

## **CHAPTER 8**

### **PUBLIC WORKS**

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## 8.01 STREET GRADES.

(A) **Establishment**. The grades of all streets and alleys shall be established and described by the Town Board upon recommendation of the Town Engineer and shall be recorded in the office of the Town Clerk/Treasurer.

(B) **Required**. No street or alley shall be worked until the grade thereof is established as stated in subsection (A) above.

(C) **Altering Prohibited**. No person shall alter the grade of any street, alley or public ground, or any part thereof, unless authorized or instructed to do so by the Town Board.

## 8.02 RIGHT-OF-WAY MANAGEMENT.

(A) **Findings and Purpose**. The Town finds that the passage of the Telecommunications Act of 1996 has resulted in increased use of the public rights-of-way and increased costs to the taxpayers of the Town and that these costs are likely to continue into the foreseeable future.

The Town finds that 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:

- (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 Town hereby enacts this ordinance relating to the 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 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); §62.11(5), Wis. Stats.; §66.0425 Wis. Stats.; §66.0915, Wis. Stats.; §86.16, Wis. Stats.; §182.017, Wis. Stats.; §196.58(1), Wis. Stats.; §196.499(1), Wis. Stats.; and these Ordinances.

The purpose of this ordinance is to provide the Town 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 Town as they use the rights-of-way of the Town, as well as to ensure the structural integrity of the public rights-of-way. The Town desires to minimize and anticipate the number of excavations taking place thereon 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 by persons who locate facilities therein.

Under this chapter, all persons who excavate, obstruct and/or occupy the public rights-of-way will reimburse the Town's administrative, ongoing management and degradation costs. Right-of-way users will bear a fair share of the financial responsibilities for the integrity of the public rights-of-way.

(B) **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.

- (1) "Alternative Telecommunications Utility" has the meaning in §196.01, Wis. Stats.
- (2) "Applicant" means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.
- (3) "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.
- (4) "Department" means the Department of Public Works of the Town, whether formally constituted or not, and shall include the Roads, Sewer and Water Departments of the Town and the Town Building Inspector.
- (5) "Department Inspector" means any person authorized by the Department to carry out inspections related to the provisions of this chapter.
- (6) "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.
- (7) "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- (8) "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, structures and appurtenances.

(9) "In" when used in conjunction with "right-of-way", means over, above, in, within, on or under a right-of-way.

(10) "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 ordinance.

(11) "Obstruct" means 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.

(12) "Occupy" means to dwell or reside above, on, in, or below the boundaries of the public rights-of-way.

(13) "Permittee" means any person to whom a permit to excavate or occupy a right-of-way has been granted by the Town under this chapter.

(14) "Person" means, municipality, corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

(15) "PSC" means the Public Service Commission of the State of Wisconsin.

(16) "Public Utility" has the meaning provided in §196.01(5), Wis. Stats.

(17) "Registrant" means any person who has registered with the Town (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.

(18) "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.

(19) "Repair Bond" means 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.

(20) "Restore or Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed according to Department specifications.

(21) "Restoration Bond" means 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.

(22) "Right-of-Way" means 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.

(23) "Service" or "Utility Service" includes municipal sewer and water services and also includes, except as provided herein, but is not limited to (1) those services provided by a public utility as defined in §196.01(5), Wis. Stats.; (2) telecommunications, pipeline, fire and alarm communications, water, electricity, light, heat, cooling energy or power services; (3) the services provided by a district heating or cooling system; and (4) cable service as defined and regulated under 47 U.S.C. 521 through 573. Wireless telecommunications service and cellular mobile radio telecommunications (CMRS) services as defined by Section 332(d) of the Federal Communications Act of 1996 (47 U.S.C. 332(d)(1)) are excluded, unless these services have a presence in the right-of-way.

(24) "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 had already been issued.

(25) "Telecommunications Carrier" has the meaning in §196.01, Wis. Stats.

(26) "Telecommunications Provider" has the meaning in §196.01, Wis. Stats.

(27) "Telecommunications 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, 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 telephone system defined and regulated under §66.0419(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.

(28) "Telecommunications Service" means 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.

