTION AND REPAIR**

- 14.11.010 Permit.

**14.12 EXCAVATIONS**

- 14.12.010 Definitions.
- 14.12.020 Permit required.
- 14.12.030 Application for permit.
- 14.12.040 Security.
- 14.12.050 Issuance of permit.
- 14.12.060 Conduct of work.
- 14.12.080 Notice of completion of work.
- 14.12.090 Barricades and safety measures.
- 14.12.100 Liability for accidents.
- 14.12.110 Repairs.
- 14.12.120 Option to City to replace pavement.
- 14.12.130 Applicability to City employees.
- 14.12.140 Emergencies.

**14.16 SIDEWALK REPAIRS**

- 14.16.010 Owner duty – Council power.
- 14.16.020 Notice of defective sidewalks.
- 14.16.030 Permit for repairs.
- 14.16.040 Repairs by City.
- 14.16.050 Assessment for repairs by City.
- 14.16.060 Liability of owners.

**14.28 PEDESTRIAN AND BICYCLE PATHS**

- 14.28.120 Pedestrian and/or bicycle paths – Establishment designated.
- 14.28.130 Pedestrian and/or bicycle paths – Motor vehicles prohibited.
- 14.28.140 Pedestrian and/or bicycle paths – Violation – Penalty.

## **Chapter 14.04 ENCROACHMENTS**

Sections:

- [14.04.010](#) Conditions of license.
- [14.04.020](#) Limitations.
- [14.04.030](#) Notices.
- [14.04.040](#) Liens.

### **14.04.010 Conditions of license.**

The City Manager shall have authority to issue license to occupy public property, including rights-of-way, subject to the following conditions:

(1) The City Manager shall find that the occupation of the public property or right-of-way shall not constitute unreasonable obstruction for public use at the time the license is granted;

(2) A property owner receiving the license shall assume all liability arising from use of the public rights-of-way or public properties;

(3) All licenses issued under this chapter shall be subject to revocation without cause after 90 days' written notice by the City to the licensee;

(4) All licenses issued under this chapter may be revoked for failure to comply with the terms of the license, after the City has given the licensee 10 days' notice or revocation.

### **14.04.020 Limitations.**

Any license issued under this chapter shall include any terms or conditions deemed to be in the public interest within the following limits:

(1) No encroachment onto any existing public sidewalk shall exceed five inches;

(2) In areas where no sidewalks are existing at the time the license shall be granted, the encroachment shall not extend over the established curb line of the street;

(3) No encroachment into a public alley shall exceed four feet.

### **14.04.030 Notices.**

All notices provided to be given in this chapter shall be in writing addressed to the licensee as his/her address appears at the assessor's records of the county in which the property is located. For the purpose of this chapter only, a license issued hereunder shall be to the owner of the property abutting the proposed encroachment upon public way and the license shall be one that runs with the land and the obligations of this chapter and the conditions of license shall attach to the land and succeed to each owner of the land abutting the encroachment.

#### **14.04.040 Liens.**

Upon notice to remove an encroaching structure from public rights-of-way or public property, the licensee shall remove the encroachment within 10 days after receipt of notice. In the event the licensee shall fail to remove the encroachment within 10 days after receipt of notice, the City shall have the authority to remove the encroachment and the cost of removal shall become a lien against the real property abutting the encroachment. The lien so created shall be subject to foreclosure pursuant to the foreclosure laws of the State in the same manner as foreclosure of mechanic's liens.

### **Chapter 14.11 USE OF STREETS FOR CONSTRUCTION AND REPAIR**

Sections:

[14.11.010](#) Permit.

#### **14.11.010 Permit.**

No person shall use or occupy a street, alley, or public sidewalk for performance of work under a building permit except in accordance with the provision of Chapter 33 of the Oregon Structural Specialty Code.

### **Chapter 14.12 EXCAVATIONS**

Sections:

[14.12.010](#) Definitions.  
[14.12.020](#) Permit required.  
[14.12.030](#) Application for permit.  
[14.12.040](#) Security.  
[14.12.050](#) Issuance of permit.  
[14.12.060](#) Conduct of work.  
[14.12.080](#) Notice of completion of work.  
[14.12.090](#) Barricades and safety measures.  
[14.12.100](#) Liability for accidents.  
[14.12.110](#) Repairs.  
[14.12.120](#) Option to City to replace pavement.  
[14.12.130](#) Applicability to City employees.  
[14.12.140](#) Emergencies.

#### **14.12.010 Definitions.**

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(1) "Person" means every natural person, firm, co-partnership, association, or corporation.

(2) "Street" means every way or place open as a matter of right to use of the public for vehicular traffic and lying between curb lines.

(3) "Tunnel" means an excavation requiring the removal of dirt or like material and does not include driving or forcing of pipe through the ground.

#### **14.12.020 Permit required.**

It is unlawful for any person to cut, break, dig up, damage in any manner, undermine, or tunnel under any public street or alley without first complying with the provisions of this chapter in regards to the obtaining of permits, depositing of securities, and the making of applications to the City Engineer. Applications for permits shall be in the form prescribed by the City Engineer. Permits shall be issued on an annual basis or for a limited time and shall specify the extent of the authority granted by the permit.

