**CHAPTER 21**

**STREETS AND SIDEWALKS**

**Part 7**

**Placement and Maintenance of Utilities**

 **§701. Purpose**. The purpose of this Part is to regulate the placement and maintenance of utilities, both public and private, within areas designated as public or private rights-of-way or easements within White Deer Township (the Township). This Part is adopted to promote the health, safety and welfare of the residents of the Township and the general public.

 **§702. Definitions.**

 CARTWAY – The stoned, paved or hard surface of a street, road or alley customarily used by vehicles in the regular course of travel.

 PERSON – Any natural person or persons, corporations, company, partnership, firm, entity or similar organization.

 PRIVATE STREET – A private right-of-way intended for use as a means of vehicular and/or pedestrian circulation which provides a means of access to 3 or more or potentially 3 or more tracts of land or lot, abutting the said private right-of-way, upon which commercial, industrial, residential or public buildings are or can be erected.

 PUBLIC STREET – A right-of-way dedicated to White Deer Township, Union County, Pennsylvania, intended for use as a means of vehicular and/or pedestrian circulation, which provides a means of access to abutting tracts of land or lots.

 RIGHT-OF-WAY (EASEMENT) – A strip of land occupied or used or intended to be occupied and used exclusively or in conjunction with other uses as a street, road, highway, alley, walkway, or for utility lines, pipes and structures, storm water drainage systems and structures or similar uses.

 SHOULDER (BERM) – The improved area immediately adjacent to a cartway.

 STRUCTURE – Anything man made constructed, placed or erected that requires location on or below the surface of the ground or attached to something having location on or below the surface of the ground and shall include poles and towers.

 UTILITY – Any enterprise that provides the following services, products or commodities to the public or a designated group of persons utilizing lines, pipes or structures: electricity, gas, water, telephone, television, oil, communications, sewage collections or similar sources, products or commodities.

 **§703. Utility Permit**. From and after the effective date hereof it shall be unlawful for any Person to install, repair or replace a public or private utility or any component thereof within the right-of-way of any public or private street within the Township without first obtaining a permit for the same. The permit shall be valid for 6 months from date of issuance and may be extended by the Township upon request.

 **§704. Application for Permit.** Permits required by this Part shall be issued upon a written application for the same submitted to such person as the Township shall designate (Township Representative) by the Person desiring to install, repair or replace the said utility (Applicant). The application shall be submitted on the form provided by the Township for such purpose.

 The application shall include, but not be limited to the following information:

 (1) Name, address, telephone number, fax number, and a contact person of the Applicant.

 (2) Name and location of the street and designation of public or private street.

 (3) Date of commencement of work and estimated date of completion of work with typical work hours.

 (4) Name, address, telephone number, fax number and contact person for Contractor performing the work if other than the Applicant.

 (5) Description of the utility.

 (6) Attached to the application shall be the following:

 (a) Drawings and plans, satisfactory to the Township and of a workable scale setting forth location of existing and proposed utilities, and all components thereof, name of street, width of right-of-way, cartways, and shoulders, location of storm water drainage facilities and all components thereof. The drawings and plans shall be certified by a registered engineer currently licensed in Pennsylvania whose seal shall be affixed to the plans and drawings and properly executed Performance Agreement and Maintenance Agreement.

 (b) A narrative description of all work to be done including a description of all materials to be used.

(c) Copies of all permits required by other regulatory agencies.

 (7) At the time the application is submitted to the Township all utilities, existing or proposed, within the area of work, shall be clearly marked on the land and upon request of the Township Representative the Applicant shall review the same with the Township Representative at the site.

 The application for a permit shall be reviewed by the Township Representative and acted upon within 45 days of submission. The action by the Township Representative shall be (1) approval and issuance of the permit or (2) denial of the permit. Written notice of said action shall be sent to Applicant by First Class Mail, postage prepaid, within the said 45 days. Depositing the said notice with the United States Postal Service within the said 45 days shall be compliance with this notice provision. In the event of a denial of the application the said notice shall set forth the reasons for the denial.

 Failure to comply with the notice requirements herein shall be deemed to be an approval of the application.

 **§705. Application Fee**. The application for a permit provided for in §704 hereof shall be accompanied by a fee to be determined by the Township from time to time by resolution. The purpose of the fee is to defray the Township’s costs for processing the application, issuing or denying the permit and inspecting the site prior to taking action on the application.

 In the event the Township determines that it is necessary to have the application, attachments, and/or site reviewed by someone other than a Township employee the costs of the same shall be paid by the Applicant. Upon such determination the Township shall notify the Applicant of the same and of the estimated costs of said review. Applicant shall pay the estimated costs to the Township within 3 business days of the date of the notice. Any delay in the receipt by the Township of the payment of said estimated costs beyond the said 3 business days shall cause an automatic extension of the date for Township action on the application by the number of days between the said 3 business days and the date of receipt of the said estimated costs. Should Applicant fail to pay the same within 15 days of the date of the said notice the application shall be denied for failure to pay the fee.

 **§706. Inspection Fee.** Contemporaneous with the issuance of a permit by the Township Applicant shall pay to Township a fee to be determined by the Township from time to time by resolution. The purpose of the fee is to defray the Township’s costs in inspecting the work to assure that it is in accordance with the application and with Township regulations and ordinances.

