

ORDINANCE REGULATING USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY

SECTION 1.0 - GENERAL PROVISIONS

SECTION 1.01 – AUTHORITY

The Town Board of the Town of Sherman, Sheboygan County, Wisconsin, has the specific authority under §66.0103 and §19.34 Wis. Stats., to prepare and adopt this ordinance. Town hereby enacts this ordinance relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

SECTION 1.02 – PURPOSE

The purpose of this ordinance is to provide the Town a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the Town as they use the right-of-way of the Town, as well as to ensure the structural integrity of the public rights-of-way. In the exercise of governmental functions the Town has priority over all other uses of the public rights-of-way. The Town desires to anticipate and minimize the number of obstructions and excavations taking place therein and to regulate the placement of facilities in the Rights-of-Way to ensure that the Rights-of-Way remain available for public services and safe for public use. The taxpayers of the Town bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by Persons who locate facilities therein. The Town finds increased use of the public rights-of-way and increased costs to the taxpayers of the Town and that these costs are likely to continue into the foreseeable future. The Town finds that occupancy and excavation of its rights-of-way causes costs to be borne by the Town and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.

2. Management costs associated with ongoing management activities necessitated by public right-of-way users.

3. Repair or restoration costs to the roadway associated with the actual

excavation into the public right-of-way.

4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

SECTION 1.03 - EFFECTIVE DATE

This ordinance is effective on publication or posting. The town clerk shall properly post or publish this ordinance as required under §60.80 Wis. Stats.

SECTION 1.04 - RESERVATION OF REGULATORY AND POLICE POWERS

The Town, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this Ordinance does not surrender or in any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or maybe hereafter granted to the Town under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this Ordinance agrees that all lawful powers and rights, regulatory powers, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the Town, shall be in full force and effect and subject to the regulatory and police powers of the Town to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the Town pursuant to such powers.

SECTION 1.05 - SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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.

SECTION 2.0 – DEFINITIONS.

A. The following definitions apply in this ordinance. References hereafter to "sections" are unless otherwise specified references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

1. APPLICANT. Any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

2. DEGRADATION. The decrease in the useful life of the paved portion of the right-of-way, excluding the sidewalk right-of-way, caused by an excavation 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.

3. EMERGENCY. 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 in

order to restore service to a customer.

4. EXCAVATE. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

5. FACILITIES. All equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

6. IN, when used in conjunction with "right-of-way". Over, above, within, on or under a right-of-way.

7. INSPECTOR. The Town Building Inspector.

8. LOCAL REPRESENTATIVE. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Ordinance.

9. OBSTRUCT. To place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

10. PERMITTEE. Any Person to whom a permit to occupy, excavate or obstruct a Right-of-Way has been granted by the Town under this Ordinance.

11. PERSON. Corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

12. PUBLIC UTILITY. As defined in Wis. Stats 196.01(5).

13. REGISTRANT. Any person who has registered with the Town to have its facilities located in any right-of-way.

14. REPAIR. To perform construction work necessary to make the right-of-way useable for travel according to Inspector specifications, or to restore equipment to an operable condition.

15. RESTORE or RESTORATION. The process by which an excavated right-of-way and surrounding area, including pavement and foundation is reconstructed, per Inspector specifications.

16. RIGHT-OF-WAY. The surface and space above and below an improved or

unimproved public roadway, highway, street, bicycle lane and public sidewalk in which the Town has an interest, including other dedicated rights-of-way for travel purposes.

17. TOWN. The Town of Sherman, Wisconsin, a Wisconsin municipal corporation.

B. Administration. The Inspector or his/her designee is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.

SECTION 3.0 – APPLICATION FOR RIGHT-OF-WAY OCCUPANCY

SECTION 3.01 – GENERAL APPLICATION REQUIREMENTS

A. Each person who has, or seeks to have, facilities located in any right-of-way shall apply with the Inspector and pay the fee set forth in Section 3.03. Application will consist of providing information specified by the Town and paying a registration fee. This section shall not apply to those persons who have facilities in the right-of-way pursuant to a franchise or other agreement.

B. No person may construct, install, maintain, repair, remove, relocate or perform any other work on, or use any equipment or any part thereof in any right-of-way unless that person has made an application to the Inspector.

