



**Meeting:** Village Board  
**Meeting Date:** 05/23/2016  
**Agenda Item:** 6b

**Mission Statement**  
To provide our residents with a safe, friendly, attractive and active community by aggressively pursuing innovative ways to

## VILLAGE BOARD MEETING STAFF REPORT

**REPORT TO:** Burt R. McIntyre, President  
Village Board of Trustees

**REVIEWED BY:**

**REPORT FROM:** Geoffrey Farr, PE, Director of Public Works

**AGENDA ITEMS:** Review and consider Ordinance 2016-17 regulating the use of Public Rights-of-Way.

### **POLICY ISSUE**

Should the Village Board approve Ordinance 2016-17 regulating utilities or any persons use of the public right of way?

### **BACKGROUND INFORMATION**

Staff worked with Village Attorney Dennis Duffy and Attorney Anita T. Gallucci of Boardman Clarke on fine tuning the ordinance adopted by the Village Board in April. As a result changes have been made to the original ordinance. The revised ordinance is attached for your review. The ordinance provides a regulatory framework for staff to process permit applications in a fair, uniform and defensible manner.

Updating Howard's Right-of-Way (ROW) Management Ordinance was spurred in part by the request to install 4 foot diameter 120 foot tall poles in the Village ROW rather than on private property. That application intended to locate one of the towers between the curb and the sidewalk where cars might hit it and block visibility for motorists. Also many of the ROW permits that the Village receives have increasingly desired to place new facilities in random locations in an uncontrolled poorly planned manner resulting in an inefficient use of limited space in the ROW. New facilities may also create potential hazards to right of way users and increase Village operating costs to administer permits and maintain its utility facilities. The Village desires to control the number of obstructions, locations and excavations taking place in the public ROW in order to ensure that they remain available for public services and remain safe for use.

### **PRIOR ACTION/REVIEW**

The Village Board approved Ordinance 2016-09 at its April 25<sup>th</sup> meeting.

**FISCAL IMPACT:**

1. Is There A Fiscal Impact?	Positive, <u>Yes</u>
2. Is it Currently Budgeted?	<u>N/A</u>
3. If Budgeted, Which Line?	<u>N/A</u>
4. <u>Amount:</u>	<u>N/A</u>

**RECOMMENDED ACTION**

Village staff recommends that the Village Board approve Ordinance 2016-17.

If the Village Board were in favor of this policy action, the following motion could be made:

***“Motion to approve Ordinance 2016-17.”***

**POLICY ALTERNATIVE(S)**

The Village Board could take the following actions:

- Approve the ordinance
- Not approve the ordinance
- Table the ordinance

**ATTACHED INFORMATION**

- I. Ordinance 2016-17

**COPIES FORWARDED TO:**

- I. None

**ORDINANCE No. 2016-17**

**AN ORDINANCE REPEALING AND RECREATING  
ARTICLE VIII. RIGHT-OF-WAY MANAGEMENT  
SECTIONS 32-372 THROUGH 32-398 OF CHAPTER 32, STREETS, SIDEWALKS  
AND OTHER PUBLIC PLACES OF THE VILLAGE OF HOWARD MUNICIPAL CODE  
BROWN COUNTY, WISCONSIN**

**THE VILLAGE BOARD OF THE VILLAGE OF HOWARD, BROWN COUNTY, WISCONSIN  
DOES ORDAIN THAT ARTICLE VIII. RIGHT-OF-WAY MANAGEMENT, SECS. 32-372  
THROUGH 32-398, OF CHAPTER 32, STREETS, SIDEWALKS AND OTHER PUBLIC  
PLACES BE CREATED TO READ AS FOLLOWS:**

**SECTION 1. ARTICLE VIII. DIVISION 3. EXCAVATIONS AND OPENINGS, Sections 32-372  
through 32-398 is deleted in its entirety.**

**SECTION 2. ARTICLE VIII. RIGHT-OF-WAY MANAGEMENT**

**Section. 32-372 Findings and Purpose.**

- (a) In the exercise of its police powers, the Village has priority over all other uses of the public Rights-of-Way. The Village desires to anticipate and minimize the number of obstructions and excavations taking place in the public Rights-of-Way to ensure that the Rights-of-Way remain available for public services and safe for public use. The taxpayers of the Village bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excess deterioration the public Rights-of-Way is the frequent excavation by Person who place facilities therein.

