

ORDINANCE NO. 675

**AN ORDINANCE ESTABLISHING REGULATIONS FOR EXCAVATION
WITHIN PUBLIC RIGHTS-OF-WAY**

WHEREAS, the Town expends significant funds on public rights-of-way and improvements associated therewith; and

WHEREAS, there is an increasing interest by third parties and private entities to use public rights-of-way, including excavation within those rights-of-way; and

WHEREAS, it is important to establish criteria and a permit proves for use and excavation of the public rights-of-way within the Town that are consistent so that all third parties are aware of the criteria; and

WHEREAS, the Town Council for the Town of Naches find it is in the best interests of the residents of the Town to provide and establish criteria and permitting for excavation under specific terms and conditions for the Town rights-of-way as outlined herein;

NOW, THEREFORE,

The Town Council of the Town of Naches, Washington, does ordain as follows:

Section 1: Naches Municipal Code Section 12.06 entitled “Public Right-of-Way Excavation” is added to the Naches Municipal Code to read as follows:

12.06: PUBLIC RIGHT-OF-WAY EXCAVATION

Sections:

- 12.06.005 Definitions
- 12.06.010 Permit required.
- 12.06.020 Permit application.
- 12.06.030 Application—Contents—Fees.
- 12.06.040 Relocation of excavation and excavation approval.
- 12.06.050 Term of permit.
- 12.06.060 Performance bond required.
- 12.06.070 Insurance required.
- 12.06.075 Non-excavation period.
- 12.06.077 Notice required.
- 12.06.080 Routing of traffic.
- 12.06.090 Clearance for fire equipment

- 12.06.100 Protection of traffic.
- 12.06.110 Protection of adjoining property—Access.
- 12.06.120 Protective measures—Fences, barriers.
- 12.06.130 Excavated material.
- 12.06.140 Cleanup.
- 12.06.150 Trench construction and backfill.
- 12.06.160 Street restoration.
- 12.06.165 Damage to existing improvements.
- 12.06.170 Pavement cut requirement.
- 12.06.180 Inspections.
- 12.06.190 As-built drawings, plans and profiles.
- 12.06.200 Provisions not applicable to city work.
- 12.06.210 Liability of city.
- 12.06.220 Stop work order.
- 12.06.230 Roadway excavation of newly constructed or resurfaced streets.
- 12.06.240 Penalties for violation.
- 12.06.250 Town’s right to restore right-of-way and easements.
- 12.06.260 Indemnification and hold harmless.
- 12.06.270 Severability.

12.06.005 Definitions

For the purposes of this chapter the following terms, phrases and words shall have the meaning given herein.

- A. “Applicant” is any person making written application to the Town Administrator for a construction permit hereunder.
- B. “Excavation Right-of-Way Permit” also referred to herein as “Permit” is the authorization granted by the Town for an applicant or permittee to excavate in a specified right-of-way or easement to conduct the agreed upon work.
- C. “Excavation Work” or “Construction Work” is the excavation and other aboveground construction work permitted under an Excavation Right-of-Way Permit and required to be performed under this chapter.
- D. “Easement” means any town-held easement for access and public utilities.
- E. “Improvement” is any public or private improvement, including the property of public utilities.
- F. “Permittee” is any person who has been granted and has in full force and effect an excavation right-of-way permit issued hereunder.
- G. “Person” is any person, firm, corporation or service provider.
- H. “Right-of-Way” or “Public Right-of-Way” means all property in which the Town has any form of ownership or title and which is held for public street or utility purposes,

regardless of whether or not any street or utility exists thereon or whether it is used, improved or maintained for public use.

I. "Street" is any street, highway, sidewalk, alley, avenue or other public way, easement, or other public place in the Town.

J. "Town Administrator" is the Town Administrator of the Town of Naches or his or her designee.

12.06.010 Permit required.

No person, firm or corporation shall dig, excavate or penetrate any Town right-of-way, roadway, alleyway, sidewalk, curb or gutter by creating a ditch, excavation or other subgrade penetration for water, sewer, storm sewer, natural gas, telephone, cable TV, electrical power or other utility, or for any other purpose, without first obtaining an excavation right-of-way permit issued by the Town Administrator.

12.06.020 Permit application.

All applicants for an excavation permit shall file a written application on forms furnished by the Town Administrator.