(29) "Telecommunications Utility" has the meaning in §196.01, Wis. Stats.

(30) "Unusable Facilities" means 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.

(31) "Town" means the Town of Somers, a Wisconsin Municipal Corporation.

(C) **Administration.** The Town Building Inspector is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto on behalf of the Town.

(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 and pay the fee set forth in §8.02(F), below. 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.

(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 Town.

(3) **Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a Town 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.

(E) **Registration Information.**

(1) **Information required.** The information provided to the Town at the time registration shall include, but not be limited to:

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

(b) 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.

(c) All right-of-way users shall demonstrate to the satisfaction of the Town the financial capability to cover any liability which might arise out of their presence in the right-of-way.

(d) 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.

(e) A copy of the person's certificate of authority from the Wisconsin Public Service Commission 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.

(f) Execution of an indemnification agreement in a form prescribed by the Town, which is consistent with, and shall not exceed the obligations provided in §8.02(W) herein.

(2) **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.

(F) **Registration Fee.**

(1) **Registration fee.** The Town Building Inspector shall establish the registration fee in an amount sufficient to recover the costs incurred by the Town for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.

(2) **Fee computation.** The Town may recalculate, and by resolution, establish the registration fee.

(G) **Excavation Permit Requirement.**

(1) **Excavation permit required.** Except as otherwise provided in this chapter or other chapters of the Town ordinances, 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 or another excavation permit before the expiration of the initial permit, pursuant to §8.02(N), below, and a new permit or permit

extension is granted.

(2) **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.

(H) **Excavation Permit Application.** 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 if required by this chapter;
- (2) Submission of a completed permit application form, including all required attachments, and scaled drawing showing the location and area of the proposed project and the location of all existing and proposed facilities;
- (3) Payment of all money due to the Town for:
  - (a) applicable permit fees and costs as set forth below;
  - (b) unpaid fees or costs due for prior excavations; or
  - (c) any loss, damage or expense suffered by the Town because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the Town.
- (4) When an excavation permit is requested for purposes of installing additional facilities, and the posting of a restoration bond for the additional facilities is insufficient, the posting of an additional or larger restoration bond for the additional facilities may be required.

(I) **Excavation Permit Fee.**

(1) **Fee calculation.** The excavation permit fee shall be established by the Department in an amount sufficient to recover the costs incurred by the Town. This fees shall recover costs incurred by the Town for each of the following categories as provided herein:

(a) **Administrative.** The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.

(b) **Repair.** No repair fee shall be collected by the Town, 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 §8.02(J), and to pay a degradation fee.

(c) **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 be calculated by adding two (2) feet to each side of the actual street cut. Depreciation schedules shall be provided by type of street.

Degradation Fee = (cost per square yard for street, overlay and sealcoat) x (depreciation schedule rates) x (area of patch)

The total excavation permit fee shall be calculated as follows:

Total excavation permit fee = administrative cost + degradation fee (if applicable).

(2) **Town exemption**. Notwithstanding subparagraph (I)(1)(c), the Town and its contractors shall not pay degradation fees.

(3) **Payment of permit fees**. No excavation permit shall be issued without payment of applicable fees.

(4) **Non-refundable**. Permit fees paid for a permit that the Department has revoked for a breach as stated in §8.02(Q) are not refundable.

(J) **Right-of-Way Repair**.

(1) **Timing**. 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.

(2) **Repair**. In addition to repairing its own work, the permittee must repair the general area of 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.

A permittee may request to have the Town repair the right-of-way.

(a) **Town repair**. If the permittee requests to have the Town repair the right-of-way, the Town may accept or reject the request at its sole option. 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.

(b) **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 repair bond shall be released.

(3) **Standards.** The permittee shall perform repairs according to the specifications of the Department and/or in 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.

(4) **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 this period it 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 §8.02(P).

(5) **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 Town, within thirty (30) days of billing, the cost of repairing the right-of-way. If permittee fails to pay as required, the Town may exercise its rights under the repair bond.

(K) **Restoration in Lieu of Repair and Degradation.** The permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. If restoration is elected, the Department shall specify the area to be restored, and the methods and materials to be used for the restoration. The permittee shall then also comply with the preceding §8.02(J), subparagraphs (1) through (5) as applied to restoration instead of repair.

