

CITY OF LEROY
COUNTY OF MCLEAN
STATE OF ILLINOIS

ORDINANCE NO. 687

AN ORDINANCE AMENDING CHAPTER 4 BY AMENDMENT OF
SECTION 4.08-EXCAVATIONS IN STREETS, AND BY THE ADDITION
OF NEW SECTION 4.08 1/2, OF THE MUNICIPAL
CODE OF THE CITY OF LEROY, ILLINOIS, 1975 (AS AMENDED),

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY THIS 15th
DAY OF July, 1996.

PRESENTED: July 15, 1996

PASSED: July 15, 1996

APPROVED: July 15, 1996

RECORDED: July 15, 1996

PUBLISHED: July 15, 1996

In Pamphlet Form

Voting "Aye" 6

Voting "Nay" 6

The undersigned being the duly qualified and Acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned ordinance and that such ordinance was presented, passed, approved, recorded and published as above stated.

(SEAL)

x *Sue Marcum*
Acting City Clerk of the City of LeRoy,
McLean County, Illinois

Dated: July 15, 1996.

AN ORDINANCE AMENDING CHAPTER 4 BY AMENDMENT OF SECTION 4.08-EXCAVATIONS IN STREETS, AND BY THE ADDITION OF NEW SECTION 4.08 1/2, OF THE MUNICIPAL CODE OF THE CITY OF LEROY, ILLINOIS, 1975 (AS AMENDED),

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, have determined that it is in the best interests of the city and its residents to adopt regulations regarding excavations in streets or "street cuts" in addition to those already adopted by the city; and

WHEREAS, the Mayor and City Council find the existing regulations regarding excavations in streets or "street cuts" are not adequate to provide for the health, safety and welfare of the city and its residents,

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of LeRoy, in lawful meeting assembled, as follows:

Section 1. Section 4.08-EXCAVATIONS IN STREETS, and all subsections thereof, of Chapter 4, Streets, Ditches and Trees, Municipal Code of LeRoy, Illinois, 1975 (as amended), is hereby repealed.

Section 2. New Section 4.08 of Chapter 4, Streets, Ditches and Trees, Municipal Code of LeRoy, Illinois, 1975 (as amended) is hereby adopted in words and figures as follows:

4.08 - EXCAVATIONS IN STREETS - (a) It shall be unlawful for any person, firm or corporation to tunnel under or to make any excavation in, across or through any street, alley or other public place in the City of LeRoy without having first obtained a permit as hereinafter required, or without complying with the provisions of this ordinance or in violation or in variance from the terms of any such permit, as aforesaid.

(b) Applications for such permits shall be filed (on a form approved by the City Council) with the city clerk for consideration and approval or disapproval by the city Public Works Director, and shall describe the location of the intended excavation, or tunnel, the size thereof, the purpose therefor, and the person, firm or corporation doing the actual excavating work, as well as the name of the person, firm or corporation for whom or for which the work is being done, and shall contain an agreement that the applicant shall comply with all ordinances and laws relating to the work to be done, as well as such other information as the city Public Works Director shall require in order to

be adequately informed as to the nature and scope of the project prior to granting approval or determining that approval should not be granted. Said application shall also contain a bond in the form as set forth in Attachment 1, incorporated herein by reference.

(c) The fee for permits as previously described herein shall be as follows:

- (1) Excavation in an A-3 surface \$ 200.00
(maximum width of street cut permitted shall be 4 feet;
payment of an additional fee in the amount of \$5.00 per
square foot for the excavation to be made beyond the original
4 ft. width across the paved portion of the street shall be re-
quired)
- (2) Excavation in a hot mix over aggregate base surface.... 200.00
(maximum width of street cut permitted shall be 4 feet;
payment of an additional fee in the amount of \$5.00 per
square foot for the excavation to be made beyond the original
4 ft. width across the paved portion of the street shall be re-
quired)
- (3) Excavation in a hot mix surface over brick
or concrete base..... 350.00
(maximum width of street cut permitted shall be 4 feet;
payment of an additional fee in the amount of \$7.30 per
square foot for the excavation to be made beyond the original
4 ft. width across the paved portion of the street shall be re-
quired)
- (4) Excavation in brick pavement or surface..... 400.00
(maximum width of street cut permitted shall be 4 feet;
payment of an additional fee in the amount of \$8.30 per
square foot for the excavation to be made beyond the original
4 ft. width across the paved portion of the street shall be re-
quired)

