

WATAB TOWNSHIP, BENTON COUNTY, STATE OF MINNESOTA

ORDINANCE #4 (Amended November 2014)

AN ORDINANCE REGULATING TOWN ROAD RIGHTS-OF-WAY

The Board of Supervisors of Watab Township, Benton County, hereby adopts and ordains this Ordinance to Manage and Regulate Township Public Rights-of-Way. (It replaces the previously adopted Ordinance 4):

Section 1. Purpose and Authority.

- A. **Purpose.** The primary objectives of this ordinance 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 Board finds that the regulations, requirements, and restrictions, as set forth in this ordinance, are in the best interests of the health, safety, and welfare of the Town's citizens.
- B. **Authority.** As a road authority, the Board has broad authority to regulate what occurs within the Town's road rights-of-way. This authority is found in Minnesota Statute Section 365.10, Subd. 17, a variety of Sections in Chapters 160, 164, 165, 169, 222, 237, 368, and other chapters, as well as the rules associated with those chapters and all other powers granted to Urban Townships.

Section 2. Definitions.

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

- A. **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.
- B. **Board.** "Board" means the town board of supervisors of Watab Township, Benton County, MN.
- C. **Excavate.** "Excavate" means to dig into, trench, or remove, physically disturb or penetrate the soil, gravel, rock, wall, culvert, or any other part of the Right-of-Way. Excavate also means to build or install any Facility within the Right-of-Way.
- D. **Facilities.** "Facilities" means any tangible structure or asset in the Right-of-Way intended to provide public utility service, including cabling, piping, well, sign, tank, utility structure, tower, transformer, connection or junction box, or irrigation piping.
- E. **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.
- F. **Junk.** "Junk" means scrap metal; synthetic or organic trash, garbage, waste materials, or rubbish; rubber debris; appliances; junked, dismantled, or wrecked automobiles or farm or construction machinery.
- G. **Obstruct.** "Obstruct" means to place a tangible object in the Right-of-Way so as to hinder or interfere with the free and open passage of any portion of the Right-of-Way for more than two hours.
- H. **Permittee.** "Permittee" means an Applicant to whom the Township has issued a Right-of-Entry Permit.
- I. **Person.** "Person" means an individual, corporation, business trust, partnership, or association, or any other legal entity.
- J. **Right-of-Entry Permit Application.** "Right-of-Entry Permit Application" means a request or application made on the township board approved application form from an Applicant to obtain a Right-of-Entry Permit.
- K. **Right-of-Way.** "Right-of-Way" includes the definition of that term contained in Minnesota Statutes 237.162, subd. 3, and also means the entire width between boundary lines of the traveled and non-traveled portions of a road, cartway, or passage under the control and jurisdiction of Watab Township.
- L. **Vehicle.** "Vehicle" means any device which may be used to transport any person or property upon a road.
- M. **Town.** "Town" means the organized government of Watab Township, Benton County, Minnesota.

Section 3. Prohibition without Permit. No Person shall Excavate or Obstruct a Right-of-Way without first obtaining a Right-of-Entry Permit from the Town. No Person shall install or place (permanently or temporarily) any Facility or Junk in the Right-of-Way, without first obtaining a Right-of-Entry Permit from the Town.

Section 4. Town Removal of Facility or Junk. The Township Board shall have the right to remove any Facility or Junk installed or placed in any Right-of-Way without a Right-of-Entry Permit. The Township Board shall have the right to charge the cost, and enforce the collection of such cost, of removing any Facility or Junk installed or placed in any Right-of-Way without a Right-of-Entry Permit, against any person installing or placing such Facility or Junk.

Section 5. Permit Required. A Right-of-Entry Permit shall be required for any Person intending to dig into, trench, or in any way remove, physically disturb or penetrate a part of the Right-of-Way; or build or install any Facility within the Right-of-Way. A Right-of-Entry Permit shall be required for any person intending to place a tangible object in the Right-of-Way so as to hinder or interfere with the free and open passage of any portion of the Right-of-Way for more than two hours.

Section 6. Permit Application. An Applicant for a Right-of-Entry Permit shall submit an application (on the form adopted by the Township Board) to the Township Clerk providing all the required information on the form. The form must be approved by a Township Board member who will serve as the inspector. The fee for the permit shall be established through a Resolution of the Township Board.

Section 7. Permit Conditions. The Township Board may imposed reasonable conditions upon the issuance of the Right-of-Entry Permit to protect the integrity of the Right-of-Way and to provide for the health, safety, and welfare of neighboring property owners and residents or roadway users. Any Person receiving a Right-of-Entry permit from the Board as provided in this ordinance must comply with all applicable federal, state, and local laws and rules as well as all applicable Town ordinances, resolutions, specifications, regulations, and policies. Any Person receiving a Right-of-Entry Permit must comply with all conditions, requirements, and limitations the Board expresses as part of the permit. Failure to comply with any of the conditions, requirements, or limitations shall void the Permit and could place the person in violation of this ordinance.

