

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: William T. Lichter, Village Manager
DATE: January 27, 2004 (B of T) Date: February 5, 2004
TITLE: BOT 04-01: Code Amendment Regarding Street Openings and Excavations
SUBMITTED BY: Department of Community Development *DGH*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development staff transmits for your consideration its recommendation regarding the above-referenced ordinance. This ordinance has been recommended for approval by the Public Works Committee. The Departments of Community Development and Public Works also recommend approval. (ALL DISTRICTS)

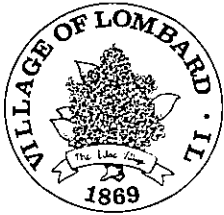
A notice was mailed to the homebuilders and contractors that are active in the Village in order to fully notify them of the proposed amendment. To date, staff has received no responses. In addition, a public hearing has been scheduled for the February 5th Village Board meeting, although such a hearing is not actually required by Code.

Fiscal Impact/Funding Source:

There will be no fiscal impact to the Village and no funding is required.

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *W. T. Lichter* _____ Date *1/28/04*

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David Gorman, PE, Development Engineer *DG*

SUBJECT: BOT 04-01; Code Amendment Regarding Street Openings and Excavations

DATE: January 27, 2004

Attached for your consideration and submittal to the Village President and Board of Trustees is an ordinance to amend Village Code §97.070 through §97.081. The ordinance would amend the pavement restoration regulations.

A notice was mailed to the homebuilders and contractors that are active in the Village in order to notify them of the proposed amendment. To date, staff has received no responses. In addition, a public hearing has been scheduled for the February 5th Village Board meeting, although such a hearing is not required by Code.

PERCEIVED PROBLEMS AND PROPOSED CODE AMENDMENT:

Village Codes §97.070 through §97.081 date from 1968. An update is warranted due to the following:

- (1) The Code now states that permittees shall backfill and then only temporarily surface road openings before the Village constructs the permanent patch. However, permittees have been held responsible for the permanent patch for many years now. Therefore, the amendment would clarify that the permittee is wholly responsible for the permanent patch.
- (2) The Code does not address the requirements for safely closing openings for short- or long-term cessation of work. The amendment would require ramped steel plates if work ceases for less than 3 days and a temporary asphalt surface if work ceases for 3 days or longer. The amendment would also require proper signage.
- (3) The Code does not adequately address the circumstances that require replacement of a full concrete panel. The amendment would require that the entire concrete panel shall always be replaced.
- (4) The Code now only requires a deposit of \$50, which is inadequate based on current costs. The amendment would require a deposit of \$1,000, which would be held for a period of one year following the construction of the permanent patch.
- (5) The Code now prohibits opening pavements less than five years old except for those essential to public health or safety or other emergency. In practice, no developments have been held up due to this Code. In addition, the Village attorney has advised that the prohibition would be difficult to defend in court given that it has not been invoked and the Code provides for a penalty fee to open new pavements. Therefore, the amendment would remove the prohibition and retain the penalty fee.
- (6) The Code now requires liability insurance in the amount of \$100,000 per person and \$300,000 per accident, and for property damages less than \$50,000, an aggregate of \$100,000 for all accidents. The amendment would increase and simplify the requirement to \$1,000,000 single limit general liability.

RECOMMENDATION:

The Public Works Committee voted unanimously on December 9, 2003 to recommend approval by the Board of Trustees. The Public Works and Community Development Departments also recommend approval.

DG:dg

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attachment

cc: David A. Hulseberg, AICP, Director of Community Development

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 9, CHAPTER 97, SECTIONS 97.070
THROUGH 97.081 OF THE LOMBARD VILLAGE CODE
IN REGARD TO STREET OPENINGS AND EXCAVATIONS**

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That Title 9, Chapter 97, Sections 97.070 through 97.081 of the Code of Lombard is amended to read in their entirety as follows:

§ 97.070 BACKFILLING AND RESTORING OPENINGS.

(A) All pavement cuts, openings, and excavations shall be properly made, backfilled, mechanically compacted and permanently surfaced by the permittee in accordance with the specifications of the Public Works Department of the Village.

(B) Whenever work is not actively being performed in the opening, including but not limited to overnight, the permittee must either backfill the opening or cover the opening with a steel plate ramped on both sides with asphalt in the direction of traffic. A temporary asphalt surface shall be provided by the permittee if work ceases for three (3) days or more. Proper signage shall be provided by the permittee until final restoration to warn motorists of the street condition.

(C) The work of final restoration including both paving surface and paving base shall be performed directly by the permittee in accordance with the requirements of the Public Works Department within two (2) weeks of the completion of work in the opening unless winter weather conditions delay such permanent restoration. When winter weather conditions delay such permanent restoration, the pavement shall be temporarily surfaced with asphalt with the permanent restoration to take place as soon as weather permits, but in no event later than ten (10) days from a notice from the Public Works Department to do so.

(D) The shape of the final restoration shall be rectangular. In concrete pavements, the entire concrete panel shall be replaced. In asphalt pavements, the restoration shall be the full lane width, shall extend a minimum of one (1) foot beyond the limit of excavation and shall be at least four (4) feet in length. The limits of restoration shall be determined by the Public Works Department.

(E) After excavation has commenced, said excavation work, backfilling and mechanical compacting the same shall be prosecuted with due diligence.

(F) The Public Works Department shall make such inspections as deemed necessary for all work authorized by a permit. The Public Works Department is empowered to provide

a full-time inspector, if necessary, to ensure compliance with the provisions of Sections 97.070 through 97.081.

(G) All inspection costs shall be borne by the permittee. Such costs shall be based on a schedule of charges now on file at the Public Works Department.