No permit shall be issued unless and until the applicant therefor has filed with the city clerk a bond in the minimum sum of \$50,000.00, conditioned to indemnify the city for any loss, liability or damage that may result or accrue from or because of the making, existence, or manner of guarding or constructing any such tunnel or excavation. The minimum amount of the bond may be increased by application of the Director of Public Works to the city council (before approval of the permit application) where such action is deemed to be in the best interest of the city. Such bond shall be in the form as attached to this ordinance (See Attachment 1). The bond shall be released six months after certification in writing by the Director of Public Works or the city engineer that the work and restoration required under the permit have been completed and inspected.

(d) It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit granted in accordance with this ordinance and upon application therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground; and in excavations, the excavations shall not have any where below the surface any portion which extends beyond the opening at the surface. No injury shall be done to any pipes, cables, or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any such pipes, cables or

conduits or to the city department or the officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof. Areas of the paved portion of a street under excavation shall be squared with a cut-off saw after the trench or excavation has been cut or made.

(e) If any sidewalk is blocked by any excavation or tunnel work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users. The temporary sidewalk shall be subject to inspection by the Director of Public Works and shall not be open for use until approved by the Director of Public Works.

(f) Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the city shall restore the surface to its original condition if there is no pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground. Any opening in a paved or improved portion of a street shall be filled with gravel or sand the width of the street or a minimum of 20 feet, whichever is the lesser, and shall be filled to a level three inches above the paved street surface or improved portion of the street, all of which work shall be under the supervision of the Public Works Director of the City of LeRoy.

(g) The Public Works Director of the City of LeRoy shall from time to time inspect or cause to be inspected all excavations and tunnels being made in or under any public street, alley or other public place in the city to see to the enforcement of the provisions of this ordinance. Notice shall be given to the Public Works Director at least 12 hours before the work to construct or refilling of any such tunnel or excavation shall commence.

(h) It shall be the duty of every person, firm or corporation cutting or making an excavation in or upon any public street, alley or other public place in the city to place and maintain barriers and warning devices necessary for the safety of the general public, and in accordance with directions or instructions issued by the Public Works Director of the City of LeRoy and in accordance with any directions or instructions contained in the permit required before tunneling or excavation work may commence. The permittee shall take appropriate measures to assure that during the performance of the excavation work or tunneling work traffic conditions as near normal as possible shall be maintained at all times in the area of the work so as to minimize inconvenience to the occupants of the adjoining property and to the general public. When traffic conditions permit, the Public Works Director may, by written approval, permit the closing of streets and alleys to all traffic for a period of time prescribed by the Public Works Director, if, in his or her opinion, it is necessary. Such written approval may require that the permittee give notification to various public agencies and to the general public before the closing of any street or alley. In such cases, such written approval shall not be valid until such notice has been given. Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street or alley, and cones or other approved devices shall be placed to channel traffic, all in accordance with the instructions or directions of the Public Works Director.

(i) The excavation or tunneling work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water shut-off valves, underground vaults, and other vital equipment as designated by the Director of Public Works.

(j) The permittee shall maintain safe crossing for two lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians at intervals of not more than 300 feet. If any excavation is made across any public street, alley or sidewalk, adequate crossings shall be maintained for vehicles and for 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's width shall be maintained along such sidewalk line.

