

**HAMPTON TOWNSHIP  
DAKOTA COUNTY, MINNESOTA**

**AN ORDINANCE REGULATING TOWN ROAD  
RIGHT-OF-WAYS AND THE IMPACTS FROM  
LARGE UTILITY PROJECTS**

**Ordinance No. 2014-1**

**Adopted April 15, 2014**

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**AN ORDINANCE REGULATING TOWN ROAD  
RIGHT-OF-WAYS AND THE IMPACTS FROM  
LARGE UTILITY PROJECTS**

The Board of Supervisors of Hampton Township hereby ordains as follows:

**ARTICLE ONE  
USE OF RIGHT-OF-WAYS BY LOCAL UTILITY PROVIDERS**

**Section 100. Findings, Purpose and Intent.**

It is the purpose of this Article to establish reasonable regulations, requirements, and restrictions regarding the use of Town right-of-ways in order to protect the health, safety and welfare of Town residents, those traveling on Town roads, and the general public. It is also the purpose of this Article to protect the cumulative investment the public has made to construct, maintain, and improve the Town's roads by requiring those undertaking utility projects in and near the Town's right-of-ways to obtain a permit from the Town and to be responsible for restoring the right-of-ways directly or indirectly impacted by the project to at least the same or better condition they were in prior to the project. Finally, this Article provides for the recovery by the Town of its actual expenses incurred related to such projects.

**Section 101. Election to Manage Right-of-Ways.**

Pursuant to the authority granted the Town under state and federal statutory, administrative and common law, the Town hereby elects, pursuant to Minnesota Statutes, section 237.163, subdivision 2(b), to manage its right-of-ways within the Town.

**Section 102. Definitions.**

For the purpose of this Article, the following terms shall have the meaning given them in this Section.

- (1) Abandoned Facility. "Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.
- (2) Applicant. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.
- (3) Commission. "Commission" means the Minnesota Public Utilities Commission.
- (4) Construction Performance Bond. "Construction Performance Bond" means any of the following forms of security provided at permittee's option:

- (a) Individual project bond;
  - (b) Cash deposit;
  - (c) Letter of Credit, in a form acceptable to the Town;
  - (d) Self-insurance, in a form acceptable to the Town; or
  - (e) A blanket bond for projects within the Town, or other form of construction bond, for a time specified and in a form acceptable to the Town.
- (5) Degradation. “Degradation” means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.
- (6) Degradation Cost. “Degradation Cost” means the cost to achieve a level of restoration, as determined by the Town at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules, parts 7819.9900 to 7819.9950.
- (7) Degradation Fee. “Degradation Fee” means the estimated fee established at the time of permitting by the Town to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.
- (8) Delay Penalty. “Delay Penalty” is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.
- (9) Emergency. “Emergency” means a condition that: (1) poses a danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
- (10) Equipment. “Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.
- (11) Excavate. “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- (12) Excavation Permit. “Excavation Permit” means the permit which, pursuant to this Article, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.
- (13) Excavation Permit Fee. “Excavation Permit Fee” means money paid to the Town by an applicant to cover the costs as provided in this Article.
- (14) Facility or Facilities. “Facility” or “Facilities” means any tangible asset in the right-of-way required to provide utility service.

- (15) Local Representative. “Local Representative” means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service and to make decisions for that registrant regarding all matters within the scope of this Article.
- (16) Management Costs. “Management Costs” means the actual costs the Town incurs in managing its right-of-ways, including such costs, if incurred, as those associated with: registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes, sections 237.162 or 237.163; or any ordinance enacted under those sections, or the Town fees and costs related to appeals taken as provided in this Ordinance.
- (17) Obstruct. “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- (18) Obstruction Permit. “Obstruction Permit” means the permit which, pursuant to this Article, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.
- (19) Obstruction Permit Fee. “Obstruction Permit Fee” means money paid to the Town by a permittee to cover the costs as provided in this Article.
- (20) Patch or Patching. “Patch” or “Patching” means a method of pavement replacement or roadway repair that is temporary in nature. A patch consists of: (1) the compaction of the sub-base and aggregate base; and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only on roads the Town Board has scheduled to be overlaid within five years.
- (21) Pavement. “Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.
- (22) Permit. “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.
- (23) Permittee. “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the Town under this Article.

