

PERCH LAKE TOWNSHIP  
CARLTON COUNTY, MINNESOTA

# PERCH LAKE TOWNSHIP RIGHT-OF-WAY ORDINANCE

Ordinance No. ~~2020~~2021-01

Adopted ~~December 14~~January, ~~2020~~2021

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The Board of Supervisors of the Town of Perch Lake ordains:

**ARTICLE ONE  
GENERAL PROVISIONS**

**SECTION 1-1  
PURPOSE, AUTHORITY, AND SCOPE**

**Section 1-1.01. Purpose.** The general purpose of adopting this “Perch Lake Township Right-of-Way Ordinance (“Ordinance”) is to protect public safety, reduce interferences with public travel, protect the public’s interest in its rights-of-way, and to provide for the efficient and uniform administration of the Town’s road rights-of-way. The Town Board finds that the regulations, requirements, and restrictions, as set forth in this Ordinance, are in the best interests of the health, safety, and welfare of the Town’s citizens.

**Section 1-1.02. Authority.** The Ordinance is adopted under the broad authorities provided the Town Board as the road authority over Town roads. This authority includes, but is not limited to, Minnesota Statutes, chapters 160, 164, 165, 168B, 169, 609, and other chapters, as well as the rules associated with those chapters. With respect to Article 4, it is adopted consistent with the authority provided the Town Board pursuant to 1997 Session Laws, Chapter 123, Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086, Minnesota Statutes, sections 164.36, 169.832, 169.87, and the other laws governing applicable rights of the Town and users of the right-of-way. That Article shall be interpreted consistent with those statutes as well as with Minnesota Rules, parts 7819.0050 – 7819.9950 to the extent applicable.

**Section 1-1.03. Scope.** This Ordinance applies to all Town road rights-of-way, including those dedicated to the public by plat, within the Town. The Town may, with respect to cartways, platted roads, and other dedicated roads that are not maintained by the Town, enforce this Ordinance to the extent the Town Board determines is necessary to preserve or protect its interests. However, any action taken by the Town on such roads shall not constitute its acceptance of the cartway or road for maintenance purposes. Additionally, failure to enforce any provision of this Ordinance shall not constitute or be deemed a decision to abandon a right-of-way or any portion thereof. This Ordinance does not apply to or otherwise regulate rights-of-way under the jurisdiction of another road authority.

**Section 1-1.04. Exceptions.** The prohibitions, requirements, and restrictions contained in this Ordinance do not apply to:

- (a) The Town, its officers, employees, or agents while operating within the course and scope of their duties for the Town; or
- (b) Contractors hired by the Town while performing services within the scope of their contract with the Town.

**Section 1-1.05. Roads Dedicated by Plat.** The Town shall not assume the responsibility to maintain any right-of-way dedicated to the Town or the public, whether by plat or otherwise, until it is built to Town specifications, all conditions the Town Board may have imposed related to the acceptance of the road have been complied with to the satisfaction of the Town Board,

and the Town Board passes a resolution determining that spending the Town's funds to maintain the road is in the public interest.

**Section 1-1.06. Effective Date.** This Ordinance is effective on the first day of publication of an approved summary hereof.

## **SECTION 1-2 DEFINITIONS**

**Section 1-2.01. Definitions.** For the purposes of this Ordinance, the following terms shall have the meaning given them in this section. Any term not defined in this section shall have the meaning given it in the most applicable Minnesota Statute or Minnesota Rule. If not defined therein, the term shall have the meaning most commonly given it in the context in which it is used in this Ordinance.

**Subd. 1. Abandoned Facility.** "Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

**Subd. 2. Abandoned Vehicle.** "Abandoned vehicle" shall have the meaning given the term in Minnesota Statutes, section 168B.011, subdivision 2.

**Subd. 3. Applicant.** "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

**Subd. 4. Approach.** "Approach" means the area of the right-of-way between the traveled surface of the road and the adjacent property that is intended to provide access for vehicles or equipment from the road to the adjacent property.

**Subd. 5. Collocate or Collocation.** "Collocate" or "Collocation" has the meaning given in Minnesota Statutes, section 237.162, subdivision 10.

