

ORDINANCE NUMBER 05062009

**AN ORDINANCE OF THE TOWN OF BURKE
RELATING TO EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAYS AND
ROADS**

The Town Board of the Town of Burke, Dane County, Wisconsin, does hereby ordain as follows:

Sec. 4-3-1 of the Code of Ordinances of the Town of Burke, WI is repealed and recreated as Sec. 4-3-1 of the Code of Ordinances to provide as follows:

**SEC. 4-3-1 EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAYS AND
ROADS.**

1) Permit Required

- a) No person, partnership, utility or corporation, or their agents or employees or contractors shall make or cause to be made any opening or excavation in any public street, public road, public alley, public way, public ground, public sidewalk or Town-owned easement or fill or alter any culvert or construct or install additions or extensions to its existing facilities within the Town of Burke without a permit from the Town Clerk or designee.
- b) A utility or its contractor shall submit to the town a written request for a utility construction/street excavation permit and a plan of the proposed alteration, extension or addition, showing its location and details of construction, including specific depth, method of excavation, open cut or augering, provisions of restoration and what ever the Town would deem necessary for review and consideration. In being issued a permit the utility or its contractor agrees to be bound by the regulations of this section and Section 4-3-2.

2) Fee. The fee for an excavation or opening permit shall be \$250.00. The fee shall be paid to the Town Clerk, who shall issue a receipt.

3) Insurance Required. A permit shall be issued only upon condition that the applicant submit to the Town Clerk or designee satisfactory written evidence that the applicant has in force and will maintain during the time the permit is in effect public liability insurance of not less than \$500,000 per person, \$500,000 for one accident and property damage coverage of not less that \$500,000. The policy shall name the Town of Burke as an additional insured.

4) Bond

- a) Before a permit for excavating or opening any street or public way may be issued, the applicant must sign a statement that they will indemnify and hold harmless the Town of Burke and its officers from all liability for accidents and damage caused by any of the work covered by his permit, and that he will fill

and place in good and safe condition all excavations and openings made in the street or other area under permit, and will replace and restore the pavement over any opening he may make as near as can be to the state and condition in which he found it, and keep and maintain the same in such condition, normal wear and tear excepted, to the satisfaction of the Supervisor of Public Works or designee for a period of two (2) years, and that he will pay all fines imposed upon him for any violation of any rule, regulation or Ordinance governing street opening or drain laying adopted by the Town Board and will repair any damage done to existing improvements during the progress of the excavation in accordance with the Ordinances, rules and regulations of the Town. Such statement shall also guarantee that if the Town shall elect to make the repairs, the person opening the street will pay all costs of making such repairs and of maintaining the same for two (2) years.

- b) Faulty work or materials or failure to remove erosion control measure shall be immediately corrected by the permittee upon notice by the Town. Failure to correct deficiencies shall result in a one (1) year revocation of the right to obtain a street opening permit. The Town shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus twenty (20%) percent for administration.
- c) The person who does such restoration shall be responsible therefore for two (2) years from the date of the completion of the work and shall file a written guarantee or surety bond to that effect with the Town in an amount of not less than Five Hundred (\$500.00) Dollars, nor more than Ten Thousand (\$10,000.00) Dollars, with the amount to be determined by the Supervisor of Public Works or designee. **At the discretion of the Supervisor of Public Works or designee, a deposit to an account with the Town in the form of a check or cash may be accepted in lieu of a written guarantee or surety bond. Said deposit shall be held for two (2) years from the completion date.**
- d) Whenever the Supervisor of Public Works or designee shall find that any such work has become defective within two (2) years of the date of the completion, he shall give written notice thereof to the contractor and to the permittee surety stating the defect, the work to be done, the cost of and the period of time deemed by the Supervisor of Public Works to be reasonably necessary to complete said work. After receipt of such notice the contractor or the surety must, within the time specified, repair the defect or indemnify the Town for the cost of doing the work as set forth in the notice.
- e) An annual bond may be given under this section to protect the public and the Town which shall cover all excavation work done by the principal during a one (1) year period, beginning on the date of approval, which bond shall be conditioned as specified above. The value of the work, as determined by the Town Engineer above, shall not exceed the value of the annual bond provided to the Town.

The above and foregoing ordinance was adopted by the Town Board of the Town of Burke at a meeting held on May 6, 2009.

