

ORDINANCE NO. 2320

AN ORDINANCE AMENDING CHAPTER 94 OF THE HERMISTON MUNICIPAL CODE,
ENTITLED “ STREETS AND SIDEWALKS.”

Whereas, the staff of the City of Hermiston is conducting a major review of the City’s Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has a line through it.)

Section 1. Section 94.01 of the Hermiston Municipal Code is amended to read:

94.01 CITY’S JURISDICTION OVER PUBLIC RIGHTS-OF-WAY.

(A) *Definitions.* For the purpose of this ~~section~~ Chapter, the following mean:

(1) ~~CITY. The City of Hermiston.~~

OCCUPANT. Any person occupying property whether under a lease or rental agreement, by permission or sufferance.

(2) ~~PERSON. Individual, corporation, association, firm, partnership, joint stock company and similar entities.~~

PARKING STRIP. The area between the curb, or if no curb exists, the edge of a street, and the abutting property line, but excluding any surfaced sidewalk.

(3) PUBLIC PLACE. Any public street, street right-of-way, place, alley, sidewalk, park, square, plaza or any other public property owned or controlled by the City.

(~~43~~) PUBLIC RIGHTS-OF-WAY. Includes, but ~~is~~ are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

(~~54~~) WITHIN THE CITY. Territory over which the City ~~city~~ now has or acquires jurisdiction for the exercise of its powers.

(B) *Jurisdiction.* The City of Hermiston has control over all public rights-of-way within the City ~~city~~ to the fullest extent provided for in ~~under the authority of the city the city~~ City charter and state law.

(C) *Scope of regulatory control.* The City ~~city~~ has jurisdiction and exercises regulatory control over each public right-of-way whether the City ~~city~~ has a fee, easement or other legal interest in the right-of-way. The City ~~city~~ has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

(D) *City permission requirement.* No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights of way by a franchises, licenses, and permits or other approval issued by the City.

(E) *Obligations of the city City.* The exercise of jurisdiction and regulatory control over a public right-of-way by the City city is not official acceptance of the right-of-way and does not obligate the City city to maintain or repair any part of the right-of-way.

Section 2. Section 94.02 of the Hermiston Municipal Code is amended to read:

94.02 PUBLIC WORKS DESIGN STANDARDS AND SPECIFICATIONS.

This Chapter sets forth the minimum standards for work in the public right-of-way. All shall conform to and be governed by the applicable provisions of the City of Hermiston Public Works Design Standards and Specifications as amended and the terms of any permit.

Section 3. Section 94.03 of the Hermiston Municipal Code is amended to read:

94.03~~2~~ SIDEWALK AND PARKING STRIP REPAIR.

(A) *Duty to maintain.* It shall be the duty of every owner of any lot or parcel of land or part thereof ~~or parcels of land~~ fronting any of the public right-of-way streets of the City city where sidewalks have been constructed or parking strips exist abutting the lots or parcels of land to keep such sidewalks and parking strips in good repair, and in a safe and sound condition, including but not limited to repair of damage caused by a tree or its roots. ~~for the travel of the public, and~~ The owner and occupant shall ~~to~~ keep sidewalks clear of sand, banks of dirt, weeds or other obstructions. Snow and ice shall be removed as provided in §94.10.

(1) The owner of real property responsible for maintaining the adjacent sidewalk or parking strip shall be liable to any person injured or who otherwise sustains damage due to a defective sidewalk or parking strip condition or because of any negligence of owner in failing to maintain the sidewalk or parking strip in good repair and safe and sound condition.

(2) If the City city is required to pay damages for an injury to persons or property caused by the failure of a person to perform the duty which this section imposes, whether by judgment or settlement, ~~the~~ that person shall indemnify or otherwise compensate the City city for the amount of the damages thus paid. The City city may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

(B) *Notice to Repair.* The City Engineer or designee may issue a "Notice to Repair Sidewalk or Parking Strip" if the City Engineer or designee determines that a sidewalk or parking strip is in need of repair of maintenance. The notice shall be posted on the parking strip or property and sent by registered or certified mail to the responsible property owner. The notice shall ~~If the owner of any lot or part thereof or parcel of land shall suffer any sidewalk along the same to become out of repair, it shall be the duty of the City Engineer to post a notice of repair on the adjacent property headed "Notice to Repair Sidewalk"~~

in letters not less than one inch in length and the notice shall, in legible characters, direct the owner, agent or occupant of the property immediately to obtain a permit from the City and to repair the sidewalk or parking strip in accordance with applicable City Standards, all within ten days. It shall inform the owner that failure to do so may result in the City performing the repair at the owner's expense. The notice shall provide that the owner has 10 days to appeal the notice as provided in Chapter 136. ~~same in good and substantial manner, and the City Engineer shall file with the Finance Director/Recorder an affidavit of the posting of the notice stating the date when and the place where the same was posted.~~

(C) Repair. It shall be the duty of the owner, agent or occupant immediately after the posting of the notice and before making repairs to obtain from the City Engineer, or designee, a permit ~~so to do~~ which shall prescribe the kind of repairs to be made, the material to be used and specifications therefor; and the owner, agent or occupant shall make repairs within 20 days from receiving the permit ~~the posting of the notice.~~ If the owner, agent or occupant of any lot or part thereof or parcel of land shall fail, neglect or refuse to make the sidewalk or parking strip repairs within the time designated, the ~~Council~~ City Manager or designee may authorize the City Engineer to make the same, ~~the City Engineer to keep an accurate account of the cost of labor and materials in making the repairs in front of each lot or part thereof or parcel of land fronting on the sidewalk upon which repairs are made~~ repairs at the owner's expense.

