

## ORDINANCE NO 2012-01.

### AN ORDINANCE GOVERNING THE CONSTRUCTION, INSTALLATION, OPERATION, REPAIR, MAINTENANCE, REMOVAL AND RELOCATION OF FACILITIES AND EQUIPMENT IN THE PUBLIC GROUND OF THE TOWNSHIP OF NEW HAVEN AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

THE TOWN BOARD OF SUPERVISORS OF THE TOWNSHIP OF NEW HAVEN ORDAIN:

**SECTION 1. DEFINITIONS.** The terms defined in this Section have the meanings given them.

**1-1 Person.** "Person" means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political. Examples include:

A. a business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier or utility, and any successor or assignee of any of them;

B. a social or charitable organization; and

C. any type or combination of political subdivision, which includes the executive, judicial, or legislative branch of the state, a local government unit, or a combination of any of them.

**1-2. Facility.** "Facility" means any tangible asset in the public right-of-way or on public ground required to provide utility services.

**1-3 Public Ground.** "Public Ground" includes Public Right-of-Way and other land owned or otherwise controlled by the Town for park, open space or similar public purpose, which is held for use in common by the public.

**1-4 Public Right-of-Way.** "Public right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, alley, bicycle lane, and public sidewalk in which the Town has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the Town.

**1-5 Utility Service.** "Utility Service" includes (1) services provided by a public utility as defined in [Minnesota Statutes, section 216B.02](#), subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including the transporting of voice or data information; (3) services provided by a cable communications system as defined in Minnesota Statutes, chapter 238; (4) natural gas or electric energy or telecommunications services provided by a local

government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling, or heating services.

**1-6 Right-of-Way User.** "Right-of-way user" means: a person or company owning or controlling a facility in the public right-of-way that is used or is intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

## **SECTION 2. PERMIT PROCEDURE.**

**2-1. Permit Required.** A person may not construct, install, repair, remove or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the Township. The Township shall require a separate permit of a company for each location where construction, installation, or other disturbance of the public ground is to occur. Each permit shall state specifically the locations of any facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the Township.

**2-2. Application.** Application for a permit is made to the Planning & Zoning Administrator. A person shall apply for a permit or renewal of a permit a minimum of two (2) weeks before starting work and must submit detailed plans for street use and pedestrian safety on major projects. This provision or portions thereof may be waived by the Township in the event of an emergency.

**2-3. Issuance of Permit.** If the Township Board determines that the applicant has satisfied the requirements of this Ordinance a permit may be issued. An applicant may contest a permit denial or the conditions of approval by written notice to the Planning & Zoning Administrator requesting Township Board reconsideration within fourteen (14) days of the denial. The Township Board shall hear any permit denial contest within forty-five (45) days of the Planning & Zoning Administrator's receipt of the contest notice. Nothing in this Ordinance precludes the Township from requiring a franchise agreement with the applicant, as allowed by law, in addition to the issuance of a permit set forth herein.

**2-4. Permit Fee.** The application must be accompanied by the permit fee of \$\_\_\_\_\_.

**2-5. Security for Completion of Work.** Prior to commencement of work, the person must deposit with the Township security in the form of certified check, letter of credit, or construction bond, in a sufficient amount as determined by the Township for the completion of the work. The securities will be held until the work is completed plus a period of 2 months thereafter to guarantee that restoration work has been satisfactorily completed. Upon application of the

person, providing such information as the Township may require, if two or more work projects are to be constructed during a calendar year, the Township may accept, in lieu of separate security for each project, a single security for multiple projects in such form and amount as determined, in the discretion of the Township Board, to be sufficient to assure completion of all projects which may be in progress at any one time during that calendar year and to guaranty that restoration work will be satisfactorily completed. The security will then be returned to the person with interest if required by law and then interest at the applicable statutory rate.

**2-6. Inspection of Work.** When the work is completed, the company must request an inspection by the Township. The Township will determine if the work has been satisfactorily completed, and provide the company with a written report of the inspection and approval.

**2-7. Penalty.** Any person who fails to secure required permits prior to beginning construction, excavation, installation, or work shall be guilty of a misdemeanor and shall be punished pursuant to the applicable State statute regarding misdemeanor penalties as may be amended from time to time, plus the cost of prosecution. Each day in which any violation occurs shall be deemed a separate offense. The Township may, in its discretion, seek any civil remedies available to it as well, including injunctive relief. Each right or remedy accruing to the Township under this ordinance or at law is separate and distinct, and may, in the Township's discretion, be exercised independently or simultaneously with any other right or remedy.