**Subd. 6. Commission.** "Commission" means the Minnesota Public Utilities Commission.

**Subd. 7. Construction Performance Bond.** "Construction Performance Bond" means any of the following forms of security provided at permittee's option:

- (a) Individual project bond;
- (b) Cash deposit;
- (c) Letter of Credit, in a form acceptable to the Town;
- (d) Self-insurance, in a form acceptable to the Town; or
- (e) A blanket bond for projects within the Town, or other form of construction bond, for a time specified and in a form acceptable to the Town.

**Subd. 8. Degradation.** "Degradation" means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

**Subd. 9. Degradation Cost.** “Degradation Cost” means the cost to achieve a level of restoration, as determined by the Town at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules, parts 7819.9900 to 7819.9950.

**Subd. 10. Degradation Fee.** “Degradation Fee” means the estimated fee established at the time of permitting by the Town to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

**Subd. 11. Delay Penalty.** “Delay Penalty” is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

**Subd. 12. Emergency.** “Emergency” means a condition that: (1) poses a danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

**Subd. 13. Equipment.** “Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

**Subd. 14. Excavate.** “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

**Subd. 15. Excavation Permit.** “Excavation Permit” means the permit which, pursuant to ~~this~~ Article [Four](#), must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

**Subd. 16. Excavation Permit Fee.** “Excavation Permit Fee” means money paid to the Town by an applicant to cover the costs as provided in ~~this~~ Article [Four](#).

**Subd. 17. Facility or Facilities.** “Facility” or “Facilities” means any tangible asset in the right-of-way required to provide utility service.

**Subd. 18. Headwall.** “Headwall” means rock, concrete, masonry, metal, timber or other similar materials placed on the sides of an approach as support, to prevent erosion, or for decorative purposes.

**Subd. 19. Junk.** “Junk” means old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, garbage, waste materials, rubbish, rubber debris, appliances, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

**Subd. 20. Junk Vehicle.** “Junk vehicle” shall have the meaning given the term in Minnesota Statutes, section 168B.011, subdivision 3.

**Subd. 21. Local Representative.** “Local Representative” means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service and to make decisions for that registrant regarding all matters within the scope of ~~this~~ Article [Four](#).

**Subd. 22. Management Costs.** “Management Costs” means the actual costs the Town incurs in managing its right-of-ways, including such costs, if incurred, as those associated with: registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the Town, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes, sections 237.162 or 237.163; or any ordinance enacted under those sections, or the Town fees and costs related to appeals taken as provided in this Ordinance.

**Subd. 23. Micro Wireless Facility.** “Micro wireless facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 14.

**Subd. 24. Motor Vehicle or Vehicle.** “Motor vehicle” or “vehicle” has the meaning given motor vehicle in Minnesota Statutes, section 169.011, subdivision 42.

**Subd. 25. Obstruct.** “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

**Subd. 26. Obstruction Permit.** “Obstruction Permit” means the permit which, pursuant to ~~this~~ Article [Four](#), must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

**Subd. 27. Obstruction Permit Fee.** “Obstruction Permit Fee” means money paid to the Town by a permittee to cover the costs as provided in ~~this~~ Article [Four](#).

**Subd. 28. Ordinance.** “Ordinance” means this “[Perch Lake Township Right-of-Way Ordinance](#) ~~Regulating Town Road Rights-of-Way and the Impacts from Large Utility Projects.~~”

**Subd. 29. Parking Enforcement Officer.** “Parking enforcement officer” means a duly elected supervisor of the Town Board. Law enforcement officers shall have all the powers of a parking enforcement officer under this ordinance.

**Subd. 30. Patch or Patching.** “Patch” or “Patching” means a method of pavement replacement or roadway repair that is temporary in nature. A patch consists of: (1) the compaction of the subbase and aggregate base; and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only on roads the Town Board has scheduled to be overlaid within five years.

**Subd. 31. Pavement.** “Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

**Subd. 32. Permit.** “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162 with respect to permits issued under Article Four of this Ordinance. Other references in this Ordinance to a permit shall be to the particular permit identified in the reference.

**Subd. 33. Permittee.** “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the Town under ~~this~~-Article Four of this Ordinance.

**Subd. 34. 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.

**Subd. 35. Residential Lot.** Means a lot or piece of property, the principal use of which is for single-family or multi-family residential use.

