

**BALDWIN TOWN
SHERBURNE COUNTY, MINNESOTA**

ORDINANCE NO. 100

**AN ORDINANCE REGULATING
TOWN ROAD RIGHTS-OF-WAY**

**ARTICLE I
ADMINISTRATION**

Section 1.00. Purpose, Authority and Scope.

1. **Purpose.** The primary objectives of this Article are to protect public safety, reduce interferences with public travel, protect the public's interest in its rights-of-way, and to provide for the efficient and uniform administration of the Town's road rights-of-way. The Town Board finds that the regulations, requirements, and restrictions, as set forth in this Article, are in the best interests of the health, safety, and welfare of the Town's citizens.
2. **Authority.** As a road authority, the Town Board has broad authority to regulate what occurs within the town's road rights-of-way. This authority is found in a variety of sections in chapters 160, 164, 165, 169, 222, 237, 609, and other chapters, as well as the rules associated with those chapters.
3. **Delegation of Authority.** This Article shall be administered and enforced by the Town Board. The Town Board may delegate to individuals the authority to administer and enforce this Article, or aspects thereof, on behalf of the Town. Such designees shall have full authority to carry out the duties delegated to them as well as such related powers and duties reasonably necessary to fully execute those delegated duties.
4. **Scope.** This Article applies to all Town road rights-of-way, including those dedicated to the public by plat, within the Town. The Town may, with respect to cartways, platted roads, and other dedicated roads that are not maintained by the Town, enforce this Ordinance to the extent the Town Board determines is necessary to preserve or protect its interests. However, any action taken by the Town on such roads shall not constitute its acceptance of the cartway or road for maintenance purposes. This Article does not apply to or otherwise regulate rights-of-way under the jurisdiction of another road authority. (Ordinance 100, 15 Sep 09)

Section 1.01. Definitions.

For the purposes of this Article, the following terms shall have the meaning given them in this section.

1. **Abandoned vehicle.** "Abandoned vehicle" means a motor vehicle, as defined in Minnesota Statutes, section 169.011, subdivision 42, located within a right-of-way that lacks vital component parts or is in an inoperable condition such that it has no substantial potential for further use consistent with its usual functions.

2. **Approach.** "Approach" means the area of the 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.
3. **Headwall.** "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.
4. **Junk.** "Junk" means 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.
5. **Motor Vehicle or Vehicle.** "Motor vehicle" or "vehicle" has the meaning given motor vehicle in Minnesota Statutes, section 169.011, subdivision 42.
6. **Obstruct.** "Obstruct" means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
7. **Parking enforcement officer.** "Parking enforcement officer" means a duly elected supervisor of the Town Board. Law enforcement officers shall have all the powers of a parking enforcement officer under this Article.
8. **Person.** "Person" means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
9. **Right-of-Way.** "Right-of-way" means the entire width between boundary lines of any way or place under the jurisdiction of the Town, including publicly dedicated rights-of-way, 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.
10. **Towing Company.** "Towing company" means a person engaged in the business of towing or recovering vehicles by means of a crane, hoist, tow bar, tow line, or dolly.
11. **Town.** "Town" means Baldwin Township, Sherburne County, Minnesota.
12. **Town Board.** "Town Board" means the Board of Supervisors of Baldwin Township, Sherburne County, Minnesota. (Ordinance 100, 15 Sep 09)

Section 1.02. Cultivation and Landscaping.

1. **Cultivation.** No person may cultivate, plant, harvest, or maintain agricultural crops, trees, bushes, or shrubs within a right-of-way

2. **Landscaping.** No person may cultivate, plant, or maintain grasses, flowers, vegetables, or other vegetation in any manner that obstructs visibility of a right-of-way 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. (Ordinance 100, 15 Sep 09)

Section 1.03. Obstructions and Junk Prohibited as a Public Nuisance.

1. **Obstructions.** No person may place, maintain, or allow any obstruction in a right-of-way other than those specifically permitted by this Article, by state law or rule, or by written approval of the Town Board. Items prohibited by this section include, but are not limited to, fences, posts, structures, 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.
2. **Junk.** No person shall place, discard, deposit, or maintain Junk in a right-of-way. (Ordinance 100, 15 Sep 09)

Section 1.04. Alteration of Grade.

No person may alter or change the depth or contour of any portion of any ditch or embankment in a right-of-way without written approval of the Town Board. (Ordinance 100, adopted 15 Sep 09)

Section 1.05. Unauthorized Maintenance.

No person may work, maintain, improve, or repair the traveled portion of a right-of-way without the written approval of the Town Board. (Ordinance 100, 15 Sep 09)

Section 1.06. Doing Damage.

No person shall cause damage to a right-of-way, whether by a willful act or a failure to exercise due care, without the written approval of the Town Board. Damage prohibited by this section includes obstructing a ditch, culvert, or any related drainage facilities. Any person doing work within a right-of-way with approval of the Town Board shall return the right-of-way to at least the same condition it was in prior to the damage. (Ordinance 100, adopted 15 Sep 09)

Section 1.07. Mailboxes, Signs and Newspaper Boxes.

