

ORDINANCE NO. 12-21-09

AN ORDINANCE OF THE TOWN OF VIENNA
FOR STREET EXCAVATIONS AND OPENINGS

ORIGINAL

The Town Board of the Town of Vienna, Dane County, Wisconsin, pursuant to authority vested in it, does hereby ordain as follows:

SECTION 1. EXCAVATIONS OF PUBLIC RIGHT OF WAYS AND ROADS

A. Permit Required.

- 1) 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 Vienna without a permit issued by the Town Clerk/Manager or designee.
- 2) The applicant (utility or 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 specified depth, method of excavation, open cut or boring, provisions of restoration and whatever the Town would deem necessary for review and consideration. In being issued a permit, the applicant agrees to be bound by the regulations of this Ordinance.

B. Fee. The fee for an excavation or opening permit shall be set by resolution of the Town Board from time to time. The fee shall be paid to the Town Treasurer who shall issue a receipt therefor. In the event of an emergency excavation for the protection of property, life, health, or safety, there shall be no permit fee (except any actual Town expenses shall be charged to the applicant) provided the application for the street opening permit is filed with the Clerk or designee within two (2) regular business days of the excavation. If the permit application for the emergency excavation is not filed within two (2) regular business days, the application and review fee shall be triple the standard fee plus any actual Town expenses.

C. Insurance Required. Prior to the commencement of excavation work unless waived in writing by the Town Board, an applicant shall furnish the Town satisfactory written evidence that it has in force and will maintain during the life of the permit and the period of excavation insurance, with the Town of Vienna named as an additional insured, as follows:

- 1) *Worker's Compensation.* Worker's compensation with limits as prescribed by the State of Wisconsin.
- 2) *Motor Vehicle Liability.* Comprehensive motor vehicle liability with limits of Two Hundred Fifty Thousand (\$250,000.00) for injuries to one

(1) person and Five Hundred Thousand (\$500,000.00) for any one (1) accident and property damage of not less than One Hundred Thousand Dollars (\$100,000.00). Motor vehicle liability shall cover owned, non-owned, and hired vehicles.

- 3) *General Liability.* Comprehensive general liability with limits of not less than One Million Dollars (\$1,000,000.00) each occurrence. The insurance coverage shall include the acts or omissions of any contractor, its employees, agents or subcontractors and include explosion, collapse, and underground liability coverage. A form of blanket contractual liability to indemnify and save harmless the Town of Vienna, its officers, agents and employees from any and all liability for accidents or damage caused by or arising from any work covered by the permit shall also be included in such insurance coverage.
- 4) *Completed Operations and Product Liability.* This policy shall provide completed operations and product liability coverage for the period of time set forth in the permit and any extensions thereof and for a period of eighteen (18) months after final completion of the work. Limits of liability shall be the same as general liability.
- 5) *Umbrella Policy.* The limits of liability mentioned above can be provided through split limits or through a combination of underlying an umbrella liability. Limits mentioned are the minimum to be provided under any policy or combination of policies.

D. Town Standards. All street work shall be performed in accordance with the current standard specifications for street openings. Any damaged curb and gutter, driveway, sidewalk, or grass-covered area shall be restored to the condition prior to damage.

E. Applicant Requirements.

- 1) Before a permit for excavating or opening any street or public way may be issued, the applicant must sign a statement in that it will indemnify and save harmless the Town of Vienna, its officers, agents and employees from all liability for accidents and damage caused by any of the work covered by its permit, that it will fill up and place in good and safe condition all excavations and openings made in the street, that it will replace and restore the pavement over any opening it may make as near as can be to the state and condition in which it found it and keep and maintain the same in such condition, normal wear and tear excepted, to the satisfaction of the Town Board for a period of eighteen (18) months, that it will pay all fines imposed upon it for any violation of any rule, regulation, or ordinance governing street openings or drain laying adopted by the Town Board, and that it 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 street repair, the

person opening the street will pay all costs of making such repair and of maintaining the same for eighteen (18) months.

