

Chapter 355, STREETS AND SIDEWALKS

[HISTORY: Adopted by the City Council of the City of Binghamton as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Advertising -- See Ch. 163.
Notification of defects -- See Ch. 295.
Peddling and soliciting -- See Ch. 307.
Use of rights-of-way -- See Ch. 327.

ARTICLE I, Maintenance and Use [Adopted 10-5-1970 (Ch. 20, §§ 20-1 through 20-38, of the 1970 Code)]

§ 355-1. Authority of Commissioner of Public Works.

It shall be the duty of the Commissioner of Public Works to see that the sidewalks are kept free from snow and ice, and that the ordinances of the City respecting streets, sidewalks and bridges are duly enforced. Whenever any resolution shall be passed by the City Council directing any work to be done with the oversight of which the Commissioner is charged by the Charter, he or she shall immediately obtain from the City Clerk a copy of such resolution and proceed to execute the same as therein required. The Commissioner shall have general oversight of the buildings and property belonging to the City, and shall, without further direction, keep free from snow and ice the walks on the bridges and in front of said buildings.

§ 355-2. Adoption of major street plan.

The major street plan, together with certain maps designated as the official map of existing streets in the City, which said maps comprise a complete outline of existing streets in the City of Binghamton, with the exception of Plat No. 3, comprising streets in the vicinity of South Mountain Park, and Plat No. 39, comprising streets in the vicinity of Ely Park, be and the same hereby are adopted as the major street plan and official map of existing streets of the City of Binghamton.

§ 355-3. Conveyances of land for street purposes to be accompanied by engineer's certificate.

No deed or conveyance of land to the City for street purposes shall be received or accepted by the City Council unless the same shall be accompanied by a certificate of the City Engineer to the effect that the lands so offered are on the proper grade.

§ 355-4. Construction standards and specifications.

Construction standards and specifications for streets and sidewalks within the City shall be as determined by the office of the City Engineer upon approval by the City Council.

§ 355-5. Games in streets; designation of play streets.

No person shall fly a kite or play baseball, football or other game or games in any public highway except such streets or parts of streets as may be designated by the Traffic Board as playground streets.

§ 355-6. Skateboarding and coasting on streets and sidewalks. [Amended 5-7-07 by Ord. No. 13-2007; Amended 4-21-08 by Ord. No. 23-2008; Amended 3-17-10 by Local Law 1-2010]

- A. Preamble. Public sidewalks and streets are for the benefit of all residents. There must be a balance among pedestrians, motor vehicles, bicycles, and, less traditional forms of transportation and recreation such as skateboards, and coasting, *e.g.*, the use of scooters and rollerblades. To achieve this balance, the City of Binghamton wishes to prohibit skateboarding in the "downtown area" and to limit coasting as may be determined by the Traffic Board. Safety is the primary concern regarding use of public streets and sidewalks. Just as operators of motor vehicles and bicycles are responsible

for their safety and the safety of others, skateboards and other coasting equipment must be used in a safe and responsible manner.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

COASTING - The use of any equipment, such as scooters, rollerblades or other non-motorized vehicles upon wheels or runners, excluding skateboards, for transportation or recreation.

RECREATION - Performing acrobatic stunts such as grinding, jumping obstacles larger than 12", or any activity where some surface of the skateboard (other than wheels) is made to come in contact with an object (other than the feet or hands of rider).

SKATEBOARD - A device for riding upon, usually while standing or sitting, consisting generally of an oblong piece of wood or other materials mounted on skate wheels and propelled solely by the force of its rider. The definition of the term "skateboard" shall not be construed to include bicycles, roller skates, roller blades, wheelchairs or any other device intended to be used to provide transportation for any disabled person.

C. Use of skateboards prohibited in certain areas.

- (1) It shall be unlawful to operate skateboards in any manner in public parking garages and ramps within the Binghamton city limits.
- (2) It shall be unlawful to operate skateboards in any manner on any private property in the City of Binghamton, unless specifically allowed by property owner.
- (3) It shall be unlawful to operate skateboards on the property of Binghamton University's Downtown Center and anywhere on Governmental Plaza property
- (4) It shall be unlawful to operate skateboards for any purpose on any sidewalks and streets specified by the Binghamton Traffic Board. The Traffic Board has prohibited skateboarding on the sidewalks and streets bounded as follows: Starting at the E. Clinton Street Bridge, east to Washington Street then north to Lewis Street, east to Fayette Street then south to Henry Street, west to Carroll Street then south to Susquehanna Street, west to Exchange Street then south to the Susquehanna River, west to the confluence with the Chenango River, and north to the E. Clinton Street Bridge. Skateboarding for transportation is permitted on the sidewalks and streets forming this boundary, *e.g.* Washington Street, Lewis Street, Fayette Street, Henry Street, Carroll Street, Susquehanna Street, and Exchange Street; and the Binghamton River Trail.

D. Use of skateboards for recreational purposes limited. It shall be unlawful to operate skateboards on streets, sidewalks or other public property in any manner for the purpose of recreation within the City of Binghamton, except in any skateboard parks, other areas specifically designated by the Traffic Board of the City of Binghamton (*e.g.*, areas with signs designating it a Free Skate/BMX Zone) for recreational skateboard purposes, and block parties where permission has been granted by City Clerk.

