

STREET EXCAVATION ORDINANCE

**An Ordinance of the Town of Kirkwood Regulating
Excavations in Streets and Highways Within the Town and
Prohibiting Certain Types of Vehicles Thereon To Be Known
As “Ordinance Governing Excavations in Town Streets and Highways”**

Adopted September 21, 1965

SECTION 1. Excavations in Streets

- Par. 1 Definitions. As used herein, the words “street” or “highway” shall mean any public street or highway owned and controlled by the Town of Kirkwood.
- Par. 2 Obstructions. No person, persons, firm or corporation shall remove from or deposit on any public street, highway, public land, or sidewalk, any dirt, gravel, stone or other material, without having first obtained a written permit from the Superintendent of Highways.
- Par. 3 Excavations. No person, persons, firm or corporation shall intentionally injure any pavement, road or highway surface, sidewalk, grass plot within the bounds of any such road, sewer, catch basin, crosswalk, drain, gutter or other public ground, or equipment imbedded in or placed in the ground or cause to be dug or made any hole or excavation in or under any public street or highway, or cause to be erected any sign, signpost, billboard, structure, barrier, pole or similar object, either affixed or unaffixed to the ground, without having or first applied for and received a written permit from the Superintendent of Highways.
- Par. 4 Damages. The person to whom such permit is issued shall be responsible for all damages caused to public utilities in the street, and any cracked or damaged sewer and water pipe shall be replaced with new pipe, under the supervision of the Sewer and Water Inspector. Damaged ditches, curbs, sidewalks, or other improvements shall be repaired or replaced in as good condition as before the excavation.
- Par. 5 Restoration. Any such excavation in any public street or highway shall be restored within the time granted in the permit, with approved bank run gravel and shall be kept and maintained level with the unexcavated portion thereof, for a period of one year from the date of the permit, so that said excavated portion shall be left in as good, substantial and permanent condition as before the excavation; and if not so restored and maintained, the work shall be done under the direction of the Superintendent of Highways and the cost thereof shall be a lawful charge against the person to whom the permit was issued and it shall be the duty of the Superintendent of Highways to sue for and recover such costs.
- Par. 6 Guarding of Excavations. No person, persons, firm or corporation making or having made any such excavation in or upon any street or highway aforesaid, shall permit such excavation to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and in addition thereto, shall place at such location, flares, red lanterns or other warning devices, by night, so as to properly warn all persons of the danger of such hole or excavation.
- Par. 7 Surety Bond and Liability Insurance. No permit shall be issued by the Superintendent of Highways for the excavation in any street or highway, unless the person to whom the permit is to be issued shall have filed with the application for such permit a personal liability insurance policy or certificate thereof naming the Town of Kirkwood an additional insured with the minimum limits of coverage for bodily injury equal to \$100,000.00 for each person

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injured, \$300,000.00 for aggregate bodily injury resulting from each occurrence, and \$25,000.00 property damage.

The applicant shall also file a surety bond in favor of the Town Superintendent of Highways and the Town of Kirkwood guaranteeing compliance with the provisions of this ordinance in the amount of \$250.00 for each permit requested or at the applicant's option a surety bond in the amount of \$2500.00, which bond for \$2500.00 will allow the applicant to make up to 10 excavations at any given time under this ordinance during the calendar year in which the said \$2500.00 bond is filed. The Highway Superintendent of the Town shall determine if an excavation has been properly restored as required by paragraph 5 of this ordinance so as to permit the applicant to make additional excavations under said \$2500.00 bond, and his determination of said restoration shall be conclusive upon the applicant.

If the applicant intends to excavate in the roadway pavement of any town street or highway he shall file, in addition to the insurance policy and surety bond mentioned above, a certified check or Treasurer's check payable to the Town Superintendent of Highways in the sum of \$25.00, all or any portion of which check may be used by said Superintendent as necessary to reimburse the Town of Kirkwood for any costs incurred in restoring or maintaining any excavation as a lawful charge against any applicant who fails to do so in compliance with Paragraph 5 of this Ordinance."

If the applicant intends to excavate in the roadway pavement of any town street or highway he shall file, in addition to the insurance policy and surety bond mentioned above, a certified check or Treasurer's check payable to the Town Superintendent of Highways in the sum of \$100.00 if said street is surfaced with blacktop (asphalt) and \$25.00 if such Street has a stone and oil surface, all or any portion of which check may be used by said Superintendent as necessary to reimburse the Town of Kirkwood for any costs incurred in restoring or maintaining any excavation as a lawful charge against any applicant who fails to do so in compliance with Paragraph 5 of this Ordinance. (Amended Nov. 6, 1974 by Town Board Resolution)

Par. 8 Exceptions. No permit, liability insurance, surety bond, or treasurer's check or certified check, shall be required in the following instances:

- (1) For the erection of posts to hold mailboxes on the grass plot adjoining the used or paved portion of any street provided same is set back at least three feet from the edge of the used or traveled portion thereof.
- (2) For the performance of any work pursuant to a contract, franchise or other agreement entered into with the Town Board acting as such or on behalf of any lawfully created District in said Town.
- (3) For the construction of line fences where half thereof is situated upon the premises of the owner and half thereof upon the public street provided that the total width thereof does not exceed six inches.

SECTION 2. Uses Prohibited.

Par. 1 No vehicle shall be operated, driven, pushed, or towed upon any such street or highway, having lugs or other metal treads, which will destroy, break, dig, injure, cut, mark or mar the surface thereof.

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SECTION 3. Title.

This Ordinance shall be known and cited as “Ordinance Governing Excavations in Town Streets and Highways.”

SECTION 4. Separability.

Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or unjust for any reason by a Court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

SECTION 5. Inconsistency.

All Resolutions or Ordinances or portions thereof of the Town of Kirkwood not consistent with this Ordinance in whole or in part shall be repealed.

SECTION 6. Penalties.

(Amended May 4, 2004 by LL No. 18, 2004)

A. A violation of this ordinance is an offense, punishable by a fine not exceeding two hundred fifty dollars or imprisonment for not more than fifteen days, or both.

B. In addition to the above prescribed penalties, the Town Board may in its discretion revoke any permit previously issued after a public hearing at which the applicant shall have an opportunity to be heard, or in the alternative, may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with this ordinance by injunction, abatement or otherwise compel cessation of each violation, and obtain restitution to the Town for costs incurred by the Town in remedying each violation, including but not limited to reasonable attorney’s fees.

SECTION 7. Effective Date.

This Ordinance shall take effect ten (10) days after the publication thereof and posting thereof by the Town Clerk pursuant to applicable provisions of the Town Law.