- 2) The person who does such restoration shall be responsible therefor for eighteen (18) months from the date of the completion of the work and shall file a written guarantee, letter of credit, or surety bond to that effect with the Town in a minimum amount of Five Thousand Dollars(\$1,000.00).
- 3) Whenever the Town Board shall find that any such work has become defective within eighteen (18) months of the date of completion, it shall give written notice thereof to the contractor or to its surety stating the defect, the work to be done, the cost thereof, and the period of time deemed by the Town Board to be reasonably necessary to complete said work. After receipt of such notice, the contractor or the surety shall, within the time specified, repair the defect or indemnify the Town for the cost of doing the work as set forth in the notice.
- 4) Upon written request by the applicant, the Town Board, in its sole discretion, may waive some of the requirements under this Ordinance when such requirements are deemed by the Town Board to be inapplicable or unnecessary due to the nature of the work involved.

SECTION 2. REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS

- A. Frozen Ground. No openings 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/Manager or designee.
- B. 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 Town Board or its designee and in accordance with Section VI of the Manual of Uniform Traffic Control Devices, as amended from time to time. 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 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 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 Town 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/her employees of any necessary precaution against injury or damage to persons, vehicles, or property of any kind.

- 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 applicant to provide reasonable access to all properties adjacent to its 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 applicant 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 workers or others. It shall be the responsibility of the applicant to prevent traffic backup during construction operation. The applicant shall notify the Town 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 Subsection H below.
- 5) 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 twelve (12) hours prior to the loss of service unless the operations are part of an Emergency Excavation as defined in Subsection H below.
- 6) Trenches adjacent to the roadway left open during non-working hours shall be protected with snow fence along the entire trench edge and shall be marked with flashing barricades at each end.
- 7) No equipment or construction materials may be stored during non-working hours within Town roadway right-of-way.
- 8) No steel track construction equipment may be driven on or over paved Town roadways.
- 9) Prior to beginning any work on Town roadways, the Town Clerk/Manager's office shall be given the names and telephone numbers of at least two (2) contractor employees who may be contacted during non-working hours.
- 10) Construction materials spilled or tracked on pavement shall be immediately swept off by power broom equipment.
- 11) No excavated materials may be stored temporarily or permanently within a Town roadway right-of-way.
- 12) The Town may elect to have the Town or an outside contractor make the pavement repair for any street or sidewalk opening, in which case the cost of making such repair and of maintaining it for eighteen (18) months shall be charged to the person making the street opening.

C. Pavement Removal.

- 1) Removal of existing pavement shall be to neat, straight lines. The applicant shall make a final saw cut in the existing pavement after backfilling. Excavations shall be kept to the minimum possible and

acceptable for the convenience and safe performance of its work and in accordance with all applicable codes and regulations.

- 2) Precautions shall be taken to prevent damage to road pavements. Sheathing and bracing or the use of a portable trench box should be used to prevent undermining of material below the existing pavement. If damage is done to the pavement, it shall be restored.
- 3) If the pavement is damaged during excavation beyond the original saw cut lines, it shall be saw cut again along neat, straight lines. The finished saw cut shall leave a regular rectangular section for pavement replacement. Should the street opening occur within adjacent or close to an existing patch or require more than one (1) opening within a short distance, the applicant shall locate and identify the existing patches or additional openings on the permit application form. Town representatives shall, on the basis of an on-site inspection, approximate the boundaries of the pavement replacement area.
- 4) Pavement replacement areas with the long dimension in the direction of travel shall have the long dimension parallel with the curb line or the direction of travel. Pavement replacement areas in concrete pavements shall be parallel with or at right angles to the direction of travel.
- 5) The Town Board or designee may order the applicant to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.

