

## CHAPTER 13. RIGHT-OF-WAY REGULATIONS

## Article I. General Regulations.

## Section 13-01. Purpose and Authority.

- (a) **Purpose.** The primary objectives of this ordinance are to protect public safety, reduce interference with public travel, protect the public's interest in Rights-of-Way, and to provide for the efficient and uniform administration of the Town's road Rights-of-Way. The Board finds that the regulations, requirements, and restrictions, as set forth in this ordinance, are in the best interests of the health, safety, and welfare of the Town's citizens. Specifically, the Board makes the following findings:
1. Demands for usable space over, under and across public Rights-of-Way threaten to exceed the already limited space practically available in existing public Rights-of-Way.
  2. Because systems are typically installed in shallow trenches, the paved streets are restored in narrow "ribbons" which deteriorate faster than the surrounding street surface and shorten the original design life, thereby increasing costs to taxpayers.
  3. Lengthy and uncoordinated construction, installation, repair or relocation of equipment or facilities within the public Rights-of-Way add to existing hazards and inconvenience for motorists, pedestrians, and adjacent landowners.
  4. Telecommunication companies and users are not paying their fair share of the costs to acquire, develop and maintain the public Rights-of-Way.
  5. Efficient management and regulation of public Rights-of-Way can ensure economical access to and preservation of Town owned storm water systems, as well as economical access for all other current and future users of public Rights-of-Way.
- (b) **Authority.** As a road authority, the Board has broad authority to regulate what occurs within the Town's road Rights-of-Way. This authority is found in Minn. Stat. § 365.10, subd. 17, a variety of sections in Minn. Stat. Chapters 160, 164, 165, 169, 222, 237, and other chapters, as well as the rules associated in those chapters.

**Section 13-02. Definitions.**

For the purposes of this ordinance, the following terms shall have the meaning given them in this section:

**Approach.** Means the area of Right-of-Way between the traveled surface of the road and the adjacent property that is intended to provide access for vehicles or equipment from the road to the adjacent property.

**Board.** Means the Town Board of Supervisors of Athens Township, Isanti County, Minnesota.

**Headwall.** Means rock, concrete, masonry, metal, timber or other similar materials placed on the sides of an approach as support, to prevent erosion, or for decorative purposes.

**Junk.** Means, including but not limited to, old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic trash, garbage, waste materials, rubbish, rubber debris, appliances, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

**Person.** Means an individual, corporation, business trust, partnership or association including, but not limited to, a partnership of any kind, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

**Right-of-Way.** Means the entire width between boundary lines of any way or place under the jurisdiction of the Town when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic and is maintained by the Town.

**Town.** Means the organized government of Athens Township, Isanti County, Minnesota.

**Section 13-03. Cultivation and Landscaping.**

- (a) **Cultivation.** No person may cultivate, plant, harvest, or maintain agricultural crops, trees, bushes or shrubs within a Right-of-Way.
- (b) **Landscaping.** No person may cultivate, plant, or maintain grasses, flowers, vegetables, or other vegetation in any manner that obstructs visibility of a road or otherwise interferes with, obstructs, or renders dangerous for passage a Right-of-Way. No person may place watering systems or sprinkler heads within a Right-of-Way.

**Section 13-04. Obstructions and Junk.**

- (a) **Obstructions.** No person may place, maintain, or allow any obstruction in a Right-of-Way other than those specifically permitted by this ordinance, by state law or rule, or by written approval of the Board. Items prohibited by this section include, but are not limited to, fences, posts, structures, signs, piled materials, hay bales, vehicles, trailers, campers, equipment, or any other items that interfere with the safe use or the maintenance of the Right-of-Way. No person shall park a functioning vehicle in a Right-of-Way in such a way as to unreasonably interfere with the safe use of a road or the maintenance of the Right-of-Way.
- (b) **Junk.** No person shall place or maintain junk in a Right-of-Way.

**Section 13-05. Alteration of Grade.**

No person shall alter or change the depth or contour of any portion of a ditch or embankment in a Right-of-Way without the written approval of the Board.

