

ORDINANCE NO. 2022-02

AN ORDINANCE TO REPEAL AND RECREATE THE REGULATIONS
EXCAVATIONS IN TOWN ROADS

The Town Board of the Town of Eagle enacts this Ordinance do ordain as follows:

Section 1. Repeal and Recreate. Ordinance Section 3.01, subsection 2.n. relating to the issuance of Highway and Street Opening Permits is hereby repealed and recreated to read as follows:

EXCAVATIONS WITHIN TOWN RIGHT-OF-WAYS

1. Permit Required. No person shall cause or suffer any excavation, obstruction, encroachment, or placement (either temporary or permanent) of any cables, pipes, conduits, poles, or other structures in the right-of-way, except culverts (governed by a different ordinance) of any Town road or on any other Town property, without first obtaining a permit from the Highway Commissioner or Town Engineer for the Town of Eagle under this Ordinance.
2. Application. All applications for a permit shall be in writing and filed with the Town Clerk who shall forward complete applications to the Highway Commissioner and/or Town Engineer, for approval. Applicable permit fees and financial guarantees to insure complete and proper restoration of the disturbed area(s) in the amount determined by the Town Engineer shall accompany the application. Applications shall be in writing and shall include the following:
 - Name and address of person or business on whose behalf installation to be made;
 - Name, address, and phone number of person or business doing the work;
 - Precise location where work is to take place;
 - Purpose of work (e.g., gas, electric, cable, telephone, etc.);
 - Whether work is new installation or repair;
 - Date(s) when work is scheduled to be commenced and completed;
 - Barricades, signage, and warning lights to be provided to maintain safety to adequately inform pedestrian and vehicular traffic of the nature and location of work being performed. Additional barricades, signs and/or warning lights may be required by the Town Engineer restoration work has been completed;
 - Detailed scaled plans or specifications showing all existing conditions, including but not limited to, curb and gutter, streets, catch basins/inlets, above- and below-ground utilities, trees, driveways, and proposed conditions

including, but not limited to, exact size, depth and location of excavations, structures, equipment, appurtenances, and attachments to structures and equipment as well as any other obstructions in the vicinity of the proposed installation and location of structures on abutting properties;

- Deposits required under Section 5 of this Ordinance.

3. Application Review.

- a. The Town Engineer may determine whether to approve, deny, or conditionally grant permits for excavations for underground utility work and for any installation or use unless the Town Engineer concludes the excavation and/or the related work may obstruct or disrupt the public use, in which case the application shall be referred to the Planning Commission for its recommendation to the Town Board as to whether the permit should be approved, conditionally approved, or denied. The Town Board shall give consideration to the application and the recommendation of the Planning Commission as well as any staff and expert reports, or other information as the Town Board determines appropriate. The Town Board shall consider public safety, alternative options, aesthetic considerations, and the public welfare when considering an application for a permit for above-right-of-way obstructions or encroachments. The Town Board may grant the permit, grant the permit with conditions, or deny the permit.

4. Permit Fees and Costs.

- a. Application Fee. The Town Board shall, from time to time, establish applicable permit fees by . The fees shall not exceed a reasonable approximation of actual costs incurred, shall be limited to objectively reasonable costs, and shall be uniform for similarly situated users of the right-of -way, or other Town Property, in similar circumstances. The applicant shall pay the permit fee prior to receiving a permit. In addition to applicable forfeitures, any person or business proceeding with work without a permit shall pay double fees, except in emergency.
- b. Professional Reimbursement Agreement. The applicant shall sign a professional fee chargeback agreement to ensure that, if professional fees are incurred by the Town to review said applications, inspect the work being performed, or enforce the terms of this Ordinance, such professional fees are paid.