D. Excavation.

- 1) All excavated material shall be piled in a manner such that pedestrian and motor traffic is not unnecessarily disrupted. Gutters shall be kept clear or other satisfactory provisions made for street drainage, and natural watercourses shall not be obstructed.
- 2) Excavated material to be used for backfilling of the trench must be so handled and placed as to be of as little inconvenience as practical to public travel and adjoining tenants

E. Backfilling.

- 1) All backfill material shall be free from cinders, ashes, refuse, vegetable, or organic matter, boulders, rocks, or stones greater than eight (8) inches in their greatest dimension, frozen lumps, or other material which, in the opinion of the Town Engineer or designee, is unsuitable.
- 2) In refilling the excavation if there is not sufficient material excavated suitable for refilling, the deficiency shall be made up with material, approved prior to use by the Town Engineer or designee, hauled in.

- 3) Wherever an excavation crosses an existing utility, pipe, or other structure, backfill shall be carefully compacted in stages from the bottom of the excavation. Any sanitary sewer, storm sewer, water, telephone, natural gas, or other service shall not be interrupted by the applicant. It shall be the applicant's responsibility to have the various utilities locate and mark their facilities prior to excavation.
- 4) Backfill of excavated area shall be done as directed by the Town Engineer or designee. Slurry backfill shall first be placed as directed, then twelve (12) inches (after compaction) of crushed aggregate of gradation No. 3 shall be placed, and then bituminous concrete pavement.
- 5) When allowed by the Town, mechanical compaction may be used on all materials used for trench backfill. Each layer (12-inch maximum) shall be uniformly compacted to a dry density of at least ninety-five percent (95%) of the maximum dry density as determined by the Modified Proctor Test (ASTM-1557).
- 6) All excavations shall be subject to testing by the Town. Backfilled material not achieving the above compaction requirements shall be removed and recompacted by the applicant. The cost of any retesting shall be paid by the applicant.
- 7) When the sides of the trench will not stand perpendicular, sheathing and braces shall be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. At no time shall any street pavements be permitted to overhang the excavation.

F. Notice. Except in an emergency, it shall be the duty of the applicant to notify the Town and all public and private individuals, firms, and corporations affected by the work to be done at least one (1) business day before such work is to commence. The Town shall also be notified at least four (4) hours prior to backfilling and/or restoring the surface.

G. Pavement Replacement.

- 1) Backfill material shall be left below the original surface to allow for six (6) inches of three (3) inch crushed stone and six (6) inches of three-quarter (3/4) inch crushed stone, plus the thickness of the required pavement structure. If paving will not occur as part of the initial street restoration operation, the balance of the opening to the original surface elevation shall be backfilled with compacted three-quarter (3/4) inch crushed stone.
- 2) Bituminous pavement shall be placed the full depth of the existing pavement or five (5) inches, whichever is greater. Bituminous pavement shall be placed in a maximum of a two and one-half (2-1/2) inch base layer and a two and one-half (2-1/2) inch top layer, with each layer compacted to maximum density and shall consist of Wisconsin Department of Transportation Gradation No. 1 for the binder course and Wisconsin Department of Transportation No. 3 for the surface course.

The finished surface shall be smooth and free of surface irregularities and shall match the existing pavement and any castings or street appurtenances. Allowable deviations shall be no more than one-quarter (1/4) inch as measured with a ten (10) foot straight edge. If hot mix is temporarily not available, the hot mix shall be temporarily replaced with cold mix. The cold mix shall be removed and replaced with hot mix upon availability.