E. Conditions for use of skateboards as transportation. The operation of skateboards for the purpose of transportation only is permitted on any street, sidewalk, the Binghamton River Trail, or in any park, excluding those areas specifically prohibited in this chapter, see the No Skateboard Zone defined above, under the following conditions:

- (1) Skateboards may be operated upon the public roadways subject to New York State Vehicle and Traffic Law Article 34, and upon sidewalks and in bicycle lanes within the city limits, where not otherwise prohibited by ordinance, law or regulation.
- (2) The operator of a skateboard, when operated on the sidewalks within the city limits, shall maintain a safe speed (maximum speed should be the equivalent of a brisk walk or slow jog), will maintain a reasonable distance from pedestrians, and will avoid creating situations that make it unsafe for either the skateboard operator or pedestrians.

- (3) No person riding upon any skateboard shall attach the same or him/herself to any vehicle being operated on a roadway.
- (4) Upon all roadways, any skateboards shall be operated on a usable bicycle lane or, if a usable bicycle lane has not been provided, near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic, except when reasonably necessary to avoid conditions that would make it unsafe to continue along near the right-hand curb or edge. Conditions to be taken into consideration include, but are not limited to, fixed or moving objects, vehicles, bicycles, in-line skates, pedestrians, animals, surface hazards or traffic lanes too narrow for a person on a skateboard and a vehicle to travel safely side-by-side within the lane. When preparing for a turn, operator must utilize existing crosswalks.
- (5) Persons riding upon a roadway shall not ride more than two abreast. Persons riding upon a shoulder or a bicycle lane or bicycle path intended for the use of bicycles may ride two or more abreast if sufficient space is available, except that when passing a vehicle, a bicycle or a person on in-line skates, another skateboarder or a pedestrian standing or proceeding along such shoulder, lane or path, persons riding skateboards shall ride single file. Persons riding skateboards upon a roadway shall ride single file when being overtaken by a vehicle.
- (6) No person shall skate or glide on a skateboard on a roadway during the period of time between 1/2 hour after sunset and 1/2 hour before sunrise, unless such person is wearing readily visible reflective clothing or material which is of light or bright color.

F. Coasting. Coasting is permitted on any street, sidewalk, the Binghamton River Trail, or in any park unless prohibited by order of the Traffic Board.

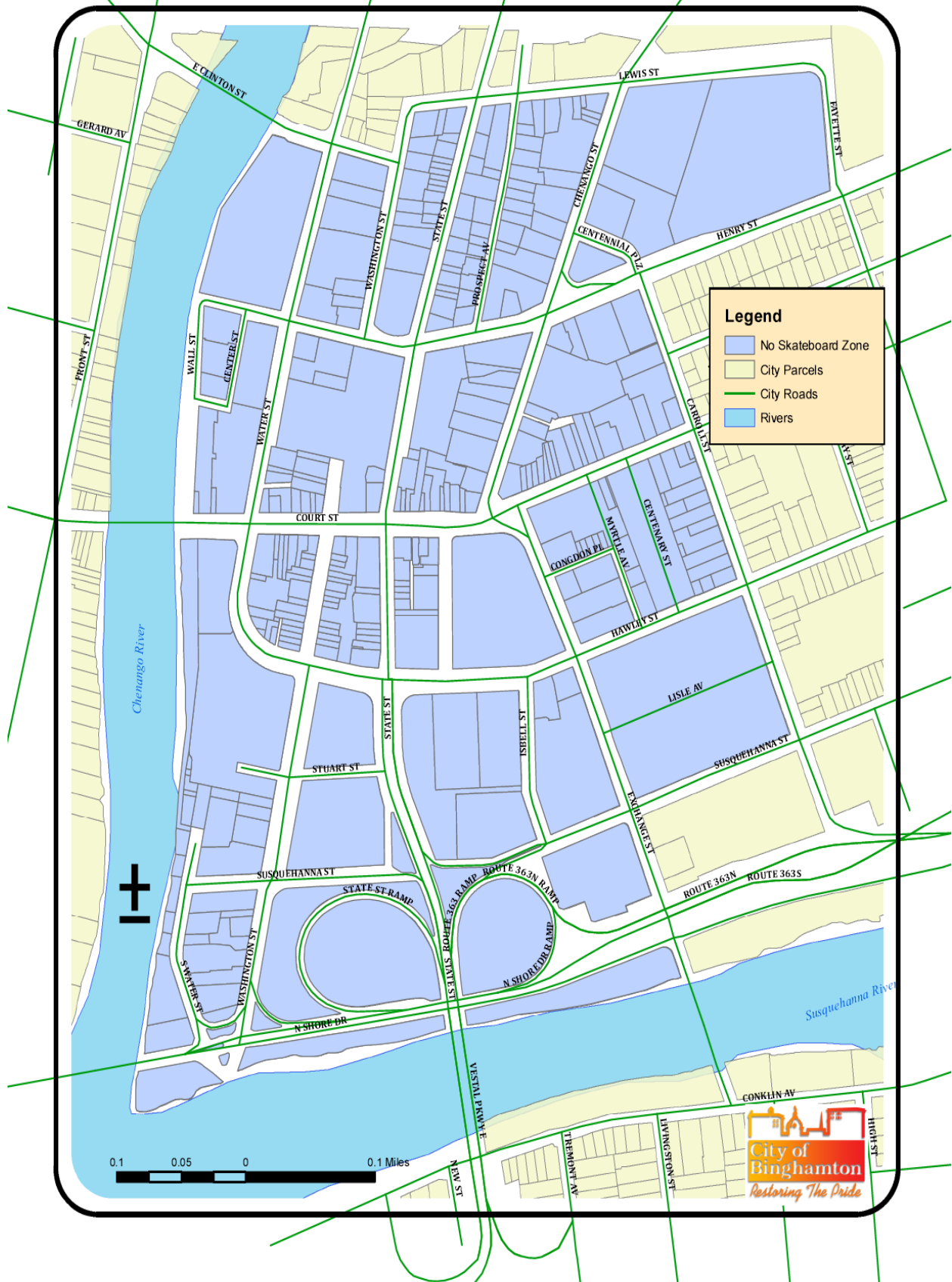
G. Safety. City streets and sidewalks are not designed for skateboards and coasting. Moreover, conditions may change from day to day or hour to hour. It is the responsibility each person using a skateboard or coasting or the parent of a minor, to (i) inspect and confirm that conditions are appropriate for such use; (ii) comply with all manufacturers' recommended safety wear, including helmets, if applicable; and (iii) comply with all traffic signs, traffic control devices and directions from a police officer. Nothing herein shall be deemed to amend the notice requirements of General Municipal Law § 50-g.

