

## Chapter 1 EXCAVATION

### SECTIONS:1

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#### **7-1-1: Permit Required**

A. Permit required. It is unlawful for any person, firm, corporation, partnership, utility company, special district or other entity, unless specifically excepted, to dig, open, excavate, construct or replace sidewalks, place fill, gravel, asphalt, concrete, etc., or to cause to be dug, opened or excavated, any street, alley, sidewalk or any public right-of-way or place on Town-owned property in the Town without first having obtained an excavation permit therefor from the Town of Westcliffe. (Ord. 10-1985, 10-15-1985)

B. Such permits shall be kept at the site of the excavation or construction activity while the work is in progress and shall be exhibited upon request by any police officer or representative of the Town. A copy of such permit shall also be maintained in the office of the Town of Westcliffe. (Ord. 10-1985, 10-15-1985)

#### **7-1-2: Permit Application<sup>3</sup>**

A. Permit application. Application for an excavation permit shall be made upon a form provided by the Town of Westcliffe and shall recite specifically and illustrate by sketch or plan the exact location, depth, length, width, surface area and nature of the excavation desired to be made, together with the location of all underground utilities within a radius of ten feet of the proposed excavation. The permit shall also state the applicant's name, address, date of commencement and completion of the work, and a statement that the work will be performed in strict compliance with the requirements

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<sup>1</sup> Title 7, Chapter 1, Section 9 is repealed in its entirety (Ord. 8-2019, eff. 10-31-2019)

<sup>2</sup> Title 7, Chapter 1 is amended by the addition of Section 8. Ord. 1-1986, 1-6-1986.

<sup>3</sup> Title 7, Chapter 1, Section 2, subsections B and C are repealed and reenacted, subsections A, D and E remains as is. Ord. 1-2012, 3-9-2012.

of this ordinance. The application form shall further recite the posting of such bonds as shall be required by this ordinance, and a place for the applicant's signature shall be provided. (Ord. 10-1985, 10-15-1985, Ord. 8-2019, eff. 10-31-2019)

- B. Permit conditions.<sup>4</sup> All permits shall be issued according to the provisions of this ordinance and are subject to such rules, directions and time limitations as the Town of Westcliffe may specify. Such permits shall be conditioned so that all work performed thereunder shall be in accordance with the ordinances and specifications of the Town of Westcliffe, providing for the proper care and protection of the streets, alleys, sidewalks, public rights-of-way of the Town, all persons and adjacent property. Applicants shall pay such fee as applicable from the addendum "THE TOWN OF WESTCLIFFE PERMIT FEE SCHEDULE" which is adopted into this ordinance and attached for reference, and which may be amended from time to time by the Town's Planning Commission and ratified by the Board of Trustees of the Town prior to issuance of such permit. No permit issued under the provisions of this chapter shall be for more than one excavation project. (Ord. 10-1985, 10-15-1985, Ord. 1-2012, 3-9-2012)
- C. Permit - Bond required<sup>5</sup>. Bond required. Prior to the issuance of any excavation permit the applicant shall post a performance bond in an amount equal to or greater than the cost of the material and labor of the proposed excavation with the Town of Westcliffe. Only one bond is required for any number of permits provided the bond is sufficient to cover the cost of labor and material for all the projects undertaken by such company or utility and has not been declared forfeit or has not been reduced by the provisions of any other section of this ordinance. The condition of such bond shall be that the Permittee shall comply with all the ordinances and specifications of the Town relating to excavating or working in any street, alley, sidewalk or other public right-or-way or Town-owned property. Such bond shall be approved by the Town of Westcliffe as to sufficiency and by the Town attorney as to form, and shall remain in full force and effect for a period of two (2) years from the Acceptance of Work as noted in the "Right of Way Excavation Application" and continuing in full force and effect until two years after the completion of the project covered by the bond. In the event of a breach of any of the conditions of such bond, the Town of Westcliffe shall give notice of same to the surety which shall cause to be remedied the condition wherein the bond is breached, and the Town attorney shall bring action in the name of the Town to recover the penalty of the bond or so much thereof as may be necessary to reimburse all costs and expenses the Town may have incurred incidental thereto. No excavation permit shall be issued to any applicant whose bond or any portion thereof has been declared forfeit, until such applicant posts a cash bond in a form acceptable to the Town of Westcliffe for not less than an amount of