TOWN OF BURKE

Signed Kevin Viney
Kevin Viney, Chairman

Attest Brenda Ayers
Brenda Ayers, Clerk/Treasurer

Posted: 5/8/2009

Published: 5/13/2009

SEC. 4-3-2 REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS

- 1) Frozen Ground. No opening in the streets, alleys, sidewalks or public ways shall be permitted when the ground is frozen except where it is deemed necessary by the Town Clerk or designee.
- 2) Removal of Paving. In any opening or excavation, all paving or ballasting materials shall be removed with the least possible loss or injury to surfacing materials and together with the excavated materials from the opening shall be placed so as to cause the least practicable inconvenience to the public and permit free flow of water along gutters.
- 3) Protection of Public
 - a) Every opening and excavation shall be enclosed with sufficient barriers. Sufficient warning lights shall be kept on from sunset to sunrise. Such lights shall be spaced so as to give adequate warning of the existence of the opening and of piled excavated materials. No open flame warning pots shall be used. Except by special permission from the Town, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet where pipe or conduit has been laid.
 - b) All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of the work. Each person making such opening shall be held liable for all damages, including costs incurred by the Town in defending any action brought against it for damages, as well as any cost of appeal, that may result from the neglect by such person or his employees of any necessary precaution against injury or damage to persons, vehicles or property of any kind.
- 4) Replacing Street Surface. In opening any public street, public alley, public sidewalk, public way, public easement or public ground, the paving materials, sand, gravel and earth or other material removed or penetrated and all surface monuments or hubs must be removed and replaced as nearly as possible in their original condition or position and the same relation to the remainder as before. Any excavated material which, in the opinion of the Town, is not suitable for refilling shall be replaced with the approved backfill material. All rubbish shall be immediately removed. In refilling the opening, the earth must be laid in layers not more than six (6) inches in depth and each layer rammed, tamped or flushed to prevent after-settling. When the sides of the trench will not stand perpendicular, sheathing or other lumber shall be left in any trench. If the work is not done to the satisfaction of the Town the Town will perform the work and the cost of making such repair and of maintaining it for one (1) year shall be charged to the person making the street opening.
- 5) Notice. It shall be the duty of the permittee to notify the Town Chairperson and /or Town Clerk, or the Town Engineer when requested by Town, and all private individuals, firms and corporations affected by the work to be done at least twenty-four (24) hours before such work is to commence. The Clerk and/or Chairperson, or the Town Engineer

when requested by the Town, shall also be notified at least four (4) hours prior to backfilling and/or restoring the surface.

6) Validity of Permit. Unless the work shall be commenced within thirty (30) days of the issuance of the permit, the permit shall be void, and a new permit must be obtained and an additional fee charged. The Town may extend the time limitation for a good cause. The utility or contractor shall have present at the site of construction and during the restoration period a copy of the construction plans and Town permit.

7) Backfilling. It shall be the duty of the permittee to backfill the opening immediately upon completion of the work and to place at least five (5) inches of traffic bind or similar material in the opening unless otherwise advised by the Town. It shall be the duty of the permittee to maintain the opening in good condition for a period of six (6) months after the completion of the work or until the surface has been restored. The Town shall decide when, within said six (6) months' period, the opening is ready for repaving if needed. If the surface is not restored within a period of ten (10) days or such longer period as determined by the Town, the Town may restore the surface and bill the permittee therefore.

8) Emergency Excavation. In the event of an emergency, any person, firm or corporation, owning or controlling any sewer, gas main, water main, conduit or other utility in or under any public street, alley easement, way or ground and his agents and employees may take immediate proper emergency measures to remedy dangerous conditions for the protection of the property, life, health or safety without obtaining an excavation permit, provided that such person, firm or corporation shall apply for an excavation permit not later than the next business day.

9) Excavation in New Streets Limited. Whenever the Town Board determines to provide for the permanent improvement or repaving of any street, such determination shall be made not less than thirty (30) days before the work of improvement or paving shall begin. Immediately after such determination by the Town Board, the Town shall notify in writing each person, utility, Town department or other agency owning or controlling any sewer, water main, conduit or other utility in or under said street or any real property abutting said street, that all such excavation work in such street must be completed within thirty (30) days. After such permanent improvement or repaving, no permit shall be issued to open or excavate said street for a period of five (5) years after the date of improvement or repaving unless, in the opinion of the Town Board, an emergency exists which makes it absolutely essential that the permit be issued.

10) Exception. The provisions of this Section shall not apply to excavation work done by Town employees or contractors performing work under contract with the Town except that the safety precautions under Subsection (3) hereof shall be complied with.