1. **Mailboxes.** Mailboxes and newspaper boxes are permitted within a right-of-way if they do not interfere with, obstruct, or render dangerous for passage in a right-of-way. Mailboxes placed within a right-of-way shall comply with all of the standards in Minnesota Rules, chapter 8818 regardless of the speed limit of the adjacent road. The Town Board may remove and replace mailboxes that do not comply with the standards at the owner's expense as provided in Minnesota Statute, section 169.072.
2. **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. (Ordinance 100, 15 Sep 09)

Section 1.08. Property Access.

1. **Permit Required.** No person may construct or reconstruct any access within a right-of-way, including replacement of existing culverts, without first obtaining a permit from the Town.
 - (a) Applications for an access permit shall be submitted to the Town Clerk on forms provided by the Town.
 - (b) An application shall be accompanied by a non-refundable fee as provided by the town fee schedule
 - (c) An application shall also be accompanied by detailed written and graphic materials, including a site plan drawn to scale indicating the location of the proposed access in relation to property lines and other existing accesses.
 - (d) The town staff shall have the authority to request additional information from the applicant deemed necessary to determine compliance in relation to all pertinent sections of this Ordinance.
 - (e) The request shall be considered as being officially submitted when the Town Clerk determines that there is compliance with all the information requirements.
 - (f) Process:
 - (1) All applications for an access to a public road shall be subject to review by the Town Engineer.
 - (2) Construction of a single access to a residential lot or parcel or access(es) to commercial, industrial, and institutional lot or parcels shall be subject to approval the Town Engineer.
 - (3) Applications for more than one access to a residential lot or parcel shall be subject to the recommendation of the Town Engineer, review by the Planning Commission, and approval of the Town Board:
 - (i) The property owner shall have the burden of demonstrating that the criteria established by Section 1.08.2(c) of this Section are met.
 - (ii) The Planning Commission shall make a recommendation to the Town Board as to such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of this Ordinance.

(iii) Upon receiving the report and recommendation of the Planning Commission and Town staff, the Town Board may approve the request, with any conditions it considers necessary to protect the public health, safety, and welfare, or deny the application by majority vote.

(g) The Town Clerk shall within 10 days provide the applicant and property owner with written notice of the Town Board's decision regarding the application.

2. **Number of Accesses:**

(a) All properties shall be entitled to one access from a public road.

(b) Access to agricultural properties shall not be limited, but shall be subject to approval of the Town Engineer.

(c) Allowance of one or more additional accesses from a public road to a residential lot may be allowed, provided that the criteria are satisfied:

(1) The lot or parcel shall comply with the minimum lot area, width, and depth requirements of the Zoning Ordinance.

(2) There is a demonstrated need for more than one access due to physical site constraints (soils, steep slopes, significant vegetation, storm basins, wetlands or waterbodies) or the location of existing principal buildings.

(3) The proposed access shall not be onto a collector or arterial roadway designated by the Town.

(4) The location of all accesses shall comply with the provisions of this Ordinance and the requirements of the Zoning Ordinance, subject to approval of the Town Engineer.

(5) The proposed access shall comply with the construction standards of this Ordinance, subject to approval of the Town Engineer.

(d) Commercial, industrial, and institutional uses shall be allowed one access from each road frontage or, if located on the same road frontage, one access for each 125 feet of frontage to that roadway, subject to approval of the Town Engineer.

3. **Location.** All accesses to properties from a public road shall comply with the following requirements:

(a) Each lot or parcel shall have access directly onto an abutting, improved public road, except that shared accesses only within the public right-of-way onto a collector or arterial road designated by the town may be allowed subject to review by the Planning Commission and approval of the Town Board.

- (b) Access Spacing (measured at the right-of-way line):
 - (1) No access shall be located closer than 75 feet to the intersection of the pavement of two local public roads or another access on the same side of the road.
 - (2) No access shall be located closer than 150 feet to the intersection of the pavement with a collector or arterial road or another access on the same side of the roadway from a collector or arterial road.
- (c) All accesses shall be setback 10 feet from side or rear property lines, except as required for a shared access as allowed by Section 1.08.3(a) of this Ordinance subject to approval of the Town Engineer.
- (d) An access shall not encroach within a drainage and utility easement, except those at the perimeter of a lot as required by the Subdivision Ordinance, unless approved by the Town Engineer and the property owner enters into an encroachment agreement approved by the Town Attorney that is recorded with the property.

4. **Width:** The width of an access within the public right-of-way shall comply with the following standards to be defined on a standard detail plate:

- (a) Access to an agriculture, rural, or residential uses shall be a minimum of 16 feet and not more than exceed 24 feet in width.
- (b) Access to a commercial, industrial, or institutional use shall be a minimum of 24 feet and not more than 30 feet in width, unless approved by the Town Engineer for traffic circulation needs.

5. **Surface:**

- (a) The surface of an access within the public right-of-way shall be asphalt or concrete, except for an access to agricultural properties to be provided an adequate surface approved by the Town Engineer.
- (b) The surface of an access within a lot or parcel shall comply with the provisions of the Zoning Ordinance.

6. **Construction Standards.** Construction of an access from a public road shall comply with Town standard specifications and the following:

- (a) Culverts:
 - (1) Minimum length: 24 feet

- (2) Minimum diameter: 15 inches
- (3) All culverts shall be constructed of 16 gauge corrugated metal pipe
- (b) The inslope at the culvert within the right-of-way shall not exceed 4:1.
- (c) The full width of right-of-way abutting a lot or parcel shall be cleared and grubbed prior to construction of the access:
 - (1) All stumps, roots, logs, brush, shrubs, trees or other vegetation shall be removed from the upper two feet of the access embankment.
 - (2) Oversized rock, broken concrete, metals, or other debris shall be removed from the upper one foot of the access embankment.