(D) ~~The Council shall, at the first regular meeting in the month of September of each year, examine the reports upon sidewalk repairs filed by the City Engineer in the office of the Finance Director/Recorder during the preceding year, and by ordinance assess upon each of the lots or parts thereof or parcels of land fronting upon sidewalks which have been so repaired, the cost of making repairs and 10% additional to defray the cost of notice, engineering and supervision. In each case all assessments may be combined in one assessment roll and the same shall be entered on the docket of city liens and collected in the same manner as is provided for special assessments for street improvements.~~

Appeal of notice. The property owner may file an appeal of the notice within 10 days as provided in Chapter 136.

(E) Abatement and repairs. Failure of the owner to make the repairs specified in the Notice within 20 days, if no appeal is filed, or as provided in an order on appeal, constitutes a public nuisance. The City may, without further notice make the repairs and assess the cost thereof against the property as provided in HMC 92.16.

(F) Emergency repairs. Notwithstanding any other provision, the City may make repairs to a sidewalk or parking strip as it deems necessary to address an immediate public safety risk. Notice shall be provided to the property owner as is reasonable under the circumstances. The cost thereof may be assessed against the property as provided in HMC 92.16. Nothing in this Chapter 94 precludes the City from making sidewalk or parking strip repairs at its expense as it deems appropriate, but this Chapter imposes no duty on the City to do so.

Section 4. Section 94.04 of the Hermiston Municipal Code is amended to read:

94.043 PLANTING AND MAINTENANCE OF TREES AND COMMUNITY TREE BOARD.

(A) ~~Planting trees in public place. No trees or shrubs shall be planted in, or removed from, any public parking strip or other public place in the city without permission from the City Manager or his duly authorized representative.~~

Community Tree Board. The Parks and Recreation Committee shall act as the Community Tree Board as established in §32.33 and advise the City Council on all matters pertaining to this subchapter.

(B) *Planting trees in a public place.* No trees or shrubs shall be planted in, or removed from, any public parking strip or other public place in the City city without approval ~~permission from~~ of the City Manager, designee, or the Parks and Recreation Committee acting as Community Tree Board as established in Chapter 32.33 ~~or his duly authorized representative.~~

(B)C) *Street tree plans.* The City Council may adopt a street tree plan for any or all streets or public places in the City.

(1) All trees and shrubs hereafter planted in any public parking strip or other public place in the City city shall conform as to species and location to the applicable street tree plan, if any, for the public place, street, or portion thereof.

(2) Street tree plans for streets or public places within the City city shall be adopted by resolution of the City Council. These plans shall consist of maps of streets, blocks, or portions of streets and public places where the planting is permitted and shall by appropriate legends and symbols specify the species and location of the trees and shrubs which may be planted along each street or block or portion thereof or public place shown by the map thereof.

(3) In formulating and adopting street tree plans, the public safety in the use of streets, sidewalks, and public places, the protection and preservation of public improvements, and the beautification of public places shall be taken into consideration by the following means:

(a) Species of trees and shrubs shall be chosen with due regard to their size, appearance, rate, and manner of growth and other characteristics and to the size, nature, and construction and traffic volume on the street or other public place involved; and

(b) Regulations regarding location and setback of trees permitted in public parking strips and other public places shall be adopted with due regard to traffic visibility, utility lien clearance, and relative location of public paving and other facilities.

(C)D) *Certain trees prohibited.* The City Council may, by resolution, designate trees that are prohibited from being planted in any public parking strip due to potential for damage, disease or interference with use of the public rights-of-way. No person shall plant in any public parking strip the following trees: Poplar, Russian Olive, Chinese Elm, Cottonwood, and certain Locust. No person shall plant Willow, Cottonwood, or Poplar trees anywhere in the City city unless the City Manager or designee ~~his duly~~

authorized representative approves the site as one where the tree roots will not interfere with a public sewer.

~~(D)~~ E *Trimming, and pruning, or removal of trees.* No owner shall permit any tree or shrub, or part thereof, to overhang any public street, alley, or sidewalk at a height of less than 14 feet above the street or alley or less than 10 feet above the sidewalk or that in any other way endangers or is likely to endanger the security or usefulness of any public street, sewer, or sidewalk. The City Manager or designee ~~his duly authorized representative~~ may cause to be trimmed, pruned, or removed any trees, shrubs, plants, or vegetation in any public parking strip or other public place, or may require any property owner to trim, prune, or remove any trees, shrubs, plants, or vegetation in a parking strip s abutting upon the owner's property; ~~and failure to comply therewith, after 30 days' notice by the Finance Director/Recorder, shall be deemed a violation of this section.~~

~~(E)~~ F *Trimming pruning or removal of overhanging trees.* If any tree or shrub, or part thereof, overhangs any public street or alley or sidewalk at a height of less than 14 feet above the street or alley surface or less than ten feet above the sidewalk or in any other way endangers or is likely to endanger the security or usefulness of any public street, sewer, or sidewalk, the same is hereby declared to be a public nuisance and may be abated as provided in §92.14.

