

First Reading: June 4, 2007

Second Reading: *July 2, 07*

ORDINANCE # ~~23~~<sup>23</sup>-07

EXCAVATION

**Section 1.** It shall be unlawful for any person, firm or corporation to cut into, open or excavate in or under the *bed* of any street, road, highway, lane, alley, avenue, sidewalk, curb or any other public way within the corporate limits of the Town of Wyoming for the purpose of installing therein or there under any poles, pipes, mains, wire or conduits or for any other purpose without first obtaining a permit from the Town Clerk or their designee of the Town of Wyoming to conduct such work.

**Section 2. Permit application procedure**

A. Any person, firm, or corporation desiring to cut into, open or excavate in or under the bed of any street, road, highway, lane, alley, avenue, curb, sidewalk or other public way for any purpose as aforesaid shall first make written application to the Town Clerk or their designee for a permit to conduct such work.

**The following information is required of all applicants;**

1. Name and address of the person, firm or corporation conducting such work.
2. Name and address of the person, firm or corporation on whose behalf the cutting into, opening or excavating is to be done.
3. Name of the street, road, highway, lane, alley, avenue, curb, sidewalk or other public way.
4. The location on street where work is to be performed.
5. Project start date and time.
6. Estimated completion date.
7. The length, width and depth of the opening or excavation.
8. The direct or indirect cost of such work, including but not limited to the cost of labor, materials and equipment rental.

B. Any person, firm or corporation applying for a permit must sign an agreement with the Town of Wyoming that will include, among other things:

1. A promise to comply with the terms of this article.
2. A promise to indemnify, hold harmless and defend the town, its officers and employees from any and all claims for personal injury, including death or damage to property resulting from, relating to or arising out of the issuance of a permit to the applicant pursuant to this article or any action or activities in relation thereto, by the applicant or others, excepting only such claims due solely to the negligence of the town, its officers and employees. Such indemnification shall not be affected or diminished by insurance provided by the applicant.

C. Any person, firm or corporation applying for a permit shall file with the Town Clerk a general liability policy or certificate of insurance issued by an insurance company authorized to issue said policy in the state of Delaware, naming the Town of Wyoming as an additional insured, which policy or certificate evidences that the applicant has procured comprehensive general liability insurance providing coverage for legal liability and customarily covered expenses for bodily injury and property damage, including but not limited to liability for bodily injury and property damage caused by, related to or arising out of operations performed by the applicant or by the applicant's independent contractors or arising out of acts or omissions of the applicant in connection with his general supervision of such operations (contractors'/ owners' protective liability insurance) occurring after operations have been completed or abandoned (completed operations insurance) and assumed under contract with the town (contractual liability insurance), which policy shall be indorsed to delete from the contractual liability coverage any exclusions for actions on a contract for third-party beneficiary arising out of a project for a public authority and which policy shall include coverage for all possible liability. Said policy shall be in a form and content satisfactory to the town solicitor and shall provide that the policy shall not be changed or canceled until the expiration of 60 days after written notice to the town and that it shall automatically renew upon expiration and continued in force unless the town is given 60 days' written notice to the contrary. Said policy shall insure the Town of Wyoming and the applicant and shall cover all operations relative to the excavation, reconstruction and restoration therefore. Said policy shall have limits of liability of not less than \$1,000,000 for bodily injury and in the aggregate for each accident and property damage liability of not less than \$100,000 for each accident.

### **Section 3. Issuance of permit by Town Clerk**

Upon compliance with the terms of this article, the Town Clerk shall then issue a permit for such cutting into, opening or excavating, subject to the terms and conditions of this article, and upon satisfied that such opening or excavation is in a proper location and for a lawful purpose.

#### **Section 4. Precautions; work standards and specifications**

- A. Every person, firm or corporation receiving a permit pursuant to the terms of this article shall complete the work pursuant to the terms of such permit as promptly as possible and shall take every precaution to protect all persons and property from damage and shall properly protect the public from injury by reason of such cutting into, opening or excavation.
- B. Any hole, opening, excavation, obstruction or dangerous area created incident to such work shall be roped off or otherwise guarded and caution lights maintained and kept thereat for a minimum period of one hour before sunset to one hour after sunrise.
- C. All work performed and materials used in the making and filling of such cutting into, opening or excavation shall comply with the applicable standard specifications of the Delaware Department of Transportation, July 1985 to 2006 standards.

#### **Section 5. Restoration of excavation; closing of streets**

- A. Upon completion of the work, every such person, firm or corporation shall fully fill any such opening or excavation so made pursuant to the standard specifications of the Town of Wyoming and any additional requirements of this article and shall immediately repair and restore the street, curb or sidewalk or way disturbed thereby pursuant to such standard specifications and shall maintain the same for a period of 24 months after final inspection and written acceptance by the Town Clerk or their designee on behalf of the Town of Wyoming, pursuant to the standard specifications of the Town of Wyoming as aforesaid.
- B. In the event any such person, firm or corporation fails to comply with the provisions of this article or with the standard specifications of the Town of Wyoming, as aforesaid, the Town Clerk shall give in writing 48 hours notice to comply. After the 48 hours has expired said Town Clerk may proceed to repair, restore and maintain such street, road, highway, lane, alley, avenue, sidewalk, curb or other public way at the cost and expense of such person, firm or corporation.
- C. When a town street must be closed to vehicular traffic for a specific period of time, it must be noted on the application with an estimated closing and opening date and time, not exceed 15 working days. If a street is closed for a period longer than 15 working days, a fine of \$25.00 per day for each successive work day may be levied by the town.

#### **Section 6. Exceptions**

The provisions of this article shall **NOT** be applicable to work undertaken by the employees of any governmental body or agency, which by law, has jurisdiction of such street, road, highway, lane, alley, avenue, sidewalk, curb or other public way.

**Section 7. Violations and penalties**

Every person, firm or corporation who violates any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of \$1000.00 and shall pay the cost of prosecution in addition to any other remedies permitted by law. For the purpose of this article, each calendar day or part thereof that a violation occurs shall be deemed a separate offense.

**Section 8. Emergency repairs**

If required during the closed office hours of the Town of Wyoming, Emergency work may be performed for the safety of the public. Within open hours of the next business day, the person, firm or corporation must apply for a permit as continued in previous sections.

If a person, firm or corporation fails to apply and obtain a permit. The fine is doubled as in section 7 Violations and penalties.

ENACTED AND ORDAINED this 2<sup>nd</sup> day of July, 2007.

TOWN COUNCIL OF THE  
TOWN OF WYOMING, DELAWARE

BY: Frankie Dale Rife  
Frankie Dale Rife, Mayor

Dave Reed  
Dave Reed, Vice Mayor

William Carnivale  
William Carnivale, Secretary

Georgette Williams  
Georgette Williams, Treasurer

Michael McFann  
Michael McFann, Councilperson

Adopted: July 2, 07

Amended Date:

Legally Posted: July 9, 2007

Effective Date: July 19, 2007