H. Penalties for offenses.

- (1) Violation of any of the provisions of this chapter, if committed by a person 16 years of age or older, shall be punished as follows:
 - (a) First offense: any person convicted of a violation of this chapter shall be punished by a fine of \$25 (to include all costs and assessments). The court may authorize community service in lieu of all or part of this fine.
 - (b) Second offense: any person convicted of a violation of this chapter shall be punished by a fine of \$50 (to include all costs and assessments). The court may authorize community service in lieu of all or part of this fine.
 - (c) Third or subsequent offense. Any person who violates this chapter a third or more times within a five-year period shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$250. The court may authorize' community service in lieu of all or part of the fine.
- (2) Violation of any of the provisions of this chapter, if committed by a person less than 16 years of age shall result in the confiscation of person's skateboard and a written warning with a copy of the same being sent to such person's parents or guardian.

- I. Enforcement. It shall be the duty of the City of Binghamton Police Department to enforce the provisions of this chapter. Additionally, any peace officer shall have authority to enforce the provisions of this chapter.
- J. Discontinuance of skateboarding and coasting during emergency. If a state of emergency is declared by the Mayor, skateboarding and coasting are prohibited.

No Skateboard Zone



§ 355-7. Deposits of garbage and rubbish prohibited.

- A. No person shall throw, dump, deposit or place or cause to be thrown, dumped, deposited or placed upon any highway or street in the City or within the limits of the right-of-way of such highway or street, or upon private and public lands adjacent thereto, any refuse, trash, garbage, rubbish, litter or any nauseous or offensive matter.
- B. Nothing herein contained shall be construed as prohibiting the use in a reasonable manner of ashes, sand, salt or other material for the purpose of reducing the hazard of, or providing traction on, snow, ice or sleet.

§ 355-8. Spilling loads.

No person, while transporting through the streets any manure, gravel, dirt, stone or other substance, shall permit any portion of the same to escape from the load or bulk transported and to fall and remain upon any public highway.

§ 355-9. Sale of merchandise on sidewalks; solicitation of business on sidewalks.

No person shall sell or expose for sale any goods, wares or merchandise or solicit business upon any sidewalk in the City.

§ 355-10. Water draining on sidewalks.

No person shall conduct or allow to be conducted from any building, through any pipe, gutter, trough, spout or otherwise any water upon or over any sidewalk; nor shall any roof or eaves project over any sidewalk unless there shall be an eave trough or other device so placed as to prevent water from falling upon the walk.

§ 355-11. Width of curb openings for access to public streets. [Amended 12-4-1972 by Ord. No. 243-72; 8-6-1973 by Ord. No. 158-73; 5-6-1974 by Ord. No. 64-74; 11-4-1974 by Ord. No. 23-74; 6-19-1978 by Ord. No. 107-78]

- A. Restrictions on width. All curb openings for access to a public street shall be limited to a maximum width of 30 feet, and all curb openings shall be separated by regular curbing at least 20 feet in width. No curb openings will be allowed within 30 feet of an intersection.
- B. Exceptions. The Binghamton Traffic Board is hereby authorized to consider all applications for permission to construct curb openings which do not comply with the restrictions of Subsection A of this section. Before approving any application for such permission, the Binghamton Traffic Board shall notify the Council member who represents the district to be affected.

§ 355-12. Gates over sidewalks.

No gate shall be made or hung so as to open and swing over any sidewalk.

§ 355-13. Moving buildings and structures through streets.

- A. Permission required. No person shall move or cause to be moved any building or structure through or over any public highway without the permission of the City Council after public hearing thereon.
- B. Application for permission. Application for such permit shall be in writing, specifying the route through which it is proposed to move the building or structure.

§ 355-14. Depositing snow on streets and sidewalks prohibited.

No person shall cast, shovel, dump, plow, push or in any other way cause to be placed any snow upon the streets and sidewalks in the City. The provisions of this section shall not prohibit any person from removing snow from the sidewalks in front of their premises.

§ 355-15. Obstructing fire hydrant with snow or ice.

No person shall, in removing snow or ice from any street, sidewalk, building or other place, throw or deposit or cause to be thrown or deposited such snow or ice upon or so as to hinder, obstruct or delay free access to any fire hydrant.

§ 355-16. Windowboxes over sidewalks.

No person shall place on the windowsill of any building within 10 feet of the street line any box, flowerpot or other article unless said article is suitably secured to prevent the same from falling.

§ 355-17. Boxes, goods and wares on sidewalks.

No person shall place or cause to be placed any box, showcase, goods, wares, merchandise or other articles upon any sidewalk except as may be necessary in transporting such articles across the sidewalk.

§ 355-18. Erection of booths, stands and banners.

No person shall, without permission of the City Council, erect upon any public highway any booth or stand for the purpose of selling or exposing for sale, or advertising any goods, wares or merchandise; nor cause to be hung any banner or advertising devices across or over any public highway; nor erect any platform or grandstand upon any public highway.

§ 355-19. Obstructions to catch basins, sewers or gutters.

No person shall throw or deposit or cause to be thrown or deposited into any drain, catch basin, sewer or gutter any substance which may cause obstructions or injury thereto, or nuisance therein; nor shall any person divert or stop the flow of any drain or sewer.

§ 355-20. Hedge fences.

It shall be unlawful for any person to plant, set, have or maintain upon his or her premises adjacent to any street, sidewalk or footpath within the City any hedge fence unless the same shall be set at least two feet back from the line of the street, and be kept so trimmed as not to project into or over said street, sidewalk or footpath, or be separated from said street, sidewalk or footpath by a fence other than said hedge fence.

§ 355-21. Erection of barbed wire fences upon street line or adjacent to street.

Any person who shall erect, or place or cause to be erected or placed any barbed wire fence or fence constructed partly of barbed wire, likely to cause injury to animals or persons, or their clothing, within the City, situate, constructed or built upon any line of or adjacent to any street, avenue, alley, lane, public square or place therein shall be punished as provided in § 1-4 of this Code.

§ 355-22. Injury to bridges.

It shall be unlawful for any person to cut, whittle, post bills, mark upon or otherwise mar or injure any bridge within the City.

§ 355-23. Obstructing bridges.

It shall be unlawful for any person having control of any cart, sled or other vehicle to suffer the same to remain upon any public bridge for any longer time than shall be reasonably necessary to pass over the same; nor shall any person offer or expose for sale any goods, wares or merchandise upon any such bridge.

§ 355-24. Ordinances granting permission for erection of banners.

All ordinances granting permission for the erection of banners shall contain the words to be placed upon said banners.

§ 355-25. Public pedestrian malls. [Added 9-16-1985 by Ord. No. 113-85]

A. Definition.

- (1) A public pedestrian mall is a public way or public space owned by and/or controlled by the City wherein:
 - (a) Vehicular through traffic is prohibited; and
 - (b) Any permitted vehicular traffic is incidental to the use of the public pedestrian mall (examples of such permitted vehicular use include deliveries, public safety use, ingress and egress incidental to the mall and such other uses which may be authorized and permitted by the appropriate public agency); and
 - (c) Improvements for the benefit and use of pedestrians are installed and maintained.
- (2) The term "public pedestrian mall" shall include but not be limited to areas commonly known as promenades, malls, common space, commons, improved alleys and elevated walkways but shall not include any public property dedicated or reserved for park purposes as defined by law.

B. Street attributes of malls. For purposes of the provisions of the City Code set forth below, public pedestrian malls shall be considered as a street or highway:

- (1) Chapter 327, Article I, Activity Permits.
- (2) Chapter 220, Disorderly Conduct, § 220-1, Section 14-7, Injury to public property prohibited.
- (3) The definition of "public lands" in Chapter 170, Alcoholic Beverages, Article II, Consumption and Possession in Public Places.
- (4) Section 355-5, Games in streets; designation of play streets, of Article I of this chapter.
- (5) Section 355-6, Coasting on streets and sidewalks, of Article I of this chapter.
- (6) Section 355-7, Deposits of garbage and rubbish prohibited, of Article I of this chapter.
- (7) Chapter 178, Animals, Articles I and II.

C. Sidewalk attributes of malls. For purposes of [cmz] § 13-106 of the City Code, entitled "Operation of Bicycles Prohibited," public pedestrian malls shall be considered as a sidewalk.

D. Vehicular traffic. Limited vehicular uses of public pedestrian malls not permitted as of the effective date of this section (September 16, 1985) shall only be permitted by the express consent of the Council.

§ 355-26. Awnings. [Amended by L.L. No. 5-1975]

No awning, other than cloth so hung or placed as to be at least seven feet in the clear above the surface of the sidewalk, shall be placed, constructed or maintained over any street, sidewalk or portion of the same within the City. The foregoing shall not apply to awnings already constructed, but the same may be removed at any time by order of the City Council or the City Engineer.

