**CHAPTER 21**

**STREETS AND SIDEWALKS**

**Part 2**

**Excavation**

**§201. Purpose.** The purpose of this Part is to regulate the construction and maintenance of public roads, streets, and highways in White Deer Township (Township) and to control and regulate the manner in which work is performed within the right-of-ways of the same. This Part is adopted to promote the health, safety and welfare of the residents of the Township and the general public.

**§202. Construction of Public Roads and Streets.** All roads, streets and highways herein offered for dedication to the Township as a public road, street or highway shall, prior to acceptance of the same by the Township, meet certain standards and criteria established by the Board of Supervisors of White Deer Township from time to time by resolution. The standards and criteria set forth in the said resolutions shall be minimum standards. If in the sole and exclusive opinion of the Board of Supervisors of the Township, the standards and criteria are not sufficient to insure the maintenance, stability, integrity or safety of the said street, road or highway, the Township shall require the same to be construed to different standards and criteria as the Board of Supervisors of the Township shall determine.

Prior to the acceptance of any offer of dedication, the Board of Supervisors of the Township shall inspect the road or cause it to be inspected and shall determine if it has been constructed in accordance with the said standards and criteria. Any such inspection or inspections shall be performed on a schedule established by the Township. Prior to any construction, the Township should be consulted to establish an inspection schedule. The costs of said inspections shall be paid by the person, firm, entity, corporation or partnership proposing the dedication.

**§203. Regulations.** The Township may, by resolution or ordinance, from time to time, adopt such rules and regulations governing the use of public roads as it deems necessary and appropriate for the maintenance and upkeep of the said roads, streets and highways and for the health, safety, and welfare of its residents and the general public.

**§204. Work Performed in Public Right-of-Way.** No person, firm, corporation, partnership, entity or organization shall do or perform any work, service or activity within, upon, under or above the right-of-ways of any street, road, alley, path, walk, passage, easement or area dedicated to the Township, or to the public and situate within the Township, except in a safe manner and in accordance with all laws and regulations of the Commonwealth of Pennsylvania, and the Township, present and future, including but not limited to the regulations of the Pennsylvania Department of Transportation regulating the manner in which work is performed within the highways of the Commonwealth of Pennsylvania.

**§205. Excavation Permit.** It shall be unlawful for any person to dig up, break, excavate, tunnel, bore, undermine, or in any manner break up any street or to make or cause to be made any excavation in or under the surface of any street, or to place, deposit, or leave upon any street any earth or unexcavated material obstructing or tending to interfere with the free use of the street by the public or do any work within a public right-of-way unless such person shall first have obtained an excavation permit from the Township as herein provided.

**§206. Application for Permit.** No excavating permit shall be issued unless an application for the issuance of the same, on forms provided for that purpose, is submitted to the Township. The application shall state the name and address of the applicant, the nature, location and purpose of the excavation, the date of commencement and date of completion of the excavation, and other data as may be reasonably required by the Township. If, in the sole and exclusive opinion of the Township, extensive excavation and construction is planned, the application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of the elevated surfaces, the location of the excavation work, and such other information as may be prescribed by the Township by resolution from time to time. It shall be permissible for Public Utilities, as that term is defined by statute, to telephone the Township to submit permit information to perform maintenance work on their facilities.

**§207. Permit and Inspection Fees.** The application for an excavation permit shall be accompanied by such fee as established by the Township by resolution from time to time. Permittee shall be responsible for and shall pay all costs incurred by the Township in inspecting the work authorized by the permit and all costs incurred by the Township for the review of the application if such review is made by a person other than a Township employee. The determination as to the necessity of a review by a non-Township employee rests solely and exclusively with the Township. The costs to be charged for inspection of the work shall be in accordance with fees adopted by the Township by resolution from time to time.

**§208. Excavation Placard.** The Township shall provide each Permittee, at the time the permit is issued, a suitable placard which shall state the Permittee’s name, the permit number and the date of expiration, which shall be exhibited at the site of said work at all times. It shall be unlawful for any person to exhibit such permit at or about any excavation or work site not covered by such permit, to misrepresent the permit number or the date of expiration.

**§209. Performance Bond.** Before an excavation permit is issued, the applicant shall deposit with the Township a performance bond, in favor of the Township, in the amount of $5,000.00 or such greater amount as may be determined by the Township.

(1) With good and sufficient surety satisfactory to the Township.

(2) Satisfactory to the Township Solicitor in form and substance.