(k) The permittee shall not interfere with any existing facility or utility line without the written consent of the Director of Public Works and the owner of the facility or utility line. If it becomes necessary to relocate an existing facility, such as utility lines and the like, this shall be done by its owners. No facility or utility line owned by the city shall be moved to accommodate the permittee unless the cost of such work is paid by the permittee, with an amount approximately equal to the estimated cost of such relocation (such costs to be estimated by the Director of Public Works) being first deposited with the city. The cost of moving privately owned facilities and utility lines shall be similarly borne by the permittee unless it makes other arrangements with the person owning such facility or utility line. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and shall do everything necessary to support, sustain, and protect them under, over, along or across said work. The permittee shall secure approval of the method of support and protection from the owner of the facility or utility line. In case any of said pipes, conduits, poles, wires or apparatus shall be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a sub-structure, the permittee shall promptly notify the owner thereof. All damages to facilities or utility lines shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this provision that the permittee shall assume all liability for damage to facilities and utility lines, and any resulting damage or injury to anyone because of such facility or utility line damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owner of the facility or utility line. The city shall not be made a party to any action because of this ordinance provision. The permittee shall inform himself, herself or itself as to the existence of all underground facilities and utility lines and shall protect the same against damage.

(l) The permittee shall at all times, and at his, her or its own expense, preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where, in the protection of such property, it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall first obtain consent from the owner of such private property for such purpose, and if the permittee cannot obtain such consent, the Director of Public Works may authorize the permittee to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work, and shall be responsible for all damage to public or private property or highways resulting from the permittee's failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area, said area shall be reseeded or the sod shall be carefully cut and rolled and replaced after excavations have been back-filled as required by this ordinance. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove, even temporarily, any

trees or shrubs which exist in parking strip areas without first obtaining the consent of the appropriate city department or city official having supervision of such property.

(m) All material excavated from excavation areas and piled adjacent to the excavated area or in any street shall be piled, and maintained, in such a manner so as not to endanger those working in the excavated area, nor to endanger pedestrians or users of the streets, and so that as little inconvenience as is possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the excavated area, such as might be the case in a narrow alley, the Director of Public Works shall have the authority to require the permittee to haul the excavated material to a storage site and then rehaul it to the excavation site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites. All material excavated shall be laid compactly along the side of the trench and kept trim so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Director of Public Works. Whenever necessary, in order to expedite the flow of traffic or to abate the dirt or dust nuisance, toe boards or bins may be required by the Director of Public Works to prevent the spreading of dirt into traffic lanes or on to pedestrian walk-way areas. This provision is not intended to allow the permittee to replace any excavated area with any or all of the material removed from the excavated area. Back-filling and the material(s) used in backfilling shall be as directed by the Director of Public Works for the city.

(n) As the excavation or tunneling work progresses, all streets shall be thoroughly cleaned at least daily of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the location of the excavation or tunneling shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Director of Public Works. From time to time, as may be ordered by the Director of Public Works, and in any event immediately after completion of the excavation or tunneling work, the permittee shall, at the permittee's own expense, clean up and remove all refuse and unused materials of any kind resulting from said work, including all dirt, rock and debris located on or about the excavated area, and upon failure to do so within 24 hours after having been notified to undertake such clean-up operations by the Director of Public Works, said work may be done by the city and the cost thereof charged to the permittee. The permittee shall also be liable for the cost of any such clean up work conducted by the city under the bond provided herein.

(o) The permittee shall maintain all gutters and ditches free and unobstructed for the full depth of the adjacent curb or ditch, and for at least 1 foot in width from the face of such curb at the gutter line or the full width of the ditch. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and at all times maintained. The permittee shall make arrangements to take care of all surplus water, muck, silt, slickings, or other run-off pumped from excavations or tunneling, or resulting from sluicing or other operations, and shall be responsible for any damage resulting from the permittee's failure to so provide.

(p) After excavation or tunneling work is commenced, the permittee shall prosecute with diligence and expedition all such excavation or tunneling work covered by the permit and shall promptly complete such work and restore the street or other public way or place to its original condition, or as near may be, so as not to obstruct the public place or travel thereon more than is reasonably necessary.

(q) When traffic conditions, the safety or convenience of the traveling public, or the public interest require that the excavation or tunneling work be performed as emergency

work, the Director of Public Works shall have full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee 24 hours a day to the end that such excavation work may be completed as soon as possible.

(r) Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipes, or for making repairs, provided that the person, firm or corporation making such excavations shall make application for a permit or permits as required under this ordinance on the first working day after such work is commenced.

