

Sponsor: Gravatt  
First Reading: 11-7-2022  
Second Reading: 12/5/2022

**ORDINANCE #65-22**

**AN ORDINANCE REGULATING THE EXCAVATION OF STREETS WITHIN THE TOWN OF WYOMING**

**WHEREAS**, Section 18.3 of the Charter of the Town of Wyoming authorizes the Town to “[a]scertain and fix the boundaries of streets, squares, lanes, alleys and sidewalks, to repave and improve the same, to alter, extend or widen any street square, lane, alley or sidewalk and to open, lay out, improve and repair new streets, squares, lanes, alleys, and sidewalks”;

**WHEREAS**, the Town of Wyoming owns and maintains streets and sidewalks within the Town, which are periodically excavated by utility companies and other entities in conjunction with installing, repairing, and maintaining utilities located beneath the streets and sidewalks; and

**WHEREAS**, in the opinion of the Town Council, it is in the best interest of the public health, safety, and welfare to adopt regulations requiring any entity excavating streets and sidewalks within the Town to obtain a permit from the Town and to repair the streets and sidewalks pursuant to standards established by the Town.

**NOW THEREFORE, BE IT HEREBY ENACTED** by the Town Council of the Town of Wyoming, a majority thereof concurring in council duly met, that the following ordinance be and hereby is adopted, as follows, to wit:

**Section 1. Purpose and Intent.** The Town hereby finds that streets, roads, rights-of-way, highways, lanes, ways, alleys, sidewalks, and curbing are an asset of the Town of Wyoming and need to be appropriately maintained. The purpose of this ordinance is to regulate excavation that will disturb streets, roads, rights-of-way, highways, lanes, ways, alleys, sidewalks, and curbing in the Town of Wyoming in order to ensure proper restoration to their original condition. This ordinance will help prevent financial loss to the Town due to poor workmanship and assist the Town with tracking and monitoring excavations taking place throughout the Town.

**Section 2. Definitions.** For purposes of this ordinance, the terms indicated herein shall have the following definitions:

*Excavate or excavation* shall mean the cutting into, the opening, or excavating in or under the bed of any street.

*Person* shall mean an individual, corporation, company, partnership, government agency, quasi-government agency, utility company, utility authority created pursuant to 16 Del. C. Ch. 14, or other legal entity, whether for profit or not-for-profit.

*Street* shall mean any street, road, right-of-way, highway, lane, way, alley, sidewalk, or curbing, which are constructed of concrete, asphalt, brick, stone, or other similar materials.

**Section 2. Permit required.**

A. No person shall excavate any street without first obtaining an excavation permit from the Town to excavate such street.

B. Excavation work performed by the State of Delaware, the Town of Wyoming, or their agents is exempt from the requirements of this ordinance.

**Section 3. Permit application.**

A. Any person desiring to excavate any street for any purpose shall make written application to the Town for a permit for such work.

B. The application shall state:

1. The name of the street and the location where such excavation is to be made;
2. The purpose, depth, and width of the excavation;
3. The date when the excavation work will be commenced and the date when it will be completed; and
4. The extent of any street closures necessary to perform such work and the temporary traffic controls to be used for such road closure.

C. The application shall be accompanied by a permit fee of \$100.00.

D. No permit shall be issued until the permittee provides evidence of insurance with minimum coverage for bodily injury and property damage liability as follows:

1. Bodily injury liability with a minimum limit of \$500,000 for all damages arising out of personal injury to or death of one person in any one occurrence, and, subject to that limit for each person, an aggregate limit of \$1,000,000 for all damages arising out of personal injury to or death of two or more persons in any one occurrence; and
2. Property damage liability with a minimum limit of \$500,000 for all damages arising out of injury to, destruction of, or loss of use or property in any one occurrence.

E. The Town Manager, or designee, shall issue a permit for such excavation subject to the terms and conditions of this ordinance, upon being satisfied that it is to be made in a proper location and for a lawful purpose.

**Section 4. Bond required.**

A. An excavation permit shall be accompanied by a good and sufficient bond in the sum of Twenty Thousand Dollars (\$20,000), in form approved by the Town Solicitor, conditioned that the person engaged in the excavation work will faithfully observe all the laws pertaining to the excavating of the streets and the installation of the corresponding utilities; further, that the Town shall be indemnified and saved harmless from all claims arising from accidents and damage of any character whatsoever caused by the negligence of such person engaged in the excavation business or by any other unfaithful, inadequate work done either by themselves or their agents or employees, and that such person will maintain in a safe condition for a period of one (1) year all ditches, excavations and road repairs, which may be opened in the performance of any excavation work, and further that all dirt and other material, excavated will be replaced in good condition with similar materials.