 In the event the Township determines that it is necessary to have someone other than a Township employee conduct all or some of the inspections, perform tests or other appropriate work the costs of the same shall be paid by the Applicant. Upon such determination the Township shall notify the Applicant of the same and the estimated costs of such inspections, tests or work, the same to be in writing. Applicant shall, within 3 business days of the date of the notice, pay to Township the estimated costs of said inspections, test or work. Failure to pay the estimated costs within the said 3 business days shall cause an automatic suspension of the permit and all work shall cease until such time as the costs are paid.

 **§707. Performance Agreement**. If not already submitted to the Township pursuant to some other ordinance or regulation Applicant shall submit, with the application for a permit, a properly executed Performance Agreement, in an amount equal to 110% of the estimated costs of the construction or reconstruction. The Performance Agreement shall include adequate provision for financial security in the form of (1) cash deposited with a financial institution with restrictions on disbursement, (2) a irrevocable letter of credit with a financial institution, (3) an irrevocable line of credit with a financial institution, (4) a performance bond with an insurance company authorized to do business in Pennsylvania, or (5) the pledge of some other form of financial security.

 The Performance Agreement shall provide, inter alia, that if Applicant shall fail to perform the work in accordance with the application and Township regulations and all other governmental law and regulations within the time provided for in the Performance Agreement, or fails to maintain liability insurance the Township may draw on the financial security, enter upon the land and complete the work and or pay for the liability insurance as the case may be. The form, amount, and financial security of the Performance Agreement shall be subject to the approval of the Township Solicitor.

 **§708. Maintenance Agreement.** Applicant shall submit with the application a properly execute Maintenance Agreement in an amount equal to 25% of the estimated costs of the work. Applicant shall be responsible for all defects in the work occurring or discovered within 2 years of the date of the completion of the work and the Maintenance Agreement shall provide for the same. The Maintenance Agreement shall provide for financial security in the same manner as set forth in §707 of this Part for the Performance Agreement.

 The Maintenance Agreement shall provide that if Applicant, or its successors and/or assigns, fails to correct any defect in the work occurring or discovered within the said 2 years, or fails to maintain liability insurance after notice of the same to Applicant, Township may draw upon the said financial security, enter upon the lands and take action to correct the defect.

 The form, amount and financial security of the Maintenance Agreement shall be subject to the approval of the Township Solicitor.

 **§709. Construction Regulations**. The Township, by resolution, shall, from time to time, establish regulations and standards for the installation, repair, replacement and maintenance of utilities within public and private rights-of-way, the same to include but not be limited to location of utilities lines or structures, size of utility lines or structures, depth of underground utility lines, placement of poles for overhead utility lines, distances between utility lines, methods of installation of utility lines and structure. All installation, repair and replacement of utility lines and structures shall be in accordance with said standards and regulations.

 **§710. Insurance**. Contemporaneous with the issuance of a permit Applicant shall submit to Township written evidence, satisfactory to the Township, of permanent public liability insurance in an amount of not less than $1,000,000.00. The same shall remain in full force and effect until 2 years after the date of the completion of the work for which the permit has been issued. The insurance will be in such form and with such company as shall be satisfactory to the Township. The Township shall be named as a co-insured and the policy shall include a provision to defend the Township

 In the event Applicant fails to provide written evidence of said insurance as required herein or fails to maintain the said insurance as required herein Applicant shall cease all work and Township may exercise its rights under the Performance Agreement or Maintenance Agreement to complete the work or take such action as is necessary to make the area of work safe or pay for liability insurance. The costs of any action taken by the Township shall be paid from the financial security under either agreement as the case may be. Applicant shall be responsible for all costs incurred but not paid from the financial security.

 **§711. Indemnification**. Applicant shall indemnify, keep and hold the Township free and harmless from liability on account of injury or damage to person or property arising or growing out of the Applicant’s work pursuant to the said permit. In the event a suit is brought against the Township either individually or jointly with Applicant or others on account thereof. Applicant, upon notice from the Township, shall pay the Township’s costs in defending the said suit. In the event there is a final judgment against the Township on the same, Applicant shall pay said judgment together with all costs and shall save Township harmless therefrom.

 **§712. Revocation of Permit.** The failure of any Applicant to comply with the provisions of this Part or any regulations adopted pursuant hereto or compliance with any other Township ordinance and regulation or any state and federal regulation shall cause an automatic revocation of the permit issued pursuant hereto and all work pursuant to said permit shall cease.

 **§713. Safety.** All work performed pursuant to a permit issued in accordance with this Ordinance shall be done in compliance with all Pennsylvania Department of Transportation regulations and all applicable state, federal and local laws, statutes, ordinances and regulations including those dealing with the safety and protection of the public, persons performing the said work and all others.

 **§714. Penalty.** Any Person who violates or permits the violation of any of the provisions of this Part shall, upon being found guilty of such violation in a civil enforcement proceeding, pay a judgment of not more than One Thousand and 00/100 Dollars ($1,000.00), plus all court costs, and reasonable attorney fees incurred by the Township in the enforcement of this Part and the prosecution of the violation.

 Each day that a violation shall occur shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this Part shall be paid over to the Township. Nothing in this section shall be construed or interpreted to grant to any person other than the Board of Supervisors of the Township or its duly designated representative the authority to commence or prosecute any action pursuant to this section.

 In addition to the prosecution of a civil enforcement action the Township may bring an Action in Equity to enforce the provisions of this Part. All costs of the same, including reasonable attorney fees, incurred by the Township shall be paid by the Person violating the provisions of this Part.

 **§715. Exception.** This ordinance shall not apply to mobile home parks as that term is defined in the White Deer Township Zoning Ordinance.

 (Ordinance #03-03, adopted March 25, 2003)