(L) **Inspection.**

(1) **Notice of completion.** When the work under any permit hereunder is completed, the Permittee shall notify the Department.

(2) **Site inspection.** 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 which 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. 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 §8.02(Q).

(M) **Ongoing Management Fees.**

(1) **Fee basis.** Fees shall reflect the ongoing or long-term costs to the Town of managing access to the right-of-way. These costs are exclusive of administrative costs collected under excavation permit fees. Fees shall be initially set, and may be annually recomputed, to recover the costs incurred by the Town in ongoing management of the right-of-way. Ongoing management costs include, but are not limited to, inventory maintenance, facility tracking, GIS, tree trimming, grass mowing, right-of-way maintenance, location marking and general inquiries related to public right-of-way users. The fee shall be based on the number of feet of right-of-way occupancy by a telecommunications right-of-way user.

The per foot management fee shall be calculated as follows:

Annual management fee per foot = total annual management cost/total ROW occupancy feet

(2) **Payment of fees.** Ongoing management fees shall be subject to adjustment and correction at the conclusion of the calendar year. Such fees shall be paid for all and any part of a calendar year, prorated on a daily basis, during any time period in which the said person:

- (a) Uses or occupies the right-of-way to furnish telecommunications service, or
- (b) Places, maintains or uses the person's wires, mains, pipes, or any other facilities in the right-of-way.

(N) **Joint Applications.**

(1) **Joint application.** Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.

(2) **With Town projects.** Registrants who join in a scheduled excavation performed by the Town, whether or not it is a joint application by two (2) or more registrants or a single application, are not 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.

(O) **Supplementary Applications.**

(1) **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.

(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. 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) **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 one has already been paid on the original permit.

(P) **Other Obligations.**

(1) **Compliance with other laws.** Obtaining a permit to excavate and/or occupy the right-of-way does not relieve 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 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.

(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.

(Q) **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 grounds:

- (a) The applicant or permittee is required by §8.02(D) to be registered and has not done so;
- (b) Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;
- (c) Misrepresentation of any fact by the applicant or permittee;
- (d) Failure of the applicant or permittee to maintain required bonds and/or insurance;
- (e) Failure of the applicant or permittee to complete work in a timely manner;
- (f) The proposed activity is contrary to the public health, safety or welfare;
- (g) If insufficient right-of-way space where the permit is sought is available;
- (h) The competing demands for the particular space in the right-of-way;
- (i) The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permit applicant;
- (j) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way.
- (k) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or
- (l) 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 subparagraph (1), above, 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 utility service, or (c) to 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 with the Town Board. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Town Board may affirm, reverse or modify the decision of the Department.

(R) **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 Chapter.

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 obtain a 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 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 chapter.

(S) **Supplementary Notification.** If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the Department of the accurate information as soon as this information is known.

(T) **Location of Facilities.**

(1) **Under grounding.** Under conformity with local, state and federal law, unless existing above-ground facilities are used or specific advance written permission is obtained by the Department for the installation of above-ground facilities, the installation of new facilities and replacement of old facilities shall be done under ground or contained within buildings or other structures in conformity

with applicable codes.

(2) **Corridors**. The Department may assign specific corridors within the right-of-way, consistent with Wisconsin Public Service Commission standards. All excavation or other permits issued by the Department involving the installation or replacement of facilities shall designate the property corridor for the facilities at issue consistent with the Wisconsin Public Service Commission's corridor selection standards.

(3) **Limitation of space**. The Department may prohibit or limit the placement of new 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 decision, the Department shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare.

(U) **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 Town use of the right-of-way, (ii) a public improvement undertaken by the Town, (iii) an economic development project in which the Town 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.

(V) **Interference With Other Facilities During Municipal 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 local representative. The registrant shall meet with the Town's representative within twenty-four (24) hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within seventy-two (72) hours, 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 arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days.

(W) **Indemnification**. Permittee expressly acknowledges and agrees, by acceptance of the permit, to indemnify, defend and hold harmless the Town, its officers, boards, committees, commissions, elected officials, employees and agents, 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 the Town or its agents or employees 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 Town or its agents or employees.

