

CHAPTER 3
ROAD EXCAVATION; TREES

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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 out 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 determined by Town Board resolution. 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.

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 that 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.

SEC. 4-3-3 TREES AND SHRUBBERY OBSTRUCTING VIEWS AT INTERSECTION OR VIEW OF TRAFFIC SIGNS; TREE REMOVAL; FENCES

- 1) Obstruction of Intersections. No person shall maintain, plant or permit to remain on any private or public premises situated at the intersection of two (2) or more roads, streets or alleys in the Town of Burke any hedge, tree, shrub, or other growth which may obstruct the view of the operator of any motor vehicle or pedestrian approaching such intersection.
- 2) Obstruction of Signs. It is unlawful for any person to plant, cause to grow, allow to grow or maintain any trees, bushes, shrubbery or vegetation of any kind which is an obstruction to the clear and complete vision of any traffic sign in the Town. It shall be the duty of every owner of such tree, brush, shrubbery or vegetation to remove such obstruction.
- 3) Abatement Procedure. Any shrub, tree or other plant which obstructs the view at an intersection or the view of a traffic sign shall be deemed to be dangerous to public travel, and the Town Clerk shall notify the property owner in writing, describing the conditions, stating the steps necessary to correct the conditions, and establishing a reasonable time within which the corrective steps shall be taken. In the event that effective steps are not taken within the time specified it shall be lawful for the Town to abate these conditions to the extent necessary to assure compliance with the foregoing requirements, and the costs thereof shall be assessed to the owner.
- 4) Trees in and Adjacent to Highway Right of Way
 - a. Removal of Fallen Trees. If any tree falls from adjacent land into any highway, the owner or occupant of the land shall immediately remove the tree from the highway. If the tree is not removed by the property owner following notice from the Town, the Town may remove from any highway any fallen tree or trees therein and charge the cost thereof to the property owner pursuant to Sec. 66.0627, Wis. Stats
 - b. Planting Trees and Shrubs in a Highway Right of Way. Any person owning or occupying land adjoining any highway may, with the approval of the Town Board, plant, cultivate and maintain trees, shrubs or hedges on the side of the highway continuous to and within ten (10) feet of his land. Such trees, shrubs or hedges shall be cut or removed only by the owner or occupant of the abutting land or by the public authority having control of the highway.
- 5) Cutting or Injuring Trees on Highway Right of Way. No person shall cut down, break, girdle, bruise the bark or in any other manner injure any public or private trees, shrubs or hedges growing within the highway right of way, except as the owner thereof or the public authority maintaining the highway right of way may cut down, trim and remove trees, shrubs and hedges for the purpose of and conducting to the benefit and improvement of the owner's land or the highway facility. When it is necessary for the trees in a road right-of-way to be removed, the adjacent property owner shall have a right of first refusal to have the wood. After receiving notice that a tree is to be removed, the adjacent property owner shall have fourteen (14) days to remove the tree.

- 6) Fences. No person shall build or reconstruct any fence within the public road right-of-way measured from the center of the road. With the permission of the Town Board, a person owning or occupying land adjoining a highway may build or reconstruct a fence on the side of the highway contiguous to and within ten (10) feet of his land.

State Law Reference: Sec. 86.03, Wis. Stats.

SEC 4-3-4 INJURY TO TREES AND SHRUBS PROHIBITED

- 1) No person shall, without the consent of the owner in the case of a private tree or shrub, or without written permits from the Town Board in the case of a public tree or shrub, do or cause to be done by others any of the following acts listed A-f below but not limited to:
 - a. Secure, fasten or run any rope, wire sign, unprotected electrical installation or other device or material to, around or through a tree or shrub.
 - b. Break, injure, mutilate, deface, kill or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
 - c. Permit any toxic chemical, gas, smoke, oil or other injurious substances to seep, drain or be emptied upon or about any tree or shrub, or place cement or other solid substance around the base of the same.
 - d. Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water or fertilizer.
 - e. Attach any sign, poster, notice and other object on any tree, or fasten any guy wire, cable, rope, nails, screws or other device to any tree; except that the Town may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work or parades.
 - f. Cause or encourage any fire or burning near or around any tree.
- 2) All trees on any parkway or other publicly owned property near any excavation or construction of any building, structure or street work shall be sufficiently guarded and protected by those responsible for such work as to prevent any injury to said trees.

State Law Reference: Sec. 86.03, Wis. Stats.

SEC. 4-3-5 DEPOSIT OF RUBBISH AND STONES ON HIGHWAY RIGHT-OF-WAY

It shall be unlawful for any person to throw, deposit, or otherwise place any weeds, sod, brush, cans, glass, gravel, stones, boulders, machinery, garbage or other waste or rubbish in or on the right-of-way of any highway located in the Town of Burke, without written permission of the Town Board for temporary use with the exception of brush set for chipping or rubbish set out for regular pick up.