12.06.030 Application—Contents—Fees.

Any person desiring to apply for permit under this chapter shall do so by filing a written application with the Town Administrator. Such application shall be signed by the person who intends to conduct the excavation. The applicant must be a licensed and bonded contractor of the state of Washington. The application shall be in such form as the Town Administrator may reasonably require and shall include, at a minimum, the following information:

A. All applications shall be accompanied by an excavation plan showing the extent of the proposed excavation work. The excavation plan shall indicate all locations and dimensions of the proposed excavation, including depth of excavation and location of other utilities, and any other information as may be required by the Town Administrator or the Town's engineer.

B. A nonrefundable application fee of two hundred and seventy-five dollars (\$275.00) shall accompany each application for the issuance of an excavation permit. Said application fee shall be in addition to all other fees for permits or charges relative to any proposed construction work.

C. A copy of the contractor's or any subcontractor's state licensing and bonding compliance and a current Town of Naches business license.

12.06.040 Relocation of excavation and excavation approval.

A. The Town Administrator may require the applicant to relocate the proposed excavation to a place designated as a more appropriate place by the Town Administrator.

B. The Town Administrator may require the applicant to perform the excavation and protect the material placed in the excavation in whatever reasonable manner required by the Town Administrator in order to protect the material placed in the excavation from possible damage by future excavation.

12.06.050 Term of permit.

All excavation permits issued pursuant to the provisions of this chapter shall expire on a date certain, which date shall be established by the Town Administrator as the date on which the excavation is to be completed. This expiration date shall be clearly noted on the permit.

12.06.060 Performance bond required.

Before an excavation permit may be issued under the provisions of this chapter, the applicant shall deposit with the Town Administrator a surety bond in an amount determined by the Town Administrator to be sufficient to ensure completion of the work and fulfillment of the warranty provided for herein and in a form approved by the town attorney. Said bond shall guarantee completion of all excavation and street restoration work required by this chapter and by the conditions of the permit within the time limits set on the permit by the Town Administrator. Said bond shall further guarantee that all excavation and restoration work shall be free from settling and defects in workmanship or materials for a period of two years after the date said work is completed and accepted by the Town.

12.06.070 Insurance required.

Before an excavation permit may be issued, the applicant shall secure comprehensive general liability insurance for personal injury and property damage in the amount of one million dollars (\$1,000,000.00) which shall remain in full force and effect throughout the duration of the permit. The policy of insurance shall name the Town of Naches as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty days' prior written notice to the Town. Proof that the applicant has such insurance must be furnished to the Town Administrator prior to issuance of the permit.

12.06.075 Non-excavation period.

Due to asphalt plant shutdown and the unavailability of appropriate packing materials and the likelihood of ground freezing and associated settling problems, no person, firm or corporation shall trench, dig, excavate or penetrate any town right-of-way, street, roadway, alleyway, sidewalk, curb or gutter by creating a ditch, excavation or other subgrade penetration for water, sewer, storm sewer, natural gas, telephone, cable TV, or

electric power or other utility, or for any other purpose, from October 31st until March 31st of the following year. Exceptions due to emergencies are subject to approval of the Town Administrator

12.06.077 Notice required.

A. The permittee shall give to the Town Administrator notice not less than forty-eight (48) hours before any work under an excavation right-of-way permit is commenced and shall notify the Town Administrator upon completion of the work.

B. In the event the excavation work is going to close any street or public area, notice of the closure must be posted no less than 48 hours in advance of work to be performed. Door hangers shall be provided to adjacent property owners in addition to notification, for any work to be done.

C. In the event of an unexpected repair or emergency, a permittee may commence work as required under the circumstances, provided the permittee obtains an excavation right-of-way permit within forty-eight (48) hours after work is commenced. Unexpected repairs and emergency work shall comply with all other requirements of this title.

12.06.080 Routing of traffic.

The permittee shall take such measures as are deemed necessary by the Town Administrator to assure that during the performance of the excavation work pre-excavation traffic conditions and flow are maintained as nearly as practicable. No streets may be closed by the permittee without the express permission of the Town Administrator. The permittee shall route and control traffic, including its own vehicles, as directed by the Town Administrator. Traffic cones or signs directing traffic shall be furnished by the permittee at the permittee's expense.

12.06.090 Clearance for fire equipment

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within fifteen (15) feet of fire hydrants. Passageways leading to fire escapes or fire-fighting equipment shall be kept free from obstructions at all times.

12.06.100 Protection of traffic.

The permittee shall erect and maintain suitable barriers to confine earth from trenches or other excavations in order to encroach upon the town street as little as possible. The permittee shall construct and maintain crossings over excavations and across streets under restoration or improvement which, in the opinion of the Town Administrator, are adequate and safe to accommodate vehicular and pedestrian traffic at all times.

