

**TOWN OF NEPEUSKUN  
WINNEBAGO COUNTY, WISCONSIN**

**ORDINANCE NO. 01-2023-01**

**TOWN ROAD RIGHT-OF-WAY FACILITY LOCATION ORDINANCE**

WHEREAS, the Town Board of the Town of Nepeuskun, Winnebago County, Wisconsin ("Town Board") has deemed it is in its best interest and that of its citizens to amend the Town of Nepeuskun Municipal Code by adopting and adding a Town Road Right-of-Way Facility Location Ordinance that would create a permitting and regulatory scheme for the construction, installation and repair of facilities used to furnish or distribute heat, light, water, sanitary sewer service, power, telephone service, internet service, or natural gas across or within Town road right-of-way; and

WHEREAS, the Planning Commission of the Town of Nepeuskun ("Planning Commission"), Winnebago County, Wisconsin, reviewed and recommended adoption of Ordinance No. 01-2023-01 on January 9, 2023, at a properly noticed meeting open to the public; and

WHEREAS, the Town reviewed and considered Ordinance No. 01-2023-01 and the Planning Commission recommendation on January 16, 2023, at a properly noticed meeting open to the public; and

**NOW, THEREFORE:**

1. The Town Board hereby adopts Town of Nepeuskun Ordinance No. 01-2023-01, Town Road Right-of-Way Facility Location Ordinance, as Chapter 16 of the Town of Nepeuskun Municipal Code, as follows:

**16.1 Purpose.** *The purpose of this Ordinance is to create a permitting and regulatory scheme for the construction, installation and repair of facilities used to furnish or distribute heat, light, water, sanitary sewer service, power, telephone service, internet service, or natural gas across or within Town road right-of-way. The Town of Nepeuskun reserves the right to waive any fees associated with town sponsored projects.*

**16.2 Authority.** *This Ordinance is adopted pursuant to Wis. Stat. § 86.16, 182.017, 66.0831, and pursuant to the Town's police powers.*

**16.3 Definitions.** *For purposes of this Chapter, the following definitions apply:*

1. *"Person and/or applicant" shall mean all individuals, partnerships, associations, and bodies politic or corporate.*
2. *"Facilities" shall mean any pipes, lines, or other infrastructure used to furnish or distribute heat, light, water, sanitary sewer service, power, telephone service, internet service, or natural gas across or within Town road right of way.*

**16.4 Establishment of Permit.** *No Person may construct or install Facilities across or within any Town road right-of-way without a Facility Location Permit issued by the Town Zoning Administrator or an agent designated by the Town Board.*

**16.5 Application for Permit.** Application for a Facility Location Permit shall be made in writing to the Town Clerk upon a form furnished by the Town Zoning Administrator and shall contain, at a minimum, the following information. Applications will not be processed, reviewed or approved until the application is deemed complete by the Town Zoning Administrator.

1. The applicant's name, address, and contact information.
2. Plan map or sketch showing the following:
  - a. The location of the proposed Facilities.
  - b. The location of all existing Facilities.
  - c. The vertical and horizontal distance between the proposed Facilities and all existing Facilities.
3. Estimated project starting and restoration completion dates.
4. For Facility installations and repairs running parallel to four (4) or more parcels, documentation of existing right-of-way conditions shall be submitted using concise photos and/or video covering the entire route.
5. Signature agreeing to the provisions and conditions of the permit.
6. Any other information requested by the Town Zoning Administrator or designated agent of the town needed for application review purposes.
7. Non-refundable application fee consistent with the Town's Annual Fee Schedule.

**16.6 Application Fee.** The Town Zoning Administrator shall collect a non-refundable application fee, consistent with the Town's Annual Fee Schedule, from the applicant at the time of application for a permit. Failure to submit the appropriate application fee will result in the application being deemed incomplete.

**16.7 Facility Separation.** All proposed Facilities shall be set back from existing Facilities that were installed by the Town or a Town Sanitary District a minimum horizontal distance of eight feet and a minimum vertical distance of eighteen inches, unless lesser setbacks are approved by the Town Board in its sole discretion.

**16.8 Administration of Permit.** Facility Location Permits shall be issued by the Town Zoning Administrator unless the Town Board has delegated such authority to another agent. In either event, no Facility Location Permit will be issued until the Town first submits the application to all affected Town utility districts for review and recommendation.

**16.9 Indemnification.** All Facility Location Permit holders shall defend, indemnify, and hold harmless the Town, all Town sanitary and utility districts, and their respective officers, employees, agents, and insurers harmless of and from all actions of any nature whatsoever that arise out of or are connected with any work done by the applicant pursuant to a Facility Location Permit.

**16.10 Enforcement.** Any Person who violates this Chapter shall be subject to a Class III fine as established by Chapter 1 of the Town of Nepeuskun Municipal Code in addition to any other remedies available to the Town at law or equity. For purposes of determining forfeitures under this Ordinance, each day an offense continues constitutes a separate offense. In addition to forfeitures, the Town may seek injunctive relief, abatement orders, and other equitable relief as the Town deems necessary to enforce this Ordinance. The Town shall also be awarded cost of prosecution, including reasonable attorneys' fees, in the event of a violation. Finally, any applicant not in compliance with a previously issued permit, will not receive another Facility Location Permit until compliance is obtained.

2. Passage of this ordinance repeals any prior ordinance addressing construction, installation and repair of facilities within the town right-of-way.

Adopted this 16th day of January, 2023, on the following vote of the Town Board:

Yes: 2 No: 0 Abstain: 0 Absent: 1

TOWN OF NEPEUSKUN

By:   
Kyle Grahn (Jan 18, 2023 08:08 CST)

Kyle Grahn, Town Chairperson

Attest:   
Rebecca L. Pinnow (Jan 18, 2023 06:53 CST)

Rebecca Pinnow, Town Clerk