- (24) Person. “Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
- (25) Restore or Restoration. “Restore” or “Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
- (26) Restoration Cost. “Restoration Cost” means the amount of money paid to the Town by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.
- (27) Right-of-Way. “Right-of-Way” means the area on, below, or above a public road, highway, street, cartway, bicycle lane or public sidewalk in which the Town has an interest, including other publicly dedicated right-of-ways for travel purposes and utility easements of the Town. The term includes the full width of the Town’s easement or other interest. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.
- (28) Right-of-Way Permit. “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Article.
- (29) Right-of-Way User. “Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
- (30) Service or Utility Service. “Service” or “Utility Service” includes the following: (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minnesota Statutes, Chapter 238; (4) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (5) water, and sewer, including service laterals, steam, cooling or heating services.
- (31) Service Lateral. “Service Lateral” means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.
- (32) Temporary Surface. “Temporary Surface” means the compaction of sub-base and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the Town’s two-year plan, in which case it is considered full restoration.

- (33) Trench. “Trench” means an excavation in the traveled surface of a road, with the excavation having a length equal to or greater than the width of the traveled surface.
- (34) Telecommunication Right-of-Way User. “Telecommunication Right-of-Way User” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Article, a cable communication system defined and regulated under Minnesota Statutes, Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, Chapter 308A, are not telecommunications right-of-way users for purposes of this Article.
- (35) Town. “Town” means Hampton Township, Dakota County, Minnesota.
- (36) Town Board. “Town Board” means the Board of Supervisors of Hampton Township, Dakota County, Minnesota.
- (37) Town Representative. “Town Representative” means a Town supervisor or other person designated by the Town Board to conduct inspections or to otherwise oversee work done within right-of-ways, whether such work is done by permit or otherwise.

**Section 103. Permit Requirement.**

- (1) Permit Required. Except as otherwise provided in this Article, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Town to do so.
  - (a) Excavation Permit. An excavation permit is required to excavate within a right-of-way related to the installation, repair, replacement, or removal of facilities.
  - (b) Obstruction Permit. An obstruction permit is required to obstruct a right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. The incidental obstruction of a right-of-way as part of a project for which an excavation permit has been issued does not require an obstruction permit. However, anything more than an incidental obstruction of the right-of-way shall require an obstruction permit or a combination permit. For the purposes of this Section, an incidental obstruction means the obstruction of the free and open passage over the right-of-way for no more than 30 minutes in any four hour period.
  - (c) Combination Permit. If a proposed utility project involves both the excavation and obstruction of a right-of-way, a person may apply for a combination excavation/obstruction permit.



- (2) Exclusions. The Town, its agents, and contractors performing work for the Town shall not be required to obtain permits from the Town to excavate or obstruct a right-of-way. Contractors performing work for the Town shall be required to erect and maintain such signs and other traffic control devices as are necessary to warn of the work and to protect public safety.
- (3) Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless: (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and (ii) a new permit or permit extension is granted.
- (4) Delay Penalty. In accordance with Minnesota Rules, part 7819.1000, subpart 3, the Town may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.
- (5) Permit Display. Permits issued under this Ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Town.

#### **Section 104. Permit Applications.**

Application for a permit is made to the Town. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- (1) Application. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- (2) Fees. Payment of money due the Town for:
  - (a) Permit fees, estimated restoration costs and other management costs;
  - (b) Any outstanding amounts related to prior obstructions or excavations;
  - (c) Any undisputed loss, damage, or expense suffered by the Town because of applicant's prior excavations or obstructions of the right-of-ways or any emergency actions taken by the Town; and
  - (d) Franchise fees or other charges, if applicable.
- (3) Disputed Fees. Payment of disputed amounts due the Town by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (4) Bond. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the Town deems the existing construction performance bond inadequate under applicable standards.

**Section 105. Issuance of Permit; Conditions.**

- (1) Permit Issuance. If the applicant has satisfied the requirements of this Article, the Town shall issue a permit.
- (2) Conditions. The Town may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

**Section 106. Permit Fees.**

- (1) Establishing Fees. The Town Board shall establish the following fees by resolution, or as part of its general fee schedule, and update the fees as it determines is appropriate:
  - (a) Excavation Permit Fee. The Town shall establish an excavation permit fee in an amount sufficient to recover the Town's management costs, and to the extent applicable, degradation costs.
  - (b) Obstruction Permit Fee. The Town shall establish the obstruction permit fee and shall be in an amount sufficient to recover the Town's management costs.
- (2) Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The Town may allow applicant to pay such fees within thirty (30) days of billing.
- (3) Non-Refundable. Permit fees that were paid for a permit that the Town has revoked for a breach as provided in this Article are not refundable.
- (4) Fees. All fees provided for in this Article shall be determined by Town Board and shall be designed to recover the actual costs the Town incurs related to the particular project and in managing its right-of-ways.