The Village finds that there has been an increase in the use of the public Rights-of-Way and, as a result, increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

The Village finds that excavation and occupancy of the public Rights-of-Way causes direct and indirect costs to be borne by the Village and its taxpayers, including but not limited to:

1. Administrative costs associated with public Right-of-Way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public Right-of-Way users.
3. Repair costs to the roadway associated with the actual excavation into the public Right-of-Way.

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

In response to the foregoing facts, the Village hereby enacts this new ordinance relating to administration of and permits to excavate obstruct and/or occupy the public Rights-of-Way, together with an ordinance making necessary revisions to other Code provisions. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within its Rights-of-Way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the Village a legal framework within which to regulate and manage the public Rights-of-Way, and to provide for recovery of costs. This ordinance provides for the health, safety and welfare of the residents of the Village as they use the Rights-of-Way of the Village, as well as to ensure the structural integrity of the public Rights-of-Way.

Under this Chapter, all Persons who excavate, obstruct and/or occupy the public Rights-of-Way will reimburse the Village's administrative, ongoing management and degradation costs. Right-of-Way users will bear a fair share of the financial responsibility for the integrity of the public Rights-of-Way.

#### **Section. 32-373 Definitions.**

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

"Applicant" means any person requesting permission to excavate, obstruct and/or occupy a Right-of-Way.

"Village" means the Village of Howard, Wisconsin, a Wisconsin municipal corporation.

"Degradation" means the accelerated depreciation of the Right-of-Way, caused by an excavation of the Right-of-Way, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the excavation did not occur,

"Department" means the Village's Director of Public Works.

"Department Inspector" means any person authorized by the Department to carry out inspections related to the provisions of this Chapter.

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

"Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way.

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

"In", when used in conjunction with "Right-of-Way," means over, above, in, within, on or under a Right-of-Way.

"Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.

"Obstruct" means to place any object in a Right-of-Way so as to hinder free and open passage over/ under on or in that or any part of the Right-of-Way.

"Occupy" means to dwell or reside above, on, in, or below the boundaries of the public Rights-of-Way.

"Permittee" means any person to whom a permit to excavate or occupy a right-of-way has been granted by the Village under this Chapter.

"Person" means, municipality, corporation, company, including a "Company" as defined in Wis. Stat. § 182.017(1g)(b), association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

"PSCW" means the Public Service Commission of Wisconsin.

"Public Utility" has the meaning provided in Wis. Stat. §196.01(5).

"Registrant" means any Person who has registered with the Village (1) to have its facilities located in any Right-of-Way or (2) to use or seek to occupy or use the Right-of-Way or any facilities in the Right-of-Way.

"Repair" means to perform construction work necessary to make the Right-of-Way useable for travel, according to department specifications, or to return facilities to

an operable condition that is in as good or a better a condition as the facilities were before the work commenced.

"Repair Bond" means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that Right-of-Way excavation repair work is completed in both a timely and quality manner, per Department specifications.

"Right-of-Way" means the surface and space above and below a public roadway, highway, street, bicycle lane, landscape terrace, shoulders, side slopes, and public sidewalk in which the Village has an interest, including other dedicated Rights-of-Way for travel purposes.

"Rights-of-Way User" means a person owning or controlling a facility in the public Right-of-Way, or seeking to own or control a facility in the public Right-of-Way.

"Service" or "Utility Service" includes services such as municipal sewer and water services and services provided by a Public Utility or a Company subject to Wis. Stat. § 182.017 and other similar services.

"Supplementary Application" means an application made to excavate or obstruct more of the Right-of-Way than allowed in, or to extend, a permit that has already been issued.

"Unusable Facilities" means facilities in the Right-of-Way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.

#### **Section. 32-374 Administration.**

The Department is responsible for the administration of the Rights-of-Way, and the permits and ordinances related thereto.

#### **Section. 32-375 Registration for Right-of-Way Occupancy.**

(a) Registration. Each service, utility service or Right-of-Way user who occupies, uses, or seeks to occupy or use, the Right-of-Way or any facilities in the Right-of-Way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any Right-of-Way shall register with the Department and pay the fee set forth in Section 32-377. Registration will consist of providing application information and paying a registration fee.

This section shall not apply to those persons exclusively utilizing facilities provided by another Right-of-Way user.

(b) Registration Prior to Work. No person may construct, install, repair, 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 Department.

(c) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain the tree lawn in the area of the Right-of-Way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this Chapter.

**Section. 32-376 Registration Information.**

(a) Information Required. The information provided to the Department at the time of registration shall include, but not be limited to:

Each registrant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

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.