7. **Installation and Maintenance:**

- (a) A property owner shall be responsible for all costs for construction of an access or reconstruction of an existing access to a lot or parcel from a public road, including the cost of a permit required by this section, as well as all labor and materials.
- (b) Property owners shall be responsible for all costs for maintaining, repairing, and replacing as necessary any access to their lot or parcel from a public road, including a culvert(s).
- (c) Any person that damages a culvert shall be responsible for all costs to replace the damaged culvert with a culvert sized to convey a discharge equal to or greater than the capacity of the damaged culvert, subject to approval of the Town Engineer.

8. **Headwalls Prohibited.** Construction or reconstruction of any headwall within a right-of-way shall be prohibited.

9. **Variances.** Exceptions to the provisions of this Section, except as regulated by the Zoning Ordinance, may be applied for in accordance with the following process:

- (a) A property owner shall submit a written request and other information to the Town Clerk explaining the standards from which a variance is sought and demonstrating the need for the variance.
- (b) The application shall include a non-refundable fee as required by the Town Fee Schedule.
- (c) The Town Engineer shall review and provide recommendations as to approval of the variance application and any conditions thereof for review by the Planning Commission.

- (d) Notice of the meeting at which the Planning Commission will consider the variance request shall be noticed to abutting property owners with access to the same public road, including those across a public right-of-way from the property applying for the variance.
- (e) The Planning Commission shall make a recommendation to the Town Board as to such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of this Ordinance.
- (f) Upon receiving the report and recommendation of the Planning Commission and Town staff, the Town Board may approve the variance request, with any conditions it considers necessary to protect the public health, safety, and welfare, or deny the application by majority vote.
- (g) The Town Clerk shall provide the applicant and property owner with written notice of the Town Board's decision regarding the application.
- (h) If a request for variance receives approval of the Town Board, the Town Clerk, at the applicant's expense, shall record such action with Sherburne County.

9. **Enforcement.** Owners of properties with accesses that fail to comply with the provisions of this Section may be required to remove and/or reconstruct such access at their expense, including responsibility for all costs incurred by the Town related to enforcement of this Ordinance and abatement of the violation. (Ordinance 100-2, 4 Dec 23)

Section 1.09. Drainage Affecting Right-of-Way.

No person may install, connect, construct, or reconstruct any drainage system or facility including, but not limited to, ditches, drain tile, culverts, or pipes into, across, or that outlets into a right-of-way without first obtaining a permit from the Town. A person may be required to submit a map or drawing of the existing or proposed drainage system when seeking approval. (Ordinance 100-2, 4 Dec 23)

Section 1.10. Abandoned Vehicles.

It shall be unlawful to park, store, leave, or to allow the parking, storage, or leaving of an abandoned vehicle in a right-of-way. Abandoned vehicles create an unsightly condition tending to reduce property values, interfere with the maintenance and safe use of rights-of-way, and constitute an attractive nuisance creating a hazard to the health, safety, and welfare of minors. (Ordinance 100-2, 4 Dec 23)

Section 1.11. Towing and Impoundment Authorized.

The Town may tow and have impounded a vehicle parked or abandoned in violation of this Article as provided in this section.

- (a) Parking Enforcement Officers. The duly elected supervisors of the Town Board are individually

designated parking enforcement officers for the purposes of this Article and shall have all powers provided such officers under this Article, Minnesota Statutes, section 169.041, and are authorized to act on behalf of the Town, as a towing authority, for the purposes of Minnesota Statutes, Chapter 168B.

- (b) Designating a Towing Company. The Town Board may designate one or more towing companies that a parking enforcement officer may contact to tow a vehicle in accordance with this Article. If one or more towing companies are designated, a parking enforcement officer shall use a designated company to the extent reasonably possible under the circumstances. The Town board may enter into such agreements with the towing companies as it deems necessary to provide for the timely towing and storage of vehicles. A towing company towing or impounding a vehicle pursuant to this Article shall be responsible for impounding and properly storing and safekeeping the vehicle and its contents. Any towing company towing a vehicle upon order of a parking enforcement officer shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in the towing, storage, and sale or other disposal of the vehicles it tows. (Ordinance 100-2, 4 Dec 23)

Section 1.12. Procedure for Towing Vehicles.

A parking enforcement officer shall comply with the following procedures before ordering a vehicle towed pursuant to this ordinance.

- (a) Citation and Towing Report. A parking enforcement officer shall issue a citation and towing report ("Report") regarding the vehicle in violation of this ordinance. The Report shall describe the vehicle, the license plate number, and the reasons for towing. The citation and towing report may be on the same form. The parking enforcement officer and the tow driver shall both sign the Report.
- (b) Waiting Period. If the vehicle is not moved or otherwise made to comply with this Article within four hours of the issuance of the Report, the parking enforcement officer may order the vehicle towed.
- (c) Immediate Towing. A parking enforcement officer may order the immediate towing of a vehicle, upon the issuance of a Report and without allowing for a waiting period, if its parked or located so as to:
 - 1) Violate the snow season parking prohibition contained in this Article;
 - 2) Interfere with snowplowing the traveled portion of a right-of-way;
 - 3) Block a driveway, alley, right-of-way, or fire hydrant;
 - 4) Be within 30 feet of a stop sign and visually blocking the stop sign;
 - 5) Be within a designated no parking area;
 - 6) Constitutes an accident or traffic hazard to the traveling public as determined by a parking enforcement officer;
 - 7) Prevent egress by a lawfully parked vehicle; or
 - 8) Violate state law allowing the immediate towing of a vehicle.