**Section 107. Right-of-Way Patching and Restoration.**

- (1) Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited due to unseasonal or other weather conditions which reasonably prohibit the work.
- (2) Patch and Restoration. Permittee shall patch its own work. The Town may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
  - (a) Town Restoration. If the Town restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the roadway settles due to permittee's improper backfilling, the permittee shall pay to

the Town, within thirty (30) days of billing, all costs associated with correcting the defective work.

- (b) Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules, part 7819.3000.
- (c) Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- (3) Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the Town and shall comply with Minnesota Rules, part 7819.1100.
- (4) Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the Town shall correct all restoration work to the extent necessary, using the method required by the Town. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Town, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited by unreasonable weather conditions.
- (5) Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Town, or fails to satisfactorily and timely complete all restoration required by the Town, the Town at its option may do such work. In that event, the permittee shall pay to the Town, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the Town may immediately exercise its rights under the construction performance bond.

### **Section 108. Supplementary Applications.**

- (1) Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area: (i) make application for a permit extension and pay any additional fees required thereby; and (ii) be granted a new permit or permit extension.
- (2) Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after

the end date of the previous permit. This supplementary application must be submitted before the permit end date.

### **Section 109. Other Obligations.**

- (1) Compliance With Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the Town or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, sections 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules, Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- (2) Prohibited Work. Except in an emergency, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (3) Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way in a way that interferes with the natural free and clear passage of water through the gutters or other waterways. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with Town parking regulations and are located such that they do not create a safety hazard. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- (4) Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D, Minnesota Rules, Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Town.

### **Section 110. Denial of Permit.**

The Town may deny a permit for failure to meet the requirements and conditions of this Article if the Town determines that the denial is necessary to protect the health, safety, and welfare, or if the Town determines such denial is necessary to protect the right-of-way and its current use.

### **Section 111. Installation Requirements.**

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, parts 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, Chapter 7560 and this Article.

## **Section 112. Inspection.**

- (1) Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.
- (2) Site Inspection. Permittee shall make the work site available to the Town and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (3) Authority of Town Representative.
  - (a) At the time of inspection, the Town Representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
  - (b) The Town Representative may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Town Representative that the violation has been corrected. If such proof has not been presented within the required time, the Town Representative may revoke the permit as provided herein.

## **Section 113. Work Done Without a Permit.**

- (1) Emergency Situations. Each right-of-way user shall immediately notify the Town Representative of any event regarding its facilities that it considers to be an emergency. The right-of-way user may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Article for the actions it took in response to the emergency.
- (2) Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the Town, deposit with the Town the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Article.

**Section 114. Supplementary Notification.**

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the Town of the accurate information as soon as this information is known.

**Section 115. Revocation of Permits.**

- (1) Substantial Breach. The Town reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - (a) The violation of any material provision of the right-of-way permit;
  - (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens;
  - (c) Any material misrepresentation of fact in the application for a right-of-way permit;
  - (d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
  - (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by a Town Representative.
- (2) Written Notice of Breach. If the Town determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the Town shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Town, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- (3) Response to Notice of Breach. Within 24 hours of receiving notification of the breach, permittee shall provide the Town with a plan, acceptable to the Town, that will cure the breach. Permittee's failure to so contact the Town, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

- (4) Reimbursement of Town Costs. If a permit is revoked, the permittee shall also reimburse the Town for the Town's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

**Section 116. Location and Relocation of Facilities.**

Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules, parts 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to townships.

**Section 117. Right-of-Way Vacation.**

If the Town vacates a right-of-way that contains the facilities installed pursuant to a permit issued by the Town, the rights of the owner of the installed facilities in the vacated right-of-way are governed by Minnesota Rules, part 7819.3200.

**Section 118. Indemnification and Liability.**

By accepting a permit under this Article, permittee agrees to defend and indemnify the Town in accordance with the provisions of Minnesota Rules, part 7819.1250.

**Section 119. Abandoned and Unusable Facilities.**

- (1) Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the Town must provide information satisfactory to the Town that the right-of-way user's obligations for its facilities in the right-of-way under this Article have been lawfully assumed by another person.
- (2) Removal. Any right-of-way user who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Town.