**Section 13-06. Unauthorized Maintenance.**

No person may work, maintain, improve, or repair the traveled portion of a Right-of-Way without the written approval of the Board.

**Section 13-07. Doing Damage.**

No person shall cause damage to a Right-of-Way without the written approval of the Board. Any person doing damage within a Right-of-Way with approval of the Board shall return the Right-of-Way to at least the same condition it was in prior to the damage.

**Section 13-08. Mailboxes, Signs and Newspaper Boxes.**

- (a) **Mailboxes and Newspaper Boxes.** Mailboxes and newspaper boxes are permitted within a Right-of-Way if they do not interfere with, obstruct, or render dangerous for passage a road. Mailboxes placed within a Right-of-Way must comply with all of the standards in Minnesota Rules Chapter 8818. The Board may remove and replace mailboxes that do not comply with the standards as provided in Minnesota Statute § 169.072.
- (b) **Signs.** No sign of any nature may be placed or allowed to remain in any Right-of-Way except an official traffic sign placed by a governmental authority or other signage expressly permitted by state law.

**Section 13-09. Approaches and Headwalls.**

- (a) **Approaches.** No person may construct or reconstruct any approach to a road without first obtaining approval by the Board. A person may be required to submit a map or drawing of the existing or proposed approach when seeking approval.
- (b) **Culverts.** A person constructing or reconstructing an approach may be required to install a culvert meeting the specifications set out by the Board if the Board determines a culvert is necessary for suitable approach to the road and to promote adequate drainage of the Right-of-Way.
- (c) **Costs.** A person constructing or reconstructing an approach to an existing road shall be responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals and the cost of a culvert if one is required. Property owners are responsible for maintaining all approaches and associated culverts on their property at their own cost.
- (d) **Headwalls.** No person may construct or reconstruct any headwall in a way that interferes with the safe use or maintenance of a Right-of-Way.

**Sections 13-10 thru 13-13. Reserved.**

**ARTICLE II. PERMITS TO EXCAVATE OR OBSTRUCT A RIGHT-OF-WAY.**

**Section 13-14. Definitions.** The following definitions, along with those in Article I, Section 1.01, shall apply to the terms found throughout this Article.

**Applicant.** Means any person requesting permission to excavate or obstruct a Right-of-Way.

**Construction Performance Bond.** Means a performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that Right-of-Way excavation and obstruction work is completed in accordance with the terms of the Right-of-Way permit, or other applicable State law or local regulations.

**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 did not occur.

**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 proposed PUC rules parts 7819.9900 to 7819.9950.

**Degradation Fee.** Means the estimated fee established at the time of the 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 Costs.

**Director.** Means such person authorized by the Board to carry out the duties assigned to the Director pursuant to this ordinance.

**Delay Penalty.** Means the penalty imposed as a result of unreasonable delays in Right-of-Way construction.

**Emergency.** Means a condition that (1) poses a clear and immediate 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.

**Equipment.** Means any tangible asset used to install, repair or maintain facilities in any Right-of-Way.

**Excavate.** Means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way.

**Excavation Permit.** Means the permit that, pursuant to this ordinance, 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.

**Excavation Permit Fee.** Means money paid to the Town by an applicant to cover the costs as provided in Section 1.08 of this Article.

**Facility or Facilities.** Means any tangible asset in the Right-of-Way required to provide utility service.

**Inspector.** Means the Town Engineer or such other person authorized by the Town Board to carry out inspections related to the provisions of this ordinance.

**Local Representative.** Means a local person or persons, or designees of such person or persons, authorized by a registrant to accept service and to make decisions for the registrant regarding all matters within the scope of this ordinance.

**Management Costs.** Means the actual costs the Town incurs in managing its Rights-of-Way, including such costs, if incurred, as those associated with all reasonable administrative, legal, planning, engineering and other professional costs as well as all reasonable engineering expenses incurred by the Town in enforcing, approving, completing, restoring, and inspecting any construction activities, including, but not limited to, 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 Minn. Stat. 1997, Chapter 123; Minn. Stat. § 237.162 or 237.163 or any ordinance enacted under those sections, or the Town fees and costs related to appeals taken pursuant to this Article.