All Right-of-Way users shall demonstrate to the satisfaction of the Village the financial capability to cover any liability that might arise out of their presence in the Right-of-Way. If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to by the Secretary of State.

A copy of the person's certificate of authority from the PSCW 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.

Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, Section 32-395 herein.

(b) Notice of Changes. The registrant shall keep all of the information listed above

current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

**Section. 32-377 Registration Fee.**

- (a) Annual Registration Fee. Each registrant shall annually renew its registration or discontinue and properly abandon its facilities. The Department shall establish the Registration Fee in an amount sufficient to recover the costs incurred by the Village for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.
- (b) Fee Computation. The Department may recalculate and establish a new Registration Fee each year.

**Section. 32-378 Reserved.**

**Section 32-379 Excavation Permit Requirement.**

- (a) Excavation Permit Required. Except as otherwise provided in this Chapter or other Chapters of the Village Code, no person shall excavate any Right-of-Way or place facilities in a Right-of-Way without first having obtained an excavation permit from the Department.

No person shall excavate the Right-of-Way or maintain an excavation in the Right-of-Way beyond the date or area specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to Section 32-387, and a new permit or permit extension is granted.

- (b) Permit Display. A copy of any permit issued under this Chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

**Section. 32-380 Excavation Permit Application.**

- (a) Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
  - (1) Registration with the Department as required by this Chapter;
  - (2) Submission of a completed permit application form, including the following:



- (i) If the proposed project involves the installation of a pole or tower in the Right-of-Way, the applicant must submit scaled drawings of the proposed pole or tower and all proposed attachments.
- (ii) The applicant shall identify in detail the location of the proposed project and any affected Right-of-Way, public utility easements, and the location of all existing and proposed facilities within the project area in addition to installation details, traffic control plans and other details requested by the Department;
- (iii) If the proposed project involves the installation of a pole or tower in the Right-of-Way, the applicant must submit evidence sufficient to demonstrate that the applicant is prohibited from using an existing pole or tower (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law.
- (iv) If the proposed project involves the installation of a pole or tower in the Right-of-Way that is greater than 10 feet taller than existing poles or towers in nearby Right-of-Way, the applicant must submit evidence sufficient to demonstrate that:
  - (A) the greater height is required to accomplish the applicant's purposes;
  - (B) the applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibitive, or prohibited by law; and
  - (C) the pole or tower, due to its height and size, poses no greater danger to the health, safety, and welfare of the public than existing poles in nearby Right-of-Way.

(3) Payment of all money due to the Village for:

- (i) applicable permit fees and costs as set forth below;
- (ii) unpaid fees or costs due for prior excavations; or
- (iii) any loss, damage, or expense suffered by the Village because of applicant's prior excavations of the Rights-of-Way or any emergency actions taken by the Village.

- (4) A statement on forms provided by the Department that the registrant will comply with all local, state and federal codes including but not limited to safety, building, traffic control codes and the Manual of Uniform Traffic Control Devices (MUTCD).
- (5) Furnish a certificate of liability insurance complaint with standards of the Department.
- (6) Post a repair bond. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a repair bond for the additional facilities is insufficient, the posting of an additional or larger repair bond for the additional facilities may be required.
- (7) The Department shall not deny a registrant an excavation permit because of a dispute between the Village and the registrant, related to Section 32-380(a)(3)(b) and/or Section 32-380(a)(3)(c) if:
  - (i) the dispute has been adjudicated in favor of the registrant;
  - (ii) the dispute is the subject of an appeal filed by the registrant and no decision in the matter has at yet been rendered.

**Section. 32-381 Excavation Permit Fee.**

- (a) Fee Calculation. The Excavation Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the Village. This fee shall recover costs incurred by the Village for each of the following categories as provided herein:
  - (1) Administrative: The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.
  - (2) Repair: No repair fee shall be collected by the Village. However, the Permittee shall be required to repair the public Right-of-Way to Department specifications, subject to inspection and acceptance by the Department, as per Section 32-382, and to pay a degradation fee.
  - (3) Degradation: The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch.

The area of the patch shall generally be square and calculated by adding two feet to each side of the anticipated street cut and then, at the option of the Department, extending to the full pavement lane width. Depreciation schedules shall be provided by type of street.

The total excavation permit fee shall be calculated as follows: Total Excavation Permit Fee = Administrative Cost + Degradation Fee.

