

ORDINANCE NO. 2010-05

**An Ordinance Relating to Excavations of Streets, Alleys,
Public Ways and Grounds and Regulations
Governing Excavations and Openings**

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Section 6-2-3 of the Municipal Code of the City of Cedarburg is hereby amended as follows:

SEC. 6-2-3 EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAYS AND GROUNDS.

- (a) **Permit Required.** No person, partnership or corporation, or their agents or employees or contractors, shall excavate in or disturb the surface of any public street, public alley, public way, public ground, public sidewalk or City-owned easement within the City of Cedarburg without a permit ~~therefor~~ from the City Engineer.
- (b) **Application for Permit.** The application for a permit shall be in writing and signed by the applicant or his agent. The applicant shall submit to the City Engineer, at the time the permit is applied for, sufficient information relating to the work to be done including the general location and nature of the work and the method applicant proposes to use in doing the work. The City Engineer shall determine if sufficient information is submitted.
- (c) **Exception.** The provisions of this Section shall not apply to City excavation work done under the direction of the Director of Engineering and Public Works.
- (d) **Validity of Permit.** Permits shall be valid for a period of ~~thirty (30)~~ ninety (90) days from the date of approval. Any person or utility who has been granted a permit to excavate in the public right-of-way or to disturb the same shall perform such work in such manner and in such time as the Director of Engineering and Public Works shall direct and shall restore the surface of the public right-of-way pursuant to the requirements of this Section and Section 6-2-4.
- (e) **Excavations by Public Utilities.** Any public utility having a franchise to lay pipe in or near the public way shall, before excavation or disturbing any portion of the public right-of-way, give written notice and present plans thereof to the City Engineer in such form as the Director of Engineering and Public Works may prescribe.
- (f) **City Standards.** All street work shall be performed in accordance with the current standard specifications for street openings. Any damaged curb and gutter, sidewalk or grass-covered area shall be restored to the condition prior to damage. All provisions of City Policy PR-6 "Protection of Public Trees During Construction" shall apply.
- (g) **Permit Fee and Deposit.**
 - (1) The following fees shall be submitted with applications for permits under this Section:

a. Opening street	\$250.00
b. Opening curb, alleyway, walkway or parkway	\$150.00
c. Perform work or labor or deposit excavation or construction materials within a public right-of-way	\$ 50.00
 - (2) The sum of One Hundred Dollars (\$100.00) of the fees deposited under a. and b.

hereof shall be refunded upon completion of the restoration of the disturbed surface to the satisfaction of the City Engineer.

- (h) **Insurance Required.** A permit shall be issued only upon condition that the applicant submits to the City Engineer satisfactory written evidence that applicant has in force and will maintain during the time the permit is in effect public liability insurance in an amount prescribed by the City's Schedule of Insurance Requirements. The policy shall name the City of Cedarburg as the third-party insured and shall be subject to approval by the City Attorney.
- (i) **Bond.**
- (1) Before a permit for excavating or opening any street or public way may be issued, the applicant shall sign a statement that he will indemnify and save the City of Cedarburg 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 up and place in good and safe condition all excavations and openings made in the street, 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 City Engineer for a period of one (1) year, and that he will pay all fines of forfeitures imposed upon him for any violation of any rule, regulation or ordinance governing street openings or ~~drainlaying~~ drain laying adopted by the Common Council 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 City. Such statement shall also guarantee that, if the City shall elect to make the street repair, the person opening the street will pay all costs of making such repair and of maintaining the same for one (1) year.
 - (2) Faulty work or materials shall be immediately replaced by the permittee upon notice by the City. Failure to correct deficiencies shall result in a one (1) year revocation of the right to obtain a street opening permit. The City shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus twenty percent (20%) for administration.
 - (3) The person who does such restoration shall be responsible ~~therefor~~ therefore for one (1) year from the date of the completion of the work and shall file a written guarantee or surety bond to that effect with the City in the amount of Ten Thousand Dollars (\$10,000.00).
 - (4) Whenever the City Engineer shall find that any such work has become defective within one (1) year of the date of completion, he shall give written notice thereof to the contractor or to his surety stating the defect, the work to be done, the cost thereof and the period of time deemed by the City Engineer 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 City for the cost of doing the work as set forth in the notice.
 - (5) An annual bond may be given under this Section covering all excavation work done by the principal for one (1) year beginning at the start of the project, which shall be conditioned as specified above and in the amount equal to one hundred percent (100%) of the project bid amount.

SECTION 2. Section 6-2-4 of the Municipal Code of the City of Cedarburg is hereby amended as follows:

SEC. 6-2-4 REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS.

- (a) **Frozen Ground.** No openings in the streets, alleys, sidewalks or public ways shall be permitted between ~~November 15th and May 1st~~ December 1st and April 1st except where it is determined by the City Engineer to be an emergency excavation or authorized Public Works Department projects.
- (b) **Notification to Property Owners.** Any person who is granted a permit hereunder shall notify all property owners identified by the City Engineer or his designate as affected by this excavation. The notice shall be given in writing at least forty-eight (48) hours in advance of such excavation, except in emergencies as identified by the City Engineer, in which case the City Engineer may waive this requirement. When the operations will result in the loss of any utility service to private properties, the private properties shall be notified in writing or by personal contact at least forty-eight (48) hours prior to the loss of service, unless the operations are part of an emergency excavation as defined in Sec. 6-2-4(i).
- (c) **Protection of Public.**
 - (1) Every opening and excavation shall be enclosed with sufficient barriers, signing, and such other traffic control devices as may be required by the Engineer, and in accordance with Section VI of the Manual of Uniform Traffic Control Devices. Sufficient warning lights shall be kept on from sunrise to sunset. No open flame warning devices shall be used. Except by special permission from the City Engineer, 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 from where pipe or conduit has been laid.
 - (2) 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 City in defending any action brought against it for damages, as well as cost of any 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~~.
 - (3) Unless otherwise approved, a minimum of one (1) lane of traffic in each direction shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to his project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area.
 - (4) The permittee shall perform the work in such a manner so as not to disrupt the flow of traffic in the area or endanger the safety of workmen or passersby. It shall be the responsibility of the permittee to prevent traffic backup during construction operation. The permittee shall notify the Police Department twenty-four (24) hours prior to commencement of excavation of the location and extent of the excavation, unless the excavation is an emergency excavation as identified in

Section 6-2-4(c).

- (d) **Standard Specifications.** Pavement removal, excavations, backfilling and pavement replacement shall be performed pursuant to standard specifications on file with the City Engineer.
- (e) **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 make take immediate proper emergency measures to remedy dangerous conditions for the protection of 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 and shall notify the Police Department immediately.
- (f) **Excavation in New Streets Limited.** Whenever the Board of Public Works 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 repaving shall begin. The City Engineer shall notify in writing each person, utility 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, prior to advertising for bids for such work, and 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 City Engineer, conditions exist which make it absolutely essential that the permit be issued. Every effort shall be made to place gas, electric, telephone and television cable lines in street parkways.

SECTION 3. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 8th day of March, 2010.

Gregory P. Myers, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Kaye K. Vance, City Attorney