5. Deposits required.

- a. A cash deposit or letter of credit shall be submitted prior to the issuance of any permit to guarantee the work and restoration to be performed. Said deposit or letter of credit shall be held for 12 months after the completion of all work. At the completion of said 12 months, the Town shall inspect the work that was performed including all restoration of the work area. Any and all deficiencies shall be corrected. The deposit will be returned upon completion of the repairs being inspected and accepted by the Town

Engineer. The requirements of this paragraph shall be subject to the limitations of Wisconsin Statutes §§ 66.0425(2) and (5).

- b. Certificate of insurance. Before a permit may be issued the applicant shall file a certificate of insurance with the Town Clerk in the minimum sum of \$1,000,000 insuring such permit holder and the Town against any claim, loss or demand and have a thirty-day cancellation or change notice to the Town.
 - c. Indemnification agreement. Before any person, entity, or utility commences work pursuant to this section, such person, entity or utility shall file an agreement with the Town Clerk to hold the Town harmless and indemnify and defend the Town, its officers, agents, and employees from and against any and all injury and damage of any kind caused or occurring as a result of such work. The agreement shall be in a form approved by the Town Attorney, and shall have continuing effect during the course of such work and for all time that the obstruction or facilities or installation remain within the right-of-way, and thereafter until such obstruction is removed and the site is fully restored to the satisfaction of the Town Engineer or his or her designee.
6. Excavation Methods, Restoration, and Regulation. Boring shall be the only allowed method of construction. Upon demonstration that boring cannot work, the Highway Commissioner or Town Engineer has the discretion to authorize excavation. . All work permitted under a permit granted under this section, and the repair and restoration of the right-of-way as required herein, shall be completed within the dates specified in the permit to the reasonable satisfaction of the Town Engineer and the applicant must provide a warrant such repairs for 12 months thereafter.
- a. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must warrant such repairs for 12 months thereafter.
 - b. The permittee shall perform repairs and restorations according to the standards and with the materials specified by the Town Engineer. The Town Engineer shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis. The Town Engineer in exercising this authority shall be guided by the following standards and considerations:
 - c. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.
 - d. The traffic volume carried by the right-of-way.

- e. The character of the neighborhood surrounding the right-of-way; the pre excavation condition of the right-of-way.
 - f. The remaining life-expectancy of the right-of-way affected by the excavation.
 - g. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance, or damage to the right-of-way.
 - h. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
 - i. Where such excavations are on streets or other surfaces that are concrete, or have a concrete base, the excavation and replaced pavement shall be of like kind, material, density and durability to that which exists, and, if done within 30 years of the Town's acceptance of such pavement, shall be done joint to joint, and shall not be trenches or other methods that will create new joints or seams in the concrete.
 - j. Where excavations are in streets or other paved surfaces that are asphalt, the excavation and replaced pavement shall be of like kind, materials, density and durability to that which exists and, if done within 15 years of the Town's acceptance of such pavement, the pavement shall be replaced to the full width of the pavement and parking lane and no less than five feet in length. Multiple asphalt repairs may be considered one repair and require a larger area of repair.
 - k. Methods of restoration authorized by the Town Engineer may include, but are not limited to, patching, replacement of the right-of-way surface and base, restoration of landscaping, and milling and overlay of the entire area of the right-of-way and complete reconstruction of the entire right-of-way area affected by the work. During this twelve-month period, the permittee shall, upon notification from the Town Engineer, correct all restoration work to the extent necessary using the method proposed by the permittee and approved by the Town Engineer. Said work shall be completed within five calendar days of the receipt of the notice from the Town Engineer. If the permittee fails to restore the right-of-way to the condition required by the Town Engineer, or fails to satisfactorily and timely complete all repairs required by the Town Engineer, the Town Engineer may cause such repairs to be completed. In such event, the permittee shall pay to the Town, within 30 days of billing, the cost of restoring the right-of-way.
7. Refuse and Grade. All refuse, extra dirt, and material shall be removed immediately upon the completion of the work. No person or business shall alter the grade within the right-of-way without written authorization from the highway commissioner.