(d) Notice. Within five days of towing a vehicle, the town or the towing company shall send or otherwise deliver written notice of the towing to the owner and lien holder of the vehicle. If the town provides the notice, it shall provide a copy of the notice to the towing company and if the towing company provides the notice, it shall provide the town with a copy. If the owner cannot be identified, the notice required by this paragraph shall be published at least once in the town's official newspaper. The notice shall include the following information:

- 1) The date the vehicle was towed;
- 2) The place the vehicle was towed from;
- 3) The year, make, model, and vehicle identification number of the vehicle;
- 4) Information about the right to reclaim the vehicle and who to contact; and
- 5) The failure to reclaim the vehicle constitutes a waiver by them of any right, title, and interest in the vehicle and its contents and consent to dispose of both. (Ordinance 100-2, 4 Dec 23)

Section 1.13. Retrieving Impounded Vehicles.

An owner shall contact the towing company directly in order to reclaim a vehicle towed and impounded pursuant to this ordinance. The towing company may charge the reasonable costs of services provided in the towing, storage, and inspection of the vehicle before releasing the vehicle. The towing company shall be responsible for requiring sufficient proof of ownership before releasing a vehicle or its contents. A registered owner of a vehicle may retrieve the contents of a vehicle without charge and without retrieving the vehicles when authorized to do so pursuant to Minnesota Statutes, section 168B.07, subdivision 3. (Ordinance 100-2, 4 Dec 23)

Section 1.14. Disposal of Unclaimed Vehicles.

The towing company shall be responsible for properly disposing of the unclaimed vehicles impounded pursuant to this ordinance in accordance with the authority provided to impound lots under law to sell or otherwise dispose of impounded vehicles. (Ordinance 100-2, 4 Dec 23)

Section 1.15. Utilities in the Right-of-Way.

The installation, maintenance, replacement, and removal of utility lines, equipment, or related facilities within a right-of-way shall be regulated pursuant to Article II of this Ordinance.

Section 1.16. Town and Contractors.

The prohibitions, requirements, and restrictions contained in this Article do not apply to: the Town; Town officers, employees, or agents while operating within the course and scope of their duties for the Town; or contractors while performing services within the scope of a contract with the Town. (Ordinance 100-2, 4 Dec 23)

Section 1.17. Permissions and Permits.

1. **Conditions.** The Town may place reasonable conditions and impose reasonable regulations on any permission or permit it issues to do work within a right-of-way. Failure to comply with any condition or regulation may result in the revocation of the Town's permission or permit if the deficiency is not immediately corrected upon notice from the Town.
2. **Limitations.** Any person receiving permission or a permit from the Town Board as provided in this Article must comply with all applicable federal, state, and local laws and rules as well as all applicable Town ordinances, resolutions, specifications, regulations, and policies. The person shall also comply with all conditions, requirements, and limitations the Town Board expresses as part of the permission or permit. Any person doing work within a right-of-way shall be responsible for posting such signs, barricades, or other warning signs as may be required to notify the traveling public of any hazards created by the work and shall take such other measures as may reasonably be required to protect public safety.
3. **Indemnification.** Any person doing work within a right-of-way with permission or upon a permit issued by the Town agrees, as a condition of such permission or permit, to indemnify, defend, and hold the Town, its officers, employees, and agents harmless from all claims, suits, penalties and costs, including defense costs, the Town, its officers, employees, or agents may incur or be required to pay arising out of or in any way related to the work. Nothing in this ordinance shall constitute or be deemed a waiver of the limitations on or exemptions from liability available to the Town under Minnesota Statutes, Chapter 466 or otherwise. Additionally, the granting of permission or a permit shall not constitute a joint venture or joint enterprise between the person and the Town. (Ordinance 100-2, 4 Dec 23)

Section 1.18. Dedications.

The Town shall not assume the responsibility to maintain any right-of-way dedicated to the Town or the public, whether by plat or otherwise, until it is built to Town specifications, all conditions the Town Board may have imposed related to the acceptance of the road have been complied with to the satisfaction of the Town Board, and the Town Board passes a resolution determining that spending the Town's funds to maintain the road is in the public interest. (Ordinance 100-2, 4 Dec 23)

Section 1.19. Fees.

The Town Board shall establish, by resolution, fees for all permits required by this Article. The Town Board may amend its fee schedule by resolution at any regular meeting. (Ordinance 100-2, 4 Dec 23)

Section 1.20. Enforcement and Penalty.

1. **Violation.** A violation of any section or requirement of this Article is prohibited and shall constitute

a public nuisance. The person or persons violating this Article shall be subject to the penalties provided herein and shall be responsible for abating the nuisance, including the reimbursement of all costs the Town may incur to abate or otherwise respond to the nuisance.