- (b) Village Exemption. The Village and its contractors shall not pay administrative and degradation fees.
- (c) Payment of Permit Fees. No excavation permit shall be issued without payment of applicable fees, unless the applicant shall agree to pay such fees within thirty (30) days of billing therefor.
- (d) Fee Computation. The Department may recalculate and establish a new fee structure each year.
- (e) Non-refundable. Permit fees paid for a permit that the Department has revoked for a breach as stated in Section 32-389 are not refundable.

**Section 32-382 Right-of-Way Repair.**

- (a) The work to be done under the excavation permit, and the repair 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 as unseasonable or unreasonable under Section 32-388.
- (b) In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.
- (c) A Permittee may request to have the Village repair the Right-of-Way.
  - (1) Village Repair. If the Permittee requests to have the Village repair the Right-of-Way, the Village may accept or reject the request at its sole option. If the Village accepts, the Permittee shall be billed for the Village's costs, and shall pay the amount thereof within thirty (30) days of billing.
  - (2) Permittee Repair. If the Permittee chooses to repair the Right-of-Way, it shall, at the time of application for an excavation permit, post a repair

bond in an amount determined by the Department to be sufficient to cover the cost of repairing the Right-of-Way to Department specifications. If, thirty-six (36) months after completion of the repair of the Right-of-Way, the Department determines that the Right-of-Way has been properly repaired, the surety on the repair bond shall be released.

- (d) Standards. The Permittee shall perform repairs according to the specifications of the Department and/or in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair and may do so in written procedures of general application or on a case-by-case basis.
- (e) Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion, except for organic material, which shall be maintained for twelve (12) months. During either period, the Permittee shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 32-388.
- (f) Failure to Repair. If the Permittee fails to repair the Right-of-Way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the Village, within thirty (30) days of billing, the cost of repairing the Right-of-Way. If the Permittee fails to pay as required, the Village may exercise its rights under the repair bond.

**Section. 32-383 Reserved.**

**Section 32-384 Inspection.**

- (a) Notice of Completion. When the work under any permit issued hereunder is completed, the Permittee shall notify the Department.
- (b) Site Inspection. The Permittee shall make the work site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) Authority of Department. At the time of inspection, the Village may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The Village may issue an order to the registrant for any

work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Sec. 32-389.

**Section 32-385 Fall Radius/Breakaway Requirements.**

- (a) Poles and other utility structures over 60 feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.
- (b) Rigid non-breakaway poles and other utility structures shall be located a minimum of 10' from roadway curbs or shoulders and behind existing or future sidewalks.

**Section. 32-386 Joint Applications.**

- (a) Joint Application. Registrants may jointly apply for permits to excavate the Right-of-Way at the same place and time.
- (b) With Village Projects. Registrants who join in a scheduled excavation performed by the Village, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portion of the excavation permit fee.
- (c) Shared Fees. Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

**Section. 32-387 Supplementary Applications.**

- (a) Limitations on Area. An excavation permit is valid only for the area of the Right-of-Way specified in the permit. No Permittee may perform any work or excavate 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 excavated must, before working in that greater area (1) make application for a permit extension and pay any additional fees required thereby and (2) be granted a new permit or permit extension.
- (b) Limitation on Dates. An excavation 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.

- (c) Fees for Supplementary Applications. A Permittee shall pay administration costs for any additional permits. A Permittee is not required to pay an additional degradation fee for the same excavation, if such fee has already been paid on the original permit.

**Section. 32-388 Other Obligations.**

- (a) Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the Right-of-Way does not relieve a Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other Village, County, State, or Federal rules, laws, or regulations. A Permittee shall comply with all requirements of local, state, and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.
- (b) Prohibited Work. Except in an emergency, or with the approval of the Department, no Right-of-Way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

**Section 32-389 Revocations, Suspensions, Refusals to Issue or Extend Permits.**

- (a) Grounds. The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
  - (1) The applicant or Permittee is required by Sec. 32-375 to be registered and has not done so or the permit application is otherwise incomplete;
  - (2) The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required under Section 32-378; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
  - (3) Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
  - (4) Misrepresentation of any fact by the applicant or Permittee;

- (5) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
- (6) Failure of the applicant or Permittee to complete work in a timely manner;
- (7) The proposed activity is contrary to the public health, safety or welfare;
- (8) The extent to which space is available in the Right-of-Way for which the permit is sought;
- (9) The competing demands for the particular space in the Right-of-Way;
- (10) The availability of other locations in the Right-of-Way or in other Rights-of-Way for the facilities of the Permittee or applicant;
- (11) If the Permittee or applicant proposes to install a new pole or tower in the Right-of-Way, the availability of other existing poles or towers owned by the Permittee or applicant or by a third party;
- (12) The applicability of ordinances or other regulations of the Right-of-Way that affect location of facilities in the Right-of-Way;
- (13) The condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial reconstruction; or
- (14) The applicant or Permittee is otherwise not in full compliance with the requirements of this Chapter or state or federal law.