## **Section 5. Safety requirements.**

A. Every person receiving an excavation permit shall complete the work as promptly as possible and shall take all reasonable precautions to avoid accidents to persons and property and to properly protect the public from injury by reason of any such opening or excavation.

B. Temporary traffic controls shall be provided by the permit holder in compliance with the most current edition of the Manual on Uniform Traffic Control Devices (MUTCD) issued by the Federal Highway Administration.

C. Failure to provide temporary traffic controls in compliance with the MUTCD regulations will result in the revocation of the excavation permit.

D. The permit holder is responsible for contacting Miss Utility for utility locates prior to the start of any excavation work.

## **Section 6. Restoration of street; procedures.**

A. Upon completion of the excavation work, every permittee shall fully fill any such street opening or excavation so made and shall immediately repair and restore the street or way disturbed in accordance with the standards and requirements of the Delaware Department of Transportation for excavations and restorations of streets. The permittee shall maintain the repaired portions of the street for twelve (12) months after completion of the work.

B. In case any permittee fails to repair, restore or maintain such street within forty-eight (48) hours after written notice to do so has been given by the Town, the Town may proceed to properly repair, restore, and/or maintain such street at the cost and expense of such person.

1. In such case, the Town shall invoke the bond to cover all costs and expenses incurred for repairing and restoring the street.

2. If the cost and expenses exceed the face amount of the bond, then the permittee shall pay the amount of the excess.

3. Such excess cost of repairing the streets may be recovered by an action brought in the name of the Town in any court of competent jurisdiction.

## **Section 7. Illegal Work; Revocation of License.**

A. Any person engaged in excavation work whose work does not conform to this ordinance and the codes and specifications of the Town, or whose workmanship or materials are of inferior quality shall, on notice from the Town Manager, make necessary changes or corrections at once so as to conform to this ordinance and the codes and specifications of the Town. If work has not been so changed after ten (10) days' notice from the Town Manager, the Town Manager shall then refuse to issue any more permits until such work has been completed as required herein.

B. The Town Manager may appear before the Town Council and request that an excavation permit be revoked or that excavation permits not be issued for a period of time not to exceed twelve (12) months because of violations of this ordinance by the permittee.

C. When the revocation of any such permit is to be considered at any meeting, the person, to whom the permit has been issued shall have at least three (3) days' notice in writing of the

time and place of such meeting, together with a statement of the grounds upon which such permit should be revoked.

D. The Town may issue a stop work order for any person engaged in excavation work without an excavation permit. After a stop work order has been issued, the person performing the work shall take those actions necessary to secure the site to make the street safe for vehicles and pedestrians until an excavation permit has been issued, which work may be performed by the Town or its agents if the contractor fails to do so within 24 hours of the stop work order. The permittee shall be required to pay any costs incurred by the Town to secure the site prior to an excavation permit being issued. Excavation work shall not resume until an excavation permit has been issued and any civil penalty paid.

#### **Section 8. Inspections.**

An inspector appointed by the Town Manager is authorized to perform inspections of street excavations and restorations at such times during the construction process as is necessary to ensure that the street excavations and restorations are performed and completed in accordance with the standards set forth herein.

#### **Section 9. Violations and penalties.**

Anyone violating one or more of the provisions of this ordinance shall be subject to a civil penalty for the first offense of \$400.00. For each subsequent offense within twelve (12) months of the first offense, such person shall be subject to a civil penalty of \$600.00.

#### **Section 10. General provisions.**

(1) *Severability.* If any of the sections, paragraphs, sentences, clauses and phrases of this ordinance shall be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses and phrases of the ordinance.

(2) *Effective date.* This ordinance shall take effect after the second reading and approval by the town council.

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### **SYNOPSIS**

This ordinance requires permits before excavating streets. This ordinance establishes procedures for applying for excavation permits, which must be accompanied by a \$20,000 bond and a permit fee. This ordinance establishes minimum insurance requirements and safety requirements for performing excavations. Persons engaging in excavation activities must restore streets pursuant to standards adopted by the Delaware Department of Transportation. This ordinance authorizes the Town to issue a stop work order if excavation work commences without an excavation permit. This ordinance includes procedures for revoking excavation permits and penalties for violations of this ordinance.

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This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Wyoming at a duly-noticed and convened meeting at which a quorum was present on December 5, 2022.

So Certifies:

Attest: Brian James  
Town Clerk

Stew Billray  
Mayor

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This shall certify that a copy of this ordinance was posted at the Town Hall on December 6, 2022.

So Certifies:

12/16/2022  
Date

Audrey Lunde