2. **Correction Order.** Upon discovery of a violation of this Article, the Town Board may issue a correction order to the violator, in person or by U.S. Mail, ordering the person to correct the violation by a time certain. If the address of the violator is not known, or if the property is not occupied, the Town will provide notice of the order by posting same on the property. If the violator fails to comply with the correction order by the time indicated in the order, which in no case shall exceed 30 days, the Town Board may provide for the correction of the violation. Issuance of a correction order does not preclude imposition of the penalties set forth in this Article.
3. **Immediate Correction.** If the Town Board determines that the violation creates an immediate threat to public safety, the Town Board will make a good faith effort to notify the violator to immediately correct the situation. If the Town Board is not able to promptly contact the violator, or if the violator fails to immediately correct the situation upon notification, the Town Board may provide for the correction of the violation as it determines is appropriate.
4. **Cost of Correction.** The cost of correcting a violation shall be the responsibility of the violator. If the Town Board provides for the correction of the violation, all expenses incurred, including reasonable attorney's fees shall be billed to the violator. If the bill is not paid in full by the due date, the Town Board may exercise any options available to it under law to collect the amount due including, but not limited to, imposing the costs on the violator's property as a service charge pursuant to Minnesota Statutes, section 366.012.
5. **Penalty.** Any person who violates this Article shall be guilty of a misdemeanor and subject to the penalties for such as provided in State law, except that a violation of the parking restrictions contained herein shall be a petty misdemeanor. Each day of existence of such violation shall constitute a separate offense. If convicted, the person may be assessed the costs of prosecution as allowed by Minnesota Statutes, section 366.01, subdivision 10. (Ordinance 100-2, 4 Dec 23)

Section 1.21. Savings Clause.

The failure of the Town Board to exercise, and any delay in exercising, any right under this Article, 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 any other type of property interest. (Ordinance 100-2, 4 Dec 23)

Section 1.22. 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. (Ordinance 100-2, 4 Dec 23)

ARTICLE II
USE OF RIGHTS-OF-WAY BY UTILITY PROVIDERS

Section 2.00. Purpose and Authority.

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

Authority. As the road authority for the Town's roads, the Town Board has the authority and responsibility to provide for safe and efficient local roadways and to establish regulations governing the use and maintenance of Town roadways and public rights-of-way. This Article is adopted consistent with that authority as well as the authority provided the Town Board pursuant to 1997 Session Laws, Chapter 123, Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act"), Minnesota Statutes, sections 164.36, 169.832, 169.87, and the other laws governing applicable rights of the Town and users of the right-of-way. This Article shall be interpreted consistent with those statutes as well as with Minnesota Rules, parts 7819.0050 – 7819.9950 where possible. This Article shall not be interpreted to limit the regulatory and police powers of the Town to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public. (Ordinance 100, 15 Sep 09)

Section 2.01. Election to Manage the Public Right-of-Way.

Pursuant to the authority granted the Town under state and federal statutory, administrative and common law, the Town hereby elects, pursuant to Minnesota Statutes, section 237.163, subdivision 2(b), to manage its rights-of-way within the Town. (Ordinance 100, 15 Sep 09)

Section 2.02. Definitions.

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

1. **Abandoned Facility.** "Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way User.
2. **Applicant.** "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.
3. **Commission.** "Commission" means the Minnesota Public Utilities Commission

4. **Construction Performance Bond.** "Construction Performance Bond" means any of the following forms of security provided at permittee's option:
 - a. Individual project bond;
 - b. Cash deposit;
 - c. Letter of Credit, in a form acceptable to the Town;
 - d. Self-insurance, in a form acceptable to the Town; or
 - e. A blanket bond for projects within the Town, or other form of construction bond, for a time specified and, in a form, acceptable to the Town.

5. **Degradation.** "Degradation" means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

6. **Degradation Cost.** "Degradation Cost" subject to Minnesota Rules, part 7819.1100, means the cost to achieve a level of restoration, as determined by the Town at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules, parts 7819.9900 to 7819.9950.

7. **Degradation Fee.** "Degradation Fee" means the estimated fee established at the time of permitting by the Town to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

8. **Delay Penalty.** "Delay Penalty" is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

9. **Emergency.** "Emergency" means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

10. **Equipment.** "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

11. **Excavate.** "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

12. **Excavation Permit.** "Excavation Permit" means the permit which, pursuant to this Article, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such a permit.

13. **Excavation Permit Fee.** "Excavation Permit Fee" means money paid to the Town by an applicant to cover the costs as provided in this Article.

14. **Facility.** "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.
15. **Local Representative.** "Local Representative" means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service and to make decisions for that registrant regarding all matters within the scope of this Article.
16. **Management Costs.** "Management Costs" means the actual costs the Town incurs in managing its rights-of-way, including such costs, if incurred, as those associated with: registering applicants; issuing, processing, and verifying right-of-way Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way Permits. Management costs do not include payment by a telecommunications right-of-way User for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes, sections 237.162 or 237.163; or any ordinance enacted under those sections, or the Town fees and costs related to appeals taken as provided in this Article.
17. **Obstruct.** "Obstruct" means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
18. **Obstruction Permit.** "Obstruction Permit" means the permit which, pursuant to this Article, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.
19. **Obstruction Permit Fee.** "Obstruction Permit Fee" means money paid to the Town by a permittee to cover the costs as provided in this Article.
20. **Patch.** "Patch" or "Patching" means a method of pavement replacement or roadway repair that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only on roads the Town Board has scheduled to be overlaid within five years.
21. **Pavement.** "Pavement" means any type of improved surface that is within the public right-of-way and that is paved or otherwise constricted with bituminous, concrete, aggregate, or gravel.
22. **Permit.** "Permit" has the meaning given "right-of-way Permit" 111 Minnesota Statutes, section 237.162.
23. **Permittee.** "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the Town under this Article.