**Section 120. Appeal.**

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are not in conformity with Minnesota Statutes, sections 237.163, subdivision 6; or (4) disputes a determination of the Town Representative regarding compliance with this Article or of permit conditions may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the Town Board. The Town Board shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the Town Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

**ARTICLE TWO**  
**PERMIT REQUIREMENTS FOR LARGE UTILITY PROJECTS**

**Section 200. Findings, Purpose and Intent.**

The Town Board is familiar with the range of impacts large utility projects can have on communities. While those impacts can be widespread, this Article is focused on the impacts the construction or expansion of such projects can have on Town right-of-ways, the safety of the traveling public, and those living and owning property along the roads and bridges affected by the project. Large utility projects may involve the placement of pipelines, overhead lines, towers, or other utility facilities that often extend across multiple governmental jurisdictions and which are regulated by the Minnesota Public Utilities Commission. The facilities installed as part of these projects frequently do not provide utility services directly to nearby homes and business, but instead are a means of generating and/or conveying the resource to another location for refinement or redistribution.

The Town Board recognizes the value and need for these projects, and further acknowledges the Minnesota Public Utilities Commission, not the Town, regulates the siting or routing of large utility projects. However, as the road authority, the Town Board determines it has a duty to act to mitigate the impacts large utility projects can have as a result of utility facilities crossing Town right-of-ways and from the heavy hauling and construction traffic on right-of-ways associated with building such projects. Many of the Town's roads and bridges were not built to handle the weight of the types of vehicles often utilized for these projects. The unregulated use of the Town's roads and bridges by the construction vehicles could result in severe damage to Town's infrastructure that exceed the financial resources of the Town to repair. In some cases, it may be possible to improve the roads and bridges to enhance their capacity to accommodate the vehicles, but even in such cases they must be carefully monitored and inspected to identify any resulting damage or degradation that must be repaired.

The purpose of this Article is to protect the Town, its infrastructure, its taxpayers, and the health, safety, and welfare of the public by requiring a project permit and placing reasonable requirements and restrictions on the use of the Town's right-of-ways to mitigate the negative effects of large utility projects. It is also the purpose of this Article to protect the Town's limited financial resources and its taxpayers by ensuring the costs for improving, maintaining, repairing, and restoring the right-of-ways related to the project are paid by the permittee, and that the Town is fully reimbursed for its costs.

**Section 201. Definitions.**

The following definitions shall apply to this Article in addition to the definitions contained in Article One of this Ordinance, to the extent such definitions are consistent with the following:

- (1) Applicant. "Applicant" means any person requesting a project permit associated with a large utility project.



- (2) Construction Security. “Construction Security” means a financial guarantee, whether in the form of a bond, letter of credit, cash, or other type of security, submitted to the Town by an applicant to secure the cost of the right-of-way improvements, alterations, maintenance, repair, and restoration work to be performed pursuant to a project permit. The Town draws from the security as needed to pay for the required work if the permittee fails to pay or perform the work. The Town Board determines the required form and amount of the security the applicant is required to provide.
- (3) Escrow. “Escrow” means cash an applicant deposits with the Town and from which the Town draws to pay the administrative and professional costs it incurs associated with a large utility project.
- (4) Haul Road. “Haul Road” means any right-of-way proposed to be used, or which is actually used, for the hauling of materials, supplies, or equipment related to a large utility project, including construction traffic and access routes. The term shall also include any Town right-of-way used as a detour for public travel to avoid any road temporarily closed or obstructed for the project.
- (5) Large Utility Project or Project. “Large Utility Project” or “Project” means the installation, construction, extension, or expansion of a large energy facility (as defined in Minnesota Statutes, section 216B.2421, subdivision 2), a large electric power facility (as defined in Minnesota Statutes, section 216E.01, subdivision 6), or a large wind energy conversion system (as defined in Minnesota Statutes, section 216F.01, subdivision 2) conducted pursuant to a routing or siting permit issued by the Minnesota Public Utilities Commission or by a local governmental unit through a local review process.
- (6) Permittee. “Permittee” means any person to whom a project permit has been granted by the Town under this Article.
- (7) Project Permit. “Project Permit” means a permit issued by the Town Board related to a large utility project and which must be obtained before any construction traffic or hauling associated on such project may occur on Town right-of-ways.
- (8) Road Use Agreement. “Road Use Agreement” means an agreement entered into between the Town and a permittee related to a large utility project and which may be required as a condition of a project permit.
- (9) Town Engineer. “Town Engineer” means the engineer appointed by the Town to represent it with respect to a large utility project. The Town Engineer may involve such other engineers and other professionals as needed to accomplish the tasks assigned by the Town in carrying out the provisions of this Article, a project permit, and a road use agreement with respect to a particular project.
- (10) Utility Facilities. “Utility Facilities” means any tangible asset in a right-of-way placed as a part of a large utility project or to facilitate the construction or operation of the project.