**Subd. 36. Restore or Restoration.** “Restore” or “Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

**Subd. 37. Restoration Cost.** “Restoration Cost” means the amount of money paid to the Town by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

**Subd. 38. Right-of-Way.** “Right-of-Way” means the area on, below, or above a public road, highway, street, cartway, bicycle lane or public sidewalk in which the Town has an interest, including other publicly dedicated right-of-ways for travel purposes and utility easements of the Town. The term includes the full width of the Town’s easement or other interest. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

**Subd. 39. Right-of-Way Permit.** “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by ~~this~~-Article Four.

**Subd. 40. Right-of-Way User.** “Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or 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.

**Subd. 41. Service or Utility Service.** “Service” or “Utility Service” includes the following: (1) those 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 transporting of voice or data information, or wireless internet services; (3) services of a cable communications systems as defined in Minnesota Statutes, Chapter 238; (4) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (5) water, and sewer, including service laterals, steam, cooling or heating services.

**Subd. 42. Service Lateral.** “Service Lateral” means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common

source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

**Subd. 43. Small Wireless Facility.** "Small wireless facility" has the meaning given in Minnesota Statutes, section 237.162, subdivision 11.

**Subd. 44. Snow Season.** "Snow season" means from November 1st through April 30th each year as well as any days before or after that period during which one or more inches of snow has accumulated.

**Subd. 45. Telecommunication Right-of-Way User.** "Telecommunication Right-of-Way User" means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information, or for providing wireless services. For purposes of ~~this~~ Article Four, a cable communication system defined and regulated under Minnesota Statutes, Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, Chapter 308A, are not telecommunications right-of-way users for purposes of ~~this~~ Article Four, except to the extent these entities are offering wireless services.

**Subd. 46. Temporary Surface.** "Temporary Surface" means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the Town's two-year plan, in which case it is considered full restoration.

**Subd. 47. Towing Company.** "Towing company" means a person engaged in the business of towing or recovering vehicles by means of a crane, hoist, tow bar, tow line, or dolly.

**Subd. 48. Town.** "Town" means Perch Lake Township, Carlton County, Minnesota.

**Subd. 49. Town Board.** "Town board" means the board of supervisors of Perch Lake Township, Carlton County, Minnesota.

**Subd. 50. Town Property.** "Town property" means any property owned, or directly managed, by Perch Lake Township and includes, but is not limited to, parks, open space, utility easements, cemeteries, lake accesses, and the town hall property.

**Subd. 51. Town Representative.** "Town Representative" means a Town supervisor or other person designated by the Town Board to conduct inspections or to otherwise oversee work done within right-of-ways, whether such work is done by permit or otherwise.

**Subd. 52. Town Road.** "Town road" means the entire width between the boundary lines of any way or place under the town's jurisdiction or dedicated to the public by plat within the town when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic. Unless expressly indicated otherwise in this ordinance, town road includes all portions of the right-of-way including, without limitation, the travelled surface, shoulders, ditches, and the remainder of the easement area regardless of whether it is regularly brushed, mowed, or otherwise maintained by the town.

**Subd. 53. Trench.** “Trench” means an excavation in the traveled surface of a road, with the excavation having a length equal to or greater than the width of the traveled surface.

**Subd. 54. Truck.** “Truck” shall have the meaning given the term in Minnesota Statutes, section 168B.011, subdivision 88.

**Subd. 55. Utility Pole.** “Utility Pole” has the meaning given in Minnesota Statutes, section 237.162, subdivision 12.

**Subd. 56. Wireless Facility.** “Wireless facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 13.

**Subd. 57. Wireless Service.** “Wireless Service” has the meaning given in Minnesota Statutes, section 237.162, subdivision 15.

**Subd. 58. Wireless Support Structure.** “Wireless Support Structure” has the meaning given in Minnesota Statutes, section 237.162, subdivision 16.

**Subd. 59. Wireline Backline Facility.** “Wireline Backline Facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 17.

## **ARTICLE TWO GENERAL RIGHT-OF-WAY REGULATIONS**

### **SECTION 2-1 GENERAL PROVISIONS**

**Section 2-2.01. Delegation of Authority.** This Article shall be administered and enforced by the Town Board. The Town Board may delegate to individuals the authority to administer and enforce this Article, or aspects thereof, on behalf of the Town. Such designees shall have full authority to carry out the duties delegated to them as well as such related powers and duties reasonably necessary to fully execute those delegated duties.