SEC. 4-3-6 PLACEMENT OF RURAL MAILBOXES

Rural mailboxes are prohibited on the right-of-way of all highways within the Town of Burke except as hereinafter provided:

- 1) Mailboxes are approved only if they are of a construction or design approved by the United States Postal Service or previously approved by the Postmaster.
- 2) Newspaper tubes are permitted only if provided by the newspaper or of a construction or design that will not present a hazard to the public use of the right-of-way. Where the newspaper tube used has not been provided by the newspaper, the Building Inspector shall have the authority to approve the tube. If the Building Inspector refuses to approve the newspaper tube, it must be removed.
- 3) A nameplate bearing the name and address number of the mailbox owner shall be permitted on each box.
- 4) The support for the mailbox and newspaper tube shall adhere to the standards governing construction of mailbox supports as established by the Wisconsin Department of Transportation and shall not constitute a hazard to the public use of the right-of-way.
- 5) Mailboxes and newspaper tubes must be located on the side of the road required by the United States Postal Service and so that the door to the mailbox or protruding end of the newspaper tube is at least one (1) foot from the paved portion of the highway.
- 6) The owner of each mailbox and/or newspaper tube shall, within twenty-four (24) hours after the end of each snowfall, remove all snow and ice which has fallen or accumulated in front of said mailbox and/or newspaper tube and shall remove the snow for a distance of fifteen (15) feet to each side of said mailbox and/or newspaper tube.
- 7) No other object of any kind shall be attached to the mailbox, newspaper tube or their supports. No other objects, including, but not limited to, landscaping boulders or fences may be placed on the right-of-way.
- 8) This section is not intended to and shall not be construed to create any affirmative duty on the part of the Town of Burke to locate and remove obstructing mailboxes. The Town of Burke is not liable for damages to mailboxes caused by snowplowing.
- 9) It is unlawful to place amber or red deflectors on or near any mailbox.

Enforcement. All costs incurred by the Town relating to the enforcement of this Chapter or in making the determinations or inspections necessary hereunder, shall be

paid by the property owner, including, but not limited to, Town administrative costs, and engineers and attorneys fees. If a property owner refuses to comply with the Chapter, the Town may make the necessary changes and charge back the cost or additional cost thereof as a special charge pursuant to Sec. 66.60 (16) WI Stats. Those persons deemed non-compliant with this Chapter, after written notice giving 10 days for compliance may be subject to the general penalty provisions as stated in Town of Burke Ordinance 1-1-6.

SEC. 4-3-7. OBSTRUCTIONS AND EXCAVATIONS GENERALLY PROHIBITED.

No person shall place an obstruction or excavation in any right-of-way, highway, alley, sidewalk, public grounds, public way, or land dedicated to public use or any part thereof, except as allowed in sections 4-3-5, 4-3-6 and 4-3-8.

SEC. 4-3-8. PRIVILEGES IN HIGHWAYS.

- (1) **Privilege Permit Required.** A person may apply to the Town Board for a privilege permit. For purposes of this section, "privilege" means the authority to place an obstruction or excavation within the right-of-way of a Town highway.
- (2) **Application and Town Board Action.** An application for a privilege permit shall be made on an application form provided by the Town Clerk/Treasurer. The completed application shall be filed with the Town Clerk/Treasurer. The Town Clerk/Treasurer shall forward each properly completed application to the Town Board for action. The Town Board shall deny the application, grant the application, or grant the application with conditions.
- (3) **Conditions of Approval.** The Town Board may approve the application for a privilege permit on the condition that the applicant:
 - (a) Assume liability for damages to person or property by reason of the granting of the privilege permit;
 - (b) Remove the obstruction or excavation upon 10 days' notice by the Town and waive the right to contest in any manner the validity of this section or the amount of compensation charged by the Town related to the privilege;
 - (c) File a bond in an amount not to exceed \$10,000 that runs to the Town and third parties who may be injured by the obstruction or excavation and secures the applicant's fulfillment of the conditions specified in this section 4-3-8.
 - (d) Agree that the applicant is not entitled to damages for removal of the obstruction or excavation, and that if the applicant does not remove the obstruction or excavation upon 10 days' notice, the Town may remove the obstruction or excavation at the applicant's expense.
 - (e) Agree that third parties whose rights are interfered with by obstruction, excavation, or granting of the privilege have a right of action against the applicant only.
 - (f) Enter into a written agreement with the Town that documents the privilege and any conditions imposed by the Town. The Town may record and re-record the agreement or a notice of agreement, with the office of the Dane County Register of Deeds, and the terms and conditions of the agreement shall run with the land and be binding on the applicant and the applicant's heirs, successors and assigns.

- (4) **Fees.** The applicant shall pay an application fee and an annual fee for the privilege permit. The Town Board shall specify the applicable fees.
- (5) **Applicable to Cities, Villages, and Towns.** This Section applies to an obstruction or excavation by a city, village, or other town.
- (6) **Exceptions.** This section does not apply to:
 - (a) An obstruction or excavation that is in place for less than 90 days and which otherwise complies with any applicable ordinance.
 - (b) Subsections (1) to (5) do not apply to telecommunications carriers, as defined in Wis. Stat. § 196.01(8m), telecommunications utilities, as defined in §196.01(10), alternative telecommunications utilities, as defined in § 196.01(1d), public service corporations, or cooperatives organized under ch. 185 of the Wisconsin Statutes to render or furnish gas, light, heat, or power, or to cooperatives organized under ch. 185 or ch. 193, to render or furnish telecommunications service, but the carriers, utilities, corporations and associations shall secure a permit from the proper official for temporary obstructions or excavations in a highway and are liable for all injuries to person or property caused by the obstructions or excavations.
 - (c) Mailboxes placed in compliance with section 4-3-6.
- (7) **Fines.** Any person who violates this section may be fined not less than \$25 nor more than \$500 or imprisoned for not less than 10 days nor more than 6 months or both.