### **SECTION 3. RESTORATION AND RELOCATION.**

**3-1. Restoration.** Upon completion of the work contemplated by a permit, the company must restore the general area of the work, including the pavement and its foundations, to the same or better condition than existed prior to commencement of the work necessitating a permit. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the Township may put it in the same condition at the expense of the company. The company must, upon demand, pay to the Township the direct and indirect cost of the work done for or performed by the Township, including, but not limited to, the Township's administrative costs.

**3-1.1.** To recover its costs, the Town may draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the Town.

**3-2. Right-of-Way User Initiated Relocation.** A right-of-way user must give the Township written notice and obtain a permit prior to a right-of-way user initiated relocation of facilities. A right-of-way user initiated relocation shall be at the right-of-way user's expense.

**3-3. Township Required Relocation.** A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in public ground whenever the Township, in writing, requires such relocation.

**3-4. Relocation Where Public Ground Vacated.** The vacation of public ground does not deprive the right-of-way user of the right to operate and maintain its facilities in the Township. If the vacation proceedings are initiated by the Township, the Township must pay the relocation costs. If the vacation proceedings are initiated by the right-of-way user, the right-of-way user must pay the relocation costs unless otherwise agreed to by the Township, right-of-way user and other persons.

#### **SECTION 4. COMPANY DEFAULT.**

**4-1. Notice.** If the right-of-way user has failed to comply with the terms and conditions of the permit, including, but not limited to, restoration requirements for more than 30 days after receiving written notice from the Township of the default, the Township may terminate the rights of the company under the permit, subject to the Township's absolute right to revoke the permit at any time in the exercise of the Township's police powers. The notice of default shall be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice shall either be personally served on the right-of-way user or served by certified mail to the address of the right-of-way user provided on the permit application.

**4-2. Township Action on Default.** If the right-of-way user is in default in the performance of the work authorized by the permit, the Township may, after the above notice to the right-of-way user, and failure of the right-of-way user to cure the default within 30 days, take such action as may be reasonably necessary to abate the condition caused by the default. The right-of-way user shall reimburse the Township for the Township's costs and expenses, including costs of collection and attorney fees incurred as a result of the right-of-way user's default. The security posted under Section 2-5 may be applied by the Township first toward payment of said costs and expenses.

Notwithstanding the 30-day notice period provided for in paragraph 4.1 above, in the event that a default by the right-of-way user will reasonably result in irreparable harm to the environment or to public or property, the Township may immediately prevent, reduce or otherwise mitigate such irreparable harm, provided that the Township makes good-faith, reasonable efforts to notify the Right-of-way user as soon as is practicable of the default,

the projected irreparable harm, and the intended actions of the Township to remedy said harm.

## **SECTION 5. OTHER CONDITIONS OF USE.**

**5-1. Use of Public Ground.** Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established therein, including, but not limited to (i) the right of inspection by the Town at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Section 3-3 and 3-4; and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission, and other State and Federal laws, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes, Chapter 216D.

**5-2. Location.** The facilities must be placed in a location agreed to by the Township. The company shall give the Township forty-five (45) days advanced written notice of the company's proposed location of facilities within the public ground. No later than 45 days after the Township's receipt of the company's written notice, the Township will notify the company in writing of the Township's acceptance or rejection of the proposed location. If the Township rejects the company's proposed location, the Township shall propose alternative locations. The Township does not waive or forfeit its right to reject the location of facilities by failure to respond within 45 days.

**5-3. Emergency Work.** A right-of-way user may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event, the right-of-way user must request a permit not later than the second working day thereafter, and comply with the applicable conditions of the permit. In no event may the right-of-way user undertake such an activity, which will result in the closing of a street or alley without prior notification to the Township.

**5-4. Street Improvements, Paving or Resurfacing.** The Township will give the right-of-way user written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice shall contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the Township will start the work; and (iv) if more than one street is involved, the sequences in which the work is to proceed.

**5-5. Company Protection of Facilities.** A right-of-way user must take all reasonable measures to prevent its facilities from causing damage to persons or property. A right-of-way user must take all reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property

or the elements. The right-of-way user must take all reasonable protective measures when the Township performs work near the facilities.

**5-6. Guarding of Obstructions or Dangers.** If a right-of-way user shall obstruct any public ground, such right-of-way user shall keep such obstruction or obstructions properly guarded at all times. From sunset to sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in such a manner that they will give proper warning of said obstruction. The Township may require any other restrictions or safety regulations as may be in the public interest.

**5-7. Prior Service Connections.** In cases where the Township is undertaking the paving or resurfacing of streets and the facilities are located under such street, the company may be required to install service connections prior to the paving or resurfacing if it is apparent that service will be required during the five year period following the paving or resurfacing.