(3) Conditioned that the applicant will faithfully comply with all the terms and conditions of this Ordinance; all rules, regulations, and requirements pursuant thereto and as required by the Township and all reasonable requirements of the Township.

(4) Said bond shall remain in force for one (1) year after the work has been completed to provide security for any defects in said work.

An annual bond may be given under this provision which shall remain in force for one (1) year conditioned as above, in the amount specified herein and in other respects as specified herein but applicable as to all work done pursuant to any permit issued to the person submitting the said bond during the term of one year from said date of issuance of said bond. Said bond shall be extended if necessary to comply with the provision of this ordinance.

**§210. Exemption from Bond.** The performance bond provisions of this Part shall not apply to any Public Utility permitted to operate within the Township limits, or any Permittee to whom a permit is issued for work under a contract with the Township.

**§211. Requirements.** All work done pursuant to an excavation permit issued under the provisions of this Part shall be performed to the satisfaction of the Township or its duly authorized agent. Permittee shall comply with applicable regulations as may be adopted, from time to time, by resolution of the Township Board of Supervisors.

**§212. Emergency Action.** In the event of an emergency in which a main, conduit, or utility facility in or under any street breaks, bursts, or otherwise is in such condition as to immediately endanger the property, life, health, or safety of any individual, the person owing or controlling such main, conduit, or utility facility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such main, conduit or facility shall apply for an excavation permit not later than the end of the next succeeding business day.

**§213. Non-Completion or Abandonment.** Work shall progress in an expeditious manner until completion in order to avoid unnecessary inconvenience to or threaten the safety of the general public. In the event that the work shall not be performed in accordance with the applicable regulations or in accordance with the provisions of this Part, or shall cease or be abandoned without due cause, the Township may, after six hours notice in writing to the holder of the said permit of intent to do so, correct said work or fill the excavation and repair the street, and in any such event the entire cost to the Township of such work shall be a liability of and shall be paid by the person, firm, corporation or entity to whom the permit was issued and the said performance bond may be utilized for this purpose.

**§214. Insurance.** A Permittee, prior to the commencement of work hereunder, shall furnish the Township satisfactory evidence in writing that the Permittee has in force liability insurance of not less than $500,000.00 duly issued by a reputable insurance company authorized to do business in the Commonwealth of Pennsylvania and on which policy the Township is named as co-insured, said insurance policy shall include a duty to defend the Township along with proof that the policy is in full force and effect for the period of time it will take to complete the work. Permittee shall upon request, exhibit evidence of such insurance coverage to Township.

**§215. Indemnification.** The Permitted shall indemnify, keep and hold the Township free and harmless from liability on account of injury or damage to persons or property arising or growing out of the Permittee’s work pursuant to the said permit. In the event that suit shall be brought against the Township either independently or jointly with the Permittee on account thereof, the Permittee, upon notice to it by the Township shall defend the Township in any suit at the cost of the Permittee, and in the event of a final judgment being obtained against the Township either independently, or jointly with the Permittee, the Permittee shall pay such judgment together withal costs and hold the Township harmless there from.

**§216. Exemption from Insurance Provisions.** The provisions of this Part requiring evidence of public liability insurance shall not be applicable to any Public Utility operating facilities within the Township.

**§217. Refusal of Permit.** If any person, partnership, entity, firm or corporation shall fail, refuse or neglect to comply with the provisions of this Ordinance, or any rules or regulations, or any reasonable orders or directions of the Township representative in reference thereto, the Township may refuse to issue further permits to such person, partnership, entity, firm or corporation until such conditions or orders are complied with and may enforce the provisions of this Part with actions in either law or equity.

**§218. Penalty.** Any person, partnership, corporation, or entity who or which has violated or shall violate or permitted or permits the violation of the provisions of this Part shall, upon being convicted of a violation of this Part in a Summary Proceeding under the provisions of the Pennsylvania Rules of Criminal Procedure be fined an amount not exceeding $1,000.00 and/or be imprisoned to the extent allowed by law for the punishment of summary offenses.

Each day that a violation continues, after written notice of a violation has been delivered to a violator by leaving the same at the violator’s place of business or residence, shall constitute a separate violation. All fines collected for a violation of this Part shall be paid to the Township.

In addition to the above the Township may enforce the provisions of this Part through an Action in Equity brought in the Court of Common Pleas of Union County. All costs of such action, including but not limited to attorney fees, court costs, and witness fees shall be paid by the person, firm, partnership, corporation or entity violating this Part together with all costs incurred by the Township prior to the commencement of said action in investigating the said violation.

(Ordinance No. 01-02, adopted September 25, 2001)