(b) Discretionary Issuance. Notwithstanding Subd. (a) (2), the Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its Public Utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or Village ordinance or an order of a court or administrative agency.

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

**Section 32-390 Work Done Without a Permit.**

(a) Emergency Situations. Each registrant shall immediately notify the Village by verbal notice on an emergency phone number provided by the Village of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this Chapter. If the Village becomes aware of an emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The Village may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(b) Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a Right-of-Way must subsequently register and apply for an excavation permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Chapter or other Chapters of the Village Code, deposit with the Department the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Chapter. If a subsequent permit is denied or is not approved, the registrant shall discontinue and abandon its facilities.

**Section 32-391 Supplementary Notification.**

If the excavation of the Right-of-Way begins later or ends sooner than the date given on the permit, the Permittee shall notify the Department of the accurate information as soon as this information is known.

**Section 32-392 Location of Facilities.**

(a) Undergrounding. Unless in conflict with state or federal law, except when existing aboveground facilities are used, the installation of new facilities and replacement of old existing facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

(b) Corridors. The Department may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the Village expects will someday be located within the Right-of-Way. All excavation, obstruction, or other permits issued by the Village involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Department's assignment.



Any registrant who has facilities in the Right-of-Way in a position at variance with the corridors established by the Village 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 Village 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.

- (c) **Limitation of Space.** To protect health, safety, and welfare, or when necessary to protect the Right-of-Way and its current use, the Department may prohibit or limit the placement of new, replacement or additional facilities within the Right-of-Way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the Right-of-Way. In making such decisions, the Department 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 Village plans for public improvements and development projects which have been determined to be in the public interest.

#### **Section 32-393 Relocation of Facilities.**

Except as prohibited by State or Federal law, 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 Department 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 Department may make such request to prevent interference by the Company's facilities with (i) a present or future Village use of the Right-of-Way, (ii) a public improvement undertaken by the Village, (iii) an economic development project in which the Village 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.

#### **Section 32-394 Interference with Other Facilities during Municipal Construction.**

When the Village performs work in the Right-of-Way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the Village shall notify the local representative. The registrant shall meet with the Village's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within 72-hours, unless the Village agrees to a longer period. In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the Village may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days. Add alternate delay damage charges.

**Section 32-395 Indemnification.**

By registering with the Village, or by accepting a permit under this Chapter, a registrant or Permittee, as the case may be, agrees to indemnify, defend, and hold harmless the Village, its officers, boards, committees, commissions, elected officials, employees and agents (collectively, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the Village or its agents or employees.

**Section 32-396 Abandoned Facilities.**

- (a) Discontinued Operations. A registrant who has determined to discontinue its operations in the Village must either:
- (1) Provide information satisfactory to the Department that the registrant's obligations for its facilities under this Chapter have been lawfully assumed by another registrant; or
  - (2) Submit to the Department a proposal and instruments for dedication of its facilities to the Village. If a registrant proceeds under this clause, the Village may, at its option:
    - (i) accept the dedication for all or a portion of the facilities; or
    - (ii) require the registrant, at its own expense, to remove the facilities in the Right-of-Way at ground or above ground level; or

- (iii) require the registrant to post a bond or provide payment sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any Right-of-Way shall remove it from that Right-of-Way within two years, unless the Department waives this requirement.

(b) Abandoned Facilities. Facilities of a registrant who fails to comply with Section 32-396 subd. (a), and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

(c) Public Utilities. This section shall not apply to a Public Utility that is required to follow the provisions of Wis. Stat. § 196.81.

#### **Section 32-397 Reservation of Regulatory and Police Powers.**

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

#### **Section 32-398 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.

Secs. 32-399 – 32-410. Reserved.

**SECTION 3.** All ordinances or parts of ordinances, in conflict herewith are hereby repealed.

**SECTION 4.** This ordinance shall take effect on and after its passage and publication.

Approved and adopted this 23<sup>rd</sup> day of May, 2016.

APPROVED:

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Burt R. McIntyre, Village President

ATTEST:

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Christopher A. Haltom, Village Clerk

Date of Publication:

May 27, 2016