**Section 2-2.02. Prohibitions.** In order to protect public safety and avoid interferences with maintenance activities, the following are prohibited within a Town road right-of-way.

**Subd. 1. Obstructions.** No person may place, maintain, or allow any obstruction in a right-of-way other than those specifically permitted by this Ordinance, by state law or rule, or by written approval of the Town Board. Items prohibited by this section include, but are not limited to, fences, posts, structures, piled materials, hay bales, vehicles, trailers, campers, equipment, or any other items that interfere with the safe use or the maintenance of the right-of-way. No person shall park a functioning vehicle in a right-of-way in such a way as to unreasonably interfere with the safe use of a road or the maintenance of the right-of-way.

**Subd. 2. Cultivation.** No person may cultivate, plant, harvest, or maintain agricultural crops, trees, bushes, or shrubs within a right-of-way.

**Subd. 3. Landscaping.** No person may cultivate, plant, or maintain grasses, flowers, vegetables, or other vegetation in any manner that obstructs visibility of a right-of-way or otherwise interferes with, obstructs, or renders dangerous for passage a right-of-way. No person may place watering systems or sprinkler heads within a right-of-way.

**Subd. 4. Junk.** No person shall place, discard, deposit, or maintain Junk in a right-of-way.

**Subd. 5. Alteration of Grade.** No person may alter or change the depth or contour of any portion of any ditch or embankment in a right-of-way without written approval of the Town Board.

**Subd. 6. Unauthorized Maintenance.** No person may work, maintain, improve, or repair the traveled portion of a right-of-way without the written approval of the Town Board.

**Subd. 7. Doing Damage.** No person shall cause damage to a right-of-way, whether by a willful act or a failure to exercise due care, without the written approval of the Town Board. Damage prohibited by this section includes obstructing a ditch, culvert, or any related drainage facilities. Any person doing work within a right-of-way with approval of the Town Board shall return the right-of-way to at least the same condition it was in prior to the damage. f

**Subd. 8. Depositing Snow.** No person shall place or otherwise deposit any snow or ice on the travelled portion of a right-of-way, or push snow across the travelled portion of a right-of-way so as to leave ridges or other deposits of snow or ice on the travelled portion.

**Subd. 9. Statutory Prohibitions.** Without limiting or modifying the other provisions of this Ordinance, the prohibitions contained in Minnesota Statutes, section 169.2715 are adopted by reference and are incorporated into this Ordinance.

### **Section 2-2.03. Mailboxes, Newspaper Boxes, and Signs.**

**Subd. 1. Mailboxes.** Mailboxes and newspaper boxes are permitted within a right-of-way if they do not interfere with, obstruct, or render dangerous for passage in a right-of-way. Mailboxes placed within a right-of-way shall comply with all of the standards in Minnesota Rules, chapter 8818 regardless of the speed limit of the adjacent road. The Town Board may remove and replace mailboxes that do not comply with the standards at the owner's expense as provided in Minnesota Statute, section 169.072.

**Subd. 2. Signs.** No sign of any nature may be placed or allowed to remain in any right-of-way except an official traffic sign placed by a governmental authority or other signage expressly permitted by state law.

### **Section 2-2.04. Approaches.**

**Subd. 1. Permit Required.** No person may construct or reconstruct any approach within a right-of-way without first obtaining a permit from the Town and complying with the provisions of this Section. A person may be required to submit a map or drawing of the existing or proposed approach when seeking approval.

**Subd. 2. Standards.** Approaches constructed or reconstructed within a right-of-way shall comply with the following standards:

- (a) Culverts within approaches shall be a minimum of 15 feet in diameter and a minimum of 24 feet in length.

- (b) Approach culverts must be constructed of 16 gauge corrugated metal pipe.
- (c) Aprons are required.
- (d) Approach inslopes in the ditch at the culvert shall be no greater than 4:1.
- (e) One driveway per roadway is permitted for each residential lot, unless the Town Board approves an additional driveway upon a demonstration of need by the owner.
- (f) The minimum spacing between approaches connecting to a collector roadway is 150 feet.
- (g) The maximum top width of a residential approach within the right-of-way shall be limited to 24 feet. The maximum top width of a commercial driveway within the right-of-way shall be limited to 30 feet.
- (h) The full width of the right-of-way adjacent to the person's property shall be cleared and grubbed prior to the construction of the approach.
- (i) All stumps, roots, logs, and brush shall be removed from the upper 24 inches of the approach roadbed embankment.