**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.

**Obstruction Permit.** Means the permit that, pursuant to this ordinance, 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 by placing equipment described therein on the Right-of-Way for the duration specified therein.

**Obstruction Permit Fee.** Means money paid to the Town by a permittee to cover cost as provided in Section 1.08 of this Article.

**Patch or Patching.** Means a method of pavement replacement 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 when replacement of the pavement is included in the Town's five-year road improvement plan.

**Permittee.** Means any person to whom a permit to excavate or obstruct a Right-of-Way has been granted by the Town under this ordinance.

**Probation.** Means the status of a person that has been found in noncompliance with the conditions of this ordinance.

**Probationary Period.** Means one year from the date that a person has been notified in writing that they have been put on probation, regardless of the reason for the probation.

**Registrant.** Means any person who (1) has or seeks to have its equipment or facilities located in any Right-of-Way, or (2) in any way occupies or uses, or seeks to occupy or use, the Right-of-Way or place its facilities in the Right-of-Way.

**Restore or Restoration.** Means the process by which a Right-of-Way is returned to the same condition and life expectancy that existed before excavation.

**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 the PUC rules.

**Right-of-Way.** For purposes of this Article, means the area on, below, along side, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the Town has an interest, including other dedicated Rights-of-Way for travel purposes and utility easements of the Town. A Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service.

**Right-of-Way Permit.** Means either the excavation permit or the obstruction permit, or both, depending on the context, required by this ordinance.

**Service or Utility Services.** Includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat. § 216B.02, Subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy or power services; (3) the services provided by a corporation organized for the purposes set forth in

Minn. Stat. § 300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minn. Stat. Chapter 238; and a (6) Telecommunication Right-of-Way User as defined in subpart (31) below.

**Supplementary Application.** Means an application made to excavate or obstruct more of the Right-of-Way than allowed by, or to extend, a permit that had already been issued.

**Telecommunications Rights-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 ordinance, a cable communication system defined and regulated under Minn. Stat. Chapter 238 and telecommunications activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. §216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chapters 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chapter 308A, are not Telecommunications Right-of-Way Users for purposes of this Ordinance.

**Temporary.** Means patching or restoration work that is intended to restore the roadway for a period of less than five years.

**Unusable Facilities.** Means facilities in the Right-of-Way that have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the facilities.

#### **Section 13-15. Administration.**

The Director is the principal Township official responsible for the administration of the Rights-of-Way, Right-of-Way permits and the ordinances related thereto. The Director may delegate any or all of the duties thereunder.

#### **Section 13-16. Registration and Right-of-Way Occupancy.**

- (a) **Registration.** Each person who occupies, uses, or seeks to occupy or use, the Right-of-Way for purposes of placing, maintaining or repairing any equipment or facilities in the Right-of-Way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Director. Registration will consist of providing application information and paying a registration fee.
- (b) **Registration Prior to Work.** No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or



any part thereof in the Right-of-Way without first being registered with the Director.

- (c) **Exceptions.** Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this ordinance. However, nothing herein relieves a person from compliance with the provisions of Minn. Stat. Chapter 216 D, “One Call” Law.

**Section 13-17. Registration Information**

- (a) **Information Required.** The information provided to the Director at the time of registration shall include, but not be limited to:
1. Each of the following, if applicable:
    - A. Registrant’s name, Gopher One-Call registration certificate number, address, email address, telephone and facsimile numbers.
    - B. The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
    - C. A certificate of insurance:
      - (1) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota; and
      - (2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the Right-of-Way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities in the Right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property; and

- (3) Naming the Town and its engineer as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages; and
  - (4) Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
  - (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the Town and the public and to carry out the purposes and policies of this Article.
- D. The Town may require a copy of the actual insurance policies.
  - E. If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. § 300.96 as recorded and certified by the Secretary of State.
  - F. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said Commission or other state or federal agency.
- (b) **Notice of Changes.** The registrant shall keep all of the information above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

**Section 13-18. Reporting Obligations.**

- (a) **Operations.** Each registrant shall, at the time of registration and sixty (60) days prior to construction, file a construction and major maintenance plan for underground facilities with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavation and obstructions of Right-of-Way.

