

CHAPTER 3

Road Excavations; Trees

- 4-3-1 Excavations of Streets, Alleys, Public Ways and Roads
- 4-3-2 Regulations Governing Excavations and Openings
- 4-3-3 Trees and Shrubbery Obstructing View at Intersection or View of
Traffic Signs; Tree Removal; Fences
- 4-3-4 Injury to Trees and Shrubs Prohibited
- 4-3-5 Deposit of Rubbish and Stones on Highway Right-of-Way Prohibited

SEC. 4-3-1 EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAYS AND ROADS.

(a) **Permit Required.**

(1) No person, partnership, utility or corporation, or their agents or 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 Pembine without a permit therefor from the Town Chairperson or Clerk.

(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 out or augering, 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 4-3-2.

(b) **Fee.** The fee for an excavation or opening permit shall be Five Dollars (\$5.00). The fee shall be paid to the Town Clerk, who shall issue a receipt therefor.

(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 Hundred Thousand Dollars (\$100,000.00) per one (1) person, Three Hundred Thousand Dollars (\$300,000.00) for one (1) accident and property damage coverage of not less than Fifty Thousand Dollars (\$50,000.00). The Town shall be listed as a third-party insured on the policy.

(d) **Bond.**

(1) Before a permit for excavating or opening any street or public way may be issued, the applicant must sign a statement in that he will indemnify and save harmless the Town of Pembine and its officers from all liability for accidents and damage 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 drainlaying 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 one (1) year.
- (2) The person who does such restoration shall be responsible therefor 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 the amount of One Thousand Dollars (\$1,000.00).
 - (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.

SEC. 4-3-2 REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS.

- (a) **Frozen Ground.** No openings in the streets, alleys, sidewalks or public ways shall be permitted when the ground is frozen except where it is deemed necessary by the Town Board.
- (b) **Removal of Paving.** In any opening or excavation, all paving or ballasting 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 sunrise to sunset. 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 (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet 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 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 which, in the opinion of the Town, is not suitable for refilling shall be replaced with approved backfill material. All rubbish shall be immediately removed. In refilling the opening, the earth must be puddled or laid in layers not more than six (6) inches in depth and each layer rammed, tamped

- or flushed 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. 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 one (1) year shall be charged to the person making the street opening.
- (e) **Notice.** It shall be the duty of the permittee to notify the Town Board or Town Clerk 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 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.** It shall be the duty of the permittee to backfill the opening immediately upon completion of the work and to place at least five (5) inches of traffic bind or similar material in the opening unless otherwise advised by the Town. It shall be the duty of the permittee to maintain the opening in good condition for a period of six (6) months after the completion of the work or until the surface has been restored. The Town shall decide when, within said six (6) months' period, the opening is ready for paving if a paving surface is required. If the surface is not restored within a period of ten (10) days or such longer period as determined by the Town, the Town may restore the surface and bill the permittee therefor.
- (h) **Emergency Excavation.** In the event of an emergency, any person, firm or corporation, owning or controlling any sewer, gas main, water main, 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 thirty (30) 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.

SEC. 4-3-3 TREES AND SHRUBBERY OBSTRUCTING VIEW AT INTERSECTION OR VIEW OF TRAFFIC SIGNS; TREE REMOVAL; FENCES.

- (a) **Obstruction of Intersections.** No person shall maintain, plant or permit to remain on any private or public premises situated at the intersection of two (2) or more roads, streets or alleys in the Town any hedge, tree, shrub or other growth which may obstruct the view of the operator of any motor vehicle or pedestrian approaching such intersection.
- (b) **Obstruction of Signs.** It is unlawful for any person to plant, cause to grow, allow to grow or maintain any trees, bushes, shrubbery or vegetation of any kind which is an obstruction to the clear and complete vision of any traffic sign in the Town. It shall be the duty of every owner of such tree, brush, shrubbery or vegetation to remove such obstruction.
- (c) **Abatement Procedure.** Any shrub, tree or other plant which obstructs the view at an intersection or the view of a traffic sign shall be deemed to be dangerous to public travel, and the Town Clerk shall notify the property owner in writing, describing the conditions, stating the steps necessary to correct the conditions, and establishing a reasonable time within which the corrective steps shall be taken. In the event that effective steps are not taken within the time specified, it shall be lawful for the Town to abate these conditions to the extent necessary to assure compliance with the foregoing requirements, and the costs thereof shall be assessed to the owner.
- (d) **Trees on and Adjacent to Highway.**
- (1) **Removal of Fallen Trees.** If any tree falls from adjacent land into any highway, the owner or occupant of the land shall immediately remove the tree from the highway. It shall be the duty of every highway patrolman, street commissioner or other officer in charge of the maintenance of streets or highways to remove from any highway any fallen tree or trees therein.
 - (2) **Planting Trees and Shrubs in Highway.** Any person owning or occupying land adjoining any highway may, with the approval of the Town Board, plant, cultivate and maintain trees, shrubs or hedges on the side of the highway continuous to and within ten (10) feet of his land. Such trees, shrubs or hedges shall be cut or removed only by the owner or occupant of the abutting land or by the public authority having control of the highway.
- (e) **Cutting or Injuring Trees on Highway.** No person shall cut down, break, girdle, bruise the bark or in any other manner injure any public or private trees, shrubs or hedges growing within the highway, except as the owner thereof or the public authority maintaining the highway may cut down, trim and remove trees, shrubs and hedges for the purpose of and conducting to the benefit and improvement of the owner's land or the highway facility. When it is necessary for trees in a road right-of-way to be removed, the adjacent property owner shall have a right of first refusal to have the wood. After receiving notice that a tree is to be removed, the adjacent property owner shall have fourteen (14) days to remove the tree.
- (f) **Fences.** No person shall build or reconstruct any fence within the thirty-three (33) foot public road right-of-way measured from the center of the road. With the permission of the Town Board, a person owning or occupying land adjoining a highway may build or reconstruct a fence on the side of the highway contiguous to and within ten (10) feet of his land.

State Law Reference: Section 86.03, Wis. Stats.

SEC. 4-3-4 INJURY TO TREES AND SHRUBS PROHIBITED.

- (a) No person shall, without the consent of the owner in the case of a private tree or shrub, or without written permits from the Town Board in the case of a public tree or shrub, do or cause to be done by others any of the following acts:
- (1) Secure, fasten or run any rope, wire sign, unprotected electrical installation or other device or material to, around or through a tree or shrub.
 - (2) Break, injure, mutilate, deface, kill or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
 - (3) Permit any toxic chemical, gas, smoke, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub, or place cement or other solid substance around the base of the same.
 - (4) Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.
 - (5) Attach any sign, poster, notice and other object on any tree, or fasten any guy wire, cable, rope, nails, screws or other device to any tree; except that the Town may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work or parades.
 - (6) Cause or encourage any fire or burning near or around any tree.
- (b) All trees on any parkway or other publicly owned property near any excavation or construction of any building, structure or street work shall be sufficiently guarded and protected by those responsible for such work as to prevent any injury to said trees.

State Law Reference: Section 86.03, Wis. Stats.

**SEC. 4-3-5 DEPOSIT OF RUBBISH AND STONES ON HIGHWAY
RIGHT-OF-WAY.**

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