**Subd. 3. Waiver.** A person may request a waiver from any of the standards in this Section by submitting a written request identifying the standard from which a waiver is sought and the reasons for the waiver to the Town and appearing before the Town Board at a regular meeting.

**Subd. 4. Costs.** A person constructing or reconstructing an approach to an existing road shall be responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals and the cost of a culvert if one is required. Property owners are responsible for maintaining and repairing as needed all approaches and associated culverts on their property at their own cost.

**Subd. 5. Headwalls.** No person may construct or reconstruct any headwall within a right-of-way without first obtaining a permit from the Town. All headwalls shall be constructed or reconstructed in a way that does not interfere with the safe use, maintenance, or damage of a right-of-way.

**Subd. 56. Non-Compliance.** A person who fails to comply with the requirements of this section may be required to remove or reconstruct the unapproved approach at that person's sole expense. The Town may also have the approach removed or reconstructed at the owner's expense.

## **Section 2-2.05. Culverts.**

**Subd. 1. Required.** No person may place or replace a culvert within a right-of-way without first obtaining a culvert permit from the Town. A person may be required to submit a map or drawing of the existing or proposed culvert when seeking approval. All new and replacement culverts shall be installed consistent with the Town's applicable standards. A person may be required to install a culvert meeting the specifications set out by the Town Board if the Town Board determines a culvert is necessary for suitable approach to the road and to

promote adequate drainage of the right-of-way. The property owner or other person installing the approach shall be responsible for the cost of acquiring and installing a culvert that complies with the standards established in this Ordinance.

**Subd. 2. Standards.** In addition to any other applicable standards set out in this Ordinance, culverts installed within the right-of-way shall comply with the following standards.

- (a) Safety aprons are required on all culverts located at the intersection of a Town road and a collector roadway;
- (b) Culverts used in approaches shall be a minimum of 12 inches in diameter and a minimum of 20 feet in length; and
- (c) Culverts used in approaches shall be constructed of 16 gauge corrugated metal pipe.

~~**Subd. 3. Replacement.** The property owner is responsible for replacing any culvert that is damaged, collapses, or is otherwise compromised such that it is no longer capable of conveying water as originally designed. The replacement culvert must comply with the standards established in this Ordinance.~~

~~**Subd. 4. Costs.** A person constructing or reconstructing an approach to an existing road shall be responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals and the cost of a culvert if one is required. Property owners are responsible for maintaining, repairing, and replacing as needed all approaches and associated culverts on their property at their own cost.~~

**Subd. 3. Costs.** A person installing a culvert shall be responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals. Property owners are responsible for maintaining and repairing as needed the culverts under approaches providing access to their property at their own cost.

**Subd. 4. Replacement.** The Town will, at the Town's expense, replace a culvert under a properly installed and maintained approach it determines is no longer functioning properly. The property owner shall submit a written request for a culvert replacement to the Town. The Town will supply the culvert, determine the timing of the installation of the replacement, provide for the installation of the replacement culvert, and properly dispose of the old culvert. The Town will restore the approach after the replacement, but is not responsible for landscaping or any specialty items or materials the owner may have installed in or on the approach. The Town will not replace a culvert if it determines, in its sole discretion, the failure of the culvert was the result of an intentional or negligent act. In such cases, the Town will provide the property owner written notice of its responsibility to replace the culvert. Nothing in this subdivision prohibits the Town from acting to correct any approach or culvert that is obstructing the flow of water in a Town road ditch.

