



Town of Troy

Walworth County, Wisconsin

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ORDINANCE 2018-5

AN ORDINANCE TO REGULATE EXCAVATIONS IN TOWN OF TROY RIGHTS-OF-WAY

WHEREAS, the Town of Troy has recently undertaken substantial infrastructure improvement projects within the Town, to improve and reconstruct Town roads; and

WHEREAS, certain utility infrastructure is located within Town road rights-of-way; and

WHEREAS, the Town Engineer has recommended that the Town regulate excavation within the Town road right-of-way, to protect the Town's substantial investment; and

WHEREAS, the Town Board of the Town of Troy deems it necessary to place reasonable restrictions on the public rights-of-way.

NOW THEREFORE, the Town Board of the Town of Troy, Walworth County, Wisconsin, does hereby ordain as follows:

SECTION 1: PURPOSE AND FINDINGS. 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 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 with increased use of the public rights-of-way there are increased costs to the taxpayers of the Town and that these costs are likely to continue into the foreseeable future.

The Town finds excavation of its rights-of-way causes costs to be borne by the Town and its taxpayers, including but not limited to:

- (a) Administrative costs such as permitting, inspection and supervision, supplies and materials.
- (b) Management costs.

- (c) Repair or restoration costs.
- (d) Depreciation and decreased useful life.
- (e) In response to the foregoing facts, the Town hereby enacts this Ordinance relating to administration of the right-of-way.
- (f) The purpose of this ordinance is to provide 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.

SECTION 2: PROHIBITION. No person shall injure, tear up or deface any public improvement; nor dig any hole, ditch, drain or trench; nor make any alterations or construct any improvement of any kind in any public street or highway without a written permit from the Department of Public Works. Application for such permit shall be in such form and contain such information as shall be required by the Supervisor of Public Works who shall issue such permit subject to such regulations, restrictions and conditions as he may adopt.

SECTION 3: EXCAVATION STANDARDS. All excavations made pursuant to this Ordinance must be made to the full width of the roadway, with a minimum length of twenty (20) feet, and to the Town Specifications.

SECTION 4: PERMIT REQUIRED. Any excavation in the right-of-way requires a right-of-way permit from the Town prior to such excavation.

(a) Application requirements.

1. A right-of-way excavation permit application shall be filed with the Town Supervisor of Public Works.
2. The applicant shall pay the right-of-way excavation permit fee. The right-of-way permit fee shall be in the amount as established by Resolution of the Town Board, and may be amended from time to time. In addition, a professional fee charge back agreement shall be signed to ensure compliance with Town professional fee chargeback ordinances.
3. The applicant shall provide a detailed plan describing the proposed excavation.

(b) Application approval process.

1. The Town Supervisor of Public Works shall review the permit application and determine if all application materials have been submitted, within 15 days of receipt of the initial application. Once a complete application is received, the

Supervisor of Public Works shall determine whether to approve, deny or conditionally grant the excavation permit, within 60 days of receipt of a complete application. Any grant of a right-of-way excavation permit is subject to all terms and conditions of this Ordinance, all applicable laws, and such other conditions as may be imposed by the Supervisor of Public Works.

2. Right-of-Way Restoration. The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit to the satisfaction of the Supervisor of Public Works or his or her designee. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work. The permittee must inspect the area of the work and use reasonable care to maintain the same condition for thirty-six (36) months thereafter.

The permittee shall perform repairs and restorations according to the standards and with the materials specified by the Supervisor of Public Works or his or her designee. The Supervisor of Public Works or his or her designee 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 Supervisor of Public Works or his or her designee in exercising this authority shall be guided by the following standards and considerations:

- i. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.
- ii. The traffic volume carried by the right-of-way.
- iii. The character of the neighborhood surrounding the right-of-way; the pre-excavation condition of the right-of-way.
- iv. The remaining life-expectancy of the right-of-way affected by the excavation.
- v. 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.
- vi. 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.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, restoration of landscaping, and milling and overlay of the entire area of the right-of-way affected by the work. During the thirty-six (36) month period that follows the restoration, the permittee shall,

upon notification from the Supervisor of Public Works or his or her designee, correct all restoration work to the extent necessary using the method required by the Supervisor of Public Works or his or her designee. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Supervisor of Public Works or his or her designee. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Supervisor of Public Works or his or her designee, or fails to satisfactorily and timely complete all repairs required by the Supervisor of Public Works or his or her designee, the Supervisor of Public Works or his or her designee, at his or 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 restoring the right-of-way.

SECTION 5: BOND. Prior to commencing the work, any permittee performing work within the right-of-way shall post a financial guarantee in an amount approved by the Supervisor of Public Works or his or her designee and in a form approved by the Town Attorney, provided that the limitations of Wisconsin Statutes Section 66.0425(2) shall apply as applicable. If, thirty-six (36) months after completion of the restoration of the right-of-way, the Supervisor of Public Works or his or her designee determines that the right-of-way has been properly restored, the surety on the performance bond shall be released.

SECTION 6: INDEMNIFICATION AGREEMENT. Before any person, entity, or utility commences work pursuant to this section, such person, entity or utility shall file an agreement with the Town Clerk to hold the Town harmless, indemnify, and defend the Town from and against any and all injury and damage of any kind caused or occurring as a result of such work. The agreement shall be in a form approved by the Town Attorney, and shall have continuing effect during the course of such work and for all time that the obstruction or facilities or installation remain within the right-of-way, and thereafter until such obstruction is removed and the site is fully restored to the satisfaction of the Supervisor of Public Works or his or her designee.

SECTION 7: RESERVATION OF RIGHTS. The Town retains all rights in Town right-of-way. The grant of a right-of-way permit per this section does not constitute a waiver of any Town rights and remedies regarding ongoing compliance obligations toward such installations.

SECTION 8: COMPENSATION. The Town may require payment of compensation, in an amount determined by the Town Board, for the grant of any permit pursuant to this section, provided that compensation for more than applicable fees and cost recovery shall not be required of utilities that have the right to use the right-of-way by Wisconsin Statutes Section 182.017(1r).

SECTION 9: WAIVER OF DEADLINES. Timeline deadlines in this process may be waived by written mutual agreement of the applicant and the Town.

SECTION 10: APPEALS. Any person who wishes to dispute actions taken by the Town pursuant to this Ordinance may contact the Town Clerk and request to appear before the Town Board at an upcoming regular Town Board meeting and may, at that

time, present the matter to the Town Board for resolution. Appeal from the decision of the Town Board shall be by writ of certiorari to the Walworth County Circuit Court.

SECTION 11: COMPLIANCE WITH LAWS. Approval of a permit pursuant to this section does not waive the requirement to comply with all other applicable laws and ordinances. All applicable federal, State, Walworth County, and Town of Troy codes, statutes, regulations, administrative rules, ordinances and other laws must be followed.

SECTION 12: PENALTIES. Violation of this Ordinance is subject to the standard penalty provisions for Town of Troy Ordinances described in Ordinance 2006-2, including such amendments and modifications as may be made thereto from time to time.

SECTION 13: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 14: EFFECTIVE DATE

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 14th day of November, 2018.

TOWN OF TROY



John Kendall, Town Chair

ATTEST:



Tracy Raymond, Town Clerk

Published and posted this _____ day of _____, 2018
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