(X) **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 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 Town 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 (2) years, unless the Department waives this requirement.

- (2) **Abandoned facilities.** Facilities of a registrant who fails to comply with §8.02(X)(1), above, and which, for two (2) years, remain 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 (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.

- (3) **Public utilities.** This section shall not apply to a public utility as defined by §196.01(5), Wis. Stats.

(Y) **Reservation of Regulatory and Police Powers.** The Town, 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 lessen the lawful powers and rights, which it has now or may be hereafter granted to the Town 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 Town, shall be in full force and effect and subject to the exercise thereof by the Town at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Town 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 Town pursuant to such powers.

(Z) **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this chapter 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.

## 8.03 OBSTRUCTING AND ENCROACHMENTS.

(A) **Prohibited.** No person shall encroach upon or obstruct or encumber any street, alley, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in subsection (B) below.

(B) **Exceptions.** The prohibitions of subsection (A) shall not apply to the following:

- (1) Signs and clocks attached to buildings which project not more than six (6) feet from the face of such building and which do not extend at any point lower than ten (10) feet above the sidewalk, street or alley.
- (2) Awnings which do not extend at any point lower than seven (7) feet above the sidewalk, street or alley.
- (3) Public utility encroachments authorized by the Town.
- (4) Goods, wares, merchandise or fixtures being loaded or unloaded which do not extend more than three (3) feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than three (3) hours.
- (5) Building materials when placed upon the street, alley or sidewalk upon conditions prescribed by the Town Board who may require such materials to be protected by barricades or appropriate warning lights.

## **8.04 SNOW DEPOSITS IN STREETS RESTRICTED.**

No person shall cause to be deposited snow from his premises onto the sidewalks or any street or roadway in the Town without a permit therefor from the Town Board who may require a payment of a fee sufficient to reimburse the Town for the cost of removing any snow so deposited.

## **8.05 STREET TREES IN RIGHT-OF-WAY.**

No person shall plant any tree, shrub or plant between his property line and the curb or traveled portion of any street abutting his premises without first obtaining written approval of such from the Town.

## **8.06 SPECIFICATIONS FOR TOWN ROADS AND EMBANKMENTS.**

(A) **Intent.** It is the intent of this chapter to provide road and embankment specifications as the basic requirements of such construction prior to acceptance of any dedicated street or roadway as a Town road or street to be maintained by the Town.

(B) **Road Specifications.**

(1) **General.** Specifications for all Town roads shall be the same as stated in Section 18.27 of the Land Division Platting Control and Development Ordinances of the Town of Somers including Appendix and the State of Wisconsin Department of Transportation standard specification for highway and structure construction current edition.

(2) **Preparation.** All top soil, muck, peat or soil unsuitable for roadway bases shall be removed, and where required, shall be replaced with clay subsoil or granular material acceptable to the Town Engineer.

(3) **Gravel.** A minimum of twenty-eight (28) feet in width with a minimum compacted surface of four (4) inches in depth of #3 crushed stone plus two (2) inches compacted of traffic bond will be used on standard sixty-six (66) feet right-of-way road. Other width roads shall be determined by the Town Board with the advice of the Town Engineer. The #3 and traffic bond gravel shall conform to Wisconsin Department of Transportation gradation. The outside four (4) feet of either side of the above surface may be considered to be shoulder, and the surface may be considered to be shoulder, and the surface material may be tapered to the outside edge of the road, but shall consist of a sufficient depth of material to provide a weatherproof turnout for vehicle traffic leaving the roadway.

(4) **Fine grading gravel.** Prior to priming, all roads and parking lots shall be fine graded and compacted by the paving contractor. A two (2) inch crown shall

be graded into the twenty-four (24) foot wide road. The application rate for MC-30 prime oil shall be 0.30 gallons per square yard.