ARTICLE II, Monuments [Adopted 10-5-1970 (Ch. 14, § 14-12, of the 1970 Code)]

§ 355-27. Consent required for removal.

No person shall remove any permanent iron, concrete or wood monument which has been established by the Department of Engineering of the City as a reference point without first obtaining the written consent of the City Engineer.

ARTICLE III, Construction of Vaults and Cellar Ways Under Sidewalks [Adopted 10-5-1970 (Ch. 20, §§ 20-84 through 20-87, of the 1970 Code)]

§ 355-28. Conditions on construction. [Amended by L.L. No. 5-1975]

Whenever permission shall be granted hereafter by ordinance of the City Council to any person to construct a vault under any sidewalk in the City, such permission shall be subject to the following terms, conditions and provisions as fully as if the same were set forth in such ordinance:

- A. Approval of plans, specifications. The plans and specifications for such vault shall be approved by the Superintendent of Buildings and the City Engineer.
- B. Expense, manner of construction. The vault shall be constructed without expense to the City and in a manner to be approved by the Superintendent of Buildings and subject to the supervision of the City Engineer.
- C. Provisions governing construction. The vault shall be constructed in accordance with the provisions set forth in this article and in accordance with the applicable provisions of the Building Code.
- D. Discontinuance of vault. The granting of such permission shall not be deemed or construed to be the grant of a right of permanent occupancy in the event that the City shall thereafter deem the use of said premises as contrary to public interests on account of extra hazard or otherwise, and the owner of said premises shall vacate said vault and discontinue the use thereof or cause the same to be filled in upon being ordered so to do by the City Engineer and shall at all times be subject to the orders as to any matters required for the safety of the City and highway over and along said vault. In case of the refusal of said owner to obey such order, the City Engineer shall have authority to cause the necessary work to be done, and the expense thereof shall be a charge against the owner of said premises, his or her or its heirs, executors, administrators or assigns and payable to the City.
- E. Liability of City. The owner of said premises, his or her or its heirs, executors, administrators or assigns shall indemnify and save harmless the City of and from any and all damage and liability of every name, description or nature arising or growing out of the installation and construction of said vault which shall thereafter be incurred or suffered by the City.

§ 355-29. Construction standards.

All vaults under sidewalks in the City shall be constructed of brick or stone, and the side of the grating or opening next to the center of the street shall be within one foot of the curbline, and between the same and the line of the street nearest thereto.

§ 355-30. Time frame for completion.

Every vault shall be completed, and the ground or sidewalk replaced over the same, within three weeks after the commencement of such vault, unless the time for such completion be extended by the City Council.

§ 355-31. Construction of trapdoors for cellar ways; doors not to be kept open.

Every cellar way leading from any street or sidewalk shall have trapdoors so constructed as to be on a level with the sidewalk or with the platform, if any, in front of the building where such cellar way is situated, and so as to be entirely safe for persons to pass over the same. No trapdoor or grate in any of the sidewalks of the City shall be kept open except while actually in use for the receipt or delivery of goods or commodities.

ARTICLE IV, Maintenance, Construction and Excavation Within Rights-of-Way [Adopted 4-15-2002 by L.L. No. 1-2002 (Ch. 20, §§ 20-67 through 20-75, of the 1970 Code)]

§ 355-32. Authority of City Engineer; street work permits limited during winter months.

- A. It shall be the duty of the City Engineer to supervise and control all maintenance and construction operation, including those operations which involve excavation and/or which impede the flow of vehicular or pedestrian traffic, conducted upon the City right-of-way and, to accomplish that

objective, to design and prepare forms to be used by applicants for street work permits. Said applications shall conform to the provisions of this article and may contain such other requirements as the City Engineer, in his or her discretion, shall deem necessary for the safety and well-being of the citizens and for the preservation of municipal property.

- B. No street work permits shall be issued from November 1 through April 1 of each year, except in the case of an emergency, as deemed necessary and appropriate by the City Engineer. The City Engineer shall use his or her reasonable discretion in making such determinations.

§ 355-33. Activities subject to control.

No person, firm, corporation or other entity, in the absence of emergency conditions, shall enter or encroach upon the right-of-way of the City of Binghamton for the following purposes, unless a street work permit for such activity has been duly issued by the City Engineer or his or her designated representative; provided, however, relocation of utility poles shall only be required by the City when such relocation can be accomplished by the utility without unreasonable costs or dislocation of adjoining facilities and only when necessitated by considerations of public safety.

- A. Making any excavation, trench, channel, or other opening;
- B. Removing or constructing any sidewalks, curbs or pavements;
- C. Storing, however temporarily, any sand, gravel, cement, stone, brick, lumber, or other material for building;
- D. Erecting any scaffolding or other temporary structures or devices;
- E. Installing utility poles, for whatever purpose, not covered under a current franchise agreement;
- F. Removing trees; or
- G. Any similar activity.

§ 355-34. Emergency conditions.