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

1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a “Next-year’s Projects”). The term “project” in this section includes Next-year’s Projects.

**Section 13-19. Permit Requirement**

- (a) **Permit Required.** Except as otherwise provided in this ordinance, no person may obstruct or excavate any Right-of-Way without first having obtained the appropriate Right-of-Way permit from the Director to do so.
  1. **Excavation Permit.** An excavation permit is required by a registrant to excavate that part of the Right-of-Way described in such permit and to hinder free and open passage over the specified portion of the Right-of-Way by placing facilities described therein, to the extent and for the duration specified therein.
  2. **Obstruction Permit.** An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of Right-of-Way by placing equipment described therein on the Right-of-Way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project. In circumstances of an emergency repair, verbal approval to proceed immediately may be granted by the Director and the obstruction permit must be obtained as soon as possible thereafter.
- (b) **Permit Extensions.** No person may excavate or obstruct the Right-of-Way beyond the date or dates specified in the permit unless such person (i) 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.
- (c) **Delay Penalty.** Notwithstanding Subd. 2 of this section, the Town shall establish and impose a delay penalty for unreasonable delays in Right-of-Way excavation, obstruction, patching, or restoration. The delay penalty shall be established and amended when necessary by action of the Board.
- (d) **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 Director.

**Section 13-20. Permit Applications.**

- (a) **Application.** Application for a permit is made to the Director. Right-of-Way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
1. Registration with the Director pursuant to this ordinance.
  2. 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.
  3. Payment of money due the Town for:
    - A. Permit fees, estimated restoration costs and other management costs;
    - B. Prior obstructions or excavations;
    - C. An undisputed loss, damage, or expense suffered by the Town because of applicant's prior excavations or obstructions of Rights-of-Way or any emergency actions taken by the Town;
    - D. Franchise or user fees, if applicable.
    - E. 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. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

**Section 13-21. Issuance of Permit; Conditions.**

- (a) **Permit Issuance.** If the applicant has satisfied the requirements of this Article, the Director shall issue a permit.
- (b) **Conditions.** The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare **of the Township** when necessary to protect the Right-of-Way and its current use.

**Section 13-22. Permit Fees.**

- (a) **Excavation Permit Fee.** The excavation permit fee shall be established by the Board in an amount to recover the following costs:
1. The Town management costs; and
  2. Degradation costs, if applicable.
- The excavation permit fee shall be established by the Board and shall be published in the fee schedule that the Town shall from time to time amend.
- (b) **Obstruction Permit Fee.** The obstruction permit fee shall be established by the Board and shall be published in the fee schedule that the Town shall from time to time amend.
- (c) **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 the applicant to pay such fees within thirty (30) days of billing.
- (d) **Non refundable.** Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 1.18 of this Article are not refundable.

**Section 13-23. Right-of-Way Patching and Restoration.**

- (a) **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 extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 1.13 of this Article.
- (b) **Patch and Restoration.** The 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.
1. **Town Restoration.** If the Town restores the Right-of-Way itself, permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the town, within thirty (30) days of billing, all costs associated with having to correct the defective work.

