

TOWN OF LAFAYETTE
REGULATING THE EXCAVATION OF ROADS
AND PUBLIC WAYS

ORDINANCE 6 - 05

The Town Board of the Town of LaFayette, Walworth County, Wisconsin, does hereby ordain as follows:

SECTION 1.0 PURPOSE

The purpose of this ordinance is to promote the safety and general welfare of the Town of LaFayette and others who travel the Town's highways by providing for the safe and orderly excavation of the Town's highways and roadways.

SECTION 2.0 AUTHORITY

The Town Board of the Town of LaFayette has the specific statutory authority, powers and duties, pursuant to § 82.03, WI Statutes to regulate the excavation of streets, alleys, public ways and roads.

SECTION 3.0 EXCAVATION OF STREETS, ALLEYS, PUBLIC WAYS AND ROADS

A. Permit Required.

1. No person, partnership, utility or corporation, or their agents and 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 LaFayette without a permit therefore from the Town chair or clerk, or their designee.
2. The 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 auguring, provisions of restoration and whatever the Town would deem necessary for review and consideration. In being issued a permit the utility or contractor agrees to be bound by the regulations of this Section and Section 4.0.

B. Fee. The fee for an excavation or opening permit shall be determined by resolution of the Town Board. The fee shall be paid to the Town clerk, who shall issue a receipt therefore. The fee may be amended by resolution of the Town Board. The fee shall be paid at the time of application. If the applicant is denied, the fee shall not be reinstated.

C. Insurance Required. A permit shall be issued only upon condition that the applicant submit to the Town satisfactory written evidence that applicant has in force and will maintain during the time the permit is in effect public liability insurance of not less than one million dollars (\$1,000,000) per one (1) person, one million dollars (\$1,000,000) for one (1) accident and property damage coverage of not less than one million dollars (\$1,000,000). The Town should be listed as a third party insured on the policy.

D. Bond.

1. Before a permit for excavation or opening any street or public way may be issued, the applicant must sign a statement in that he will indemnify and hold harmless the Town of LaFayette and its officers from all liability for accidents and damages 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 Town Board 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 openings 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 street repair, the person opening the street will pay all costs of making such repair and of maintaining the same for two (2) years.

2. 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 a minimum amount of three thousand dollars (\$3,000).
3. Whenever the Town Board shall find that any such work has become defective within two (2) years of the date of completion, it 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 Town Board 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.

SECTION 4.0 REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS

- A. Frozen Ground. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15 and April 15 of each year except where it is deemed necessary by the Town chair or Town clerk, or their designee.
- B. Removal of Paving. In any openings or excavation, all paving materials shall be removed with the least possible loss of 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.
- C. Protection of Public.
 1. 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 feet (250') in advance of pipe or conduit laying nor left unfilled more than five hundred feet (500') 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 the 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 kind.
- D. 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 moved 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 that, in the opinion of the Town, is not suitable for refilling shall be replaced with approved backfill material. All rubbish and non-usable excavated material shall be immediately removed. In refilling the opening, the earth must be laid in layers not more than six inches (6") in

depth and each layer mechanically rammed or tamped to prevent after-settling. When the sides of the trench will not stand perpendicular, sheathing and braces must be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. Trenches shall be compacted to ninety five percent (95%) Modified Proctor, with test results from a certified soil tester filed with the Town engineer or the Town road supervisor. The Town may elect to have the opening for any street or sidewalk repaired by the Town, in which case the cost of making such repair and of maintaining it for two (2) years shall be charged to the person making the street opening.

- E. Notice. It shall be the duty of the permittee to notify the Town chair and/or Town clerk, or the Town engineer when requested by the 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 chair, 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.
- F. 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 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.
- G. Backfilling. Reconstruction shall be in accordance with the current cross-section or according to Town Standards, whichever is stricter. If the surface is not restored as required, the Town may restore the surface and bill the permittee therefore; the town shall perform such work and bill the cost thereof to the permittee.
- H. Emergency Excavation. In the event of an emergency, any person, firm or corporation owning or controlling any sewer, gas main, watermain, 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 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.
- 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 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 ninety (90) 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.
- J. 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 C. hereof shall be complied with.

**SECTION 5.0 DEPOSIT OF RUBBISH, STONES AND PERSONAL PROPERTY
ON ROAD RIGHT-OF-WAY**

- A. It shall be unlawful for any person to throw or deposit any snow, weeds, sod, brush, cans, glass, gravel, stones, boulders, machinery, garbage or other waste or rubbish, and to place any personal property, in or on the right-of-way of any road located in the Town of LaFayette, without written permission of the Town Board for temporary use.

- B. Any person who violates the provisions of this ordinance shall be required to forfeit not less than ten dollars (\$10) and no more than one hundred dollars (\$100) for a first violation; for a second or subsequent violation shall forfeit not less than ten dollars (\$10) no more than five hundred dollars (\$500).

This Ordinance adopted by the Town Board of the Town of LaFayette of this 8th day of April 2009.

Bruno Schiffleger, Chair

Passed this day: 04.08.2009

Barbara A. Fischer, Town Clerk-Treasurer

Filed this day: 04.08.2009