

Ordinance No. 2019-06

**Town of Ledgeview
Brown County, Wisconsin**

**AN ORDINANCE TO AMEND CHAPTER 94 STREETS AND SIDEWALKS,
ARTICLE VI RIGHTS-OF-WAY AND EASEMENTS,
SECTION 18 PROTECTIONS OF RIGHTS-OF-WAY AND EASEMENTS,
SECTION 19 RIGHT-OF-WAY MANAGEMENT**

The Town Board of Supervisors of the Town of Ledgeview do hereby ordain as follows:

Section 1: Chapter 94 Streets and Sidewalks, Article VI Rights-of-Way and Easements, Section 18 Protections of Rights-of-Way and Easements and Section 19 Right-of-Way Management of the Town of Ledgeview Municipal Code is hereby amended to read as follows:

Sec. 94-18 Protection of rights-of-way and easement

A. Purpose. The purpose of this section is to set forth general regulations applicable to Town rights-of-way and easements. This section is in addition to any other applicable state or federal statutes, rule or order or any other provision of the Ledgeview Municipal Code including the provisions of Sec. 94-19 of this Code. This section is not intended to create any new rights, but instead to create additional enforcement mechanisms for the Town to protect the public interest in Town rights-of-way and easements. The provisions hereof shall not be applicable to 5G networks which shall be subject to the provisions of Sections 47 U.S.C. 253 and 332 Federal of the Communications Act.

B. Obstructions prohibited.

- (1) No improvements, including but not limited to structures, monuments, landscaping or trees, shall be erected in a Town right-of-way or easement created for the benefit of the public without the approval of the Zoning Administrator or his or her designee and, where applicable, compliance with the provisions of Sec. Section 94-19 of this Code.
- (2) Unless such improvements are specifically dedicated to the Town, any such approval shall be granted subject to a license or easement agreement recorded in the office of the Brown County Register of Deeds. If the improvement is located in a public right-of-way, the agreement shall provide for removal of the improvement at the sole discretion of the Town Board and that failure of the owner to remove the structure, monument or landscaping in the time specified by the agreement, or if necessary due to emergency, the Town may remove the improvements and charge the cost of doing so to the owner's property as a special charge under Sec. 66.0627, Wis. Stats.

C. Ditches and Drainage Ways. No Town ditches or drainage ways shall be filled or otherwise obstructed without approval from the Department of Public Works.

Sec. 94-19 Right-of-Way Management.

A. Purpose.

- (1) The operation of the Telecommunications Act of 1996 has resulted in increased use of the public rights-of-way for the location and placement of communications facilities and equipment resulting increase in costs to the taxpayers of the Town which costs are likely to escalate in the future. The excavation and occupancy of the public rights-of-way causes direct and indirect costs to be borne by the Town and its taxpayers, including but not limited to administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials; management costs associated with ongoing management activities necessitated by public right-of-way user; repair costs to the roadway associated with the actual excavation into the public right-of-way; and degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way. The purpose of this section is to set forth general regulations applicable to Town rights-of-way and easements.
- (2) This section is in addition to any other applicable state or federal statute, rule or order or any other provision of the Ledgeview Municipal Code. This section is not intended to create any new rights, but instead to create additional enforcement mechanisms for the Town to protect the public interest in Town rights-of-way and easements and to impose reasonable regulations 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 Town's authority to enact this ordinance is pursuant, but not limited to, the following federal, state and local authority: 47 U.S.C. 253(c); Sec. 62.11(5) Wis. Stats; Sec. 66.045 Wis. Stats; Sec. 66.048 Wis. Stats; Sec. 86.16 Wis. Stats; Sec. 182.017 Wis. Stats; Sec. 196.58(1) Wis. Stats; and, Sec. 196.499(1) Wis. Stats.

- (3) This Section is intended to provide the Town with a legal framework within which to regulate and manage the public rights-of-way; to provide for recovery of costs incurred by the Town; and, to provide for the health, safety and welfare of the residents of the Town as they use the Town rights-of-ways and to ensure the structural integrity of the Town's public rights-of-way. The Town desires to minimize and anticipate the number of excavations taking place within Town rights-of-way and to regulate the placement of facilities within the rights-of-way to ensure that they remain available for public services. The taxpayers of the Town bear the financial burden for the upkeep of the rights-of-way. A primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation thereof by Persons who locate Facilities therein.

B. Definitions. The following terms and phrases shall have the following described meanings:

- (1) "Alternative Telecommunications Utility Other" shall have the meaning provided in Section 196.01 of the Wisconsin Statutes.
- (2) "Applicant" shall mean any person requesting permission to excavate, obstruct and/or occupy a right-of-way.
- (3) "Degradation" shall mean 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,
- (4) "Department" shall mean the Town of Ledgeview Department of Public Works.
- (5) "Department Inspector" means any person authorized by the Department to carry out inspections related to the provisions of this Chapter.
- (6) "Emergency" shall mean a condition that poses a clear and immediate danger to life or health, or of a significant loss of property; or, requires immediate repair or replacement in order to restore service to a customer.
- (7) "Excavate" shall mean to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- (8) "Facilities" shall mean 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.
- (9) "In", when used in conjunction with "right-of-way," shall mean over, above, in, within, on or under a right-of-way.
- (10) "Indemnified Parties" shall mean the Town, its officers, boards, committees, commissions, elected officials, employees, agents and representatives.
- (11) "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.
- (12) "Obstruct" shall mean to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- (13) "Occupy" shall mean to dwell or reside above, on, in, or below the boundaries of any public rights-of-way.
- (14) "Permittee" shall mean any person to whom a permit to excavate or occupy a right-of-way has been granted by the City under this Chapter.
- (15) "Person" means, municipality, corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.
- (16) "PSC" shall mean the Wisconsin Public Service Commission.
- (17) "Public Utility shall have the meaning provided in Wis. Stats. 196.01 (5).
- (18) "Registrant" shall mean any person who has registered with the Town to have its facilities located in any right-of-way or to use or seek to occupy or use the right-of-way or any facilities in a Town right-of-way.
- (19) "Repair" shall mean 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.

- (20) "Repair Bond" shall mean 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.
- (21) "Restore or Restoration" shall mean the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed according to Department specifications.
- (22) "Restoration Bond" shall mean 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 restoration work is completed in both a timely and quality manner, per Department specifications.
- (23) "Right-of-Way" shall mean the surface and space above and below a public roadway, highway, street, bicycle lane and public sidewalk in which the Town has an interest, including other dedicated rights-of-way for travel purposes.
- (24) "Service" includes municipal sewer and water services and also includes, except as provided herein, but is not limited to those services provided by a public utility as defined in Wis. Stats. 196.01(5); telecommunications, pipeline, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; the services provided by a district heating or cooling system; and cable service as defined and regulated under 47 U.S.C. 521 through 573; provided, however, that wireless telecommunications service and cellular mobile radio telecommunications (CMRS) services as defined by Section 332(d) of the Federal Communications Act of 1996 (47U.S.C. 332 (d)(1)) are excluded, unless these services have a presence in the right-of-way.
- (25) "Supplementary Application" shall mean an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.
- (26) "Telecommunications Carrier" shall have the meaning provided in Section 196.01, Wis. Stats.
- (27) "Telecommunications Provider" shall have the meaning provided in Section 196.01, Wis. Stats.
- (28) "Telecommunications Rights-of-Way User" shall mean 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, that is used or is intended to be used for transporting telecommunication or other voice or data information. This includes Telecommunications Providers, Utilities, ATUs, and Carriers. For purposes of this Chapter, a cable television system defined and regulated under Sec. 66.082(2)(d), Wis. Stats., and telecommunication activities related to providing natural gas or electric energy services, and which are not offered for resale as telecommunications services, are not telecommunications right-of-way users.
- (29) "Telecommunications Service" shall mean the offering for sale or the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment. Telecommunications Service does not include cable television service, wireless service or broadcast service.
- (30) "Telecommunications Utility" shall have the meaning provided in Section 196.01, Wis. Stats..
- (31) "Unusable Facilities" shall mean Facilities in the right-of-way which have remained unused for one (1) 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.
- (32) "Utility Service" shall have the same meaning as provided in Subsection (22) hereof.

C. Administration. The Town Department of Public Works is responsible for the administration of all Town rights-of-way, and the permits and ordinances related thereto.

D. Registration for Right-of-Way Occupancy.

- (1) Registration. Each Person 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 in the manner provided in this Sub-section hereof and pay the Registration Fee required in this Section.
- (2) 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.
- (3) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of any 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 Section.

(4) Registration Information.

(a) Information Required. The Applicant shall provide the following information to the Department at the time of registration on forms provided by the Department:

1. The Applicant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of the Applicant's 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.
3. Documentation to demonstrate to the satisfaction of the Town that the Applicant's and any subcontractor of the Applicant has sufficient insurance coverage to cover any liability which might arise out of their presence in the right-of-way.
4. If the Applicant is a corporation, a LLC or LLP, a certificate of good standing from the Wisconsin Department of Financial Institutions.
5. A copy of the Applicant's Certificate of Authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the Applicant is lawfully required to have such certificate from said commission or other state or federal agency.
6. An Indemnification Agreement in the form prescribed by the Town.

(5) Information Updates. The Applicant shall keep the information required in subsection (a) above current at all times by providing the Department with any information changes within fifteen (15) business days following the effective date of such change.

(6) Registration Fee. Each Registrant shall annually renew its registration or discontinue and properly abandon its Facilities. The Town shall, from time to time, by resolution, establish the Registration Fee in an amount sufficient to recover the costs incurred by the Town for processing registrations. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.

E. Right-of-Way Locations.

- (1) Fall Zone.** 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.
- (2) Breakaway Zone.** Rigid non-breakaway poles and other utility structures shall be located a minimum of 10 feet' from roadway curbs or shoulders and behind existing or future sidewalks.

F. Right-of-Way Excavations.

- (1) Excavation Permit Requirement.** Except as otherwise provided in this Chapter or other Chapters of the Town Code, no person shall excavate any Right-of-Way or place facilities in a Right-of-Way that require excavation within the Right-of-Way for placement purposes without first having obtained an Excavation Permit from the Town. 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 Excavation Permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit and a new permit or permit extension is granted. The Applicant for an Excavation Permit must also file and have in place a Right-of-Way Occupancy Registration with the Town.
- (2) Excavation Permit Application.** Application for an Excavation Permit shall be made to the Department and shall be accompanied by a Right-of-Way Occupancy Registration as required under Subsection (D) herein above and, on forms provided by the Department, contain the following information:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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:
 - 1. The greater height is required to accomplish the applicant's purposes; 2. 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;
 - 3. 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.
 - 4. Payment of all money due to the Town 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 Town because of applicant's prior excavations.

(3) Excavation Permit Fee.

- (a) Excavation Fee. All Town Right-of-Way excavations shall be subject to a fee as determined by the Town
- (b) Excavation Fee Calculation. The Excavation Permit Fee shall be established by the Town in an amount sufficient to recover the costs incurred by the Town 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 as determined by the Town.
 - 2. Repair: No repair fee shall be charged; however, the Permittee shall be required to repair the public Right-of-Way to Town specifications, subject to inspection and acceptance by the Department, and to pay a degradation fee.
 - 4. Degradation: The general formula for computing the degradation fee shall be based on the actual area of trench width multiplied by length multiplied by the fee per square foot based on the roadway Paser rating. Minimum trench width shall be two (2) feet.
 - 4. Measurements. The fee shall be 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.
- (c) Excavation Permit Fee Computation. The total Excavation Permit Fee shall be calculated as follows:
Total Excavation Permit Fee = Administrative Cost + Degradation Fee.

- (d) **Excavation Permit Fee Schedules.** The Town shall establish Street Depreciation Schedules for each Town road and street. The Department may recalculate and establish, by Resolution, a new Street Depreciation Schedules and Excavation Permit Fee Structure each year.
 - (e) **Town Exemption.** The Town and its contractors shall not be subject to any administrative and degradation fees hereunder
 - (f) **Payment of Excavation Permit Fees.** No Excavation Permit shall be issued without the prior payment of all applicable fees, unless the Applicant shall agree, in writing, to pay such fees within thirty (30) days of billing therefor.
 - (g) **Non-refundable Fee.** Excavation Permit fees paid for an Excavation Permit hereunder that has subsequently been revoked by the Department are not refundable.
- (4) **Right-of-Way Excavation Repair:**
- (a) **Repair Requirements.** All Right-of-Way Excavations repairs shall be subject to the following requirements:
 - 1. **General.** The area of the repair patch shall generally be square.
 - 2. **Scope of Repair.** 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.
 - 3. **Standards.** The Permittee shall perform repairs according to the specifications of the Department and in accordance with the conditions specified in the Excavation Permit. The Department shall have the authority to prescribe the manner and extent of the repair and may alter, change or modify that manner and extent of repair based on its inspection of the excavation site.
 - (b) **Repair Completion.** The work to be done under the Excavation Permit issued hereunder with the repair of the Right-of-Way as required herein, to be completed by the date specified in the Excavation Permit. The completion date may be 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.
 - (c) **Repair Bond.** Unless the repairs work is to be done by the Town, the Permittee shall at the time of the issuance of the Excavation Permit post a repair bond in an amount determined by the Town to be sufficient to cover the full cost of repairing the Right-of-Way to Town specifications. A repair bond shall be submitted each year with the Right of Way registration form and associated documentation.
 - (d) **Repair Inspection.** The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made in accordance with the specifications of the Department. Inspection hereunder shall be subject to the following:
 - 1. **Notice of Completion.** When the work under any permit issued hereunder is completed, the Permittee shall notify the Department.
 - 2. **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.
 - 3. **Authority of Department.** At the time of inspection, the Town may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The Town 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 and the possible call of the repair bond. 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 time specified, the Department may revoke the Excavation Permit, halt further work on the project and call the repair bond.

- (e) **Guarantees.** The Permittee guarantees its work and that of its contractors and subcontractors and shall maintain it for sixty (60) months following its completion, except for organic material, which shall be maintained for twelve (12) months. The Permittee shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department.
- (f) **Town Repair.** A Permittee may request that the Town repair the Right-of-Way. If the Town accepts, the Permittee shall be billed for the Town's costs, and shall pay the amount thereof within thirty (30) days of billing.
- (g) **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 Town may, at its option, do such work. The Permittee shall be responsible for payment to the Town, within thirty (30) days of billing, all costs and expenses incurred by the Town to repair the Right-of-Way. If the Permittee fails to pay as required, the Town may exercise its rights under the Repair Bond.

G. Joint Applications.

- (1) **Joint Application.** Registrants may jointly apply for permits to excavate the Right-of-Way at the same place and time.
- (2) **Town Projects.** Registrants who join in a scheduled excavation performed by the Town, whether or not it is a joint application by two or more Registrants or a single application, shall not be required to pay the degradation portion of the excavation permit fee.
- (3) **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.

I. Supplementary Applications.

- (1) **Area Limitations.** 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 Excavation Permit, except as provided herein. Any Permittee that determines that an area greater than that originally specified in their Excavation Permit Application or Excavation Permit must be excavated must, before working in that greater file for and receive an Excavation Permit Extension on forms provided by the Department as well as pay any additional fees required thereby before expanding the original excavation or excavating an area greater than that permitted under the original Excavation Permit.
- (2) **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 specified in the

Excavation Permit. 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.

- (3) **Supplementary Application Fees.** A Permittee shall pay all 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.
- (4) **Supplementary Notification.** If the excavation of the Right-of-Way begins later or ends sooner than the date given on the Excavation Permit, the Permittee shall notify the Department, in writing, of the accurate information as soon as this information is known.

J. Other Obligations.

- (1) **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 Town, County, State, or Federal rules, laws, or regulations. A Permittee shall comply with all requirements of local, state, and federal laws and shall perform all work in conformance with all applicable codes and established rules and regulations. The Permittee is and shall remain 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, 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.

K. Revocations, Suspensions, Refusals to Issue or Extend Permits.

- (1) **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:
 - (a) The applicant or Permittee is required to be registered and has not done so or the permit application is otherwise incomplete;
 - (b) The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required on file hereunder; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
 - (c) Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
 - (d) Misrepresentation of any fact by the applicant or Permittee;
 - (e) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
 - (f) Failure of the applicant or Permittee to complete work in a timely manner;
 - (g) The proposed activity is contrary to the public health, safety or welfare;
 - (h) The extent to which space is available in the Right-of-Way for which the permit is sought;
 - (i) The competing demands for the particular space in the Right-of-Way result in insufficient space for the propose facilities;
 - (j) The availability of other locations in the Right-of-Way or in other Rightsof-Way for the facilities of the Permittee or applicant;
 - (k) 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;
 - (l) The applicability of ordinances or other regulations of the Right-of-Way that affect location of facilities in the Right-of-Way;
 - (m) The condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial reconstruction; or
 - (n) The applicant or Permittee is otherwise not in full compliance with the requirements of this Chapter or state or federal law.
- (2) **Discretionary Issuance.** Notwithstanding Sub-section (1)(b), the Department may issue a permit where issuance is necessary to:

- (a) Prevent substantial economic hardship to a customer of the Permittee or applicant, or
 - (b) Allow such customer to materially improve its Public Utility service, or
 - (c) Allow the Permittee or applicant to comply with state or federal law or Town ordinance or an order of a court or administrative agency.
- (3) 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 Town Administrator and then the Town Board. A request for review shall be in writing and filed with the Town within ten (10) days of the date of the decision being appealed.

L. Work Done Without a Permit.

- (1) Emergency Situations. Each Registrant shall immediately notify the Town by verbal notice on an emergency phone number provided by the Town 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 (2) 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 Section. If the Town 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 Town 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.
- (2) 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 Section or other Chapters of the Town 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 Section. If a subsequent permit is denied or is not approved, the registrant shall discontinue and abandon its facilities.

M. Location of Facilities.

- (1) Placement Underground. 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 placed, located and to the maximum extent possible contained underground or contained within buildings or other structures in conformity with all applicable codes.
- (2) Corridors.
- (a) Assignment by Department. 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 Town expects will someday be located within the Right-of-Way.
 - (b) Relocation. 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 consistent with the corridors established by the Town 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) Space Limitations. 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 to occupy and use 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.

N. Removal or Relocation of Facilities.

- (1) **Removal or Relocation Order.** 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 upon written direction from the Department directing either removal and relocation. The Removal or Relocation Order from the Department shall identify the factor or factors from Subsection (L)(2) that necessitate the removal or relocation of the Registrant's facilities.
- (2) **Factors.** The Department may issue a removal or relocation order to prevent interference by the Registrant's facilities with or on the basis of any of the following:
 - (a) A present or future Town use of the Right-of-Way;
 - (b) A public improvement undertaken by the Town;
 - (c) An economic development project in which the Town has an interest or investment;
 - (d) When required for purposes of public health, safety or welfare in either an emergency or non-emergency situation, or
 - (e) When necessary to prevent interference with the safety and convenience of ordinary travel within the Right-of-Way.
- (3) **Site Restoration.** Following removal or relocation of its facilities the Registrant shall restore the site to its original condition, unless otherwise directed by the Department.
- (4) **Appeals.** Except in an emergency situation, a Registrant receiving a Removal or Relocation Order from the Department shall have a right to appeal such Order. The request for review shall first be reviewed by the Town Administrator. The Town Administrator's decision may be appealed in writing to the Town Board. All requests for review shall be in writing and filed with the Town within ten (10) days of the date of the decision being appealed.
- (5) **Town Construction.** When the Town performs work in the Right-of-Way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the Town shall notify the Registrant. Except in an emergency, the Registrant shall meet with the Town within 24-hours to coordinate the protection, maintenance, supporting, and/or shoring of the Registrant's facilities. Except in an emergency, the Registrant shall accomplish the needed work within 72hours, unless the Town agrees to a longer period. In the event that the Registrant does not proceed to maintain, support, shore or move its facilities, the Town may take such action on its own with all costs thereof and therefor incurred by the Town to be charged to the Registrant.

O. Indemnification. By registering with the Town, or by accepting a permit under this Section, a Registrant or Permittee agrees to indemnify, defend, and hold harmless the Town and its Indemnified Parties from and against all loss or expense, including liability costs and actual reasonable 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 Registrant's or Permittee's acts or omissions in the exercise of its rights under this Section, whether caused by or contributed to by the Town, its agents or employees.

First reading April 1, 2019

P. Abandoned Facilities.

(1) Discontinued Operations. A Registrant who has determined to discontinue its operations in the Town must either:

(a) 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

(b) Submit to the Department a proposal and instruments for dedication of its facilities to the Town. If a Registrant proceeds under this clause, the Town, at its option:

1. Accept the dedication for all or a portion of the facilities; or

2. Require the Registrant, at its own expense, to remove the facilities in the Right-of-Way at ground or above ground level; or

3. Require the Registrant to post a bond or provide payment sufficient surety to the Town to reimburse the Town for reasonably anticipated costs to be incurred in removing the Facilities.

(2) Abandoned Facilities. Facilities of a Registrant who fails to comply with Sub Section P (1) above and, for a period of 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 Town may, at its option, upon written notice to the Registrant:

(a) Abate the nuisance,

(b) Take possession of the facilities, or

(c) Require removal of the facilities by the registrant, or the registrant's successor in interest. (3) Public Utilities. This Sub-section shall not apply to a Public Utility that is required to follow the provisions of Sec. 196.81, Wis. Stats.

Section 2: Repeal of inconsistent ordinances. All existing town ordinances, parts of ordinances, and amendments thereto in conflict with any of the provisions of this ordinance are hereby repealed.

Section 3: Severability. If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining provision shall not be affected hereby.

Section 4: Effective date. This ordinance shall take effect upon passage, postage, and publication.

Approved: _____, 2019

Philip J. Danen, Chairman

ATTEST:

I, Charlotte K. Nagel, Clerk of the Town of Ledgeview, do hereby certify that the attached ordinance is a true and correct copy of the original ordinance required by law to be in my custody and which was adopted by the Town of Ledgeview at a meeting held _____, 2019.

Charlotte K. Nagel, Town Clerk

Posted: _____

Published: _____