If it becomes necessary in case of an emergency or any unforeseen happening to enter upon the City right-of-way for the purpose of making emergency repairs to any sewer, water pipe, conduit or other underground or overhead structure, any person, firm, corporation or public utility may do so forthwith, provided that the City Engineer is immediately notified and provided that within 24 hours of the time of making such entry (Saturdays, Sundays, and holidays not included), proper application for a street work permit is made. Should the City Engineer be unavailable, emergency notice may be given to the Department of Public Works dispatcher, who shall relay the message to the City Engineer as soon as possible.

§ 355-35. Application for street work permit.

- A. No street work permit shall be issued unless a written application is approved by the City Engineer. The following conditions must be met before a street work permit shall be issued:
 - (1) Security. Security shall be exacted for excavation work to be performed on any footpath, sidewalk, street, alley, or ground(s) pursuant to the following:
 - (a) The security for any excavations shall be in the form of a performance bond in the amount of \$5,000 for each excavation not in the pavement. Security for excavations in the pavement shall be \$10,000 for each excavation.

- (b) This bond shall cover from one to ten excavations by an individual or business in any calendar year. Any individual or business engaging in greater than 10 excavations within such calendar year shall produce a bond in the amount of \$5,000 per each 10 additional excavations not in paved areas and in the amount of \$10,000 for each ten additional excavations in paved areas. The term of the bond shall be 24 months.
- (c) The maximum amount of a performance bond in any calendar year for one organization or firm shall be \$200,000.

(2) Insurance.

- (a) The applicant shall place on file with the City Engineer, without cost to the City, satisfactory evidence of public liability insurance and of property damage insurance, in amounts deemed reasonable and sufficient by the Risk Management Committee, based upon a schedule developed by said Committee. Said insurance shall insure the City of Binghamton against any loss, injury or damage arising out of the granting of the permit or from any negligence of the said applicant, his or her servants, agents or employees in connection with the said operations or with any and all work related thereto. Such insurance shall be issued in the name of the City of Binghamton as an additional insured.
- (b) Such insurance shall remain in force throughout the effective period of the permit and/or any authorized extension or extensions thereof and shall carry an endorsement to the effect that the insurance company will give at least 30 days' prior written notice to the City of Binghamton of any modification or cancellation of such insurance.
- (c) The provisions of this section shall not in any way limit the rights of the City to bring any action or proceeding against the applicant, his or her agents or employees, to recover damages suffered by the City and caused by the applicant, his or her agents or employees.

(3) Fees.

- (a) The applicant shall tender to the City Engineer a check, draft, or money order payable to the City of Binghamton for the amount as set from time to time by resolution of the City Council prior to the issuance of such permit (See Exhibit J):
- (b) Separate permits will be required for each excavation. An "excavation" is defined as having a separate noncontiguous opening in the ground or pavement and not part of a continuous operation or project. For example, installation of gas main in a continuous trench would be considered one excavation. The maximum fee amount for installation of utility mains and services on any project shall be \$5,000. A "project" is defined as being confined to a specific area or portion of a street. In no event shall the permit fees exceed the actual costs to the City in administering the project and permit.
- (c) The City of Binghamton reserves the right to negotiate a blanket annual coverage agreement with utilities licensed through the Public Service Commission, such blanket coverage agreement to be within the discretion of the City Engineer, provided that such blanket coverage is equitable in comparison with other fees. This blanket agreement must be approved by the Board of Contract and Supply.

(4) Other conditions.

- (a) The applicant shall comply with such other reasonable conditions as the City Engineer, in his or her discretion, shall require. The applicant shall be

deemed to agree, by his or her application for a street work permit, that all operations covered by the permit shall be performed and completed to the satisfaction of the City Engineer and that the direction of the City Engineer as to safety precautions shall be followed explicitly, including the placement of barricades and warning lights.

(b) Any excavations in paved areas on streets that have been reconstructed within 10 years or repaved within five years of the proposed excavation under a work permit will require that the entire width of the street be overlaid to the limits designated by the City Engineer. The City Engineer will also stipulate the type and depth of asphalt overlay on a case-by-case basis.

- B. Defects. Should any excavation be improperly restored, or should a problem develop within 12 months of the restoration of the excavation, the permittee shall be given 48 hours' written notice to correct the defect. Should said defect not be corrected, the City of Binghamton shall then be authorized to correct actions from the deposit required by Subsection A(1) above. The use of such funds will not prevent the City from seeking further compensation should such funds be insufficient to cover the costs of the corrective action. The City shall provide written notice of any withdrawal of deposit funds.
- C. City Engineer's authority. All references to the authority of the City Engineer shall mean the City Engineer or his or her designee, should the City Engineer choose to designate someone to act on his or her behalf.

§ 355-36. Exceptions.

The provisions of this article do not apply to:

- A. The erection, maintenance, and removal of public telephone facilities, pursuant to Chapter 383 of this Code.
- B. The removal or planting of trees pursuant to Chapter 391 of the Code, provided that the permittee under that chapter notifies the City Engineer of this intention at least 24 hours in advance of beginning work in the City right-of-way.
- C. The erection, maintenance and removal of public overhead electric or streetlight facilities.
- D. Maintenance or trimming of trees required for public overhead electric and streetlight facilities.

§ 355-37. Revocation of street work permit.