Abatement and reimbursement. Failure of the owner to comply with the notice within 20 days if no appeal is filed or failure of the owner to comply with an order on appeal within 20 days constitutes a public nuisance. The City may without further notice perform the maintenance and assess the costs thereof against the property as provided in Chapter 92.16.

~~(F)~~ G *Right to appeal.* Appeals from orders made under sections on trimming, pruning or removal may be made to the City Council.

Emergency maintenance. Notwithstanding any other provision, the City may take such steps to prune or remove trees or vegetation in a parking strip as it deems necessary to address an immediate public safety risk. Notice shall be provided to the property owner as is reasonable under the circumstances. The cost thereof may be assessed against the property as provided in Chapter 92.16. Nothing in this Chapter 94 precludes the City from maintaining vegetation in the public right-of-way at City expense as it deems appropriate and this Chapter imposes no duty on the City to do so.

~~(G)~~ H *Damage to trees in public place prohibited.* No person shall abuse, destroy, or mutilate any tree, shrub, or plant in a public parking strip or in any other public place, or attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster, handbill, or other thing to or on any tree growing in a public place, or cause or permit any wire charged with electricity to come into contact with any tree, or allow any gaseous, liquid, or solid substance which is harmful to trees to come in contact with their roots or leaves.

Section 5. Section 94.054 of the Hermiston Municipal Code is amended to read:

94.054 RUNNING OF WATER ON STREETS PROHIBITED.

(A) Prohibited conduct. No person, ~~firm or corporation~~ shall cause, permit or allow any irrigation water or water used for domestic or other purposes, including but not limited to swimming pool water, to run upon or cross any of the streets of the City city unless the same is confined in properly constructed flumes, ditches, pipelines or culverts. ~~and no~~ No ditches, flumes, pipelines or culverts for water shall be constructed in, upon or across any of the streets of the City city until a permit is ~~therefor shall first be~~ obtained from the Finance Director/Recorder of the City city, and any Any ditch, flume, pipeline or culvert shall be constructed under the supervision of the City Engineer or designee ~~and of material as the Engineer may prescribe~~ with materials prescribed by the City. No person shall discharge water in violation of any provision of law, including HMC 51.020 or 51.092.

(B) Repair. It shall be the duty of every person who uses such ditch, flume, pipeline or culvert for the transmission of water, or whose land is served by water which passes through the ditch, flume, pipeline or culvert to keep the same in good repair.

94.05 Definitions.

~~For the purpose of §§94.05 through 94.10, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~PERSON. Any natural Person, firm, corporation, partnership, association or other legally identifiable group, whether he or it is acting for himself or itself or as the clerk, servant, employee or agent of another.~~

~~PREMISES OPEN TO THE PUBLIC. Has the same meaning as that set forth in ORS 801.400.~~

Section 6. Section 94.06 of the Hermiston Municipal Code is amended to read:

94.06 DRIVING ON SIDEWALKS.

It shall be unlawful for any person to ride or drive any animal or vehicle ~~within any city park or~~ upon, over, or across any sidewalk, except where a proper incline or crossing is provided for that purpose. This section does not apply to vehicles being used to maintain these areas or when ~~specific~~ permission has been granted by the City city to do so.

Section 7. Section 94.07 of the Hermiston Municipal Code is amended to read:

94.07 OBSTRUCTING STREETS AND SIDEWALKS.

It shall be unlawful for any person or persons to gather or to stand upon any sidewalk or street so as to prevent, interrupt or obstruct the travel or free passage over the same by the public, or to place or deposit any article which has the same effect. This section does not apply when specific permission has been granted by the City city to do so.

Section 8. Section 94.08 of the Hermiston Municipal Code is amended to read:

94.08 VENDING GOODS FROM STREETS OR SIDEWALKS.

It shall be unlawful for any person to use or occupy any portion of a street or sidewalk for the purpose of vending goods, services, wares or merchandise by public outcry or otherwise, except when granted specific permission by the City to do so pursuant to Chapter 116.

Section 9. Section 94.11 of the Hermiston Municipal Code is amended to read:

94.11 MAINTENANCE OF DRAINAGE SWALES.

(A) ~~Definitions.~~ For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BIOSWALE. Broad open channel that is lined with grass vegetation, which acts as a filter to remove pollutants from runoff.

~~PROPERTY OWNER. A person having any legal or equitable interest in property, including, but not limited to, a purchaser, lessee, lienholder, holder of any security interest in such property, or tenant.~~

(B) *Maintenance required.* The property owner must maintain all bioswales on or abutting their property as installed at the time of swale construction. The owner shall maintain the grade, slope, depth, plantings, grass and all other facilities necessary for the operation of the swale.