SECTION 3.02 – REQUIRED APPLICATION INFORMATION

A. Application Information. The information provided to the Inspector at the time of application shall include, but not be limited to:

1. Each registrant's name, Diggers Hotline registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.

2. The name, address and e-mail 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 application.

3. Reason for and a clear description of the proposed work, use, structure, or obstruction, and the exact location of said work, use, structure or obstruction.

4. The requested dates and hours of work or placement of obstruction;

5. Other local, state or federal approvals, if necessary;

6. A certificate of insurance.

7. If the registrant is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Secretary of State.

8. A copy of the registrant's certificate of authority from the Wisconsin Public Service 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.

9. Sufficient evidence of the following health, welfare, and safety concerns:

a. Town infrastructure shall remain fully operational and it shall not be disturbed or altered unless permitted by the Town;

b. Drainage shall not be affected in the location; and

c. The placement of any structure or obstruction shall not present a safety concern, with the construction site being sufficiently lit (if applicable) or fenced and guarded (if applicable).

10. Execution of an indemnification agreement in a form prescribed by the Inspector.

B. The registrant shall keep all of the information listed above current at all times by providing to the Inspector information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

SECTION 3.03 – APPLICATION FEE

The Inspector shall charge an Application Fee to recover the costs incurred by the Town for processing the application and an annual fee to for costs for updating registration information. Said fees are set by and found in the Town Fee Schedule.

SECTION 3.04 – INTERACTION WITH OTHER TOWN RESOLUTIONS OR ORDINANCES

Nothing herein shall be construed to repeal or amend the provisions of a Town ordinance regulating excavation on private property, constructing sidewalks or driveways or other similar activities. Persons performing such activities shall not be required to obtain any permits under this Ordinance.

SECTION 3.05 – REVIEW OF AN APPLICATION FOR RIGHT-OF-WAY USER

A. The following standards shall be used in reviewing an application for a right-of-way user:

1. Applicant shall have a non-exclusive use of the premise;
2. Granting the request shall not contribute to public expense;
3. Applicant's use of the premise shall be in compliance with all local, state, or federal laws. Applicant shall obtain all permits required by local, state, or federal authorities required for the use of the premises;
4. Applicant shall not install any utility lines, equipment and/or facilities on private

property without written consent of the owner, and shall verify parcel boundaries. Easement/access agreements shall be obtained for any Town parcels not part of public rights-of way;

5. A Right-of-Way User Registration shall not be construed as a waiver of the applicant's obligation to comply with other or more restrictive Town ordinances;

6. Town infrastructure shall not be disturbed or altered unless otherwise permitted, and shall remain visible, accessible and operational. Any Town infrastructure damaged shall be immediately reported to the Inspector, be repaired to Town standards, and inspected and approved by the Inspector at the expense of the applicant;

7. Any construction, reconstruction, improvements or restoration of the public right-of-way after disturbance shall be consistent with Town standards and all public rights-of-way shall be restored to their original condition upon completion of the work, activities, or installation, unless otherwise permitted;

8. Drainage shall not be adversely affected due to the installation of any utility lines, structures, equipment or facilities;

9. Placement of obstructions during installation and all work and activities shall:

- a. Not present a public safety concern;
- b. Be sufficiently lit at night (if required by permit) so as to be in full view of the public from all directions;
- c. Be fenced or guarded (if required by permit) in a manner which insures public safety; and
- d. Be consistent with any limitations and conditions set forth in the approval.

10. The applicant shall indemnify and hold the Town harmless for any loss/liability, claims, or damage to any person or property arising from:

- a. Applicant's installation, maintenance and/or operation under the approved registration;
- b. Vandalism;
- c. Interruption in any service from any cause; and
- d. Fire, water, rain, snow, steam, sewerage, gas or odors, from any source.

11. Any other standards as determined by the Inspector or Town Board.

SECTION 4.0 – PERMIT TO EXCAVATE IN RIGHT-OF-WAY REQUIRED

SECTION 4.01 – EXCAVATION PERMIT REQUIRED

Except as otherwise provided in this Ordinance or other Ordinances of the Town of Sherman, no person shall excavate any right-of-way without first having obtained an excavation permit from the Inspector. A copy of any permit issued under this Ordinance shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Inspector upon request.

SECTION 4.02 – EXCAVATION PERMIT APPLICATION REQUIREMENTS

A. Application for a permit shall be made to the Inspector.

B. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Application with the Inspector as required by 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 existing and proposed facilities that are part of applicant's proposed project.
3. Payment of all money due to the Town for:
 - a. Applicable permit fees and costs as set forth below;
 - b. unpaid fees or costs due for prior excavations; or
 - c. any loss, damage, or expense suffered by the Town because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the Town.