The City Engineer shall have the right, in his or her reasonable discretion, to revoke any street work permit at any time based upon documentation of the violation of any of the provisions of this article, other relevant provisions of the Code of the City of Binghamton or any other local, state or federal law related to the project. Further, should any permittee repeatedly fail to make proper and adequate repairs and/or fail to take corrective action after being given notice of defect as set forth in § 355-35 above, further permits may be denied. Any two such occurrences within a twelve-month period shall be considered cause for such action.

§ 355-38. Excavations to be guarded.

No person having charge of any excavation in any street, sidewalk or public way shall permit such excavation to remain open or uncovered day or night without having and causing the same to be fenced in and guarded during the day by a red flag, and at nighttime by lights with red globes, so placed and kept as to properly warn all persons of such excavation.

§ 355-39. Underground facility protection.

All excavations shall be done in accordance with New York State Industrial Code Rule 753.

§ 355-40. Penalties for offenses.

Any person or persons illegally working within the street right-of-way without obtaining the proper permits as set forth in this chapter may be charged with a violation, punishable by a fine of up to \$1,000 and/or 15 days' incarceration.

ARTICLE V, Maintenance and Repair Plan [Adopted 2-2-2004 by Ord. No. 04-10]

§ 355-41. Creation of plan.

The City Engineer shall create an on-going five-year street maintenance/repair/rebuilding/reconstruction plan that identifies, per each year, specific streets for maintenance on a five-year schedule.

§ 355-42. Updating of plan.

Said list will be updated and/or added to on a yearly basis.

§ 355-43. Amendments to list.

- A. If an when streets are replaced or removed from a specific year on the list due to special circumstances, the City Engineer will report in person to City Council on the specific reasons said replacement or removal is to take place.
- B. Any streets so replaced or removed according to Subsection A above shall be returned to the list in a subsequent year within the five-year plan or the next year immediately following.

ARTICLE VI, Utility Pole Regulation [Adopted 5-24-2023 by LL23-01]

§ 355-44. Legislative findings.

The Common Council for the City of Binghamton hereby finds that unnecessary utility poles within close proximity to one another pose an immediate and serious hazard to motorists and pedestrians by impeding visibility along roadways, particularly at or near intersections, while serving no legitimate need or purposes. In addition, such utility poles constitute a visual eyesore while, again, serving no legitimate need or purpose. The Common Council further finds that it would be in the best interest of the City and would serve to protect and preserve the health, safety and welfare of the community to require the owners of unnecessary utility poles in close proximity to one another to remove all such unnecessary utility poles. The Common Council also finds that it would be in the best interest of the City to inspect all current and proposed utility poles to determine their stability and ensure the safety of all residents. It is the purpose of the Common Council in adopting this chapter to discourage the installation of unnecessary utility poles and to compel the owners of all existing unnecessary utility poles to remove them from City- owned properties and rights-of-way in order to protect and preserve the health, safety and welfare of the community. It is the goal of the Common Council to compel the elimination of all unnecessary utility poles from the City of Binghamton.

§ 355-45. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CITY ENGINEER — The Engineer for the City of Binghamton

PERMITTED UTILITY POLE — Any pole which is 12 or more feet from all other utility poles.

PLANT — The cables, terminals, conductors, and other fixtures necessary for transmitting electric, telephone, cable television or other telecommunications service.

UNNECESSARY UTILITY POLE —

- A. Any utility pole which is within 12 feet of another utility pole unless:
 - (1) It is necessary to safely carry some or all of the utility service lines which it, and all other utility poles within 12 feet of it, are intended to carry; and
 - (2) There is no feasible alternative configuration of utility poles which can safely carry all of the utility service lines in that area using only utility poles 12 or more feet from another.
- B. Absent satisfactory evidence of the necessity of the utility pole in question and/or the feasibility of alternative configurations of utility poles, any utility pole which is located within 12 feet of any other utility pole shall be presumed to be an unnecessary utility pole.

UTILITY POLE — A pole made of any material, which is affixed to the ground and which carries overhead utility service lines. The phrase "utility pole" includes the phrases "telephone pole" and "light pole."

UTILITY SERVICE — Electricity; telephone service, including cable telephone service; television service, including cable television service; Internet access, including cable Internet access; and any other telecommunications service.

WRITTEN NOTIFICATION — A writing directed to a representative of a public utility, who may be designated by the utility, by regular mail, fax transmission or electronic mail.

§ 355-46. Utility pole requirements; guy wires.

All utility poles shall be structurally sound and capable of standing in the vertical position and carrying the utility service lines attached to them without the support, direct or indirect, of any other utility pole. Guy wires may be used to support a utility pole, but no guy wire shall cross any road, street, sidewalk or paved or unpaved pedestrian walkway in such a manner as to pose a hazard to vehicles or pedestrians.

§ 355-47. Installation; existing poles.