Section 8. Permit Denial. The Township Board may deny a Permit Application if the Applicant refuses to complete all the required information on the Permit Application or to provide the Township Board with any additional requested information; if the Applicant's proposed work would substantially damage or permanently obstruct the Right-of-Way and Watab Township's ability to maintain the Right-of-Way; or Applicant's proposed work would adversely affect the health, safety, or welfare of neighboring property owners and resident or roadway users.

Section 9. Work Standards. All work in the Right-of-Way shall be performed according to the standards contained in Minnesota Rules 7819.1100, or any applicable Watab Township requirements. All telecommunications Facilities to be installed in a Right-of-Way shall be installed according to the requirements contained in Minnesota Rules 7819.5000, in addition to all other applicable federal, state, and local requirements. All gas and electric Facilities to be installed in a Right-of-Way shall be installed according to the requirements contained in Minnesota Rules 7819.5100, subp. 2, in addition to all other applicable federal, state, and local requirements.

Section 10. Warning Signs. A Permittee shall place and install all necessary warning signs as needed to warn the public of its Excavation or Obstruction. A Permittee shall comply with the standards established by the Minnesota Department of Transportation in determining the need for signage, the type of signs, and their location.

Section 11. Alteration of Right-of-Way Grade. No Person may alter or change the depth, direction or contour of any portion of any ditch or embankment in a Right-of-Way, without the prior written approval of the Township Board.

Section 12. Cultivation and Landscaping. No person shall cultivate, plant, harvest, or maintain agricultural or garden crops, trees, bushes, or shrubs within a Right-of-Way. No person shall cultivate, plant, or maintain grasses, flowers, vegetables, or other vegetation in any manner that obstructs visibility of a road or otherwise interferes with, obstructs, or renders dangerous for passage a Right-of-Way. If a person elects to install sprinkler heads or sprinkler systems in the road right-of-way, the township shall have no liability for them. If a utility company has a permit to enter the right-of-way, they are also not liable for any damage to the sprinkler system or other personal utilities that have been placed in the road right-of-way. The Town shall not be liable for any damage to plants, water systems, sprinkler heads, invisible fencing, or any other property planted or installed within a Right-of-Way that results from use and maintenance of the Right-of-Way.

Section 13. Obstructions and Junk. No person may place, maintain, or allow any obstruction in a Right-of-Way other than those specifically permitted by this ordinance, by state law or rule, or by the prior written approval of the Town Board. Items prohibited by this section include, but are not limited to, fences, retaining walls, posts, structures, rocks, piled materials, hay bales, vehicles, trailers, campers, equipment, or any other items that interfere with the safe use or maintenance of the Right-of-Way. No person shall place or maintain Junk in a Right-of-Way.

Section 14. Unauthorized Maintenance. No person may work, maintain, improve, or repair the traveled portion of a Right-of-Way without the prior written approval of the Township Board.

Section 15. Doing Damage. No person shall cause damage to a Right-of-Way without the prior written approval of the Town Board. Any person doing damage within a Right-of-Way with approval of the Board shall return the Right-of-Way to at least the same condition as it was prior to the damage. Any person or contractor performing work in the Right-of-Way, including but not limited to the installation of utilities, shall restore the Right-of-Way to its pre-construction condition. Such restoration includes, but is not limited to, grading, compaction of soils and gravel, replanting of vegetation, re-installing mailboxes or signage, and repair to roadway and driveway surfaces. All restoration work performed by utility companies must comply with Minnesota Rules Chapter 7819.

Section 16. Mailboxes and Signs.

1. **Mailboxes.** Mailboxes, including newspaper boxes, are permitted within a Right-of-Way if they do not interfere with, obstruct, or render a road dangerous for passage. All mailboxes placed within a Right-of-Way must comply with all of the standards in Minnesota Rules Chapter 8818, regardless of the speed limit of the road on which the mailbox is located. Any mailbox which does not comply with Minnesota Rules Chapter 8818 is presumed to be a hazard to the traveling public. The Board may remove and replace mailboxes that do not comply with the standards as provided in Minnesota Statute Section 169.072 or this ordinance, regardless of the date the mailbox was installed.
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.

Section 17. Parking of Vehicles within a Right-of-Way.