## **Section 202. Permit Required.**

No person may undertake a large utility project involving the installation of utility facilities within a Town right-of-way or the crossing or use of a Town right-of-way for construction traffic or as a haul road without first having obtained a project permit from the Town. A project permit is only required for large utility projects and such permit is intended to include all permissions and agreements required from the Town for the particular project, shall set out or reference all conditions and requirements imposed by the Town for the project, may include a road use agreement, and shall be the only permit an applicant is required to obtain from the Town for the project, provided the project is exempt from local zoning regulations. If a project changes after the issuance of a project permit such that different right-of-ways are affected or there is a change in the anticipated impacts, an amended project permit shall be required. A project permit shall include any right-of-way obstruction or excavation permit that would otherwise be required by Article One of this Ordinance, any special permit required from the Town for overweight or over length hauling, and shall otherwise address all hauling, construction traffic, right-of-way alterations, and other potential impacts the project may have on the Town's right-of-ways. Notwithstanding the exclusiveness of a project permit, if a person desires to conduct any studies involving the excavation within, or obstruction of, a right-of-way prior to formally approaching the Town regarding a project permit, the person shall obtain the appropriate excavation, obstruction, or combination permit pursuant to the procedures set out in Article One.

## **Section 203. Application Process.**

An application for a project permit shall be submitted, and complete applications will be processed, in accordance with the provisions of this Section.

- (1) Pre-Application Meeting. A person seeking a project permit for a large utility project shall meet with the Town at least once prior to submitting an application to the Town to discuss each of the following with respect to the project:
  - (a) The route and location of utility facilities to be placed throughout the Town;
  - (b) Location of all utility facilities proposed to be installed within the right-of-way;
  - (c) Proposed haul roads;
  - (d) The types of weights of vehicles used for hauling;
  - (e) Proposed construction accesses;
  - (f) Any proposed Town right-of-way alterations;
  - (g) The requirements of this Ordinance;
  - (h) The amount of escrow required;
  - (i) The form and amount of construction security required;
  - (j) Whether a road use agreement will be required; and
  - (k) Any other matters that may be relevant to the project and its impact on the Town and its right-of-ways.
- (2) Road Inspection. Prior to submitting an application, the Town and the person shall inspect any right-of-ways identified as potential haul roads, those on which accesses are to be constructed or altered, and any other right-of-ways to be directly or indirectly

impacted by the project. The purpose of the inspection is to assess the current condition of the roads, bridges, and related facilities and to determine whether they are sufficient, or can reasonably be made sufficient, to handle the proposed truck traffic, construction traffic, alterations, and utility facilities. The Town may, at the person's sole expense, have the right-of-ways inspected by an engineer it selects to assist in determining the adequacy of the roads and bridges to accommodate the proposed uses, to assess and document the present conditions of the right-of-ways, and to determine whether any pre-project improvements are required in order to make one or more right-of-ways or bridges sufficient to accommodate the proposed uses. The Town may recommend to the person alternative haul roads the Town determines will be better able to accommodate the anticipated traffic and minimize safety and maintenance concerns. If the Town determines a road or bridge cannot safely accommodate the anticipated traffic to serve as a haul road or other proposed use, and determines it cannot be reasonably improved to safely accommodate such traffic or use, the person shall be prohibited from using the right-of-way for the proposed use.