(s) Each permittee shall conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and to the occupants of any neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation or tunneling work noise, dust and unsightly debris and between the hours of 7:00 p.m. and 7:00 a.m. shall not use, except in case of emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the repose of occupants of the neighboring property.

(t) 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, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the city engineer so to do. Permission to remove or disturb such monuments, reference points or bench marks, shall only be granted upon condition that the person applying for such permission shall pay all expenses instant to the proper replacement of this monument by the city.

(u) The Director of Public Works shall make such inspections as shall be reasonably necessary, in his or her opinion, in the enforcement of this ordinance. The Director of Public Works shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this ordinance.

(v) In the event the city has to replace any work or repair any damages caused by the permittee, the permittee shall be subject to fine as provided in the Municipal Code of the City of LeRoy, and further shall be punishable by additional fine equal to the cost of repair of the damage, plus costs of suit and collection expense, if the city must resort to suit in order to recover the costs of repair of the damages.

Section 3. New Section 4.08 1/2, Chapter 4-STREETS, DITCHES AND TREES, Municipal Code of the City of LeRoy, Illinois, 1975 (as amended) is hereby adopted in words and figures as follows:

4.08 1/2 ABANDONMENT OF SUBSTRUCTURES

Whenever the use of a substructure or utility line is abandoned, except the abandonment of service lines designed to serve single properties, the person owning, using, controlling, or having an interest therein, shall, within thirty (30) days after such abandonment, file with the Director of Public Works of the City of LeRoy a statement in writing giving in detail the location of the substructure or underground utility line so abandoned. If such abandoned substructure or underground utility line is in the way,

or subsequently becomes in the way, of an installation of the city or of any other public body, which installation is pursuant to a governmental function, the owner shall remove such abandoned substructure or pay the cost of its removal during the course of excavation for construction of the facility or underground utility line by the city or any other public body.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication in pamphlet form, as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by

Ron Litherland, seconded by Bill Swindle

_____, by roll call vote on the 15th day of July, 1996, as follows:

Aldermen elected 6 Aldermen present 6

VOTING AYE:

Ron Litherland, Dave McClelland, Lois Parkin, Fred Dodson, Dawn Thompson,
(full names) Bill Swindle

VOTING NAY:

None
(full names)

ABSENT, ABSTAIN, OTHER:

None
(full names)

and deposited and filed in the office of the Acting City Clerk in said municipality on the 15th day of July, 1996.

X Sue Marcum
Sue Marcum, Acting City Clerk of the City of
LeRoy, McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 15th day of

July, 1996.

X Jerry C. Davis
Jerry C. Davis, Mayor of the City of LeRoy,
McLean County, Illinois

ATTEST:

(SEAL)

X *Sue Marcum*
Sue Marcum, Acting City Clerk, City of
LeRoy, McLean County, Illinois

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

_____, principal
(hereinafter referred to as "CONTRACTOR"), of _____, County of
_____, and State of _____, and _____

_____, as "SURETY,"
of _____, of the
County of _____, and State of _____, are held and firmly
bound unto the City of LeRoy in the penal sum of _____

_____ (\$ _____) , lawful money of the United States, for
the payment of which sum of money, well and truly to be made, we bind ourselves, our heirs,
executors, administrators, assigns and successors in interest, jointly and severally, firmly by these
presents.

The condition of the above obligation is such that whereas CONTRACTOR has received a
permit from the City of LeRoy, dated the _____ day of _____,
permitting CONTRACTOR to make one or more street excavations ("street cuts") or tunnels into
one or more places across, through, along or under the streets, public alleys or other public places,
of the City of LeRoy, or a combination of street excavations and tunneling across, through, along
or under the aforesaid streets, public alleys or other public places;