12.06.110 Protection of adjoining property—Access.

The permittee shall at all times and at the permittee's expense, preserve and protect from injury any adjoining property by providing proper foundations and taking other measures which, in the opinion of the Town Administrator, are suitable for such purposes. The

permittee shall at all times maintain adequate access to all properties adjoining the excavation or work site.

12.06.120 Protective measures—Fences, barriers.

The permittee shall erect at the permittee's expense such fence, railing or barriers about the site of the excavation or street restoration work as, in the opinion of the Town Administrator, may be necessary to prevent danger to vehicles or pedestrians using the town streets or sidewalks, and such protective barriers shall be maintained until the Town Administrator otherwise directs. Such protective barriers shall be equipped with adequate lighting to provide for both daytime and nighttime visibility.

12.06.130 Excavated material.

All excavated material which is piled adjacent to the excavation shall be piled and maintained in such manner so as not to endanger those working in the excavation or pedestrians or users of the streets. When the confines of the area being excavated are too small to permit the piling of excavated material beside the excavation, the Town Administrator shall have the authority to require the permittee to haul the excavated material to a storage site and then rehaul it to the excavation at the time of backfilling. It is the responsibility of the permittee to secure the necessary permission and make all necessary arrangement for any required storage and disposal of excavated material.

12.06.140 Cleanup.

As the excavation work progresses, all streets and private property shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such excavation. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Town Administrator.

12.06.150 Trench construction and backfill.

A. Where the pavement must be removed, it first shall be cut in vertical (or undercut) continuous straight lines.

B. Trenches shall be cut to have vertical faces, where soil and depth conditions permit, with a maximum width of outside diameter of pipe plus two feet. Shoring shall comply with the Washington State Department of Labor and Industries Safety Code.

C. The pipe or carrier shall be installed and the trench backfilled in a manner assuring no deformation of the pipe likely to cause leakage, and restoration of the structural integrity of the roadway structure. Specific trench backfill requirements regarding materials and methods shall be as approved by the Town Administrator.

D. Compaction testing may be required by the Town Administrator and shall be performed to the satisfaction of the Town Administrator and/or Town Engineer at the permittee's expense.

12.06.160 Street restoration.

A. Permanent restoration of the street shall be made by the permittee in strict accordance with the standards and specifications of the Town of Naches and in a manner meeting the approval of the Town Administrator. Permanent restoration may include overlays of portions of the street which have been disrupted by the excavation work.

B. The permittee shall guarantee and maintain the site of the excavation work to Town standards and specifications for a period of two years following the completion of the restoration and acceptance by the Town. Acceptance or approval of any excavation work or street restoration by the Town Administrator shall not prevent the town from asserting a claim against the permittee and his or its surety under the surety bond required by this chapter for incomplete or defective work if such incompleteness or defective work is discovered within two years from completion of the excavation work. The presence of the Town Administrator or his or her designee during the performance of any excavation work shall not relieve the permittee of its responsibilities under this chapter.

C. If the permittee has failed to complete the excavation work and restore the surface of the street to Town standards and specifications and to obtain the approval of the Town Administrator within the time fixed by the permit, or fails to perform any work or protective measure required by this chapter, the Town Administrator shall have the authority to have all such uncompleted work or restoration completed. The permittee shall be liable for any costs incurred by the Town in completing such work.

12.06.165 Damage to existing improvements.

All damage done to existing public or private improvements during the progress of the excavation work or construction work shall be repaired by the permittee to an equal or better condition. Methods and materials for such repair shall conform with adopted Town standards. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs, the Town Administrator shall have the authority to cause said necessary labor and materials to be furnished by the Town and the cost shall be charged against the permittee and the permittee shall also be liable on his or its bond therefor.

12.06.170 Pavement cut requirement.

Before commencing excavation in a paved street, every permittee doing so shall first cut the pavement around the circumference or parallel to the excavated area with a pneumatic hammer, saw, cutting wheel or other approved method.

12.06.180 Inspections.

The Town Administrator or his or her designee may make such inspections as they deem reasonably necessary in the enforcement of this chapter. An inspection fee of one hundred dollars shall be assessed for every five-day period of excavation.

12.06.190 As-built drawings, plans and profiles.

Upon completion of the excavation work, the Town Administrator or his or her designee may request the permittee to submit to the Town Administrator accurate drawings, plans and profiles showing the location and character of all underground structures installed during excavation work.