#### **14.12.030 Application for permit.**

(1) In the event of the application for permit for a limited time and for a specific cut or break in a street or alley, the applicant shall specify his/her name and address, the date of application, the name of the street or alley to be cut or tunneled under; the nature of the street surface or of pavement involved; the purpose of the work; the size and nature of the cut or excavation; the number of days required to complete the work; and an agreement to deposit such securities as required by the City Engineer, to comply with the provisions of this chapter and with the specifications of the City Engineer pertaining to the conduct of the work, to hold the City and its employees harmless against any injury or damage which may result from the actions of the applicant, and to file a report of the work done within 48 hours of its completion. Application for each permit to be issued for a limited time and for a specific cut or break in the street or alley shall be accompanied by a fee as adopted by resolution of the Millersburg City Council.

(2) The application for an annual permit shall be in a form as prescribed by the City Engineer and shall specify the name and address of the applicant; the date of the application; an agreement to deposit such security as required by the City Engineer, to comply with the provisions of this chapter; an agreement to hold the City and its employees harmless against any injury or damage as a result of the actions of the applicant, and to file a report of all work done under the permit within 10 days after the initial cut or break in the alley or street has been made. Application for an annual permit shall be accompanied by a fee as adopted by resolution of the Millersburg City Council.

#### **14.12.040 Security.**

Before the issuance of any permit, the City Engineer shall require the applicant to file with him/her as security either:

(1) In the event an annual permit is requested, a surety bond in the amount of \$5,000. In the event of an application for a permit for one particular cut or break in an alley or street, a surety bond in the amount fixed by the City Engineer, but not to exceed \$2,500. This bond may be left on deposit with the City for a period of one year. The bonds in either of said cases to be conditioned that the applicant will, immediately upon the completion of the work, remove all surplus earth, rubbish, or other materials, replace the pavement cut or undermine in a condition as good as or better than it was before, and keep the same in good repair, at his/her own expense, for a period of time to be designated by the City Engineer, but not to exceed one year from the completion of the work;

(2) In lieu of the above mentioned surety bond, the applicant may file as security cash or certified check in an amount equal to twice the estimate of replacement value of pavement to be cut, together with the costs of reexcavation and refilling with proper materials, if necessary, as determined by the City Engineer, to be held and returned subject to the same conditions as set forth in the case of surety bonds; provided, however, that in the case of unimproved streets, no security shall be required, unless, in the opinion of the City Engineer, such security is necessary for the protection of the public interest.

#### **14.12.050 Issuance of permit.**

If the City Engineer is satisfied that the excavation, cut, or tunnel is feasible and proper, that the application has been made in due form, that adequate security has been filed, as required by provisions of this chapter and upon payment of the permit fee, he/she shall issue a permit which shall designate the name and address of the persons to whom the permit is granted; the date of issuance of the permit; the street or streets to be cut or tunneled under; the estimated time in which the work is to be completed; and such other restrictions as may be deemed necessary or proper by the City Engineer for the safety of the public or protection of public interests.

#### **14.12.060 Conduct of work.**

All work under such permits shall be done in conformity with the provisions of this chapter, the terms of the application and permits, and in a manner approved by the City Engineer. Upon completion of the excavation, cut, or tunnel, all surplus earth, rubbish, or other materials shall be removed immediately and the street surface or pavement shall be replaced in as good as or in better condition than it was before.

**14.12.080 Notice of completion of work.**

All persons shall, on or before the tenth day of the month following the month in which the cut or excavation was completed, report the completion to the City, and report the exact location of the cut or excavation.

**14.12.090 Barricades and safety measures.**

Whenever any person or corporation shall, under authority of this chapter or otherwise, place any obstruction in a street or alley or make any excavation therein for any purpose whatsoever, it shall be the duty of such person or corporation to keep the obstructions or excavation properly safeguarded by substantial barricades and display lighted red lanterns or other lights or flares from dusk until daylight in conformity with such regulations as may be specified by the City Engineer. Whenever, in the opinion of the City Engineer, the public safety is so seriously endangered by such cuts or excavations as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning, and all traffic is properly routed around such barricades, the person to whom the permit for work has been granted shall be responsible for furnishing a night watchperson for that purpose.

**14.12.100 Liability for accidents.**

Every person or corporation having occasion to place any obstruction in any street or alley or to make any excavation therein under provision of this chapter, shall be responsible to anyone for any injury by reason of the presence of such obstruction or excavation on the public highways when the obstructions or excavation is the whole proximate cause of the injury and shall also be liable to the City, in the event that the City is held responsible for any action or claims or otherwise arising out of the presence of the obstruction or excavation on the public highway.

**14.12.110 Repairs.**

All persons to whom such permits are granted shall be personally responsible for the maintenance and repair of the street surface or pavement cut, dug up, damaged, tunneled under, undermined, under the provisions of the permits, in as good as or better condition than before such work was undertaken, at their own expense, and for such a period of time as required by the City Engineer, but not to exceed one year.

