

TOWN OF BAILEYS HARBOR
Ordinance No. 01-2020

Ordinance Requiring a Permit to Excavate in Town Roads

WHEREAS, It is in the public interest and welfare to maintain Town Roads, for the benefit of the public;

NOW, THEREFORE, The Town Board of Supervisors of the Town of Baileys Harbor, Door County, Wisconsin does ordain as follows:

Section 1 – Legal Authority:

This ordinance is drafted under the authority granted to the Town Board in Wis. Stats. Sections 60.22, 60.50, and 86.07(2)(a) with the intention of requiring a permit for excavating in Town Roads.

Section 2 – Definitions:

As used in this section, the following terms are hereby defined:

Excavation. The process of removing the finished surface of a road, alley or sidewalk and removing an amount of the subsurface soil for the purpose of installation or repair of pipes, wires, or other purpose.

Governmental agency. Any federal, state or local governmental entity, including agencies or subdivisions thereof and any public utility whose rates are regulated by a governmental agency.

Repair, emergency. Repair of damage to underground installation where such damage is discovered during other than normal working hours and which necessitates immediate repair for continuity of service.

Restoration of excavation. Replacement of fill material to grade in an excavation.

Restoration of site. Preparation of subsurface as may be required and replacement of finished grade material to match adjacent surface.

Working hours, normal. 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Section 3 –Permit Required:

- (a) No person shall in any manner excavate in or remove any portion of any street, alley, sidewalk, terrace, easement or other public place in the Town without having first obtained an Excavation in the Town Road Permit from the Town Board.
- (b) The application for excavating in or removing any dirt from under any public street, sidewalk or alley shall be made to the Town Clerk. The application shall state the location and the extent of the proposed excavation or removal of earth.
- (c) Any excavations made in any public street, sidewalk or alley shall not be larger and shall not be left open longer than the necessities of the work demand. All excavations shall at all times be properly guarded by day and by night in such manner as to sufficiently warn public travelers upon or along such street, sidewalk or alley, so that the same are as reasonably safe as the nature of the work will permit. The person making such excavation shall be responsible for any damages which may result to any person or to any property by reason of such excavating work, and the Town shall assume no responsibility therefor by reason of granting such permit.
- (d) Contracts requiring excavations in a road, alley or sidewalk shall contain, in the contract, the requirements of this section and the excavation restoration requirements as specified in section (5) below.
- (e) Emergency repairs, during other than normal working hours, may be started without obtaining the permit required by this section provided that the permit is applied for on the next succeeding working day following the start of the emergency repairs.
- (f) The permit shall serve as authorization to excavate in the road as well as a contract between the Town and the property owner to assure proper site restoration.
- (g) Governmental agencies performing construction or repairs that do not additionally require issuance of an inspection department permit shall receive the excavation permit upon application to the clerk-treasurer with no waiting period and without certification by the various department heads. Restoration of the site as specified in section (5) below shall be accomplished by the governmental agency receiving the permit.
- (h) Fee for permit issuance shall be set by the Town Board.

Section 4 – Deposit Required:

The applicant for an excavation permit shall be required to make a deposit to cover the estimated cost of restoration of the site. Governmental agencies shall not be required to provide such deposits. The deposit shall be set by the Town Board. If the finished surface is road gravel, no deposit shall be required.

Section 5– Restoration of Site:

(a) Restoration of the site shall be accomplished as follows:

1. When construction or repair is performed by a governmental agency, that agency shall accomplish restoration of the site.
2. All contracts shall contain a provision in the contract for restoration of the site by the contractor in accordance with specifications contained herein.

(b) Completion date for restoration of the site for each project shall be not more than 30 days after completion of the excavation.

(c) Standards for excavation restoration and site restoration for all projects shall be as follows:

1. Backfilling of the excavation must be done with proper materials and methods in order to keep settling to a minimum.
2. The method for measuring soil compaction shall be the Proctor method. The material in the excavation shall be compacted to at least 95 percent Proctor.
3. Finish grade material shall be equivalent to, or better than, the adjacent finished surface.

(d) Certification of completion of the project shall be as follows:

1. When the Town performs the site restoration, the Town Public Works supervisor shall certify completion of site restoration to the Town Clerk. The public works supervisor shall certify to the clerk completion of the total project and computation of the actual cost vs. deposit for the project. For those agencies not required to make deposits, the public works supervisor shall certify to the clerk completion of the project with no cost involved or, if the Town must complete or correct restoration, the actual cost of restoration for billing by the clerk.
2. When work is performed by governmental agencies other than the Town or let by contract, all certifications shall be by the agency or contractor completing the work.

(e) Nothing in this section shall prevent the Town from performing restoration on any project or from correcting deficiencies found upon inspection of restoration on any project. Such restoration or correction shall be billed as provided for in subsection (d)1 above.

Section 6 – Exceptions:

Upon application to the Town Board supported by documentation deemed to be sufficient by the board, the board is authorized to grant exceptions to the requirements of this section upon a document showing that the literal application of this section is unfeasible or works an undue hardship upon the person/agency applying for an exception to this section. The Town Board may grant such exception under such conditions as it specifically deems appropriate, all of which shall be defined in a resolution by the Town Board acting upon the application.

Section 7 – Penalty Provisions

Any person, partnership, corporation or other legal entity that fails to comply with the provisions of this Ordinance shall, upon conviction, pay a forfeiture of not less than \$50.00 nor more than \$500.00, plus the applicable surcharges, assessments and costs for each violation. Each day a violation exists or continues shall be considered a separate offense under this Ordinance. In addition, the Town Board may seek injunctive relief from a Court of record to enjoin further violation and/or to require restoration of the property subject to the violation.

Section 8 – Effective Date:

The ordinance shall take effective on the day after its publication.

Adopted on _____.

Voted for: _____ Against _____.

Chairman:

Doug Smith

Attest:

Haley Adams, Town Clerk