12.06.200 Provisions not applicable to Town work.

The provisions of this chapter shall not be applicable to any excavation work or street restoration performed by the Town or by any contractor retained by the Town to perform such work or restoration on the Town's behalf.

12.06.210 Liability of Town.

This chapter shall not be construed as imposing upon the Town or any official or employee of the Town any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued under this chapter; nor shall the Town or any official or employee thereof be deemed to have assumed such liability or responsibility by reason of inspections authorized under this chapter, the issuance of any permit or the approval of any excavation work.

12.06.220 Stop work order.

The Town Administrator or his or her designee may issue a written stop work order to any person violating any provision of this chapter or performing any work in violation of any permit issued pursuant to this chapter. The written stop work order may be served by delivering the same on any person engaged in the work and/or on the permittee. All such persons shall immediately stop work and/or cause such work to be stopped until further direction by the Town Administrator or his or her designee. Such stop work order shall constitute immediate revocation of the permit issued under this chapter, subject to reinstatement of the permit by the Town Administrator upon the taking of appropriate remedial action.

12.06.230 Roadway excavation of newly constructed or resurfaced streets.

Any utility contractor or permittee desiring to trench, dig, open, excavate, etc., in a roadway, that has been recently rebuilt or overlaid, will not be allowed to disturb the roadway surface for a period of at least ten years from the completion of the rebuilding or overlaying of the roadway. At the discretion of the Town Administrator, the permittee may be allowed to install the utility or its line under the roadway without disturbing the surface. In an exceptional situation, with the approval of the Town Administrator, the

newly built or overlaid roadway may be disturbed, upon proof that adequate repair will be made after disturbance.

12.06.240 Penalties for violation.

Any person, firm or corporation violating the provisions of this chapter shall be deemed guilty of a civil infraction and upon conviction thereof, shall be fined in an amount not to exceed one thousand dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense.

12.06.250 Town's right to restore right-of-way and easements.

If the permittee shall have failed to restore any town right-of-way or easement to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the right-of-way construction work covered by such permit or if the work of the permittee is defective and the defect is discovered within one year from the completion of the right-of-way construction work, the Town Administrator, if he or she deems it advisable, shall have the right to do all work and things necessary to restore the right-of-way and/or easement and to complete the right-of-way construction work. The permittee shall be liable for general overhead and administrative expenses. The Town shall have a cause of action for all fees, expenses and amounts paid out and due it for such work, including attorneys' fees and costs, and shall apply for payment of the amount due by retaining any deposit provided to the Town. The Town shall also enforce its rights under the permittee's surety bond, if any, provided pursuant to this chapter, or file suit in the Yakima County Superior Court. No additional permits shall be granted until the invoice for Town-performed work has been paid.

12.06.260 Indemnification and hold harmless.

The permittee shall defend, indemnify and hold harmless the Town, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits, including attorneys' fees, arising or issuing out of the granting of permits under this section, except as may be caused by the negligence or willful conduct on the party of the Town.

12.06.270 Severability.

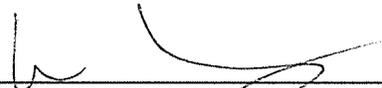
The invalidity of any section, subsection, provision, clause or portion thereof, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances.

Section 2. Severability. This ordinance and its various parts are hereby declared to be severable. If any section, clause, provision or portion of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not

affect the validity of either this ordinance as whole or any parts not declared invalid or unconstitutional.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the Town, and shall take effect and be in full force five (5) days after the date of publication

PASSED BY THE TOWN COUNCIL, of the Town of Naches, Washington this 11th day of June, 2012.



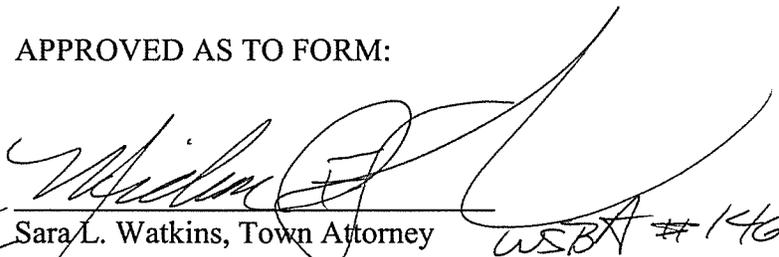
Rick Carney, Mayor

ATTEST:



Elvira Birrueta, Town Clerk/Treasurer

APPROVED AS TO FORM:



Sara L. Watkins, Town Attorney WSBA # 14679