## **SECTION 6. GENERAL PROVISIONS**

**6-1. Damage to Public Facilities.** Any person who damages or destroys public facilities located in the right-of-way, including streets, alleys, lanes, curbs, ditches, gutters, sidewalks, trails, sanitary and/or storm sewers, water main, street lights and poles, or other publicly owned property, or causes such actions to occur, shall be liable for the costs of repair and/or replacement resulting from such damage or destruction.

**6-2. Obstruction of Public Ground.** No person shall encumber or obstruct any street, alley, lane, ditch or gutter, sidewalk, trail or other public place within the corporate limits of the Town by placing therein or thereon any building, structure, building or construction materials, rock, sand, soil, wood, or other impediment, material or substance whatsoever, or by making any excavation or opening therein, without first having obtained permission in writing from the City to do so.

**6-3. Recovery of Costs for Damage or Obstruction.** When any damage, destruction, obstruction or encumbrance of any kind occurs or is put, placed, or left in the right of way, including streets, alleys, lanes, curbs, ditches, gutters, sidewalks, trails, or other public place, the Township shall attempt to notify the person who damaged, destroyed, put, placed, or left such obstruction or encumbrance as well as the owner of the abutting property if they are not the same person, to remove the obstruction or encumbrance or repair the damage or destruction within a specified amount of time. If such person fails or refuses to remove such obstruction or encumbrance within the specified amount of time, the Township may have such obstruction or encumbrance removed by Township employees or contractors, in which case the Township shall make an itemized account of any expenses incurred in or by reason of such removal. The

Township may recover from the person who damaged, destroyed, put, placed, or left such obstruction or encumbrance as well as any person who caused such actions to occur, all such expenses incurred by the Town by sending an invoice or, by Town Board order, by any other lawful means, including a civil suit. All invoices sent pursuant to this subdivision shall be paid within 30 days of mailing of such invoice. Any expenses incurred by the Township but not otherwise recovered may be recovered by special assessment of property located within the Township which is owned by the person who damaged, destroyed, put, placed, or left such obstruction or encumbrance in the Right of Way or who caused such actions to occur.

**6-4. Unloading.** Unless otherwise prohibited by the Township, a person may unload materials from a vehicle parked in the right-of-way for a period not exceeding two (2) hours, provided that the vehicle is parked in such a manner that two cars are able to safely pass that parked vehicle at the same time.

**6-5. Driveway Installation.** No person or entity shall install or connect a driveway to a Township road located within a public right-of-way without first obtaining a Driveway permit.

## **SECTION 7. INDEMNIFICATION.**

**7-1. Scope.** The right-of-way user will indemnify, keep, and hold the Township, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the facilities affecting public ground, unless such injury or damage is the result of the negligence of the Township, its elected officials, employees, officers, or agents, except that the right of way user will be required to indemnify the Township for any claims based on the local government unit's negligent or otherwise wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of the permit granted to the permittee.

**7-2. Claim Defense.** If a claim or action is brought against the Township under circumstances where indemnification applies, the, right-of-way user at its sole expense, shall defend the Township. If the right-of-way user undertakes the defense, the right-of-way user shall not settle without the consent of the Township. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Township. In defending any action on behalf of the Township, the company is entitled to assert every defense or immunity that the Township could assert in its own behalf.

**SECTION 8. EFFECTIVE DATE AND APPLICABILITY TO EXISTING FACILITIES.** Companies with facilities, in, on, over, under, or along public ground on the effective date of this Ordinance must take prompt action to comply

with this Ordinance and the permits authorized by this Ordinance. A company, however, is not required to reapply for a permit obtained from the Town prior to the effective date of this Ordinance. A company is not required to pay the difference between the permit fee of a previously obtained permit and the equivalent newly obtained permit under this Ordinance. All other provisions of this Ordinance apply to existing facilities.

**SECTION 9. ACCEPTANCE OF REQUIREMENTS.** By receiving a permit pursuant to this Ordinance, the company accepts and agrees to comply with all of the requirements of this Ordinance.

**SECTION 10. PUBLIC GROUND OTHER THAN RIGHT-OF-WAY.** Nothing in this Ordinance is intended to grant to the company authority beyond that given by Minnesota Statutes, Section 222.37, for use of the public right-of-ways for construction and operation of facilities. If the Town allows the company to use its non-right-of-way public ground, the terms of this Ordinance apply to the extent they are consistent with the contract, statutory, and common law rights the Town owns in such property.

**SECTION 11. SEVERABILITY.** Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

**SECTION 12. EFFECTIVE DATE.** This Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Town Board of new Haven Township, Olmsted County, Minnesota, this \_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED:

\_\_\_\_\_  
, Chairman

ATTEST:

\_\_\_\_\_, Clerk