SECTION 4.03 – EXCAVATION PERMIT FEE

A. An Excavation Permit Fee shall be established by the Inspector in an amount sufficient to recover the costs incurred by the Town as set by and found in the Town Fee Schedule. This fee shall recover administrative and inspection costs, as well as degradation costs should the permittee choose to repair rather than restore the right-of-way. Payment of said fees shall be collected prior to issuance of the permit. However, the Inspector, with the advice and consent of the Town Board, shall establish a fee collection process from governmental agencies and private utilities in order to expedite the permitting system and recognize that certain excavations are deemed emergencies as referenced in the Town Fee Schedule.

B. Waiving of Fees. Fees shall not be waived unless the work involved is a direct result of the Inspector's demand that a structure owned by a utility be removed or relocated or unless waived by the Town Board on appeal.

C. Town Exemption. The Town and its contractors shall not pay degradation fees for excavations due to general government functions.

D. Permit fees paid for a permit that the Inspector has revoked are not refundable.

SECTION 4.04 – COMPLIANCE WITH OTHER LAWS

Obtaining a permit to excavate and/or occupy the right-of-way does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other Town, County, State, or Federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. 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.

SECTION 5.0 – RIGHT-OF-WAY REPAIR/RESTORATION

SECTION 5.01 – RIGHT-OF-WAY REPAIR AND RESTORATION REQUIREMENTS

The Permittee shall be required to repair the public right-of-way to Inspector specifications, subject to inspection and acceptance by the Inspector, and to pay a degradation fee, as per Section 5.04 unless the Permittee elects to restore the right-of-way pursuant to Section 5.05. In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Inspector. The Inspector shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Inspector.

SECTION 5.02 – REPAIR/RESOTRATION GUARANTEES

The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this period it shall, upon notification from the Inspector, correct all work to the extent necessary, using the method required by the Inspector. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Inspector, not including days during which work cannot be done because of circumstances constituting force majeure.

SECTION 5.03 – FAILURE TO REPAIR/RESTORE

If the Permittee fails to repair/restore the right-of-way in the manner and to the condition required by the Inspector, or fails to satisfactorily and timely complete all work required by the Inspector, the Inspector at his/her option may do such work. In that event the Permittee shall pay to the Town, within thirty (30) days of billing, the cost of repairing/restoring the right-of-way.

SECTION 5.04 – DEGRADATION FEE

Degradation fee schedule is available upon request from the Inspector and is set by and found in the Town Fee Schedule.

SECTION 5.05 – RESTORATION IN LIEU OF REPAIR AND DEGRADATION

The Permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. The restoration shall be in accordance with the Standard Specifications for Public Works Construction and the plans and specifications of the Inspector. The Permittee shall then also comply with Sections 5.02 and 5.03.

SECTION 6.0 – INSPECTION

A. Notice of Completion. When the work under any permit hereunder is begun and completed, the Permittee shall notify the Inspector.

B. Site Inspection. Permittee shall make the work site available to the Inspector 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 Inspector. At the time of inspection the Town may order the immediate cessation of any work which poses a threat to the life, health, safety or well being of the public. The Town may issue an order to the registrant or Permittee for any work that does not conform to the applicable Town 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 registrant or Permittee shall present proof to the Inspector that the violation has been corrected. If such proof has not been presented within the required time, the Inspector may revoke the permit pursuant to Section 8.08(12).

SECTION 7.0 – ONGOING MANAGEMENT FEES

The cost of trimming trees around facilities is an ongoing cost to the Town. The specific cost will be determined and a fee to offset those costs may be assessed in the future.

SECTION 8.0 – PERMIT REVOCATION, SUSPENSION OR REFUSAL TO ISSUE/EXTEND

A. The Inspector may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

1. The applicant or Permittee is required to be registered and has not done so;
2. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;
3. Misrepresentation of any fact by the applicant or Permittee;
4. Failure of the applicant or Permittee to maintain required bonds and/or insurance;
5. Failure of the applicant or Permittee to complete work in a timely manner;
6. The proposed activity is contrary to the public health, safety or welfare;
7. The extent to which right-of-way space where the permit is sought is available;
8. The competing demands for the particular space in the right-of-way;
9. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant;
10. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;

B. Discretionary Issuance. The Inspector may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or

applicant to comply with state or federal law or Town ordinance or an order of a court or administrative agency.