2. **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 an amount determined by the Town Engineer to be sufficient to cover the costs of restoration. If, within thirty-six (36) months after completion of the restoration of the Right-of-Way, the Town Engineer determines that the Right-of-Way has been properly restored, the surety on the construction performance bond shall be released.
- (c) **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified or approved by the Town Engineer. The Town Engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Town Engineer in exercising this authority shall comply with PUC standards for Right-of-Way restoration and shall further be guided by the following considerations;
1. The number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way.
  2. The traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way.
  3. The pre-excavation condition of the Right-of-Way; the remaining life expectancy of the Right-of-Way affected by the excavation.
  4. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the Right-of-Way that would otherwise result from the excavation, disturbance or damage to the Right-of-Way; and
  5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.
- (d) **Guarantees.** By choosing to restore the Right-of-Way itself, the permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Town Engineer. Said work shall be completed within five (5) business days of the receipt of the notice from the Director, exclusive of weekends, legal holidays, periods during which work cannot be done because of circumstances beyond permittee's reasonable control or days when work is prohibited as

unreasonable under Section 1.13 of this Article. A letter of credit for 1.25 times the amount of the projected cost to complete such work shall be posted with the Town prior to excavation of the right-of-way.

- (e) **Failure to Restore.** If the permittee fails to restore the Right-of-Way in the manner and to the condition required by the Town Engineer, or fails to satisfactorily and timely complete all restoration work required by the Town Engineer, 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 costs of restoring the Right-of-Way. If permittee fails to pay as required, the Town may exercise its rights under the construction performance bond.
- (f) **Degradation Cost 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 costs to accomplish these responsibilities.

**Section 13-24. Joint Applications.**

- (a) **Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the Right-of-Way at the same place and time.
- (b) **With Town Projects.** Registrants who join in a scheduled obstruction or excavation performed by the Town, whether or not it is a joint application by two or more applicants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.
- (c) **Shared Fees.** Registrants who apply for permits for the same obstruction or excavation, that the Town does not perform, may share in the payment of the obstruction or excavation fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application(s).

**Section 13-25. Supplementary Applications.**

- (a) **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 that 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 a permit extension.

- (b) **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. The supplementary application must be done before the permit end date.

**Section 13-26. Other Obligations**

- (a) **Compliance with Other Laws.** Obtaining a Right-of-Way permit does not relieve a 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 regulations. A permittee shall comply with all requirements of local, state, and federal laws, including Minn. Stat. §§ 216D.01 - .09 (“One Call Excavation Notice System”). 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.
- (b) **Prohibited Work.** Except in an emergency, and with the approval of the Director, no Right-of-Way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) **Interference with Right-of-Way.** A permittee shall not so obstruct a Right-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work on the Right-of-Way may not be parked within or next to a permit area, unless parked in conformance with town parking regulations. The loading or unloading of trucks shall be done solely within the defined permit area unless specifically authorized by the permit.
- (d) **Traffic Warnings and Signage.** When working in or obstructing Town Right-of-Way, the applicant is required to erect proper signage and traffic control devices to warn the public that work is being performed in the Right-of-Way or that the Right-of-Way is obstructed. All signs and traffic warning devices shall be erected as prescribed by and in conformance with the Minnesota Manual on Uniform Traffic Devices.

**Section 13-27. Denial of Permit.**

The Director may deny a permit for failure to meet the requirements and conditions of this ordinance or if the Director determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current use.



**Section 13-28. Installation Requirements.**

The excavation, backfilling, patching and restoration, and all other work performed in the Right-of-Way shall be done in conformance with Engineering Standards adopted by the Public Utilities Commission (PUC) or other applicable local requirements, insofar as they are not inconsistent with the PUC Rules.

**Section 13-29. Inspection.**

- (a) **Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with PUC rules.
- (b) **Site Inspection.** The permittee shall make the work site available to the Town Engineer and to any other Town employees or agents and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) **Authority of Director.**
  - 1. At the time of inspection, the Director may order immediate cessation of any work that poses a serious threat to the life, health, safety or well-being of the public.
  - 2. The Director 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 Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 1.18 of this Article.

**Section 13-30. Work Done Without a Permit.**

- (a) **Emergency Situations.** Each registrant shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant 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.

- (b) **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 for any other fees required by this Article, deposit with the Director the fees necessary to correct any damage to the Right-of-Way and comply with all other requirements of this Article.

**Section 13-31. Supplementary Notification.**

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

**Section 13-32. Revocation of Permits.**

- (a) **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 regulations, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited to, the following:
1. The violation of any material provision of the Right-of-Way permit;
  2. 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;
  3. Any material misrepresentation of fact in the application for a Right-of-Way permit;
  4. 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
  5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 1.16 of this Article.
- (b) **Written Notice of Breach.** If the Director determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulations or any condition of the permit, the Director 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 and subject the permittee to costs and expenses incurred by the Town as a result of this breach including attorney's fees and restoration costs. A substantial breach, as stated above, will allow the Director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

- (c) **Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, the permittee shall provide the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.
- (d) **Cause for Probation.** From time to time, the Director may establish a list of conditions of the permit, which, if breached, will automatically place the permittee on probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way grossly outside of the permit authorization.
- (e) **Automatic Revocation.** If a permittee, while on probation, commits a breach as outlined above, the permittee's permit will automatically be revoked and permittee will not be allowed further permits for one (1) full year, except for emergency repairs.
- (f) **Reimbursement of Township Costs.** In the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulations, or any material condition of the permit, the Director may institute appropriate actions or proceedings, including requesting injunctive relief to prevent, restrain, correct or abate such violations. The permittee shall pay all restoration costs and all reasonable professional fees incurred by the Town as a result of Town efforts to enforce the terms of this Article within thirty (30) days after receipt of a bill for such costs from the Town. Said fees include attorney's fees, engineer's fees, and any other professional fees incurred by the Town in attempting to enforce the terms of this Article. The permittee will also pay all attorney's and professional fees incurred by the Town to specially assess any of the terms of this agreement should permittee's construction bond prove insufficient or should permittee fail to maintain said construction bond in the amount required. Should the Town assess permittee's property for said costs, permittee agrees not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minn. Stat. § 429.081.

**Section 13-33. Mapping Data.**

- (a) **Information Required.** Each registrant shall provide mapping information required by the Town in accordance with Public Utility Commission rules.
- (b) **Trade Secret Information.** At the request of any registrant, any information requested by the Town, which qualifies as a “trade-secret” under Minn. Stat. § 13.37 (b) shall be treated as trade secret information as detailed therein.

**Section 13-34. Location of Facilities.**

- (a) **Undergrounding.** Unless otherwise permitted by an existing franchise or Minn. Stat. § 246B.34, or unless existing above-ground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- (b) **Corridors.** The Town engineer may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of facilities that is, or, pursuant to current technology, the Town engineer expects will someday be located within the Right-of-Way. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the Right-of-Way in a position at variance with the corridors established by the Town engineer shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the Right-of-Way, unless this requirement is waived by the Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

- (c) **Nuisance.** One year after the passage of this Article, any facilities found in a Right-of-Way that have not been registered shall be deemed to be a nuisance. The Town may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring Right-of-Way to a useable condition.
- (d) **Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the Director shall have the power to prohibit or limit the placement of new or

additional facilities within the Right-of-Way, In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by consideration of the public interest, the public's need for a particular utility service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing facilities in the Right-of-Way, and future Town plans for public improvements and development projects that have been determined to be in the public interest.

**Section 13-35. Relocation of Facilities.**

- (a) A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the Right-of-Way whenever the Director for good cause requests such removal and relocation and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The Director may make such request to prevent interference by the company's equipment or facilities with (i) a present or future Town use of the Right-of-Way, (ii) a public improvement undertaken by the Town; (iii) an economic development project in which the Town has an interest or investment; (iv) when the public health, safety and welfare require it; or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any Right-of-Way that has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

**Section 13-36. Pre-Excavation Facility and Facilities Location.**

In addition to complying with the requirements of Minn. Stat. §§ 216D.01- .09 ("One Call Excavation Notice System") before the start date of any Right-of-Way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

**Section 13-37. Damage to Other Facilities.**

When the Town does work in the Right-of-Way and finds it necessary to maintain, support, or move a registrant's facilities, the Director shall notify the local representative as early as is reasonably possible. The costs associated

therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing.

Each registrant shall be responsible for the cost of repairing any facilities in the Right-of-Way that it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the Town's response to an emergency occasioned by that registrant's facilities.

Registrant shall assume full financial responsibility for any damage which may occur to public property including, but not limited to, streets, street sub-base, base, bituminous surface, curb, utility system including, but not limited to, watermain, sanitary sewer or storm sewer when said damage occurs as a result of the activity that takes place in the Right-of-Way. The registrant further agrees to pay all costs required to repair the streets, utility systems and other public property damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place in the Right-of-Way.

If registrant fails to so clean the streets or repair or maintain said public property, the Town may undertake making or causing it to be cleaned up, repaired or maintained. When the Town undertakes such activity, the registrant shall reimburse the Town for all of its expenses within thirty (30) days of its billing to the registrant. If the registrant fails to pay said bill within thirty (30) days, then the Town may draw from the construction bond, specially assess such costs against the registrant's property and/or take necessary legal action to recover such costs. The Town shall be entitled to attorney fees and expenses incurred by the Town as a result of such legal action. The registrant knowingly and voluntarily waives all rights to appeal said special assessments under Minn. Stat. § 429.081.

**Section 13-38. Right-of-Way Vacation.**

- (a) **Reservation of Right.** If the Town vacates a Right-of-Way that contains the facilities of a registrant, and if the vacation does not require the relocation of the registrant's or permittee's facilities, the Town shall reserve, to and for itself and all registrants having facilities in the vacated Right-of-Way, the right to install, maintain and operate any facilities in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- (b) **Relocation of Facilities.** If the vacation requires the relocation of the registrant's or permittee's facilities; and (i) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the Town relocation costs; or (ii) if the vacation proceedings are initiated by the Town, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the Town and the registrant or permittee; or

(iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

**Section 13-39. Indemnification and Liability.**

By registering with the Director, or by accepting a permit under this Article, a registrant or permittee agrees as follows:

- (a) **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a Right-of-Way permit, the Town does not assume any liability (i) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the Town, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.
- (b) **Indemnification.** A registrant or permittee shall indemnify, keep, and hold the Town, its representatives, officers, employees or assigns free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of registrant's or permittee's facilities located in the Right-of-Way.

The Township shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance. The Town shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the registrant or permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the Town after receiving notice of the registrant's or permittee's determination.

- (c) **Defense.** If a suit is brought against the Town under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the Town in the suit if written notice of the suit is promptly given to the registrant or permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.

If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the Town. Consent will not be reasonably withheld.

This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the Town.

In defending an action on behalf of the Town, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the Town could assert on its own behalf.

**Section 13-40. Abandoned and Unusable Facilities.**

- (a) **Discontinued Operations.** A registrant who has determined to discontinue its operations in the Town must either:
1. Provide information satisfactory to the Director that the registrant's obligations for its facilities in the Right-of-Way under this Article have been lawfully assumed by another registrant; or
  2. Submit to the Director a proposal and instruments for transferring ownership of its facilities to the Town. If the registrant proceeds under this clause, the Town may, at its option:
    - A. Purchase the facilities; or
    - B. Require the registrant, at its own expense, to remove it; or
    - C. Require the registrant to post a bond acceptable to the town in an amount sufficient to reimburse the Town for reasonable anticipated costs to be incurred in removing the facilities.
- (b) **Abandoned Facilities.** Facilities of a registrant who fails to comply with Subd. 1 of this Section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The Town may exercise any remedies or rights it has at law or in equity, including, but not limited to: (i) abating the nuisance; (ii) taking possession of the facilities and restoring it to a useable condition; or (iii) requiring removal of the facilities by the registrant, or the registrant's successor in interest.
- (c) **Removal.** Any registrant who has unusable and abandoned facilities in any Right-of-Way shall remove it from that Right-of-Way during the next scheduled excavation, unless this requirement is waived by the Director.
- (d) **Professional Fees and Costs.** In the event that the permittee or registrant discontinues operations and/or abandons facilities, and fails to remove its facilities and restore the Right-of-Way to its original condition, the Town may undertake making or causing it to be cleaned up, repaired or