- (3) Application. A request for a project permit shall be submitted on an application form approved by the Town Board. The application shall be submitted to the Town Clerk together with the application fee, escrow, and construction security in the forms and amounts determined by the Town Board and as provided in this Article. The application shall, at a minimum, include the following information:
  - (a) A detailed written description of all proposed work, including detailed plans for construction activities, within Town right-of-ways and the timetable for the project; and
  - (b) Identification of proposed haul roads related to the project including whether any detours of public traffic will be required. The applicant shall identify all Town roads, including any bridges, which are proposed to be used in the delivery of utility construction materials, the delivery of utility construction equipment, and all company or contract employee access routes. The applicant shall also identify off-road construction staging areas, material and equipment loading and unloading areas, and employee parking areas for the duration of the proposed utility construction within the Town.
  - (c) A detailed description and location of all utility facilities to be placed, temporarily or permanently, in any right-of-way.
- (4) Town Review of Applications. The Town Board may hold one or more public hearings on the proposed project permit. The Town Board shall consider the information provided by the applicant and such other information as it deems relevant in reviewing the application. The Town Board shall also consider the potential impacts of the project on the Town and identify methods for addressing the impacts. The Town Board may impose reasonable conditions on a project permit as it determines is necessary to protect its right-of-ways and the public health, safety, and welfare. When reviewing an application, the Town Board shall, at a minimum, consider the following:

- (a) Pre-Project Road Improvements. The Town shall determine, in its reasonable discretion, if any pre-project improvements are required on any of the right-of-ways proposed to be used as part of the project. Pre-project improvements may include, but are not limited to, sub-grade correction, base repair, re-surfacing, culvert replacement, alterations to the surface or drainage structures of the right-of-way needed to serve as a haul road, and bridge stabilization or replacement. Any such improvements shall be performed in accordance with the standards, specifications and requirements identified by the Town. The Town shall specifically identify in the project permit the pre-project improvements required to be completed before the right-of-ways may be used for the project. The Town will perform the pre-project improvements at the applicant's expense unless the Town and the applicant agree the applicant shall perform the improvements. If the Town performs the work, the applicant shall deposit with the Town sufficient funds to pay for the work. Such funds shall constitute construction security and the Town shall draw from the funds as needed to pay its costs. If any proposed alteration of a right-of-way requires the acquisition of additional right-of-way area, the applicant shall be solely responsible for negotiating, acquiring, and paying for the additional right-of-way. If the alteration is not intended to be permanent, the applicant shall be responsible for all costs for returning the right-of-way to its prior configuration; and
- (b) Additional Maintenance Needs. The Town shall determine if any additional maintenance work is required on the right-of-ways during the project to accommodate the additional traffic and the resulting impacts on the public such as grading, re-graveling, dust control, and ditch repair. The required additional maintenance work shall be described within the project permit.

#### **Section 204. Escrow.**

At the time of submitting the application, the applicant shall be required to provide the Town a cash escrow in the amount determined by the Town during the pre-application stage. The Town shall withdraw funds from the escrow as needed to pay all administrative, engineering, planning, and legal expenses the Town incurs related to the review and issuance of the project permit, monitoring compliance with the permit conditions, inspecting right-of-way improvements, alterations, maintenance, repairs, and restoration, and enforcing the permit. If at any time the Town determines the amount of the escrow will not be sufficient to fully reimburse the Town's costs, the permittee shall escrow such additional amounts with the Town as determined by the Town Board within ten (10) days of the Town providing written notice of the need for additional escrow. At the conclusion of the project and full restoration of the right-of-ways, the Town will return any unused portion of the escrow, without interest, to the permittee.

#### **Section 205. Construction Security.**

At the time of submitting the application, the applicant shall be required to provide the Town construction security in the form and amount determined by the Town during the pre-application

stage. The amount of the construction security shall not be less than 110% of all anticipated costs for pre-construction improvements and alterations, performing all additional maintenance, and fully restoring all right-of-ways impacted by the project to at least the same condition they were in prior to the project. The Town may agree to release portions of the construction security as work is completed, provided the Town retains at least 110% of the anticipated cost of all remaining work. The permittee shall ensure the construction security remains in place during the entire period of the project and until the Town releases it in writing.

### **Section 206. Issuance of Project Permit; Conditions.**

If an applicant provides the required application information, pays the application fee, provides the required escrow and construction security, participates in the inspections required hereunder, enters into a road use agreement (if required), agrees to limit construction traffic and hauling to the identified haul roads, and agrees to comply with the conditions imposed on the permit, the Town shall issue the requested project permit. All hauling and work performed in the Town's right-of-ways by the applicant, its agents, contractors, assigns, or successors shall be limited to the portions of the right-of-ways identified in the project permit. All project permits are subject to, and are conditioned upon, the permittee's compliance with all requirements and conditions stated in the permit as well as the requirements of this Article including, but not limited to, the following:

