

## ORDINANCE NO. 03-5250

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 22-302; CLARIFYING INSURANCE COVERAGE AND BOND REQUIREMENTS FOR EXCAVATION PERMITS; AND, ELIMINATING WAIVERS/ALTERNATE SECURITY FOR EXCAVATION SURETY BONDS.

### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

**Section 1.** That Section 22-302 of the Billings, Montana, City Code be amended so that such section shall read as follows:

#### **"Sec. 22-302. Excavation Bond and insurance.**

(a) The bond required by section 22-301 ensures that the contractor complies with required ordinances, codes and other governing regulations and laws. It shall be in the sum of ten thousand dollars (\$10,000.00) and shall be executed by a surety company authorized to do business in the state, conditioned to hold the city harmless and reimburse the city for any additional cost incurred in restoring the excavation due to nonperformance by the bondholder. Said surety bond shall be filed with the eCity eClerk and must have the bond number assigned by the surety company indicated on the face of the bond. Continuation certificates to renew the surety bond will not be accepted. This bond only covers any digging, excavation, tunneling, or opening up of any public places or alleys of the City. The actual connection and installation of the water and/or sewer pipe requires a separate Utility Bond and compliance with Article 6-500 BMCC dealing with the Plumbing Code.

(b) Insurance is required to protect the City. The city shall not issue a permit as required by this section until the applicant has filed with the City Engineering Department furnished to the city a certificate of public liability insurance in the amount of seven hundred and fifty thousand dollars (\$750,000.00) per claim and one and one-half million dollars (\$1,500,000.00) per occurrence as outlined in Section 2-9-108, MCA, conditioned to hold the city harmless from any damage or injury whatsoever to any person or property of any description, however owned, by reason of the licensee's failure or neglect to conform with any provisions of this article or other ordinance of the city relating to activities set out in Section 22-301. leaving open any excavation or tunnel at night.

The insurance requirement can be met by purchasing and maintaining Commercial General Liability Insurance, which shall include premises operations, independent contractor's protection, broad form property damage (including explosion, collapse, blasting and underground damage where applicable), products and completed operations coverage. The General Aggregate will apply separately to each of the contractor's projects by use of a "per project" General Aggregate Endorsement. The following limits will be secured at a minimum.

<u>Per Occurrence: Bodily Injury and Property Damage</u>	<u>\$1,500,000</u>
<u>Personal and Advertising Injury</u>	<u>\$1,500,000</u>
<u>General Aggregate</u>	<u>\$2,000,000</u>
<u>Products and Completed Operations Aggregate</u>	<u>\$2,000,000</u>
<u>Additional Insured – City of Billings</u>	

The contractor may satisfy the required limits by either General Liability Insurance or a combination of General Liability Insurance and Excess (or umbrella) Liability Insurance. In the event the General Aggregate limit is reduced by an amount greater than \$500,000, the contractor will provide written notice to the City of Billings of this fact.

~~Said~~ The city must be named as an additional coinsured on the liability insurance policy or policies. The certificate of insurance shall be filed in the City Engineering Department, with the respective permit. The city shall be notified in writing ~~ten (10)~~ thirty (30) days prior to any cancellation or nonrenewal of the policy. The notice of cancellation must be sent to the City Engineering Department.

~~(c) — Any person may apply to the city engineering department for a waiver of the requirement of posting a surety bond as provided in this section by a surety company; provided, that satisfactory substitute security for faithful performance and payment is provided. An application shall be made in writing detailing the reasons why the waiver should be granted and fully describing the substitute security. The city engineer or his designee shall determine whether the substitute security is sufficient. The city engineer or his designee may place whatever conditions he deems appropriate on any grant of waiver and shall fix the term of the duration of the waiver. Any applicant aggrieved by the city engineer's determination under this paragraph may appeal in writing that determination to the city administrator within thirty (30) calendar days of the date of that determination. The city administrator's decision will be final."~~

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 28th day of July, 2003.

PASSED, ADOPTED and APPROVED on second reading this 11th day of August, 2003.

***CITY OF BILLINGS***

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk