

## **Section 8.02 Public Right-Of-Way Permit Required**

### **8.02(A) Purpose.**

This Section 8.02 is intended to regulate and provide a framework for persons or entities to obtain a permit from the Town to utilize the Town right-of-way for roadway additions, roadway alterations, underground accommodations, and surface alterations within the right-of-way. The intent of this Section 8.02 is to provide a procedure for the Town to determine whether to grant a permit to work within the right-of-way and, if so, the conditions of such permit including the location, design, and the nature and quality of construction of all improvements that may be made in or encroach into the public right-of-way.

### **8.02(B) Definitions.**

- (1) Right-of-Way is defined as a public way dedicated to the public for its intended use.
- (2) Road is defined as a public way for pedestrians and vehicular traffic and utility access, including but not limited to highways, thoroughfares, parkways, through highways, streets, avenues, boulevards, lanes, places and courts, and any pavements, turf, fixtures, facilities, structures, plantings, signs and other elements of the right-of-way under the Town's jurisdiction or control.
- (3) Structure is defined as anything constructed or erected, existing or proposed, the use of which requires more or less permanent location on the ground or attached to something having permanent location on the ground.
- (4) Town Engineer is defined as a firm or individual designated by the Town Board to advise the Town Board on a particular project; if the Town Board does not designate an engineer, the term shall be defined to mean the Town Board.
- (5) Utility is defined as a public or private service corporation that provides electric, gas, cable television, telephone, fiber optic, sanitary sewer, water main, or storm sewer to/from one region to another region and exists in physical overhead and/or underground structures within easements or rights-of-way within the Town.

### **8.02(C) Permit Required.**

The Town, by means of this Section 8.02, requires a permit for any work that utilizes the right-of-way for roadway additions, roadway alterations, underground accommodations,

and surface alterations. Each person desiring to undertake an activity regulated by this ordinance shall submit the appropriate application(s), information and fee(s) as required by this Section 8.02 to the Town Clerk, no less than eight (8) weeks prior to the time the work is scheduled to begin.

**8.02(D) General Provisions.**

(1) No person shall place a culvert in the public right-of-way of a Town road without first obtaining a permit from the Town.

(2) No person shall cause, allow or permit any person to throw, deposit or discharge any weeds, sediment, sod, brush, manure or other waste or rubbish on any public right-of-way in the Town. This includes waste generated from construction sites.

(3) No person shall cause, allow or permit any persons to draw, paint, print or paste on any culvert, bridge or guardrail on any public right-of-way in the Town.

(4) No person shall cause, allow or permit any person to plant any tree or cut any tree on a public right-of-way in the Town without a permit issued by the Town. No permit shall be issued or reissued by the Town to plant any tree if the planting and location of the tree will substantially impair, now or in the future, the public safety of persons in the Town. No permit will be issued or reissued by the Town Board to cut any tree if the cutting of the tree, with the safety precautions to be taken, as described by the applicant, will still substantially impair, now or in the future, the public safety of persons in the Town, or if the cutting and removal of the tree will substantially destroy the aesthetic beauty in the Town.

(5) Retaining walls, stone walls, monuments, signs, lights, etc., shall not be allowed within Town right-of-way, including in connection with any driveways.

(6) Underground utilities improvements, including extensions, alterations, removals, etc., shall not be allowed within the Town right-of-way without a permit for such work.

(7) Excavation, grading, ditching, reditching or otherwise altering of topography of lands within the Town right-of-way shall not be allowed without a permit for such work.

(8) Curb and gutter shall not be allowed within the Town road right-of-way for private access unless the Town road has curb and gutter.

(9) Additional provisions for a particular activity associated with right-of-way, easement, roadway, driveway or utility construction may be required at the discretion of the Town.

(10) Any person prior to and at the time of seeking a permit from the Town must own or have a legal interest in and current legal access to the land to which the permit(s) will apply.

(11) Use of accesses existing at the time of the adoption of this ordinance and not discontinued in use for agriculture-related residences or agriculture field entrances will be allowed.

#### **8.02(E) Application.**

The Town Clerk shall receive all information pertaining to the permit request. The Town Clerk will initially review the submittal information for completeness and relevance.

(1) Permits shall be initially requested by the completion and submittal of an application form and required supplemental information.

(2) The purpose of the application procedure is to provide the background information necessary for the Town to perform an informed review of the proposed activity. Review of an application is preliminary and does not constitute permit authorization. Permits will only be authorized subsequent to approval of a finalized application.

(3) The Town reserves the right to request pertinent information necessary for the adequate review and determination of the work-in-right-of-way permit approval. The Town also reserves the right to verify compliance of the proposed activities according to all regulations in this ordinance and other applicable codes.

(4) An application for a permit shall include, at a minimum:

(a) The name of the applicant who is directing, performing or otherwise undertaking the work requested for the permit. If a contractor or other entity seeks a permit on behalf of a property owner for which a permit is requested, the application shall be submitted upon signed and notarized approval of the property owner.

(b) The mailing address of the applicant of the property for which the permit is requested.

(c) The property(ies) address or tax parcel designation of the property(ies) adjacent to the roadway.

(d) The name(s) of the adjacent roadway(s).

(e) Description of the type of work that is proposed and the proposed use of the completed facilities, if necessary (existing and proposed).

(f) Approximate date of proposed start of construction.

(g) Approximate date of project completion.

(h) A plan map shall be prepared with a North arrow and scale of not more than one inch equals 100 feet with a reasonable degree of accuracy that depicts the site conditions, neighboring features, and all proposed facilities, if necessary.

(i) Erosion control provisions for the work.

(j) Other information provided by the applicant that is necessary for an informed review of the application request.

(5) Applications shall not be reviewed unless the appropriate application fee(s) is received. The Town of Leeds shall be the recipient of all fees associated with work in town right-of-way permits.

(a) The application fee for the permit shall be established by Resolution of the Town Board, and may be amended from time to time.

(b) In addition to the application fee, the applicant shall pay all costs related to the Town's review, approval, inspections (if any) and enforcement of the permit, if required and as necessary by the nature of the permit request. This includes, but is not limited to fees and costs of the Town Engineer and Town Attorney.

(c) Any person proceeding in a manner requiring a permit who fails to obtain such permit shall pay twice the permit fee upon being brought into compliance, in addition to reasonable engineering, inspection, legal or other costs incurred by the Town as a result of the noncompliance.

(d) Any person who does not pay the fees of the Town in reviewing the application for a permit, or pursuant to (c) above within 30 days of receiving a billing statement from the Town Clerk, consents that the unpaid invoice shall be added to the applicant's tax bill, or adjoining consenting property owner, and collected as a special charge against the property pursuant to Wis. Stats § 66.0627.

(6) Upon appropriate Town Board approval of the proposed activity, a permit shall be granted.

(a) Plan Changes. The Town Clerk shall be notified of any changes to the plan approved in the application. Additional review information may be requested by the Town in the application review process.

(b) Other Requirements. The Town reserves the right to impose other requirements for the proposed activity prior to permit issuance, based on reasonable protections of public health, safety or specific Town ordinance(s).

(7) Revocation. The Town reserves the right to revoke a permit, based on the following:

(a) False or misleading information in the application.

(b) Improper construction techniques.

(c) Work done beyond the scope of the project.

(d) Nonpayment of Town costs incurred in connection to the application review and processing.

(8) After the work has been completed, the Town Engineer shall inspect the work to determine whether or not it was constructed according to the plan(s) and is consistent with the requirements of this ordinance.

(9) A permit, and its requirements thereof, shall be active for the duration of the project, but shall not exceed one year without written extension approval from the Town.

(10) The Town may extend a permit upon reasonable justification by the applicant in writing.

(11) The Town's issuance of a permit does not constitute a determination that a proposed activity or construction thereof is safe, suitable for use, or otherwise passable for the public.

(12) Where the Town deems it necessary to secure performance of the conditions of the work, the applicant shall be required to secure the work via a bond amount consisting of at least 110% of the estimated cost of the construction project in favor of the Town. Such bond shall remain in full force and effect for at least one year past the estimated date of completion of the project. This requirement may not be applied to public service corporations, sanitary districts and public utility districts.

**8.02(F) Permit Conditions.**

All permits issued or deemed issued under this ordinance shall be issued subject to the following minimum conditions:

(1) All activities undertaken under the permit shall conform to the application and any conditions placed upon granting of the permit.

(2) The applicant shall give at least two working days' notice to the Town prior to starting any work in the road. If a road will be fully or partially closed for any duration of time by the work, the applicant shall notify the Columbia County Sheriff's Department, the Columbia County Highway Department, the local fire department(s) and emergency medical service(s), as well as the Town Clerk.

(3) The applicant must receive written approval from the Town or its designee prior to any modifications of the activity contemplated by the permit.

(4) The applicant is responsible for repairing any damage, at the applicant's expense, to any adjoining property.

(5) The applicant is responsible for locating and maintaining any existing public utilities or structures located within the right-of-way and repairing damage to such structures.

(6) No portion of the Town roadway shall remain out of service as a result of the activity contemplated in the permit for more than 24 hours without express prior consent of the Town.

(7) Where the work being performed is for the benefit of property abutting upon the affected roadway, the applicant, on behalf of applicant or the owner of such benefitted abutting property, authorizes the Town to perform any work or operations necessary to bring the affected roadway into conformity with the permit if the work is not completed in a timely fashion, and further consents to the Town assessing the cost thereof to the owner of such benefitted abutting property as a special charge pursuant to Wis. Stats. § 66.0627.

(8) The entire cost of constructing and maintaining the facility during construction shall be borne by the applicant. The applicant shall maintain the facility after construction unless there is an appropriate legal agreement with the Town to do otherwise. At a minimum, the agreement shall address the Town's requirements for surety, acceptance of improvements, and timelines as necessary for the construction improvements proposed.

(9) All costs related to the Town's review, approval, inspections (if any), and enforcement of the permit shall be borne by the applicant.

(10) All road work must be completed within five working days of completion of the project for which the road was opened.

(11) The applicant and any contractors shall provide satisfactory proof of liability insurance in such reasonable amount as determined by the Town in accordance with the nature and extent of the work. Insurance shall be maintained during the entire duration of the permit and a Certificate of Insurance with the Town listed as an additional insured shall be filed with the Town Clerk.

(12) No part of the permitted work shall be commenced until warning signs, devices and methods adequate to protect the public are in place and fully functional. Warning signs and devices shall be as specified in the Wisconsin Manual on Uniform Traffic Control Devices.

(13) All excavation within the right-of-way shall be backfilled with suitable granular material compacted in nine-inch lifts. The bottom portion of the trench shall be compacted to 90% of maximum as measured by the Modified Proctor Method. The top three feet shall be compacted to 95%. The applicant agrees to make frequent inspections

for settlement and to be responsible for any such settlement. If requested, the applicant shall provide compaction test results.

(14) Highway surfaces, slopes, shoulders, ditches and vegetation disturbed shall be restored to at least their original conditions. The work shall be carried out in a manner satisfactory to the Town and Town Engineer as to compliance with the conditions of this permit and all local ordinances.

(15) Where special circumstances exist at the site where the work is contemplated, the Town may impose additional reasonable conditions to assure that the work is carried out in a manner consistent with Town engineering, erosion control and environmental standards.

**8.02(G) Waiver.**

Where, in the judgment of the Town Board, it would be inappropriate to apply the provisions of this ordinance to a proposed street or road because extraordinary or undue hardship resulting from the characteristics of the land would result, the Town Board may waive or modify any requirement of this Section 8.02, but only to the extent a waiver is found to be just and proper. The Town Board shall grant such relief only where it will not be detrimental to the public good, impair the intent and purpose of this ordinance or impair the desirable general development of the community in accordance with the land use plan. Any applicant who requests a waiver of a provision of this ordinance shall make a written application for a waiver and file the application with the Town Clerk. The waiver application shall state the basis for the application and the specific hardship which is claimed to exist. Any waiver, exception or variance which is granted pursuant to this Section 8.02 shall be made in writing, shall state the reasons which justified it, and shall be filed with the Town Clerk.

**8.02(H) Enforcement.**

The Town Chair or Town Engineer may post a stop-work order if any work or any part thereof is being installed contrary to the terms of a permit or without a permit, as applicable. If the applicant fails to cease the unpermitted activity or comply with the permit conditions immediately, the Town may issue a notice of intent to the applicant of the Town's intent to perform the work necessary to comply with this ordinance. A contractor retained to perform such services by the Town may commence the work no less than 14 days after issuance of the notice of intent. All costs associated with the work performed, including the services of the Town Engineer, Town Attorney, Town administrative costs and those of the contractor performing the work, shall be paid by the applicant or adjoining owner. If the applicant or landowner fails to pay the amount due,



the Town Treasurer shall enter the amount due onto the tax rolls and collect such bill as a special charge pursuant to Wis. Stats. § 66.0627.

**8.02(I) Violations and Penalties.**

(1) Any person, firm or corporation who fails to comply with any of the provisions of this Section 8.02 shall, upon conviction thereof, be subject to a penalty consistent with the penalty for a violation of section 8.01(E) as set forth in § 3.02(C) of this Code. Each violation and each day a violation continues or occurs shall constitute a separate offense.

(2) Every violation of this ordinance is declared to be a public nuisance. In addition to the penalties provided in this ordinance, the Town may abate such nuisance. The Town shall give written notice to the landowner or person who is in violation of the ordinance, giving the person a reasonable time to correct the violation. If the landowner does not correct the violation, the Town may take such action within its right-of-way as is necessary to abate the nuisance, including removal of any material which is encroaching upon or obstructing the right-of-way or trimming of vegetation which is intruding on the right-of-way. The Town may charge the responsible party for the cost of abating the nuisance, and if said charges are unpaid, assess them against the violator's property as a special charge.

(3) In addition to the other remedies herein, the Town may commence an action for injunctive relief against an alleged violator seeking to compel the violator to cease and desist from violating this ordinance.

**8.02(J) Special Circumstances.**

(1) The permit requirements shall be inapplicable to public service corporations or to any sanitary district or public utility district when performing work in the public right-of-way necessitated by unscheduled emergency repairs of damaged facilities or emergency services required for public health and safety. Under such emergency circumstances, such entity shall notify the Town Clerk and the Columbia County 911 Center of all roadway portions that will be disrupted no more than one hour after such emergency repair commences. Such entities, under circumstances not involving unscheduled emergency repairs of damage facilities, are subject to the requirements of this ordinance and other applicable state and local requirements.

(2) Mailboxes, paper boxes or similar repositories may be placed in the public right-of-way, provided they meet the following conditions.

(a) Mailbox and newspaper tubes must be located on the side of the road required by the United States Postal Service. No mail or paper box shall be placed such that its front edge is closer than 36 inches to the pavement edge on a rural cross-section street or such that it overhangs any part of the curb in an urban cross-section street.

(b) No mail or paper box shall be erected on a post or pipe made of any material other than a metal pipe or post with maximum diameter of two inches or a wooden post with a maximum size of four inches by six inches. Every effort shall be made to assure that such post or pipe will give way in the event that it is struck by a vehicle. No other object of any kind shall be attached to the mailbox, newspaper tube or its supports. No other objects, including, but not limited to, landscaping boulders or fences may be placed on the right-of-way.

(c) The Town of Leeds is not liable for damage to mailboxes caused by snowplowing.

(3) It shall be unlawful for any person to build a fence or any item beyond the property lot stakes.

(4) If any tree falls from adjacent land into any road right-of-way, the owner or occupant of the land shall immediately remove the tree from the road right-of-way. If the property owner following notice from the Town does not remove the tree, the Town may remove any fallen tree or trees therein and charge the cost thereof to the property owner pursuant to Wis. Stats. § 66.0627. When it is necessary for trees in a road right-of-way to be removed, the adjacent property owner shall have a right of first refusal to have the wood. After receiving notice that a tree is to be removed, the adjacent property owner shall have 14 days to remove the tree.

(5) All underground work completed within the Town right-of-way to install, extend, repair or replace shall conform to the following standards:

(a) Disturbed vegetated areas shall be compacted and restored to predisturbance condition. This includes but is not limited to open trenching, boring and plowing. Restored areas shall transition to the surrounding area and not leave a mound or recessed area. Excess material shall be removed or suitable fill imported to ensure the transition to the surrounding area. All restoration shall result in an equal to or better than predisturbance condition.

(b) Trees, shrubs and other vegetation shall be protected to prevent excessive damage.

(c) Trenches shall be sufficiently wide to enable installation and allow for inspection. No more than 100 feet of trench may be open at a time.

(d) Trenches shall be backfilled with suitable fill material and compacted in continuous layers not exceeding eight inches' compacted thickness. Compact each layer to a density in accordance with ASTM D1557.

(e) Roads shall be maintained in a drivable condition as accepted by the Town, county or state. Notices shall be provided to adjoining property owners and the Town a minimum of 48 hours prior to traffic disturbance or road closures.

(f) The Town, or its authorized representative, may inspect underground utility work and restoration. All work not completed in conformance with Town standards shall be repaired immediately at no cost to the Town of Leeds.

2. **Severability.** If any portion of this Section 8.02 or its application on any person or circumstances is held invalid, the validity of this Ordinance as a whole or any other provision herein or its application shall not be affected.