C. Appeals. Any person aggrieved by a decision of the Inspector revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Town Board. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Town Board may affirm, reverse or modify the decision of the Inspector.

SECTION 9.0 – WORK DONE WITHOUT A PERMIT

A. Emergency Situations

1. Each registrant shall immediately notify the Town by verbal notice on an emergency phone number provided by the Town 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 otherwise fully comply with the requirements of this Ordinance.

2. If the Town becomes aware of any emergency regarding a registrant's facilities, the Inspector may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The Town may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

B. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Ordinance and deposit with the Inspector the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Ordinance.

SECTION 10.0 – LOCATION OF FACILITIES

A. Undergrounding. Unless in conflict with state or federal law, except when existing aboveground facilities are used, 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. Limitation of Space. The Inspector may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such decisions, the Inspector shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare.

C. Relocation of Facilities. A registrant must, promptly and at its own expense, permanently

remove and relocate its facilities in the right-of-way whenever the Town, acting in its governmental capacity, requests such removal and relocation. If requested, the registrant shall restore the right-of-way. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefore.

D. Interference with Other Facilities during Town/Municipal Construction. When the Town performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the Town shall notify the local representative. The registrant shall meet with the Town's representative within twenty-four (24) hours and coordinate the protection, maintenance, supporting and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within seventy-two (72) hours, unless the Town agrees to a longer period. In the event that the registrant does not proceed to maintain, support, shore or move its facilities, the Town may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days.

SECTION 11.0 – ABANDONED FACILITIES

SECTION 11.01 – DISCONTINUED OPERATIONS

A. The registrant who has determined to discontinue its operations in the Town must either:

1. Provide information satisfactory to the Inspector that the registrant's obligations for its facilities under this Ordinance have been lawfully assumed by another registrant; or

2. Submit to the Inspector a proposal and instruments for dedication of its facilities to the Town. If a registrant proceeds under this clause, the Town may, at its option:

a. accept the dedication for all or a portion of the facilities; or
b. require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or

c. require the registrant to post a bond or provide payment sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the facilities.

B. Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the Inspector waives this requirement.

SECTION 11.02 – ABANDONED FACILITIES

Facilities of a registrant who fails to comply with Section 11.01(A)(I), and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition, to any remedies or rights it has at law or in equity the Town may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

SECTION 11.03 – PUBLIC UTILITIES

This section shall not apply to a public utility, as defined by Section 196.01(5), Wis. Stats, that is required to follow the provisions of Section 196.81, Wis. Stats.

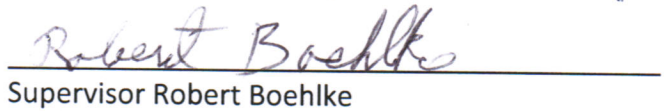
SECTION 12.0 – PENALTY

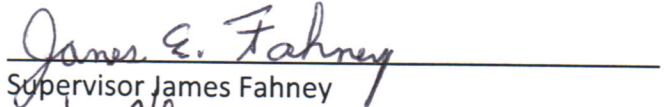
Any person who violates this ordinance or fails to comply with the provisions of this ordinance shall be subject to a forfeiture as set by and found on the Town Fee Schedule.

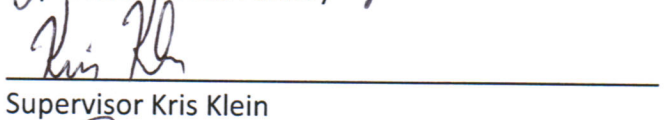
This ordinance is subject to renumbering by the Clerk/Treasurer upon entrance in the Town of Sherman Code of Ordinances.

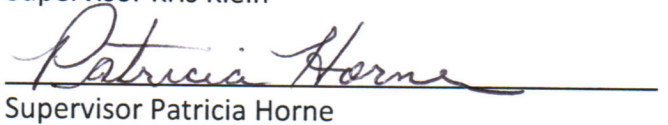
Adopted this 7th day of June, 2016


Chair William C. Goehring

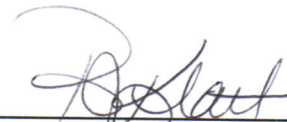

Supervisor Robert Boehlke


Supervisor James Fahney


Supervisor Kris Klein


Supervisor Patricia Horne

ATTEST:


Clerk/Treasurer Rhonda J. Klatt