(5) **Bituminous concrete pavement.** A two and three-quarters (2 $\frac{3}{4}$ ) inch thick binder course shall be laid and rolled to proper density and one and three-quarters (1 $\frac{3}{4}$ ) inch thick finish course shall be laid over the binder course and rolled to proper density. Bituminous concrete material shall conform to Wisconsin Department of Transportation specifications and shall be asphalt type AC in the penetration range of one hundred twenty (120) to one hundred fifty (150). Shoulders shall be graveled as necessary to the finish course of bituminous concrete and shall not be laid until the road bed has been adequately compacted and approval obtained from the Town Engineer nor shall the bituminous concrete be laid in new subdivisions until development has progressed to a point where the roadway will not be damaged by trucks and equipment serving the development.

(C) **Culverts.**

(1) **Culvert permit required.** No person shall install a drainage culvert in any street, road or drainage way under the jurisdiction of the Town of Somers without first obtaining a permit from the Town's Public Works Department.

(2) **Application.** Applications for a culvert shall be made to the Public Works Department which application shall state the name of the owner of the premises, the contractor who will be installing the culvert, an accurate description together with a diagram indicating the Town road's right-of-way, the applicant's property line, the distance between the shoulder of the road and the property line and any existing drainage ditch, and the direction of the flow of water.

(3) **Inspection required.** No permit shall be granted until the Public Works Foreman has made an inspection of the site and established the grade, size and length of the culvert to be installed, and shall determine such other work and conditions required at the site in order to provide a proper installation of the culvert, maintenance and upkeep of the culvert after installation.

(4) **Permit forms.** A permit for the installation of the culvert shall be on forms provided by the Town and shall set forth the terms and conditions upon which the permit is granted. Any deviation or violation of the terms of the permit shall constitute a violation of this ordinance and shall be subject to revocation of the permit after administrative proceedings as set forth in this code.

(5) **Costs and expenses.** All costs for labor and materials including the Town inspection fee, site preparation and ditching shall be paid by the applicant.

(6) **Fees.** Before any permit shall be issued, the owner shall pay to the Town a fee of Thirty-Five (\$35.00) Dollars and all other costs at the time of application.

(7) **Sizing**. Culverts shall be of a minimum diameter of fifteen (15) inches and shall be equipped with end flares. Maximum length including the flared end sections shall be twenty-four (24) feet and zero (0) inches unless appealed in writing to the Board of Appeals for a greater length. All culverts shall be covered or paved with materials that are compatible with existing public street or right-of-way, except that concrete driveway approaches are prohibited, with the Public Road right-of-way.

(D) **Ditches**. Drainage ditches, unless the road has curbing on each side, shall be of two (2) feet side slope for each foot of depth and of a depth sufficient to provide adequate drainage.

(E) **Grading and Construction of Embankments**.

(1) **Stripping**. All vegetation such as trees, stumps, brush, heavy growths of grass, decayed vegetable matter, rubbish and any other unsuitable material within the area upon which embankment is to be placed, shall be stripped or otherwise removed before the embankment is placed, and in no case shall such objectionable materials be allowed in or under the embankment. All topsoil, muck and peat shall be removed and replaced with clay subsoil or granular material in the manner specified below.

(2) **Formation of embankments**. Embankments shall be formed of satisfactory materials placed in successive horizontal layers of not more than six (6) inches in loose depth for the full width of the cross section.

(a) The grading operations shall be so conducted, and the various soil strata shall be placed so as to produce a soil structure as shown on the typical cross section as directed. All materials entering the embankment shall be reasonably free of organic matter such as leaves, grass, roots and any other objectionable material. Soil, granular material, shale and other material permitted for use in embankment shall be spread in successive layers as specified.

(b) During the construction of the embankment, the contractor shall route his equipment at all times, when loaded and when empty, over the layers as they are placed and will be maintained at all times.

(c) In the construction of the embankments, starting layers shall be placed in the deepest part of the fill, and as placement progresses, layers shall be constructed approximately parallel to the finished pavement grade line.

(3) **Compacting**.

(a) Special equipment shall be required for the compacting of the

soil. Compaction may also be accomplished by using the earth moving equipment as rolling equipment. Each layer shall be rolled with the cutting edge of the scraper used as a grader, until the entire area of each layer has been covered by the wheels of the equipment at least once.

(b) If the materials for embankment are deposited in the embankment by trucks, the material shall be spread in successive horizontal layers by a bulldozer, and each layer compacted by the tractor until the entire area of each layer has been covered by the tracks of the tractor at least once.

(4) **Preparation and protection of the top of the subgrade.**

(a) Prior to the placing of the topsoil, the subgrade shall be of such smoothness that it will not vary more than 0.10 feet from the true grade, as established by grade hubs placed four (4) inches below finished grade of the topsoil areas.

(b) At all times, the top of the subgrade shall be kept in such condition that it will drain readily and effectively. In handling materials, tools and equipment, the contractor shall protect the top of the subgrade from damage by equipment. If routes are formed, the subgrade shall be reshaped and compacted.

(5) **Topsoil.**

(a) All graded areas shall be definitely capped with a minimum amount of four (4) inches of as rich a topsoil as can be obtained from the normal grading limits. Grading operations shall be so conducted that, as far as practicable, all topsoil removed by normal excavation or stripped from beneath embankments can be deposited in top four (4) inches in embankments and cut areas that have been undercut to a depth of four (4) inches below final grade.

(b) Spreading of topsoil shall be performed in such a manner that the entire graded area will be capped with a minimum of four (4) inches of satisfactory topsoil. After spreading, the entire area shall be disked at least once, to a depth of not less than three (3) inches, after which the area shall be smoothed with suitable equipment. The area shall be of such smoothness that it will not vary more than 0.10 feet from true grade, as established by grade hubs. Any irregularities in the surface, resulting from topsoil or other operations, shall be corrected insofar as practical, to prevent the formation of low places and pockets where water can stand.

(6) **Cleaning up.** After the topsoil has been spread and the area smoothed

to the specified grade, the surface shall be cleared of all tones, roots or other objects larger than two (2) inches in greatest diameter, and all wire, brush or other objects that may interfere with the subsequent turfing operations.

(7) **Seeding.** Seed shall be fifty (50%) percent Kentucky Blue Grass, forty (40%) percent Pennlawn Creeping Fescue and ten (10%) percent domestic ryegrass and applied at the rate of one hundred (100) pounds per acre. Not more than three (3) days prior to seeding, five hundred (500) pounds per acre of 10-10-10 fertilizer shall be worked into the soil. Sod shall be Kentucky Bluegrass. Areas where erosion is likely to occur shall be sodded or mulched with straw or diked with straw or other approved material at intervals frequent enough to prevent ditch erosion. Sod shall be pegged on steep slopes and watered the same day it is laid.

(F) **Performance Bond.**

(1) Whenever a proposed public roadway or street shall be presented to the Town Board, the Board, in its discretion, may require that a performance bond, letter of credit or acceptable security in an amount adequate to insure the construction of roadway and embankment as set forth in this chapter, will be posted. Such security shall be conditioned upon the applicant's faithful performance and shall contain such other terms, conditions and for a duration deemed reasonable by the Town Board for the protection of the public and the Town.

(2) All plans and specifications for roadways and embankments including provisions for adequate surface water drainage shall be submitted to the Town Board for review by the Town Engineer and approved by the Board upon satisfactory recommendation by the Town Engineer. The Town Engineer shall inspect and approve of work and sureties shall not be released until final approval by the Town Engineer.

(G) **Exceptions.** Upon proper application to the Board of Appeals and for good cause shown, and where the Board of Appeals finds that the topography of the land or other condition beyond the applicant's control will work an extraordinary hardship on the development of the roadway, the Board may grant an exception provided that granting such exception will not have a harmful effect on the public interest or violate the spirit and intent of this chapter.

(H) This chapter shall be supplementary to Chapter 18 of the Town's Municipal Code relating to the division, platting and development of land.

## **8.07 SITE PLAN REVIEW REQUIRED.**

(A) **Purpose.** For the purpose of promoting compatible development, stability of

property values, and to prevent impairment or depreciation of property values, no person shall commence any use or erect any structure without first obtaining the approval of a detailed site plan as set forth in this section.

(B) **Procedure.** The Town Administrator shall review the site plans, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, utilization of landscaping and open space as deemed appropriate for all development classified as a principal or accessory use of any district. No accessory use buildings shall be allowed in any residential zoned district unless there is a principal structure on the site or in conjunction with a principal structure being built.