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4 Title 7, Chapter 1, Section 2, Paragraph B is repealed and reenacted in its entirety. (Ord. 8-2019, eff. 10-31-2019)

5 Title 7, Chapter 1, Section 2, Paragraph C is repealed and reenacted in its entirety. (Ord 8-2019, eff. 10-31-2019)

money covering the cost of labor and materials plus ten percent (10%) of the cost of the full project for which the bond is required. (Ord. 10-1985, 10-15-1985, Ord. 1-2012, 3-9-2012, Ord. 8-2019, eff. 10-31-2019)

- D. Permit - Bond Not Required. In the event application for a permit to excavate is for work of the amount of \$1,000.00 or less then the applicant may enter into an agreement with the Town of Westcliffe to post a cash bond or other surety arrangement that in the opinion of the Town of Westcliffe provides adequate assurance that the Town is protected from incurring any costs incidental to excavation. (Ord. 10-1985, 10-15-1985)
- E. Permit - Insurance required.<sup>6</sup> Any contractor or utility who applies for an excavation permit shall be conclusively deemed to have agreed to indemnify and save harmless the Town, its authorized agents, officers, representatives and employees from and against any and all claims, penalties, liability or loss resulting from claims or court actions, whether at law or in equity, arising directly or indirectly out of any act or omission of the contractor, his agents, officers, representatives or employees, in digging in, opening or excavating any street, alley, sidewalk, public right-of-way or Town-owned property. The contractor shall post with the Town of Westcliffe certification of general liability insurance covering such excavation work with minimum coverages as outlined below:
- a. A limit of liability of not less than three hundred thousand dollars for all damages arising out of bodily injury, including death, at any time resulting therefrom sustained by any one person in any one accident; (Ord. 10-1985, 10-15-1985)
  - b. A limit of liability of not less than three hundred thousand dollars aggregate for all damages detailed in subsection A above sustained by two or more persons in any one accident; (Ord. 10-1985, 10-15-1985)
  - c. A limit of liability of not less than one hundred thousand dollars for all property damage sustained by any one person in any one accident; (Ord. 10-1985, 10-15-1985)
  - d. A limit of liability of not less than one hundred thousand dollars aggregate for any property damage sustained by two or more persons in any one accident; (Ord. 10-1985, 10-15-1985)
  - e. All liability insurance shall be approved by the Town attorney as to form to insure such indemnity. (Ord. 10-1985, 10-15-1985)

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<sup>6</sup> Title 7, Chapter 1, Section 2, Paragraph 3, Subparagraph 1 is repealed and reenacted in its entirety. (Ord 8-2019, eff. 10-31-2019)

1. All insurance policies required in this section shall include complete operation coverage for a period covering the anticipated length of time to complete the project and shall continue in full force and effect for two years after the completion of the project covered by the insurance policy. Failure to maintain such insurance shall not relieve any applicant from liability. Such proof of insurance shall contain a clause that the Town shall be notified by the insurer not less than thirty days prior to any change in the policy or cancellation of such policy. (Ord. 10-1985, 10-15-1985, Ord 8-2019, eff. 10-31-2019)

**7-1-3: Obstructing Streets**

- A. It is unlawful, without having first obtained written permission of the Town of Westcliffe to block more than that portion of the street from the centerline to either street edge, except where the excavation is by necessity to be in the street center, in which case one lane of moving traffic shall be maintained. (Ord. 10-1985, 10-15-1985)
- B. A permittee shall give notice to the occupant prior to blocking any driveway. The driveway shall be opened and accessible to vehicular and pedestrian traffic as soon as possible upon completion of the excavation and backfill. (Ord. 10-1985, 10-15-1985)
- C. Permittee shall backfill the excavation immediately after completion of the work for which the excavation was this ordinance. (Ord. 10-1985, 10-15-1985)
- D. No longitudinal street or alley excavation shall be extended in the next succeeding block until the excavation has been backfilled. (Ord. 10-1985, 10-15-1985)
- E. Warning devices - Interfering or moving. It is unlawful to damage, displace, remove or interfere with the barricade, warning light, traffic cone or any other safety device which is lawfully placed upon or about any street, alley, sidewalk or other excavation or construction work in the Town. (Ord. 10-1985, 10-15-1985)