24. **Person.** "Person" means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political. (Ordinance 100, 15 Sep 09)
25. **Registrant.** "Registrant" means any person who (1) has or seeks to have their 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. (Ordinance 500, 7 Nov 11)
26. **Restore.** "Restore" or "Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
27. **Restoration Cost.** "Restoration Cost" means the amount of money paid to the Town by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.
28. **Right-of-Way.** For purposes of this Article, "right-of-way" means the area on, below, or above a public road, highway, street, cartway, bicycle lane or public sidewalk in which the Town has an interest, including other publicly dedicated 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 non-wire telecommunications or broadcast service.
29. **Right-of-Way Permit.** "Right-of-way permit" means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Article
30. **Right-of-Way User.** "Right-of-way user" means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
31. **Service.** "Service" or "Utility Service" includes (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minnesota Statutes, Chapter 238; (4) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (5) water, and sewer, including service laterals, steam, cooling or heating services.
32. **Service Lateral.** "Service Lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.
33. **Temporary Surface.** "Temporary Surface" means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the Town's two-year plan, in which case it is considered full restoration.

34. **Trench.** "Trench" means an excavation in the traveled surface of a road, with the excavation having a length equal to or greater than the width of the traveled surface.
35. **Telecommunications Right-of-Way User.** "Telecommunication right-of-way user" means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Article, a cable communication system defined and regulated under Minnesota Statutes, Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, Chapter 308A, are not telecommunications right-of-way users for purposes of this Article.
36. **Town Board.** "Town Board" means the Board of Supervisors of Baldwin Township, Sherburne County, Minnesota.
37. **Town.** "Town" means Baldwin Township, Sherburne County, Minnesota.
38. **Town Representative.** "Town Representative" means a Town supervisor or other person designated by the Town Board to conduct inspections or to otherwise oversee work done within rights-of-way, whether such work is done by permit or otherwise. (Ordinance 100, 15 Sep 09)

Section 2.03. Permit Requirement.

1. **Permit Required.** Except as otherwise provided in this Article, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Town to do so.
 - (a) Excavation Permit. An excavation permit is required to excavate within a right-of-way related to the installation, repair, replacement, or removal of facilities.
 - (b) Obstruction Permit. An obstruction permit is required to obstruct a right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
 - (c) Combination Permit. If a proposed utility project involves both the excavation and obstruction of a right-of-way, a person may apply for a combination excavation/obstruction permit.
2. **Exclusions.** The Town, its agents, and contractors performing work for the Town shall not be required to obtain permits from the Town to excavate or obstruct a right-of-way. Contractors performing work for the Town shall be required to erect and maintain such signs and other traffic control devices as are necessary to warn of the work and to protect public safety.

3. **Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless: (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and (ii) a new permit or permit extension is granted.
4. **Delay Penalty.** In accordance with Minnesota Rule, part 7819.1000, subpart 3, the Town may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.
5. **Permit Display.** Permits issued under this Article shall be conspicuously always displayed or otherwise available at the indicated work site and shall be available for inspection by the Town. (Ordinance 100, 15 Sep 09)

Section 2.031. Registration and Right-of-Way Occupancy.

1. **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 Town. Registration will consist of providing application information and paying a registration fee.
2. **Registration Prior to Work.** No Person may construct, install, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Town.
3. **Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a Town ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. 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 the Minn. Stat. 216D, "One call" Law. (Ordinance 500, 7 Nov 11)

Section 2.032. Registration Information.

1. **Information Required.** The information provided to the Town at the time of registration shall include, but not be limited to:
 - (a) Each of the following, if applicable; registrant's name, Gopher One-Call registration certificate number, address, e-mail address, telephone and facsimile numbers.
 - (b) 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 registration.

(c) A certificate of insurance or self-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, or a form of self-insurance acceptable to the Town;
- (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;
- (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;
- (4) Requiring that the Town be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Town in amounts sufficient to protect the Town and the public and to carry out the purposes and policies of this Ordinance.

(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 filled with 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.

2. **Notice of Changes.** The registrant shall keep all of the information listed above current at all times by providing the Town information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change. (Ordinance 500, 7 Nov 11)

Section 2.033. Reporting Obligations.

1. **Operations.** Each registrant shall, at the time of the registration and 60 days prior to construction, file a construction and major maintenance plan for underground facilities with the Town. Such plan shall be submitted using a format designated by the Town and shall contain the information determined by the Town to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of way.

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

- a) 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 Project").

The term "project" in this section shall include next year's projects. (Ordinance 500, 7 Nov 11)

Section 2.04. Permit Applications.