(C) *Filing of plans.* The project engineer shall file the as-built drawings for each street improvement containing swales. The plans will be kept on file with the Building Department.

(D) *Nuisance.* Any bioswale determined to be non-functioning by the City Manager or designee ~~the Manager's duly authorized representative~~ must be repaired to the original design standard within 30 days of notice to the property owner or it will be declared a nuisance. The nuisance will be abated following the procedure in Chapter 92 § 92-14.

(E) *Modifications.* An owner may apply to the City for a permit to modify a bioswale. The City may grant such modification if the City determines that the bioswale, as modified, will operate as originally approved, or better, and meets any applicable standards or due to changing circumstances is no longer needed.

NUMBERING AND NAMING STREETS

Section 10. Section 94.20 of the Hermiston Municipal Code is amended to read:

94.20 UNIFORM SYSTEM.

All streets shall be designated and all structures fronting on streets, except accessory structures, shall be numbered in accordance with this subchapter and the maps and plans on file in the office of the City Planner or designee ~~Engineer~~.

Section 11. Section 94.21 of the Hermiston Municipal Code is amended to read:

94.21 BASE LINES.

First Street and First Street extended to the south along the section line shall be the north-south base line; Main Street east from First Street and Hermiston Avenue west, from First street shall constitute the east-west base line for the establishment of quadrants, with each base line extended to the ~~City~~ city limits.

Section 12. Section 94.24 of the Hermiston Municipal Code is amended to read:

94.24 NUMBERING OF LOTS AND STRUCTURES.

A lot or structure fronting a street shall be numbered as follows:

(A) Even numbers shall be assigned lots and structures to the right of an observer facing out from the base lines and uneven numbers to the opposite side.

(B) Numbers shall be fixed by grids as established by the maps and plans on file in the office of the City ~~Planner or designee~~ Engineer. Whenever feasible, each grid section shall encompass a square block and each grid's length shall be allowed 100 numbers. Numbers shall run consecutively with a new 100, starting at each grid line.

(C) Owner of groups of dwelling units may place an assigned number upon the principal building or office of the group and use numbers or letters to designate each of the units as may be required.

Section 13. Section 94.25 of the Hermiston Municipal Code is amended to read:

94.25 AUTHORITY TO ASSIGN NUMBERS.

In conformity with the provisions of this subchapter, the City ~~Planner or designee~~ Engineer shall assign numbers to all lots and structures now or hereafter to be constructed. A person who obtains a building permit for construction of a new building shall, at the time of receipt of the permit, obtain from the City ~~Planner or designee~~ Engineer the number for the building.

STREET EXCAVATIONS

Section 14. Section 94.35 of the Hermiston Municipal Code is amended to read:

94.35 SHORT TITLE.

This subchapter, §§ 94.35 to 94.52, shall be known and may be cited as the Street Excavation ~~subchapter~~ Ordinance of the city.

Section 15. Section 94.36 of the Hermiston Municipal Code is amended to read:

94.36 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~CITY MANAGER. The City Manager or his designate, including the Street Superintendent, city inspectors and others.~~

EXCAVATION. Any opening in the surface of a public place made in any manner whatsoever, except an opening into a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

FACILITY. Pipe, pipeline, tube, main, service trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer or any other material, structure or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under of over any public place.

~~PUBLIC PLACE. Any public street, street right of way, place, alley, sidewalk, park, square, plaza or any other public property owned or controlled by the city.~~

SUBSTRUCTURE. Any pipe, conduit, duct, tunnel, manhole, vault, buried cable or wire or any other structure located below the surface of any public place.

VITAL STRUCTURES. Those elements of the fire and safety protection system of the City city and those elements of public and private utility systems which are vital to the health and safety of the City city. (Ord. 1942, passed 11-10-97)

Section 16. Section 94.37 of the Hermiston Municipal Code is amended to read:

94.37 PERMIT APPLICATION FOR EXCAVATING STREETS.

(A) No excavation permit shall be issued unless a written application for the issuance of an excavation permit is submitted to the City Manager. The ~~written~~ application shall state that the applicant agrees to comply with prescribed procedures for making and restoring cuts and to make the necessary payments for work performed by the City city. The application, when approved and signed by the City Manager or designee, shall constitute a permit. The permit fees shall be in amounts as established by resolution of the City Council. Fees shall be doubled if the start of construction occurs prior to application of the permit.

(B) One permit may cover more than one cut providing the following conditions are met:

- (1) Cuts shall be within a 400-foot section of street.
- (2) All work to all cuts is performed by the same contractor.
- (3) Each cut is listed on the cut permit with a map showing the location and size.

(C) No permit shall be issued ~~be given to an applicant~~ without information regarding the contractor performing the restoration of the City city right-of-way. If more than one contractor is used to perform the cut restoration, or the contractor changes, a new cut permit shall be required.

(D) The contractor shall make reasonable efforts to inform utilities and affected property owners before new paving or resurfacing is performed.