- (1) Indemnification. By accepting a project permit under this Article, permittee agrees to defend, indemnify, and hold the Town, its officers, employees and agents harmless, including attorneys fees and defense costs, from all losses, liability or claims for bodily injury or death, property damage, or otherwise arising from or related in any way to the project. The permittee is not required to indemnify the Town for losses or liability arising directly from the Town's own negligence or wrongful acts or omissions;
- (2) Compliance with Other Laws. The permittee is responsible for obtaining all such other permits or permissions related to the project as may be required by law. No additional permits shall be required from the Town once it issues a project permit, provided the project is exempt from local zoning requirements. If the project changes in any material way with respect to its impacts on the Town after the project permit is issued, the permittee shall immediately apply for an amended project permit. Without limiting the foregoing, a change in the project that results in impacts to right-of-ways not specifically identified in the project permit, or that changes the degree or type of impact on a right-of-way, shall constitute a material change in the project requiring an amended project permit; and
- (3) Costs. The permittee shall be responsible for fully reimbursing the Town for all costs it incurs related to the project including, but not limited to, all administrative, professional, construction, alteration, repair, restoration, and enforcement costs. The Town shall invoice the permittee for all such costs that are not paid from the escrow or the billing process established herein for construction costs.

### **Section 207. Road Use Agreement.**

The Town may require, as a condition of a project permit, the permittee to enter into a road use agreement with the Town. The agreement may address one or more of the items to be included in a project permit and may address such other issues related to the project as the parties determine are appropriate. A road use agreement shall be considered part of the project permit and the express provisions of the agreement shall be controlling to the extent they are inconsistent with the provisions of this Article. When required, the Town will draft the agreement for consideration by the permittee. The Town will not approve an agreement unless it is in a form acceptable to the Town Board. The permittee shall be required to fully execute and deliver the agreement to the Town before any work within a right-of-way related to the project may occur.

### **Section 208. Construction Costs and Billing.**

The Town shall provide for the improvement, alteration, additional maintenance, repair, and the restoration of the right-of-ways identified in the project permit unless the Town and permittee agree otherwise as part of a road use agreement. The permittee shall be responsible for fully reimbursing the Town for all costs it incurs to perform this work and shall pay the Town within thirty (30) days of billing for such costs. Permittee shall also be responsible for reimbursing the Town for all costs it may incur to repair and restore any other right-of-ways damaged as a result of the project regardless of whether they were identified in the project permit. If permittee fails to pay as required, the Town may revoke the permit upon prior notice to the permittee and may immediately exercise its rights under the construction security to recover its costs, including any costs it incurs to draw from the construction security. The Town may also draw upon any funds in the cash escrow and pursue any other options available to it under law to recover its costs including all costs incurred to seek such recovery.

### **Section 209. Performance Standards and Requirements.**

Permittees shall comply with the following standards, requirements, and limitations:

- (1) Road Crossings. Any underground utility facilities crossing a right-of-way shall be constructed without open cuts in the roadway when practicable. The permittee shall furnish detailed construction plans for all utility crossings within the right-of-way. The Town Engineer shall recommend to the Town Board whether the crossing(s) can be completed without disturbing the existing roadway. In the event an open road cut crossing is necessary, the permittee shall provide detailed cross sections of the existing Town road at the point of the crossing and detailed restoration plans. The Town Engineer shall recommend to the Town Board what detailed road cut restoration plans will be required as a condition of the road crossing.
- (2) Construction Access Route Signage. The permittee shall be required to post signs for all construction access, according to Town specifications, that clearly identify authorized construction access routes for materials delivery, equipment delivery, and construction employees. The permittee shall inform and instruct all contractors and subcontractors,

including equipment and material suppliers, of the restrictions for construction access and identify all authorized haul roads.

- (3) Heavy Construction Equipment Usage on Town Roads. The operation of heavy construction equipment on Town roads including, but not limited to, backhoes, cranes, and bulldozers, shall be prohibited, except as specifically authorized in the project permit.
- (4) Construction Inspection, Damage and Repair. Over the course of the project, the Town shall monitor and inspect all right-of-ways used by the permittee, as well as the right-of-ways not identified in the project permit, as needed to determine the impacts from the project. In the event any Town right-of-way is damaged by the permittee's construction or hauling activities, the permittee shall be liable for the cost of repair and restoration of the right-of-ways including, but not limited to, sub-grade correction, base repair, re-surfacing, culvert replacement, bridge repair, and ditch restoration.
- (5) Obstructions Prohibited. No equipment, materials, vehicles, or facilities related to the project shall be placed, parked, or otherwise located within a right-of-way in a way that obstruct the maintenance or safe pedestrian or vehicular usage of the right-of-ways.
- (6) Parking and Loading. Vehicle parking and loading and unloading of vehicles related to the project is prohibited within the right-of-ways in areas unless expressly allowed in the project permit.
- (7) Road Use Agreement. If a road use agreement is required by the Town, the permittee shall be required to comply with the terms, conditions, and standards set out in such agreement in addition to the standards and requirements of this Article.