maintained. When the Town undertakes such activity, the Registrant shall reimburse the Town for all of its expenses within thirty (30) days, then the Town may draw from the construction bond, specially assess such costs against the registrant's property and/or take necessary legal action to recover such costs. The Town shall be entitled to attorney fees and expenses incurred by the Town as a result of such legal action. The registrant shall knowingly and voluntarily waive all rights to appeal said special assessments under Minn. Stat. § 429.081.

**Section 13-41. Appeal.**

- (a) A Right-of-Way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the Board. The Board shall act on a written request within forty-five (45) days. A decision by the Board affirming the denial, revocation, or fee imposition will be made in writing and supported by written findings establishing the reasonableness of the decision.
- (b) Upon affirmation of the Board of the denial, revocation, or fee imposition, the Right-of-Way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before arbitrator agreed to by both the Board and the Right-of-Way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the Town, one arbitrator selected by the Right-of-Way user, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the Town and the Right-of-Way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

**Section 13-42. Reservation of Regulatory and Police Powers.**

A permittee's or registrants rights are subject to 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 13-43. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or administrative agency 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.

If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Article or any portions of this Article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and right of termination. Nothing in this Article precludes the Town from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

**Sections 13-44 thru 13-46. Reserved.**

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**ARTICLE III. ENFORCEMENT AND PENALTIES****Section 13-47. Town and Contractors.**

The prohibitions, requirements, and restrictions contained in the Chapter do not apply to: the Town, town officers, employees or agents while operating in the course and scope of their duties for the Town; or contractors while performing services within the scope of a contract with the Town.

**Section 13-48 . Permission.**

- (a) **Limitations.** Any person receiving permission or a permit from the Board as provided in this Chapter must comply with all applicable federal, state, and local laws and rules as well as all applicable Town ordinances, resolutions, specifications, regulations and policies. Any person receiving permission or a permit must comply with all conditions, requirements, and limitations as the Board expresses as part of the permission or permit. Failure to comply with any of the conditions, requirements, or limitations shall void the permission or permit and could place the person in violation of this Chapter.

**Section 13-49. Enforcement and Penalty.**

- (a) **Correction Order.** Upon discovery of a violation of this Chapter, the Board may issue a correction order to the violator ordering the person to correct the violation by a time certain. If the violator fails to comply with the correction order by the time indicated in the order, the Board may provide for the correction of the violation. Issuance of a correction order does not preclude imposition of the penalty set forth in this Chapter.
- (b) **Immediate Correction.** If the Board determines that the violation creates an immediate threat to public safety, the Board will make a good faith effort to notify the violator to immediately correct the situation. If the Board is not able to promptly reach the violator, or if the violator fails to immediately correct the situation upon notification, the Board will provide for the correction of the violation.
- (c) **Cost of Correction.** The cost of correcting a violation shall be the responsibility of the violator. If the Board provides for the correction of a violation, all expenses incurred, including reasonable attorney's fees, shall be billed to the violator. If the bill is not paid by the due date, the Board may exercise any lawful options to it to collect the amount due.
- (d) **Penalty.** Any person who violates this Chapter shall be guilty of a misdemeanor and subject to the penalties for such as provided in State law. Each day of existence of such violation shall constitute a separate

offense. If convicted, the person may be assessed costs of prosecution as allowed by Minnesota Statutes § 366.01, subdivision 10.

**Section 13-50. Savings Clause.**

The failure of the Board to exercise, and any delay in exercising, any right under this Chapter, including enforcement, shall not operate as a waiver thereof and shall not constitute a waiver of the Town's interest, however created, in any Right-of-Way, easement, or other type of property interest.

**Section 13-51. Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency 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.

*Adopted as Ordinance 2007-002 on May 7<sup>th</sup>, 2007.*