Section 17. Section 94.38 of the Hermiston Municipal Code is amended to read:

94.38 ROUTING AND PROTECTION OF TRAFFIC.

- (A) The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public, provided that the City Manager may permit the closing of streets and alleys to all traffic for a period of time prescribed as determined necessary by the City ~~by him, if in his opinion it is necessary.~~
- (B) The permittee shall maintain safe crossings for two lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians at intervals of not more than three hundred feet. If an excavation is made across a public street, alley or sidewalk, at least one safe crossing shall be maintained when possible for vehicles and pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one half of the sidewalk width shall be maintained along the sidewalk line.
- (C) It shall be the duty of every person making an excavation in or upon any public place to place and maintain barriers and warning devices necessary for safety according to specifications from the Manual on Uniform Traffic Control Devices and the Oregon Department of Transportation specifications. Warning signs shall be placed far enough back of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, all in accordance with the specifications from the Manual on Uniform Traffic Control Devices and the Oregon Department of Transportation specifications. The permittee shall notify the City ~~city~~ when the public street is again usable to traffic. The permittee ~~He~~ shall see that all barriers are removed at this time so that normal traffic routing can proceed. Barriers shall meet Oregon Department of Transportation specifications.
- (D) Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit a light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting materials may be used to supplement, but not replace, light sources.
- (E) The permit for a street excavation may require that the permittee give notification to various public agencies and to the general public. In such case, the permit shall not be valid until the notice is given.

Section 18. Section 94.39 of the Hermiston Municipal Code is amended to read:

94.39 RELOCATION AND PROTECTION OF CITY-OWNED FACILITIES.

The permittee shall not interfere with any existing City ~~city~~-owned utility without the written consent of the City Manager or designee. If it becomes necessary to relocate an existing City ~~city~~-owned utility, this shall be done by the City ~~city~~. No utility owned by the City ~~city~~ shall be moved to accommodate the

permittee unless the cost of the work be borne by the permittee. The City may require a bond, deposit or other security for payment.

Section 19. Section 94.41 of the Hermiston Municipal Code is amended to read:

94.41 PRESERVATION OF MONUMENTS.

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision or a precise survey reference point or a permanent survey bench mark within the City city shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the City Manager or designee to so do. Permission to remove or disturb the monuments, reference points or benchmarks ~~bench marks~~ shall only be granted upon condition that the person applying for the permission shall pay all expenses incident to the proper replacement of this monument by the City city.

Section 20. Section 94.43 of the Hermiston Municipal Code is amended to read:

94.43 BREAKING THROUGH PAVEMENT.

(A) The City Manager or designee shall require cutting of pavement surfaces ahead of excavations in a manner as to confine pavement damage to the limits of the trench. Pavement wearing surface cuts shall be made with a sharp-edged ~~sharp-edged tool~~ or an asphalt grinding machine designed for such purposes which will result in a smooth edge along the sides of the excavation.

(B) Sections of sidewalks shall be removed to the nearest score line or saw cut edge.

(C) Unstable pavement shall be removed over cave-outs and over-breakers, and the subgrade shall be treated as the main trench.

(D) Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.

(E) Cutouts outside of the trench lines must be normal or parallel to the trench line.

(F) Boring or other methods to prevent cutting of new pavement may be required by the City Manager or designee.

(G) The permittee shall not be required to repair damage existing prior to excavation unless the ~~his~~ cut results in small floating sections that may be unstable, in which case the permittee shall remove and refill the area.

Section 21. Section 94.44 of the Hermiston Municipal Code is amended to read:

94.44 DEPTH OF STRUCTURES.

(A) No person shall, without written permission of the City Manager or designee, install any substructure, except manholes, vaults, valve casings, culverts and catch basins at a distance less than:

- (1) Streets. Thirty inches below the established street or alley grade.
 - (2) Parkways.
 - (a) The minimum depth of any substructure shall be 24 inches below established street or alley grade when the substructure parallels the parkway.
 - (b) The minimum depth of any substructure shall be 24 inches below the top of the established sidewalk or curb when a substructure is at right angles to the parkway.
 - (3) Other public places. The minimum depth of any substructure in any other public place shall be 24 inches below the surface; provided, however, that the City Manager or designee may permit a lesser depth in special cases.
- (B) Nothing in this section shall impose a duty upon the permittee to maintain the specifications as required herein upon subsequent changes of grade in the surface unless the grade in the substructure interferes with the maintenance of, or travel on, a public street.

Section 22. Section 94.45 of the Hermiston Municipal Code is amended to read:

94.45 BACKFILLING.

~~(A)~~ Selected backfill material shall be placed in trenches containing pipe simultaneously on both sides of the pipe for the full width of the trench in layers about six inches in depth and tamped thoroughly with a pneumatic tamper. The entire depth of the trench shall be thoroughly compacted with selected material and by means of hand or mechanically operated tampers, in layers of approximately six inches and shall be brought to the required surface grade without damage to the pipe.

~~(B) In lieu of the backfilling procedure specified above, river run gravel or crushed rock or gravel may be used for backfilling that portion of the trench more than six inches above the top of the pipe, provided the maximum size of material shall not exceed four inches in diameter and shall be of uniform graduation with 20% or more passing a 1/4 inch square screen, 3/4" - 0 crushed rock shall be placed in the final 12 inches of the trench and compacted in six inch lifts, to a smooth finished grade equal to the existing surface.~~

Section 23. Section 94.47 of the Hermiston Municipal Code is amended to read:

94.47 INSPECTIONS.

The City Manager or designee shall have inspections made as are reasonably necessary in the enforcement of this subchapter. The permittee shall notify the City ~~city~~ prior to backfilling an excavation so that proper inspection may be made.