8. Failure to Restore or Repair. If applicant fails to repair or restore the area in compliance with the Town's specifications or standards or fails to complete the work in a timely manner, the Town shall give the applicant 5 days notice to complete the work. If applicant fails to perform the work, the Town shall have the right to draw on the letter of credit or cash bond and perform the work itself or contract out the work. Applicant shall pay all costs, even if such costs exceed the amount available through the letter of credit or cash bond.
9. Safety and Traffic. Applicants shall take all reasonable precautions to protect persons and property. A minimum of one lane of traffic shall be maintained at all times. At the end of every work day, restoration shall be completed such that a minimum of two traffic lanes are available for safe passage and all property owners can exit and enter driveways. Applicant shall provide all proper barricades, signs, flagmen, and lights to conform to the standards in the Manual on Uniform Traffic Control Devices.
10. Change Structures upon Request. Any person, business, or utility operating under a franchise, privilege or permit issued by the Town or under Wisconsin law, that authorized placing or maintaining structures or facilities in the Town's right-of-way, shall, upon notice from the highway commissioner, make the requested changes in the construction or location, or both, of such structures or facilities. Such changes shall be at the cost and expense of the person, business, or utility that placed or maintains the structure or facility.
11. Emergencies. "Emergency" means a condition that poses a clear and immediate danger to health or property or requires immediate repair in order to restore service to a customer. In the event of work covered by this ordinance, performed in the event of an emergency, the person or business shall provide oral notice to the highway commissioner and obtain a permit as soon as practicable. All such work shall otherwise conform to the provisions of this ordinance.
12. No waiver of rights.
 - a. The Town of Eagle retains all rights in Town rights-of-way and property. The grant of a permit under this section does not constitute a waiver of any Town rights and remedies regarding ongoing compliance obligations toward such installations. All persons, entities and utilities installing obstructions, encroachments or conducting excavation in any Town right-of-way shall remove or relocate the obstruction, encroachment or excavation upon 10 days' notice, except as otherwise provided by law.
 - b. The issuance of a permit under this Ordinance shall not be construed as a waiver of the requirement of any applicable law, regulation, or ordinance. All applicable federal, state, County, and Town statutes, regulations, rules, ordinances and other laws shall be complied with.
13. Permit Revocation or Denial. The highway commission may revoke or refuse to issue a permit in the following circumstances:
 - The date scheduled for the work would interfere with any public event;

- The applicant misrepresented any fact on the application;
- The applicant fails to maintain required financial security;
- The applicant fails to complete the work in a timely manner;
- The work or structure would be unsafe and a hazard to health or safety;
- The applicant owes money to the Town for work under prior permits; or
- The applicant violated the terms of this ordinance with the past 5 years.

14. Appeals

- Appeals from decisions of the Town Engineer or Highway Commissioner. Any person aggrieved by the action or decision taken by the Town Engineer or Highway Commissioner under this Ordinance may, within 15 days of such action or decision, request a review of such action or decision by the Town Board, which shall make an oral or written recommendation of its findings.
- Appeal from a decision of the Town Board. An appeal from a decision by the Town Board under this Ordinance shall be brought by action seeking certiorari review of the record in the Circuit Court for Waukesha County within 30 days of the Town Board's decision.

15. Penalty. Any person or business that violates this ordinance shall be subject to a forfeiture of not less than \$250 and not more than \$500 for each day a violation occurs or continues. Failure to pay shall subject the violator to commitment to the county jail or other remedy allowed by law.

Section 2. Severability.

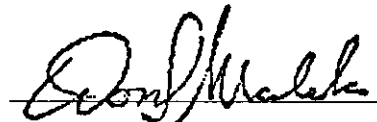
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

Section 3: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and publication as provided by law.

Adopted on motion of Supervisor Mommaerts, seconded by Supervisor Rojinski on the 16 day of November, 2022.

APPROVED
TOWN OF EAGLE


Don Malek, Town Chairman

ATTEST:



Mercia Christian, Town Clerk

Ayes 5 Noes 0 Absent 0