**7-1-4: Settlement<sup>7</sup>**

In the event of any settlement or subsidence of a particular excavation or part thereof, the permittee who performed the excavation shall be responsible for all repair and repaving costs occasioned thereby for a period of two (2) years after the date of work acceptance as noted at the end of the "Right of Way Excavation Application". In the event the permittee is unable or unwilling to repair and repave any settlement or subsidence of a particular excavation or part thereof, the Town shall take whatever measures it deems necessary to provide a safe and acceptable surface, including but not limited to calling upon the surety on the performance bond to perform repair and repaving costs or to reimburse the Town for all costs and expenses incidental to the repair and repaving made by the Town. (Ord. 10-1985, 10-15-1985, Ord. 1-2012, 3-9-2012)

**7-1-5: Backfill<sup>8</sup>**

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7 Title 7, Chapter 1, Section 4 is repealed and reenacted in its entirety. Ord. 1-2012, 3-9-2012  
8 Title 7, Chapter 1, Section 5 is repealed and reenacted in its entirety. Ord. 1-2012, 3-9-2012

Any backfill required by excavations performed within the Town shall be made in accordance with the specifications contained in the “TOWN OF WESTCLIFFE REPAIR SPECIFICATINS FOR EXCAVATIONS OF STREETS AND ALLEYS” which is adopted into this ordinance and attached for reference. (Ord. 10-1985, 10-15-1985, Ord. 1-2012, 3-9-2012)

**7-1-6: Sidewalk and Gutters**

Sidewalk and gutters to be kept clear. It is unlawful for any person to place any dirt or other materials upon any sidewalk or in any gutter, and work shall be performed so as to permit the free passage of water in the gutter and the passage of pedestrians on the sidewalk. All excavation work shall be performed in such a way as to cause minimum inconvenience to the public and minimum restriction to both pedestrian and vehicular traffic. (Ord. 10-1985, 10-15-1985)

**7-1-7: Unauthorized Excavations**

A. Unauthorized excavations. Whoever, in this Town makes or causes to be made, without lawful authority, an excavation in any highway, street, alley, sidewalk, or other public place, or otherwise digs up, or removes any stone, rock, gravel, or earth in or from any such place, or removes any stones, stakes, or other landmarks placed by any officer of said Town under authority thereof, or by any other duly authorized person, is guilty of a misdemeanor. (Ord. 10-1985, 10-15-1985)

B. Violation - Penalty. Any person convicted of a violation of this chapter or any section provision hereof shall, upon conviction, be punished by a fine of not more than three hundred dollars for any one offense, or by imprisonment for a period of not more than ninety days or both such fine and such imprisonment. The Town of Westcliffe shall refuse to issue a permit under this chapter to any person who shall have suffered two convictions hereunder within a period of five years from the date of the first or former conviction, for a period of at least one year after such second conviction. (Ord. 10-1985, 10-15-1985)

**7-1-8: Emergency Excavations<sup>9</sup>**

Nothing in Ordinance 10 Series 1985 shall be construed to prevent the making of any emergency excavation as may be necessary for the preservation of life or property, or for the location of trouble in any conduit or pipe, or for making emergency repairs, provided that the person or entity making such excavation shall immediately apply for a permit on the first working day after such work is commenced. In the event an emergency excavation becomes necessary said companies or their contractors may make the repair but must report to the Town on the next business day all the particulars of the work done and submit a site sketch of the area. All repair requirements as spelled out in the attached addenda “Town of Westcliffe Repair Specifications for Excavation of Streets and Alleys” shall still apply, as well as the conditions of Section 7-1-4 above. (Ord. 1-1986, 1-6-1986, Ord 8-2019, eff. 10-31-2019)

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Title 7, Chapter 1, Section 8 is repealed and reenacted in its entirety. (Ord 8-2019, eff. 10-31-2019)