Section 24. Section 94.48 of the Hermiston Municipal Code is amended to read:

94.48 MAINTENANCE OF DRAWINGS.

Every person owning, using, controlling or having an interest in substructures under the surface of any public place used for the purpose of supplying or conveying gas, electricity, communication impulse, water, steam, ammonia or oil in the City shall file with the City Manager ~~within 120 days after adoption of this chapter~~ a map or set of maps each drawn to a scale of not less than one inch to 200 feet showing, in detail, the location, size, description, and date of installation, if known, of all substructures, except service line designed to serve a single property owner, beneath the surface of the public place belonging to, used by or under the control of the person having any interest. Any person who has not previously submitted such map(s) shall do so within 120 days of adoption of this subchapter. Every person and shall file with the City Manager within 15 days after the first day of January of each and every year a corrected map or set of maps each drawn to the scale including all installations or modifications made during the previous year to and including the last day of the year provided, however, that a public utility owner may at its option provide corrected map ~~atlas~~ sheets at more frequent intervals.

Section 25. Section 94.49 of the Hermiston Municipal Code is amended to read:

94.49 CLEAN UP OF AREA.

Immediately after completion of the work, the permittee shall, at the permittee's ~~his or its own~~ expense, clean up and remove all refuse and unused materials of any kind resulting from the work, ~~and~~ Upon ~~upon~~ failure to do so, within 24 hours after having been notified to do so by the City Manager, the work may be done by the City and the cost thereof charged to the permittee.

Section 26. Section 94.50 of the Hermiston Municipal Code is amended to read:

94.50 EMERGENCY ACTION.

Nothing in this subchapter shall be construed to prevent the making of the excavations as may be necessary for the preservation of life or property or for the location of trouble in a conduit or pipe or for making repairs provided that the person making the excavation shall apply to the City Manager for a permit on the first working day after the work is commenced.

Section 27. Section 94.51 of the Hermiston Municipal Code is amended to read:

94.51 LIABILITY OF CITY.

This subchapter shall not be construed as imposing upon the City or any official or employee any liability responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder, nor shall the City or any official or employee thereof be deemed to have assumed any liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or by the approval of any excavation work.

Section 28. Section 94.52 of the Hermiston Municipal Code is reserved.

94.52 RESERVED. ~~PENALTY CHARGE FOR EXCAVATING NEWLY SURFACED STREETS.~~

~~In order to conserve new paving and resurfacing of streets, pavement cuts are prohibited therein except for emergency repairs or upon payment of a penalty charge. The maximum period of time for which a penalty shall apply to a street shall be five years. The penalty shall be five times the cost of restoring the pavement surface during the first year, four times the restoration costs during the second year, three times the restoration costs during the third year, two times the restoration costs during the fourth year and equal to the restoration costs during the fifth year. This penalty fee shall be computed in addition to the normal resurfacing charge and shall be computed from the date at which the city accepted the newly paved surface. In order to avoid the necessity of these penalties, the city shall inform utilities and affected property owners before new paving or resurfacing is performed. Provided, however, this section shall not apply to any necessary resurfacing of utility lines serving existing structures. (Ord. 1942, passed 11-10-97)~~

DRIVEWAY CONSTRUCTION

Section 29. Section 94.65 of the Hermiston Municipal Code is amended to read:

94.65 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS DRIVEWAY APPROACH. A driveway approach providing ingress and egress to any property other than residential property.

CORNER. The point of intersection of the lines of two street curb faces extended into the street intersection.

CURB PARKING SPACE. A length of curb equal to 18 feet where an automobile or other vehicle can park.

CURB RETURN. That portion of a curb next to a driveway approach which includes the radius of curvature or the ramp-type lug on commercial or industrial type pavements and which connects the driveway approach to the street curb.

DRIVEWAY. A place on private property for the operation of automobiles and other vehicles.

DRIVEWAY APPROACH. An area, construction, or facility between the roadway of a public street and private property intended to provide access for vehicles from a roadway of a public street to private property. For clarification, a Driveway Approach must provide access to something definite on private property such as a parking area, a driveway, or a door at least seven feet wide intended and used for the entrance of vehicles.

OUTSIDE SIDEWALK LINE. A line parallel to the property line lying along the edge of the sidewalk nearest the street roadway or curb; or where no sidewalk exists, a line in the street right-of-way parallel to and four feet from the line of the private property.

PARCEL OF LAND. A lot or lots, parcel or parcels or a tract ~~officially registered~~ under one ownership.

RESIDENT DRIVEWAY APPROACH. A driveway approach providing ingress and egress to residential property.