- A. Installation of an unnecessary utility pole.
 - (1) After the effective date of this chapter it shall be unlawful to install or have installed an unnecessary utility pole on City-owned property or within the City's right-of-way unless the owner of any such pole can demonstrate, by a signed engineer's report, to the satisfaction of the City Engineer, that:
 - (a) The utility pole in question is necessary to safely carry some or all of the utility service lines which it and all other utility poles within 12 feet of it are intended to carry; and
 - (b) There is no feasible alternative configuration of utility poles which can safely support all of the utility service lines in that area using only utility poles 12 or more feet from one another.
 - (2) Co-location of utility lines on poles and the sharing of poles by different utility companies shall be considered a feasible alternative configuration to installing an unnecessary utility pole.
 - (3) An application for permission to install a permitted pole or an unnecessary utility pole, entitled "Permit Application for Street and Sidewalk Openings," shall be submitted to the City Engineer or his designee. The application shall include the required documentary engineering evidence relevant to the necessity of the utility pole in question and the feasibility of alternative configurations of utility poles and payment of an application fee. The subject utility pole shall not be installed unless and until the City Engineer shall approve the application. Emergency installations may be made as necessary but must be followed within 14 days of the emergency installation by the application process as set forth in this article.
- B. Existing poles.
 - (1) Any unnecessary utility pole existing on the effective date of this chapter shall be removed by the owner within the time specified in a "Notice to Remove Unnecessary Utility Pole" mailed in accordance with § 171-58 below unless the owner of any such unnecessary utility pole can demonstrate, by a signed engineer's report, to the satisfaction of the City Engineer, that:
 - (a) The utility pole in question is necessary to safely carry some or all of the utility service lines which it and all other utility poles within 12 feet of it are intended to carry; and

- (b) There is no feasible alternative configuration of utility poles which can safely support all of the utility service lines in that area using only utility poles 12 or more feet from one another.
- (2) Collocation of utility lines on poles and the sharing of poles by different utility companies shall be considered a feasible alternative configuration to installing separate utility poles within 12 feet of one another.
- (3) An application for permission to continue to use and maintain an existing otherwise unnecessary utility pole shall be made to the City Engineer within the time provided for removal of the unnecessary utility pole in the "Notice to Remove Unnecessary Utility Pole." The application shall include the required documentary engineering evidence relevant to the necessity of the utility pole in question and the feasibility of alternative configurations of utility poles and payment of an application fee in the amount of \$150 per pole. Upon making such application, removal of the subject utility pole shall be held in abeyance pending a final determination on the application by the City Engineer. If the proof provided does not satisfy the City Engineer that the subject utility pole is, in fact, necessary, the City Engineer or his/ her designee shall notify the owner in writing of the determination and direct that the unnecessary utility pole be removed by a date certain which shall be no less than 14 days after the date of the mailing of that notification.

§ 355-48. Notice to remove unnecessary utility poles.

- A. When the Department or its duly authorized agent determines that a utility pole in a City road right-of-way is damaged and poses a potential threat to public safety, the Department, or its duly authorized agent, shall notify any public utility with a plant on the damaged pole that it must remove its plant from the pole or be subject to a penalty. A public utility must remove its plant from the damaged pole within 15 days of receiving such notification from the Department or its duly authorized agent.
- B. When the Department, or its duly authorized agent, determines that a double pole is in a City road right-of-way, the Department or its duly authorized agent will notify the public utility which has the top plant on the double pole that the plant must be removed within 90 days or be subject to penalty. Upon removal of the top plant, each subsequent public utility with a plant on a double pole will have 90 days to remove such plant from the date it receives notification from the Department or its duly authorized agent.
- C. After all plants have been removed from the double pole, the public utility which owns the double pole shall remove said pole within 60 days after receiving notification from the Department or its duly authorized agent. This provision shall not nullify or limit any private agreement between and among public utilities that assign responsibility for pole removal.

§ 355-49. Notification to pole owner.

The City Engineer or its duly authorized agent shall, for informational purposes, provide notice to the owner of a damaged or double pole when notification is given to a public utility that its plant must be removed from the pole.

§ 355-50. Penalties for offenses.

- A. Any person, firm or corporation or public utility offending or violating this article shall be guilty of this violation.
- B. Any person, firm or corporation or public utility found guilty of a violation under this article shall be liable for a fine which shall not exceed \$1,000 in amount in the discretion of the court. Each day on which any such violation continues shall constitute a separate chargeable offense.
- C. If a person, firm or corporation or public utility violates the provisions of this article, or fails to remove its damaged and/or double pole or plant from a damaged pole in accordance with the provisions of this article, the Corporation Counsel, upon the request of the City Engineer, may commence an action in the name of the City in a court of competent jurisdiction for necessary relief, which may include the imposition of civil penalties as authorized by this article, an order to remove the

plant from a damaged utility pole and/or to remove a damaged pole or double pole, the recovery of costs of the action and such other remedies as may be necessary to prevent or enjoin a dangerous condition from existing in a City roads or rights-of-way.

§ 355-51. Applicability; construal of provisions.

- A. This article shall apply to all utility poles located on City roads or rights-of-way as of the effective date of this article.
- B. The provisions of this chapter shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations, and nothing in this chapter shall be deemed to abolish, impair, supersede or replace existing remedies of the City, county or state or existing requirements of any other applicable state or local laws, ordinances, codes or regulations. In case of conflict between any provision of this chapter and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail.

§ 355-52. Severability.

If any clause, sentence, paragraph, section, word or part of this chapter is adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation to the clause, sentence, paragraph, section, word or part of this chapter directly involved in the controversy in which judgment is rendered.