Now, if CONTRACTOR shall in all respects well and truly keep and perform the said
contract on CONTRACTOR's part, in accordance with the terms and provisions of the aforesaid
permit and in accordance with the terms and provisions of the ordinance incorporated into said
permit by reference, and in the time and manner therein prescribed, and further shall save,
indemnify and keep harmless the City of LeRoy against all loss, damages, claims, liabilities,
judgments, costs and expenses which may in any way accrue against the City of LeRoy in
consequence of the granting of said permit, or which may in any way result therefrom, or which
may in any way result from any injuries to, or death of, any person, or damage to any real or
personal property, arising directly or indirectly from, or in connection with, work performed, or to
be performed in accordance with said permit by CONTRACTOR or CONTRACTOR's agents,
employees or workmen, assignees, sub-contractors, or anyone else, in any respect whatever, and,
moreover, shall pay to the City of LeRoy any sum or sums of money determined by the city to be
due by reason of any failure or neglect in the performance of the requirements of said permit and of
the ordinance incorporated therein, wherefore the city may elect to suspend or to cancel said
permit, and the city may pay any and all claims and demands whatsoever, which may accrue to
each and every materialman and subcontractor, and to each and every person who shall be
employed by CONTRACTOR, or by CONTRACTOR's assignees and sub-contractors, in or about
the performance of that work allowed under the aforesaid permit, and shall insure against liability
to pay the compensation, and shall pay all claims and demands for compensation which may accrue

to each and every person who shall be employed by CONTRACTOR or any of CONTRACTOR's assignees and subcontractors in or about the performance of the work allowed in accordance with the aforesaid permit, or which shall accrue to the beneficiaries or dependents of any such person, under any law of the State of Illinois, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Further, it is hereby expressly understood and agreed, and made a condition hereof, that any judgment rendered against the City of LeRoy and any suit based upon any loss, damages, claims liabilities, judgments, costs or expenses which may in any way accrue against the City of LeRoy in consequence of the granting of the aforesaid permit, or which may in any way result therefrom, or which may in any way result from any injuries to, or death of, any person, or damage to any real or personal property arising directly or indirectly from, or in connection with, work performed, or to be performed, in accordance with the aforesaid permit by CONTRACTOR or CONTRACTOR's agents, employees or workmen, assignees, sub-contractors, or anyone else, shall be conclusive against each and all parties to this obligation, as to amount, liability and other things pertaining thereto.

Nothing in this bond contained shall be taken to make the City of LeRoy liable to any subcontractor, materialman, laborer, or to any other person to any greater extent than it would have been liable had this bond not been entered into. SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of any of the documents comprising the permit and the agreement by CONTRACTOR to complete work in accordance with said permit, or to the work to be performed thereunder, shall in any way affect SURETY's obligations on this bond to be performed thereunder, or shall, in any way, affect its obligations on this bond, and SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the permit or the work to be completed in accordance with said permit.

Signed and sealed this _____ day of _____, 19 ____.

Principal (CONTRACTOR):

SURETY:

CERTIFICATE

I, Sue Marcum, certify that I am the duly appointed and acting municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on July 15, 1996, the Corporate Authorities of such municipality passed and approved Ordinance No. 687, entitled:

AN ORDINANCE AMENDING CHAPTER 4 BY AMENDMENT OF SECTION 4.08-EXCAVATIONS IN STREETS, AND BY THE ADDITION OF NEW SECTION 4.08 1/2, OF THE MUNICIPAL CODE OF THE CITY OF LEROY, ILLINOIS, 1975 (AS AMENDED),

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 687, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on July 15, 1996, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 15th day of July, 1996

(SEAL)



Acting Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

I, Sue Marcum, do hereby certify that I am the duly qualified and Acting City Clerk of the City of LeRoy, McLean County, Illinois, and as such Acting City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

AN ORDINANCE AMENDING CHAPTER 4 BY AMENDMENT OF SECTION 4.08-EXCAVATIONS IN STREETS, AND BY THE ADDITION OF NEW SECTION 4.08 1/2, OF THE MUNICIPAL CODE OF THE CITY OF LEROY, ILLINOIS, 1975 (AS AMENDED).

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 15th day of July, 1996, and prior to the making of this certificate the said ordinance was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said ordinance in the record books.

Dated this 15th day of July, 1996.

X. *Sue Marcum*
Acting City Clerk

(SEAL)