(H) The permittee shall notify the Public Works Department in writing upon completion of all work accomplished under the provisions of the permit.

(I) If any settlement or other type of pavement failure in a restored area occurs within the period of one (1) year from the date of completion of the permanent restoration, the permittee shall be notified of such settling and if same is not corrected within thirty (30) days, any expense incurred by the Village in correcting such failure shall be paid by the permittee or recovered from his bond unless the permittee submits proof satisfactory to the Director of Public Works that the failure was not due to defective construction techniques or materials.

(J) In no case shall any opening made by a permittee be considered in the charge or care of the Village or any of its officers or employees. No officer or employee is authorized in any way to take or assume any jurisdiction over any such opening except in the exercise of police power when it is necessary to protect life and property or to permanently restore the pavement if the permittee fails to do so as required by this Section.

§ 97.071 COMPUTATION OF DEPOSITS.

The Director of Public Works, upon receipt of a properly completed application, shall determine the amount of the deposit to be made by the permittee in accordance with the schedule of charges provided by § 97.075, provided, however, the minimum amount of the deposit shall be \$1,000. The deposit shall be made at the time the permit is received and the deposit shall be used to reimburse the Village for the cost of any work or materials furnished by it in connection with the work authorized by the permit to cover all necessary inspections of the work and for any other purpose set forth in Sections 97.070 through 97.081.

§ 97.072 FORM OF DEPOSIT.

The deposit may be either in the form of a letter of credit, surety bond, certified treasurer's or cashier's check or in lawful money of the United States.

§ 97.073 INSUFFICIENT DEPOSIT.

If any deposit is less than sufficient to pay all costs, the permittee shall, upon demand, pay to the Village the amount equal to the deficiency. If the permittee fails or refuses to pay such deficiency, the Village may institute an action to recover the same in any court of competent jurisdiction. Until such deficiency is paid in full, no additional permits or certificate of final inspection shall be issued to such permittee.

§ 97.074 YEARLY DEPOSIT.

A public utility not operating under a franchise agreement with the Village may either file a corporate bond or post one (1) deposit in an amount and form as provided above for the calendar year, or part thereof, to cover the cost of any and all work.

§ 97.075 DEPOSIT AND COST SCHEDULES.

The Director of Public Works shall establish and maintain a schedule of charges for inspections, labor, material, and such other expenses as may be incurred by the Village in meeting the requirements of Sections 97.070 through 97.081. In developing this schedule the Director of Public Works shall be guided by prevailing costs in the area of labor, materials, and equipment. The Director of Public Works shall revise the schedule of charges periodically to reflect any increases or decreases in costs used to establish such charges. The schedule of charges shall be open to public inspection in the office of the Director of Public Works, upon demand.

§ 97.076 REPAIRS AND WORK DONE.

The Director of Public Works shall determine the costs of any work done or repairs made by him or under his direction pursuant to the provisions of Sections 97.070 through 97.081. In the event the permittee disputes the amount charged by the Director of Public Works for the work done or repairs made by the Village, the Village Manager shall decide the amount due the Village.

§ 97.077 REFUND OF DEPOSIT.

Upon notification by the permittee that all work authorized by the permit has been completed and after a period of one (1) year following the restoration of the opening, the Director shall refund to the permittee his deposit less all costs incurred by the Village in connection with said permit. In no event shall the permit fee be refunded.

§ 97.078 INSURANCE REQUIREMENTS.

Each applicant, upon receipt of a permit, shall provide the Village with an acceptable certificate of insurance indicating that he is insured against claims for damages, for personal injury as well as against claims for property damage which may arise from or out of the performance of work, whether such performance be by himself, his subcontractors, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the streets in addition to completed operations. The amount of the insurance shall be prescribed by the Director of Public Works in accordance with the nature of the risk involved; provided, however, that the liability insurance meets or exceeds \$1,000,000 single limit general liability naming the Village and its officers, agents and employees as additional insureds and certificate holders. A public utility company or governmental authority may be relieved of the obligation of submitting such a certificate if it submits satisfactory evidence that it is insured, or has adequate provision for self-insurance, in accordance with the requirements of Sections 97.070 through 97.081. Public utilities and governmental authorities may submit annually such evidence of insurance coverage in lieu of individual submissions for each permit.

§ 97.079 NOTICES OF IMPROVEMENTS.

When the Village shall improve or pave any street, the Village Clerk shall give notice to all persons owning property abutting the street about to be paved or improved, and to all public utilities and governmental authorities operating in the Village and all such persons, public utilities, and governmental authorities shall make all connections as well as any repairs thereto which would necessitate excavation of the street, within forty-five (45) days from the giving of such notice. The time shall be extended if permission is requested in writing and approved by the Village Clerk after consultation with the Director of the Department of Public Works.

§ 97.080 RESTRICTIONS UPON OPENING NEW STREETS.

No permit shall be issued by the Director of Public Works which would allow an excavation or opening in a paved and improved street surface less than five (5) years old unless the applicant pays a new street opening fee, except that the fee shall be waived in the event the work is of an emergency nature. The fee shall be on a sliding scale and shall be equal to two percent (2%) of the cost of restoring the opening for each unelapsed month or fraction thereof of the five (5) year restricted period.

SECTION 2: That this ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2004.

First reading waived by action of the Board of Trustees this _____ day of _____, 2004.

Passed on second reading this _____ day of _____, 2004.

Ayes: _____

Nayes: _____

Absent: _____

Approved by me this _____, day of _____, 2004.

William J. Mueller, Village President

ATTEST:

Barbara A. Johnson, Deputy Village Clerk

Published by me in pamphlet form this _____, day of _____, 2004.

Barbara A. Johnson, Deputy Village Clerk