The Somers Plan Commission shall review the site plan, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway location, loading and unloading, highway access, traffic generation and circulation, drainage, sewer and water systems, utilization of landscaping and open space, and the proposed operation of all uses listed as conditional uses and make their recommendations to the Town Board.

(1) **Principles.** To implement and define criteria for the purposes set forth above, the following principles are established to apply to all new structures and uses and to changes or additions to existing structures and uses:

(a) No building shall be permitted the design or exterior appearance of which is of such unorthodox or abnormal character in relation to its surroundings as to be unsightly or offensive to generally accepted taste and community standards.

(b) No building shall be permitted the design or exterior appearance of which is so identical with those adjoining as to create excessive monotony or drabness.

(c) No building shall be permitted where any exposed facade is not constructed with a finished material which is aesthetically compatible with the other facades and presents an attractive appearance to the public and to surrounding properties.

(d) The facade of a building which faces upon a public street right-of-way shall be finished with an aesthetically pleasing material subject to the principles and standards for the aesthetic evaluation of site and building projects as described in Chapter 18 of the Town Ordinances.

(e) **Building scale and mass.** The relative proportion of a building to its neighboring buildings, to pedestrians and observers, or to other existing buildings shall be maintained or enhanced when new buildings are built or when existing buildings are remodeled or altered.

(f) **Building roof lines and roof shapes.** The visual continuity of

roofs and their contributing elements (parapet walls, coping, and cornices) shall be maintained in building development and redevelopment.

(g) Since the selection of building colors has a significant impact upon the public and neighboring properties, color shall be selected in general harmony with existing neighborhood buildings.

(h) No building or sign shall be permitted to be sited on the property in a manner which would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse affect on the beauty and general enjoyment of existing structures on adjoining properties.

(i) No building or use shall be permitted that would have a negative impact on the maintenance of safe and healthful conditions in the community.

(j) Buildings and uses shall maintain existing topography, drainage patterns, and vegetative cover insofar as is practical. The Building Inspector or the Somers Town Plan Commission may require that drainage easements be executed.

(k) Appropriate buffers shall be provided between dissimilar uses. See Kenosha County zoning ordinances.

(l) Appropriate erosion control measures shall be utilized in all new development.

(m) Buildings and uses shall provide for safe traffic circulation and safe driveway locations.

(n) Buildings and uses shall provide adequate parking and loading areas. No loading dock or overhead doors shall face upon a street right-of-way, except in a M-2 heavy manufacturing district.

(o) Buildings and uses shall be provided with adequate public service as approved by the appropriate utility.

(p) Dumpsters and other trash receptacles shall be fenced and/or screened from view from street right-of-ways and adjacent residential uses.

(q) Buildings and uses shall make appropriate use of open spaces. The Building Inspector or the Somers Plan Commission may require

appropriate landscaping and planting screens.

(C) **Appeals**. Any person or persons aggrieved by any decisions of the Building Inspector or the Somers Town Plan Commission related to plan review may appeal the decision to the Somers Town Board. Such appeal shall be in writing and filed with the Somers Town Clerk/Treasurer within thirty (30) days after filing of the decision with the Building Inspector or the Town Plan Commission.

## **8.08 SPECIAL ASSESSMENTS ESTABLISHED.**

(A) **Policy**. The Town Board of the Town of Somers does hereby establish a policy by which special assessments may be levied for any public improvement which shall benefit the properties adjacent to such improvements.

(B) **Definition**. As used in this ordinance the term public improvement shall mean any undertaking by the Town of Somers for the construction or installation of grading, graveling and paving of streets, including curb and gutters, storm and sanitary sewers, water mains or any other public improvements installed or constructed pursuant to powers of Town Sanitary Districts created by §60.71, Wis. Stats., or Utility Districts established by §66.0827, Wis. Stats.

(C) **Special Assessments**. The Town Board shall levy a special assessment against properties which receive a benefit from a public improvement. Special assessments may be paid in a lump sum or in annual installments as the Town Board shall determine and as provided by law. Unpaid special assessments shall be placed on the tax roll and treated as any other tax on real estate, all as provided in §66.60, Wis. Stats.