#### **Section 210. Revocation of Permit.**

The Town may revoke a project permit if the permittee substantially breaches any condition, term, or standard established by statute, rule, regulation, ordinance, the project permit, this Article, or in the road use agreement.

- (1) Substantial Breach. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - (a) The violation of any material provision of the project permit, including the road use agreement;
  - (b) An evasion or attempt to evade any material provision of the project permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens;
  - (c) Any material misrepresentation of fact in the application for a project permit;

- (d) The failure to complete the required work in a timely manner or in a way that does not comply with the required standards; or
  - (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by the Town.
- (2) Written Notice of Breach. If the Town determines the permittee has committed a substantial breach, it shall provide the permittee written notice of any such breach that describes the violation and orders the breach to be corrected by a certain date. If the permittee fails to fully come into compliance by the date indicated, the Town Board may act to revoke the project permit. The revocation shall be in writing and supported by written findings establishing the reasonableness of the decision. The Town shall provide the permittee a copy of the revocation and the permittee shall be required to immediately cease all work, construction traffic, and hauling within the Town's right-of-ways. If the breach is corrected, or a new project permit is issued after revocation, the Town may, at its discretion, place additional or revised conditions on the permit to mitigate and remedy the breach, or to minimize the potential reoccurrence of the same or similar breach.
- (3) Response to Notice of Breach. Within 48 hours of receiving notification of the breach, permittee shall provide the Town with a plan, acceptable to the Town, that will cure the breach. Permittee's failure to so contact the Town, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- (4) Reimbursement of Town Costs. If a permit is revoked, the permittee shall also reimburse the Town for the Town's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.



## **ARTICLE THREE GENERAL PROVISIONS**

### **Section 300. Application of Articles.**

The provisions of Article One of this Ordinance generally apply to large utility projects except to the extent they contradict an express provision of Article Two. Right-of-way users regulated under Article One are not required to comply with the requirements of Article Two, except to the extent they engage in a large utility project.

### **Section 301. Authority.**

As the road authority for Town right-of-ways, the Town Board has the authority and responsibility to provide for safe and efficient local roadways and to establish regulations governing the use and maintenance its right-of-ways. This Ordinance is adopted consistent with that authority as well as the authority provided the Town Board pursuant to 1997 Session Laws, Chapter 123, Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”), Minnesota Statutes, sections 164.36, 169.832, 169.87, and the other laws governing applicable rights of the Town and users of the right-of-way. This Article shall be interpreted consistent with those statutes as well as with Minnesota Rules, parts 7819.0050 – 7819.9950 where possible. This Article shall not be interpreted to limit the regulatory and police powers of the Town to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

### **Section 302. Delegation.**

The Town Board may delegate one or more of the tasks to be performed by the Town under this Ordinance to the Town Representative, Town Engineer, or such other person as the Town Board determines is appropriate.

### **Section 303. Penalties and Enforcement.**

Any person who violates or fails to comply with any provision of this Ordinance, or who makes false statements on any application materials, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine, jail, or both as specified in Minnesota Statutes, section 609.02, subdivision 3. The Town may elect to criminally prosecute a violation of this Ordinance or pursue a civil remedy to prevent, enjoin, correct, or abate a violation. Criminal prosecution of a violation shall not bar the Town from also pursuing a civil remedy, just as pursuit of a civil remedy does not bar criminal prosecution of a violation. Nothing in this Ordinance shall be interpreted as limiting the Town’s options for acting to prevent a violation, enforce this Ordinance, or seek relief from a violation.

### **Section 304. Severability.**

If any portion of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and

such holding shall not affect the validity of the remaining portions thereof. Nothing in this Ordinance precludes the Town from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

**Section 305. Effective Date.**

This Ordinance shall be effective upon its passage and the first day of publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2014.

**BY THE TOWN BOARD**

\_\_\_\_\_  
Town Chairperson

Attest: \_\_\_\_\_  
Town Clerk