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

- 1. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- 2. Payment of money due the Town for:
 - (a) permit fees, estimated restoration costs and other management costs;
 - (b) any outstanding amounts related to prior obstructions or excavations;
 - (c) any undisputed loss, damage, or expense suffered by the Town because of applicant's prior excavations or obstructions of the rights-of-way, or any emergency actions taken by the Town; and
 - (1) franchise fees or other charges, if applicable,
- 3. Payment of disputed amounts due the Town by posting security or depositing in an escrow accounts an amount equal to at least 110% of the amount owing.
- 4. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the Town deems the existing construction performance bond inadequate under applicable standards. (Ordinance 100, 15 Sep 09)

Section 2.05. Issuance of Permit; Conditions.

- 1. **Permit Issuance.** If the applicant has satisfied the requirements of this Article, the Town shall issue a permit.
- 2. **Conditions.** The Town may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. (Ordinance 100, 15 Sep 09)

Section 2.06. Permit Fees.

1. **Excavation Permit Fee.** The Town shall establish an excavation permit fee in an amount sufficient to recover the following costs:
 - (a) the Town management costs; and
 - (b) degradation costs, if applicable.
2. **Obstruction Permit Fee.** The Town shall establish an obstruction permit fee and it shall be in an amount sufficient to recover the Town management costs.
3. **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 applicants to pay such fees within thirty (30) days of billing.
4. **Non-Refundable.** Permit fees that were paid for a permit that the Town has revoked for a breach as provided in this Article are not refundable.
5. **Fees.** All fees provided for in this Article shall be determined by resolution of the Town Board and shall be designed to recover the actual costs the Town incurs related to the particular project and in managing its rights-of-way. (Ordinance 100, 15 Sep 09)

Section 2.07. Right-of-Way Patching and Restoration.

1. **Timing.** The work to be done under an excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited due to unseasonal or other weather conditions which reasonably prohibited the work.
2. **Patch and Restoration.** Permittee shall patch its own work. The Town may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
 - (a) Town Restoration. If the Town restores the right-of-way, the permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the roadway settles due to permittee's improper backfilling, the permittee shall pay to the Town, within thirty (30) days of billing, all costs associated with correcting the defective work.
 - (b) Permittee Restoration. If the permittee restores the right-of-way, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule, part 7819.3000.
 - (c) Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a Degradation Fee. However, the right-of-way user shall remain responsible for patching, and the Degradation Fee shall not include the cost to accomplish these responsibilities. (Ordinance 100, 15 Sep 09)

3. **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 the standards for right-of-way restoration in Minnesota Rule, part 7819.1100 and shall further be guided by the following considerations:
 - (a) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
 - (b) The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
 - (c) The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;
 - (d) 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.
 - (e) 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. (Ordinance 500, 7 Nov 11)
4. **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 Town, 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 Town, 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 unseasonal or unreasonable as provided in this Ordinance. (Ordinance 500, 7 Nov 11)
5. **Duty to Correct Defects.** The permittee shall correct detections in patching or restoration performed by permittee or its agents. The permittee, upon notification from the Town, shall correct all restoration work to the extent necessary, using the method required by the Town. Said work shall be completed within five calendar days of the receipt of the notice from the Town, not including days during which work cannot be done because of circumstances constituting *force majeure* or days when work is prohibited by unreasonable weather conditions.
6. **Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the Town or fails to satisfactorily and timely complete all restoration required by the Town, the Town at its option may do such work. In that event, the permittee shall pay to the Town, within thirty (30) days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the Town may immediately exercise its rights under the construction performance bond. (Ordinance 100, 15 Sep 09)

Section 2.08. Supplementary Applications.

1. **Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area: (i) make application for a permit extension and pay any additional fees required thereby; and (ii) be granted a new permit or permit extension.
2. **Limitations on Dates.** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date. (Ordinance 100, 15 Sep 09)

Section 2.09. Other Obligations.

1. **Compliance With Other Laws.** Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the Town or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes, sections 216D.01-.09 (Gopher One Call Excavation Notice System), and Minnesota Rules, Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work
2. **Prohibited Work.** Except in an emergency, and with the approval of the Town, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
3. **Interference with Right-of-Way.** A permittee shall not so obstruct a right-of-way so as to interfere with the natural free and clear passage of water through culverts, ditches, or other waterways or drainage structures within the right-of-way. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with Town parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
4. **Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 2160; Minnesota Rules, Chapter 7560; and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Town. (Ordinance 100, 15 Sep 09)

5. **Traffic Warnings and Signage.** When working in or obstructing a 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 Control Devices. (Ordinance 500, 7 Nov 11)

Section 2.10. Denial of Permit.

The Town may deny a permit for failure to meet the requirements and conditions of this Article if the Town determines that the denial is necessary to protect the health, safety, and welfare, or if the Town determines such denial is necessary to protect the right-of-way and its current use. (Ordinance 100, 15 Sep 09)

Section 2.11. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, parts 7819.1 100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, Chapter 7560, and this Article. (Ordinance 100, 15 Sep 09)

Section 2.12. Inspection.

1. **Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.
2. **Site Inspection.** The permittee shall make the worksite available to the Town and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. **Authority of Town Representative.**
 - (a) At the time of inspection, the Town Representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - (b) The Town Representative may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will cause revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Town Representative that the violation has been corrected. If such proof has not been presented within the required time, the Town Representative may revoke the permit as provided herein. (Ordinance 100, 15 Sep 09)

Section 2.13. Work Done Without a Permit.