(D) **Exception for Existing Roads**. The following Town roads which have been kept and maintained by the Town and placed on the Town highway map prior to the 11<sup>th</sup> day of November, 1986, shall be assessed at the rate of not more than fifty (50%) percent of the costs of paving and the balance of said costs shall be borne by the Town:

- (1) 38<sup>th</sup> Avenue South of 4<sup>th</sup> Street, including the cul-de-sac.
- (2) 118<sup>th</sup> Avenue North of 12<sup>th</sup> Street.
- (3) 11<sup>th</sup> Street West of 88<sup>th</sup> Avenue, including cul-de-sac.

## **8.09 ADMINISTRATIVE AND ENGINEERING COSTS.**

Whenever a property owner shall request the Town of Somers to undertake the feasibility of the extension or expansion of municipal services, such a municipal water, sewage, drainage or roadway studies for the purpose of providing such municipal service to the owner of the property, the entire cost of preparing such studies or reports, including the services of the Town Engineer, Town Attorney, architect, and administrative costs, or other professional service as may be required by the Board, shall be paid by

the owner requesting the service.

The property owner's request shall be referred to the Town Administrator who shall make an estimate of the cost and the applicant shall advance such cost in an initial amount of not less than Five Hundred (\$500.00) Dollars and in the event that the estimate is not sufficient, the applicant shall be notified and the additional sum shall be deposited with the Town Clerk/Treasurer. In the event that the sum advanced is more than shall be required, such excess shall be refunded to the applicant.

## 8.10 DRIVEWAYS.

(A) **Driveway Approach.** Driveway approach shall mean that area adjacent to the public street or public right-of-way which connects a private road or driveway to provide ingress and egress to the adjacent property.

(B) **Permit Required.** No person shall construct or modify any driveway approach without first obtaining a permit from the Town.

(C) **Permit Application.** Application for a driveway approach shall be filed with the Building Inspector, who shall refer the application to the Public Works Department for comment and recommendation. Said application shall, in part, state the name of the owner, location of the property, public streets or roadways adjacent to the property and to be served by the driveway approach together with a sketch indicating the approach or apron, property lines, location of intersection streets, utility poles, street signs or other obstructions to the view of street traffic.

(D) **Location of Driveway.** No parcel within the Town of Somers shall be permitted for more than one (1) access point/driveway unless the following minimum conditions can be met.

(1) There shall be a minimum of one hundred fifty (150) feet between the centerline of each driveway access which shall be measured between the centerlines of the proposed driveway access points.

(2) No driveway access point shall be permitted within the turning radius of a Town road intersection or within the vision triangle of any intersection.

(3) All driveway access points shall be a minimum of thirty (30) feet back from the greatest point of any intersection vision triangle.

(4) There shall be a minimum of ten (10) feet from the lot line to the closest edge of the paved surface of any driveway. The area between the lot line and the edge of the driveway shall be maintained being green space to facilitate drainage, snow removal and the like.

(E) **Culverts.** If the driveway approach requires culverts, Section 8.06(C)(7) shall also apply to any driveway approach construction.

(F) **Paving**. All driveway approaches shall be paved with asphalt or with any other road material compatible with the street or public right-of-way, but shall not be of concrete construction.

(G) **Inspections**. No construction of a driveway approach shall be commenced until the Building Inspector has inspected the site, approved the location and the covering or paving materials to be used. No driveway shall be approved until a final inspection has been made and all construction, including culverts, has been approved.

(H) **Owner to Maintain**. The property owner shall keep and maintain a driveway approach in good condition and shall further be responsible for and assume all liability arising out of any loss or injury to any person or property resulting from the construction and maintenance of the driveway approach.

#### **8.11 RESERVED.**

#### **8.12 RESERVED.**

#### **8.13 RESERVED.**

#### **8.14 RESERVED.**

#### **8.15 PENALTY.**

In addition to the general penalties set forth in §25.04 of this Code, the Town may declare any violation or construction of a driveway approach not in conformity with this Ordinance, a public nuisance and take such action as may be authorized under Chapter 10 of these Ordinances.