**14.12.120 Option to City to replace pavement.**

Whenever, in the opinion of the City Engineer, it would be to the best interest of the City for the City itself to replace or repair the street surface or pavement cut, damaged, tunneled under, or undermined under the provisions of this chapter, such work shall be done by the City under the direction of the City Engineer and the cost of the work shall be either charged to the person to whom the permit

for the cut or excavation has been granted or deducted from security deposited by him/her with the City.

#### **14.12.130 Applicability to City employees.**

The provisions of this chapter shall not be deemed to apply to the construction or maintenance of pavement by the City, by its employees, or by persons operating under contract with the City.

#### **14.12.140 Emergencies.**

In the event of an emergency affecting the public safety, a cut may be made in a street or alley providing that a report of the cut is made to the City Engineer within 48 hours, and all provisions of this chapter complied with as though making an application for an original permit.

## **Chapter 14.16 SIDEWALK REPAIRS**

Sections:

- [14.16.010](#) Owner duty – Council power.
- [14.16.020](#) Notice of defective sidewalks.
- [14.16.030](#) Permit for repairs.
- [14.16.040](#) Repairs by City.
- [14.16.050](#) Assessment for repairs by City.
- [14.16.060](#) Liability of owners.

#### **14.16.010 Owner duty – Council power.**

It is hereby made the duty of all owners of land adjoining any street in the City to maintain in good repair the sidewalks in front of the land. The Council shall have the power and authority to determine the grade and width of all sidewalks, the material to be used, and the specifications for the repair thereof, upon any street or part thereof, or within any district in the City.

#### **14.16.020 Notice of defective sidewalks.**

(1) If the owner of any lot or part thereof or parcel of land allows any sidewalk along the same to become out of repair, it shall be the duty of the City Engineer, his/her deputy or any persons appointed by the Council for that purpose, to give notice to the owner of the property adjacent to the defective sidewalk to repair it. The notice shall direct the owner, agent or occupant of the property to immediately repair the same in a good and substantial manner to comply with specifications for Millersburg's sidewalks.

(2) The notice to repair defective sidewalks shall be mailed by registered or certified mail, postage prepaid, to the record owner or owners of said property, or their agent at the address designated on the Linn County real property tax assessment rolls. The notice to repair defective sidewalks shall contain:

(a) A description of the real property, by street address or otherwise, adjacent to the defective sidewalk.



(b) A direction to repair the defective sidewalk within 60 calendar days from date of receipt of notice.

(c) A description of the work to be done.

(d) A statement that unless the deficiency is corrected within the time specified, the City may correct the deficiency, and the cost of the work shall be assessed against the real property adjacent to the repaired sidewalk.

(3) Upon completion of the mailing of notice to repair defective sidewalks, the persons doing said mailing shall keep an accurate record of the address and date of mailing said notice.

(4) An error in the name or address of the property owner/owners/agent shall not make the notice void, and in such case the notice shall still be sufficient.

#### **14.16.030 Permit for repairs.**

The owner, agent or occupant, before making the repairs, shall obtain from the City Engineer a permit to do so, which shall prescribe the kind of repair to be made, the material to be used and specifications therefor.

#### **14.16.040 Repairs by City.**

If the owner, agent, or occupant of any such lot or part thereof, or parcel of land shall fail, neglect or refuse to make the sidewalk repairs within the time designated, the City Engineer shall make the same, and keep an accurate account of the cost of the labor and materials used in making the repairs in front of each lot or parcel of land and shall report to the Council the cost of the repairs, and a description of the lot or part thereof or parcel of land fronting on the sidewalk upon which such repairs are made.

#### **14.16.050 Assessment for repairs by City.**

The Council shall, at least once each year, by ordinance assess upon each of the lots or parts thereof or parcels of land fronting upon sidewalks which have been so repaired or laid the cost of making the repairs or laying the same including legal, administrative and engineer costs attributable thereto. In each case all such assessments may be combined in one assessment roll and the same shall be entered in the docket of City liens and collected in the same manner as is provided by ordinance for the collection of assessments for local improvements.

#### **14.16.060 Liability of owners.**

The owner or owners of land adjoining any street in the City shall be liable to any person suffering injury by reason of any defect in the sidewalks in front of the land.

## **Chapter 14.28 PEDESTRIAN AND BICYCLE PATHS**

Sections:

[14.28.120](#) Pedestrian and/or bicycle paths – Establishment designated.

[14.28.130](#) Pedestrian and/or bicycle paths – Motor vehicles prohibited.

[14.28.140](#) Pedestrian and/or bicycle paths – Violation – Penalty.

**14.28.120 Pedestrian and/or bicycle paths – Establishment designated.**

The City Council shall by resolution establish designated paths within the City for pedestrian and/or bicycle use only.

**14.28.130 Pedestrian and/or bicycle paths – Motor vehicles prohibited.**

It is unlawful for any person to operate a motorized vehicle upon any designated pedestrian and/or bicycle path within the City, except for City authorized maintenance activities.

**14.28.140 Pedestrian and/or bicycle paths – Violation – Penalty.**

Any person violating the provisions of this chapter shall be subject to those penalties provided in Chapter 1.20.030 of this code.