1. **24-Hour Parking.** No person shall park a vehicle in a Right-of-Way for a period exceeding 24 hours. After 24 hours, the vehicle may be towed away and impounded at the owner's expense.
2. **Safety.** Under no circumstances shall a person park a vehicle in a Right-of-Way in such a way as to create a hazard for the traveling public or interfere with maintenance of the Right-of-Way.
3. **Parking Enforcement.** The Town Board Chair or the Chair's designee is designated the Town's parking enforcement officer. The parking enforcement officer may issue a parking citation and sign a towing order. All parking citations shall include the license number of the vehicle if available, the date and hour at which the violation was found to exist, the nature of the violation, and any other necessary facts relating to the violation.
4. **Towing and Impounding.** The Board is a towing authority under Minnesota Statute Section 169.041 Subd 1. In accordance with Minnesota Statute Section 169.041, the Board may tow and impound any vehicle found parked in violation of this ordinance. The Board may authorize a private towing company to tow and impound vehicles on behalf of the Town. Any impounded vehicle may be redeemed by the owner or the person parking the vehicle in violation of this ordinance by paying, to the entity which towed and impounded the vehicle, the applicable towing charge and storage fees, or any other related expenses.

Section 18. Approaches, Culverts, and Headwalls.

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

Section 19. Utilities. A utility company is required, at its own expense, to promptly and permanently remove and relocate its Facilities in the Right-of-Way when removal is necessary to prevent interference in connection with: the Town's present or future use of the Right-of-Way for a public project; the public health, safety, and welfare; or the safety and convenience of travel over the Right-of-Way.

1. **Right-of-Way Vacation.** If the Board vacates all or a portion of a Right-of-Way containing Facilities, and the vacation does not require the relocation of those Facilities, the Board shall, except when it would not be in the public interest, reserve for itself and all those having Facilities in the vacated Right-of-Way, the right to install, maintain, and operate facilities in the

vacated Right-of-Way and to enter upon the Right-of-Way at any time to reconstruct, inspect, maintain, or repair the Facilities. When a Right-of-Way vacation does require the relocation of Facilities, the utility company shall pay the cost of relocating its Facilities upon the vacation of the Right-of-Way as provided for in Minnesota Rule 7819.3200, Subp. 2.

2. **Abandoned Facilities.** A utility company is required to remove any of its abandoned Facilities in conjunction with other Right-of-Way repair, Excavation, or construction unless expressly waived by the Board in a specific situation upon the request of the Person. Abandoned Facility has the meaning provided in Minnesota Rule 7819.0100, Subp. 2.

Section 20. Town and Contractors. The prohibitions, requirements, and restrictions contained in this ordinance do not apply to: the Town; town officers 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.

Section 21. Site Inspection. Watab Township board members and others authorized by the Township Board may inspect the worksite at any time during or upon completion of the work. At any time, Watab Township may order cessation of work which poses a serious threat to the life, health, safety, or welfare of the public.

Section 22. Enforcement and Penalty.

1. **Correction Order.** Upon discovery of violations of this ordinance, the Board may issue a correction order to the violator ordering the Person to correct the violations by a time certain. If the violator fails to comply with the correction order by the time indicated in the order, the Board may provide for the correction of the violations. Issuance of a correction order does not preclude imposition of the penalty set forth in this ordinance.
2. **Immediate Correction.** If the Board determines that violations create an immediate threat to public safety, the Board will make a good faith effort to notify the violator to immediately correct the situation. If the Board is not able to promptly reach the violator, or if the violator fails to immediately correct the situation upon notification, the Board will provide for the correction of the violations.
3. **Cost of Correction.** The cost of correcting a violation shall be the responsibility of the violator. If the Board provides for the correction of the violations, all expenses incurred, including reasonable attorney's fees, shall be billed to the violator. If the bill is not paid by the due date, the Board may exercise any lawful options available to it to collect the amount due.
4. **Penalty.** The Town Board may by resolution establish a schedule of administrative penalties for violations of this ordinance. The amount of the penalty shall reflect the costs associated with inspection, notice and order, posting, and/or abatement of the violation. Administrative penalties shall be imposed according to the schedule adopted by the Town. Administrative penalties may be imposed in addition to any criminal charges or fines. Any person who violates this ordinance shall be guilty of a misdemeanor and subject to the penalties for such as provided in State Law. Each day of existence of such violations shall constitute a separate offense. If convicted, the person may be assessed costs of prosecution as allowed by Minnesota Statutes Section 366.01, Subd. 10.

Section 23. Savings Clause. The failure of the Board to exercise, or any delay in exercising, any right under this ordinance, including enforcement, shall not operate as a waiver 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.

Section 24. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Dated: November 3, 2014

Supervisors:
Ed Kacures Jr.
Lloyd Erdmann
Craig Gondeck

Attested by:

Clerk:

Patricia Spence