Section 30. Section 94.66 of the Hermiston Municipal Code is amended to read:

94.66 PROHIBITED ACTIVITY.

- (A) It shall be unlawful for any person to cut, break out, or remove any curb along a street or alley without first obtaining a permit for a driveway approach, as hereinafter provided.
- (B) It shall be unlawful for any person to construct, alter, or extend, or permit or cause to be constructed, altered, or extended, any driveway approach which can be used only as a parking space or area between the curb and private property.
- (C) All permits granted for the use of public property under the terms of this subchapter shall be revocable in the discretion ~~at the will of the City~~ Manager or designee ~~Council~~.

Section 31. Section 94.67 of the Hermiston Municipal Code is amended to read:

94.67 PERMIT APPLICATION AND ISSUANCE.

- (A) Any person desiring to construct a driveway approach across any curbing, parking, sidewalk, or sidewalk space shall first make application to the City Engineer or designee for a permit therefor. The application shall be in writing upon a form provided by the City ~~city, and made available at the office of the City Engineer~~. The application shall contain information showing type of construction, the width of the proposed driveway approach, the location of the driveway approach by lot and block number, as well as by street and house number, and other information as may be required by the City Engineer. The application shall be filed by the property owner desiring to construct the driveway approach or by their ~~his or her~~ duly authorized agent.
- (B) The permit shall be issued, at no charge, ~~by the City Engineer if~~ the City Engineer or designee determines ~~he has determined that the~~ application complies ~~applicant has complied with the terms of this subchapter.~~

Section 32. Section 94.68 of the Hermiston Municipal Code is amended to read:

94.68 SUPERVISION OF CONSTRUCTION.

All work done under a permit issued under ~~in compliance with~~ this subchapter shall be under the direction and supervision of the City Engineer or designee, who is hereby authorized to make the necessary rules, regulations, and specifications with respect to materials for and method of construction of driveway approaches. A permit issued under the provisions of this subchapter may be revoked, ~~by the City Engineer~~ at any time, if the City Engineer or designee determines ~~he is satisfied that the work is not being performed according to the~~ terms of the permit and this subchapter ~~provision hereof~~.

Section 33. Section 94.69 of the Hermiston Municipal Code is amended to read:

94.69 CONSTRUCTION REQUIREMENTS.

In addition to the rules, regulations, and specifications promulgated by the City Engineer or designee with respect to driveway approaches, the following requirements shall be complied with in the work done under the provisions of this subchapter.

- (A) The outside of the driveway approach shall be a straight grade from the top of the curb to the grade of the outside sidewalk line.
- (B) No curb cuts shall be made beyond any property line as projected except when consented to in writing by the adjoining property owner involved.
- (C) The top of the paving of the driveway slab at the back of the curb line shall be 1 5/8 inches above the flow line of the gutter and shall slope in a straight line to the flow line of the gutter, and shall be constructed in a manner that will not interfere with or obstruct the drainage in the street.
- (D) The owner and contractor shall protect the public from injury or damage during the construction of driveway approaches, and it is herein stipulated, as an essential condition of the issuance of a permit, that the ~~City city~~ shall not be liable for damage which may arise from the prosecution of work.

Section 34. Section 94.70 of the Hermiston Municipal Code is amended to read:

94.70 WIDTH AND LOCATION.

- (A) Driveway approaches, regardless of zoning, shall be a maximum of 36 feet plus a transition of at least five feet on each side of the driveway cut from the edge of the curb cut to the top of the curb.
- (B) Where the frontage of the parcel of land does not exceed 60 feet in width, there may be constructed only one driveway approach.
- (C) Where the frontage of the parcel of land exceeds 60 feet in width, the cumulative total of all curb cuts for driveway approaches shall not exceed 60% of the frontage of the parcel of land unless a different percentage is required by the City Engineer or designee based upon site specific conditions relating to drainage, access spacing, or other criteria deemed relevant by the ~~City city~~. Wherever more than one driveway is proposed for a parcel, at least 25 feet shall separate each driveway approach.
- (D) Driveway standards for all driveways constructed after the effective date of Ordinance 2268 (2018) ~~the ordinance codified in this section~~ shall conform to the requirements of § 157.150, the *City of Hermiston Standard Plans and Specifications*, and the spacing standards in the *Hermiston Transportation System Plan*.

Section 35. Section 94.71 of the Hermiston Municipal Code is amended to read:

94.71 COOPERATION WITH BUILDING INSPECTOR.

Any plans submitted to the Building Inspector for approval which propose ~~include or involve~~ unusual driveway approaches or problems shall be referred by the Building Inspector to the City Engineer or

designee for his approval before a building permit shall be issued. Issuance of a building permit does not substitute for the requirement to obtain a driveway permit from the City Engineer or designee if otherwise required by this subchapter. (Ord. 490, passed 8-23-63)

Section 36. Section 94.72 of the Hermiston Municipal Code is amended to read:

94.72 MAINTENANCE AND REMOVAL.

(A) Every driveway approach or entrance to abutting property shall be maintained and kept in a safe condition by the owner or occupant of the abutting property, and any driveway approach which shall not be so maintained and kept or which shall interfere with or obstruct the drainage carried by a street or the use of the street for the purpose of travel shall be repaired to conform with the specifications of this ordinance and the City Engineer or designee or be removed. Upon the removal of any driveway approach, that portion of the street occupied by the same shall be restored as nearly as practicable to its former condition and all curbing of sidewalks shall be replaced, ~~all by and~~ at the expense of the owner of the abutting property.