- 3) Concrete pavement shall be placed to the full depth of the existing pavement or seven (7) inches, whichever is greater. Concrete used shall not contain calcium chloride. The surface shall be given a light broom finish. The edges shall be tooled to prevent spalling at the saw cut edge. The surface shall be evenly and completely sealed with a white pigmented curing compound. The surface shall be protected from traffic for a minimum of three (3) days. Tie bars shall be installed as directed by Town officials.
- 4) All permanent restoration of street, curb, and gutter shall be of the same type and thickness as the curb and gutter which abuts. The grade of the restored curb and gutter shall conform with the grade of the existing adjacent curb and gutter. Existing grass and terrace areas shall be covered with a minimum of four (4) inches of topsoil. Topsoil shall be seeded with perennial grass seed at a rate of two (2) pounds per one thousand (1,000) square feet.
- 5) All permanent restoration of driveways and sidewalks shall conform to the manner of construction as originally placed and to the lines and grades as given by the Town Engineer. No patching of concrete driveway areas will be allowed between joints or dummy joints.
- 6) In emergency excavations during winter months when it is not possible to replace the removed pavement with a like material, the excavation shall be temporarily resurfaced with a minimum of three (3) inches of cold mix bituminous material. This temporary wearing surface shall be compacted and rolled smooth. These temporary wearing surfaces shall be removed and replaced with material as specified above by not later than the following June 1 except as provide above. Permanent pavements shall be replaced within sixty (60) days of the date of the permit.
- 7) When a street is reconstructed, utility laterals shall also be installed, including sump pump laterals, even if not immediately needed.

H. 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 its 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 Town office immediately.

- I. 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 repaving shall begin. Immediately after such determination by the Town Board, the Clerk/Manager shall notify 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 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 or its designee, 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 terraces.
- J. Repair by Town. The Town may elect to make the pavement repair for any street or sidewalk opening, in which case the cost of making such repair and of maintaining it for one (1) year shall be charged to the person making the street opening. In the event such charges are not paid within ninety (90) days of actual notice of the same having been furnished the applicant and owner of the premises for which said permit was issued, it shall become a lien against said premises and thereafter be assessed and collected as a special tax.

SECTION 3. PENALTY AND GENERAL PROVISIONS

- A. Forfeiture. Any person who shall violate any of the provisions of this Ordinance shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:
- 1) *First Offense - Penalty.* Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, forfeit not less than fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), together with the costs of prosecution and, in default of payment of such forfeiture and costs of prosecution, shall be imprisoned in the County Jail until such forfeiture and costs are paid, but not exceeding ninety (90) days.
 - 2) *Second Offense - Penalty.* Any person found guilty of violating this Ordinance who shall previously have been convicted of a violation of this Ordinance within one (1) year shall, upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00) for each such offense, together with costs of prosecution and, in default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until such forfeiture and costs of prosecution are paid, but not exceeding six (6) months.
- B. Continued Violations. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Ordinance shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Ordinance. When violations are found, the Town may issue a stop work order directing that the construction activity in violation of this Ordinance cease.

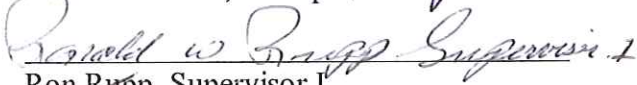
- C. Other Remedies. The Town of Vienna shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs of prosecution above and reasonable attorneys' fees and costs of collection.
- D. Severability. If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

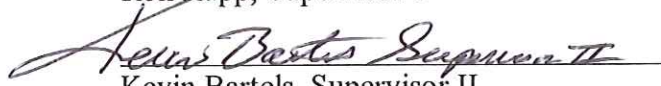
SECTION 4. EFFECTIVE DATE

This ordinance shall be effective February 1, 2010, after a public hearing, adoption by the Town Board of the Town of Vienna, and publication.

The foregoing ordinance was duly adopted at a regular meeting of the Town Board of the Town of Vienna on December 21, 2009.

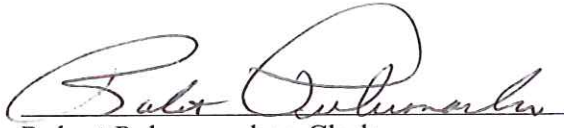

Daniel Muxfeld, Chairperson


Ron Rupp, Supervisor I


Kevin Bartels, Supervisor II

I hereby certify that the foregoing Ordinance for Street Excavations and Openings in the Town of Vienna, County of Dane, State of Wisconsin was published as a Class 1 notice under ch. 985, Wis. Stats., on the 21 day of January, ~~2009~~.

Dated: 1/22/2010, 2009.


Robert Pulvermacher, Clerk