1. **Emergency Situations.** Each right-of-way user shall immediately notify the Town Representative of any event regarding its facilities that it considers to be an emergency. The right-of-way user may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency does not fulfill this requirement. Within two business days after the occurrence of the emergency, the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Article for the actions it took in response to the emergency.
2. **Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the Town, deposit with the Town the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Article. (Ordinance 100, 15 Sep 09)

Section 2.14. 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 Town of the accurate information as soon as this information is known. (Ordinance 100, 15 Sep 09)

Section 2.15. Revocation of Permits.

1. **Substantial Breach.** The Town reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
 - (a) The violation of any material provision of the right-of-way permit;
 - (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens;
 - (c) Any material misrepresentation of fact in the application for a right-of-way permit;
 - (d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
 - (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by a Town Representative.
2. **Written Notice of Breach.** If the Town determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the

permit, the Town shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be the cause for revocation of the permit. A substantial breach, as stated above, will allow the Town, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

3. **Response to Notice of Breach.** Within 24 hours of receiving notification of the breach, the permittee shall provide the Town with a plan, acceptable to the Town, which will cure the breach. Permittee's failure to so contact the Town, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
4. **Reimbursement of Town costs.** If a permit is revoked, the permittee shall also reimburse the Town for the Town's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation. (Ordinance 100, 15 Sep 09)
5. **Cause for Probation.** From time to time, the Town may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one 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.
6. **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 full year, except for emergency repairs. (Ordinance 500, 7 Nov 11)

Section 2.155. Mapping Data.

1. **Information Required.** Each registrant shall provide mapping information required by the Town in accordance with Minnesota Rules, part 7819.4100.
2. **Trade Secret Information.** At the request of any registrant, any information requested by the Town, which qualifies as a "trade-secret information" under Minnesota Statutes, section 13.37, subdivision 1(b), shall be treated as trade secret information by the Town. (Ordinance 500, 7 Nov 11)

Section 2.16. Location of Facilities.

1. **Undergrounding.** Unless otherwise permitted by an existing franchise or Minnesota Statutes section 216B.34, or unless existing above-ground facilities is 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.

2. **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 Town 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 Town 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.

3. **Nuisance.** One year after the passage of this Ordinance, 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 the right-of-way to a usable condition.
4. **Limitations of Space.** To protect health, safety and welfare or when necessary to protect the right-of-way and its current use, the Town 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 Town shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the 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 which have been determined to be in the public interest. (Ordinance 500, 7 Nov 11)

Section 2.161. Relocation of Facilities.

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 Town 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 Town 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 which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor. (Ordinance 500, 7 Nov 11)

Section 2.172. Pre-Excavation Facility and Facilities Location.

In addition to complying with the requirements of Minnesota Statutes, Sections 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 is 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. (Ordinance 500, 7 Nov 11)

Section 2.173. 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 to protect it, the Town 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 which it or its facilities damages. 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. (Ordinance 500, 7 Nov 11)

Section 2.17. Right-of-Way Vacation.

1. **Reservation of Right.** If the Town vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the Town shall reserve, to and for itself and all registrant's 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.
2. **Relocation of Facilities.** If the vacation requires the relocation of 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 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. (Ordinance 500, 7 Nov 11)

Section 2.18. Indemnification and Liability.

1. By registering with the Town, or by accepting a permit under this Ordinance, 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 Town 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.

2. **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 unreasonably 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 in its own behalf. (Ordinance 500, 7 Nov 11)

Section 2.19. Abandoned and Unusable Facilities.

1. **Discontinued Operations.** A registrant who has determined to discontinue its operations in the town must either:
 - (a) Provide information satisfactory to the town that the registrant's obligations for its facilities in the right-of-way under this Ordinance have been lawfully assumed by another registrant; or
 - (b) Submit to the Town a proposal and instruments for transferring ownership of its facilities to the Town. If a registrant proceeds under this clause, the Town may, at its option:
 - (1) purchase the facilities; or
 - (2) require the registrant, at its own expense, to remove it; or
 - (3) require the registrant to post a bond in an amount sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the facilities.

2. **Abandoned Facilities.** Any 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 usable condition, or (iii) requiring removal of the facilities by the registrant, or the registrant's successor in interest.
3. **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 Town. (Ordinance 500, 7 Nov 11)

Section 2.195. Reservation of Regulatory and Police Powers.

A permittees or registrant's 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. (Ordinance 500, 7 Nov 11)

Section 2.20. Appeal.

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are not in conformity with Minnesota Statutes, sections 237.163, subdivision 6; or (4) disputes a determination of the Town Representative regarding compliance with this Article or of permit conditions may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the Town Board. The Town Board shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the Town Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision. (Ordinance 100, 15 Sep 09)

Section 2.22. Savings Clause.

The failure of the Town Board to exercise, and any delay in exercising, any right under this Article, 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 any other type of property interest. (Ordinance 100, 15 Sep 09)

Section 2.23. Severability.

If any portion of this Article is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this Article precludes the Town from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein. (Ordinance 100, 15 Sep 09)

Section 2.23. Effective Date. This Article shall be effective upon its passage and the first day of publication.
(Ordinance 100, 15 Sep 09)(Ordinance 500, 7 Nov 11)