(B) Whenever any driveway approach constructed under a permit issued by ~~the provisions of this subchapter chapter~~ no longer provides access for vehicles to a parking area, structure or other lawful use of the property for a period of one year or more ~~something definite on private property, such as a parking area, a driveway, or a door at least seven feet wide, intended and used for the entrance of vehicles,~~ the driveway approach permit shall be deemed terminated and the driveway shall be removed ~~forthwith~~, and that portion of the street occupied by the driveway approach shall be restored as nearly as practicable to its former condition and all curbing of sidewalks shall be replaced, ~~all by and~~ at the expense of the owner of the abutting property.

Section 37. Section 94.73 of the Hermiston Municipal Code is amended to read:

94.73 UNUSUAL CONDITIONS.

The City Engineer or designee is hereby authorized to grant in writing variances from the strict application of the provisions of this subchapter ~~chapter~~, provided the City Engineer or designee ~~he first~~ determines that the following conditions are present:

(A) The exception or variance desired arises from peculiar physical conditions not ordinarily existing in similar districts in the City ~~city~~ or is due to the nature of the business or operation on the abutting property.

(B) The exception or variance desired is not against the public interest, particularly safety, convenience, and general welfare.

(C) The granting of the permit for the exception or variance will not adversely affect the rights of adjacent property owners or occupants ~~tenants~~.

(D) That the strict application of the terms of this subchapter will work unnecessary hardship on the property owner or occupants ~~tenant~~.

Section 38. Section 94.99 of the Hermiston Municipal Code is amended to read:

94.99 PENALTIES PENALTY.

(A) Any person failing to comply with Genreal Provisions §§ 94.01 to 94.11, including but not limited to repair, commits a Class B violation.

~~The owner, agent or occupant of any lot or part or parcel of land abutting or fronting upon any sidewalk which is now or may hereafter be constructed upon any street of the city, who shall suffer or permit the accumulation of sand drifts or banks of dirt or the growth of weeds or the accumulation of filth and trash or other obstruction upon the sidewalk abutting upon his or her property commits a Class A violation.~~

~~(Ord. 56, passed 5-31-11; Am. Ord. 1632, passed 6-22-87; Am. Ord. 1976, passed 10-26-98)~~

~~(B) Any person, firm, or corporation violating any provision of §94.03, or failing to comply therewith, commits a Class A violation. (Ord. 696, passed 4-26-71; Am. Ord. 1632, passed 6-22-87; Am. Ord. 1976, passed 10-26-98)~~

~~(C) Any person who shall fail to make any repair required by §94.04 within five days after notified so to do by the Finance Director/Recorder commits a Class D violation.~~

~~(Ord. 92, passed 7-5-17; Am. Ord. 1632, passed 6-22-87; Am. Ord. 1976, passed 10-26-98)~~

~~(D) Offenses set forth in §§94.05 through 94.10 are Class A violations. Any person who shall attempt to commit any of the offenses mentioned in this division, but who for any reason is prevented from consummating the act, shall be guilty of an offense of attempt to commit as to that offense. (Ord. 1976, passed 10-26-98; Am. Ord. 1976, passed 10-26-98)~~

~~(E)~~ B Any person, firm or corporation violating any of the who fails to comply with any provisions of Numbering and Naming Streets, §§94.20 through 94.26, commits a Class A D violation. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punished.

~~(F)~~ C Anyone person who fails to comply with who violates any provision of Street Excavation, §§94.35 through 94.51, commits a Class A violation. Every full business day during which a business activity continues to be conducted in violation of §§94.35 through 94.51 shall be considered a separate offense. Offenses under §§94.35 through 94.51 shall be heard by the Board of Appeals as a violation and not as a crime. As a violation, there is no right to jury trial or court appointed counsel.

~~(G)~~ D Any person who fails to comply with violating any of the provisions of Driveway Construction, §§94.65 through 94.73, or causing, permitting, or suffering the same to be done, commits a Class A violation. Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of §§94.65 through 94.73 is committed, continued or permitted. The issuance or granting of a permit shall not be deemed or construed to be a

~~permit for, or approval of, any violation of §§94.65 through 94.73.~~ (Ord. 490, passed 8-23-63; Am. Ord. 1632, passed 6-22-87; Am. Ord. 1976, passed 10-26-98)

(E) Any person who attempts to violate any provision of this Chapter commits a class D violation.

(F) Any owner of property or permittee who permits or suffers a failure to comply with or violation of this Chapter shall be deemed to have committed the violation. If the property owner and the permittee or occupant are separate persons, each shall be subject to prosecution of a violation.

(G) Each day that a violation continues, including a failure to repair, shall be a separate violation.

(H) Nothing in this Chapter restricts the authority of the City to enforce its provisions by an action for injunctive relief or damages. Violation of the Chapter may be deemed a nuisance and abated and enforced as provided in Chapter 92. These remedies are in addition to and not in lieu of prosecution of a violation

Section 39. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 28th of June 2021.

SIGNED by the Mayor this 28th day of June 2021.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC, City Recorder