**Subd. 5. Failure to Maintain or Replace.** If the failure of a property owner to maintain or replace, if required, a culvert results in water to back up, seasonal freezing exempted, into the Town's road ditch, onto the surface of a public road, or onto the property of another, the Town may issue a corrective order to the property owner requiring the repair or replacement of the culvert. If the property owner fails to correct the situation by the date established in the order, the Town may have the work done. All costs associated with notifying the property owner, repairing or replacing the culvert, and all collection costs, including all related administrative and professional fees, constitute a service charge the Town may collect on the

taxes of the property as provided in Minnesota Statutes, section 366.012, or through any other method available to the Town under law, if the property owner fails to pay in full the amount by the date indicated in the Town's invoice. Nothing in this subdivision prohibits or delays the Town from taking immediate action if it determines such action is needed to protect public safety. The property owner remains responsible for reimbursing the Town for the costs of the emergency repair or replacement and the Town may collect any unpaid costs as provided herein.

**Section 2-2.06. Drainage Affecting Right-of-Way.** No person may install, connect, construct, or reconstruct any drainage system or facility including, but not limited to, ditches, drain tile, culverts, or pipes into, across, or that outlets into a right-of-way without first obtaining a permit from the Town. A person may be required to submit a map or drawing of the existing or proposed drainage system when seeking approval.

**Section 2-2.07. Permissions and Permits.**

**Subd. 1. Conditions.** The Town may place reasonable conditions and impose reasonable regulations on any permission or permit it issues to do work within a right-of-way. Failure to comply with any condition or regulation may result in the revocation of the Town's permission or permit if the deficiency is not immediately corrected upon notice from the Town.

**Subd. 2. Limitations.** Any person receiving permission or a permit from the Town Board as provided in this Section must comply with all applicable federal, state, and local laws and rules as well as all applicable Town ordinances, resolutions, specifications, regulations, and policies. The person shall also comply with all conditions, requirements, and limitations the Town Board expresses as part of the permission or permit. Any person doing work within a right-of-way shall be responsible for posting such signs, barricades, or other warning signs as may be required to notify the traveling public of any hazards created by the work and shall take such other measures as may reasonably be required to protect public safety.

**Subd. 3. Indemnification.** Any person doing work within a right-of-way with permission or upon a permit issued by the Town agrees, as a condition of such permission or permit, to indemnify, defend, and hold the Town, its officers, employees, and agents harmless from all claims, suits, penalties and costs, including defense costs, the Town, its officers, employees, or agents may incur or be required to pay arising out of or in any way related to the work. Nothing in this ordinance shall constitute or be deemed a waiver of the limitations on or exemptions from liability available to the Town under Minnesota Statutes, Chapter 466 or otherwise. Additionally, the granting of permission or a permit shall not constitute a joint venture or joint enterprise between the person and the Town.

**Subd. 4. Fees.** The Town Board shall establish, by resolution, fees for all permits required by this Section. The Town Board may amend its fee schedule by resolution at any regular meeting.

**Section 2-2.08. Enforcement and Penalty.**

**Subd. 1. Violation.** A violation of any provision or requirement in this Article is prohibited and shall constitute a public nuisance. The person or persons violating this Section shall be subject to the penalties provided herein and shall be responsible for abating the nuisance, including the reimbursement of all costs the Town may incur to abate or otherwise respond to the nuisance.

**Subd. 2. Correction Order.** Upon discovery of a violation of this Section, the Town Board may issue a correction order to the violator, in person or by U.S. Mail, ordering the person to correct the violation by a time certain. If the address of the violator is not known, or if the property is not occupied, the Town will provide notice of the order by posting same on the property. If the violator fails to comply with the correction order by the time indicated in the order, which in no case shall exceed 30 days, the Town Board may provide for the correction of the violation. Issuance of a correction order does not preclude imposition of the penalties set forth in this Section.

**Subd. 3. Immediate Correction.** If the Town Board determines that the violation creates an immediate threat to public safety, the Town Board will make a good faith effort to notify the violator to immediately correct the situation. If the Town Board is not able to promptly contact the violator, or if the violator fails to immediately correct the situation upon notification, the Town Board may provide for the correction of the violation as it determines is appropriate.

**Subd. 4. Cost of Correction.** The cost of correcting a violation constitutes a service charge the violator is required to pay. If the Town Board provides for the correction of the violation, all expenses incurred, including reasonable attorney's fees, shall be billed to the violator. If the bill is not paid in full by the due date, the Town Board may exercise any options available to it under law to collect the amount due including, but not limited to, imposing the costs on the violator's property as a service charge pursuant to Minnesota Statutes, section 366.012. If a contractor working on behalf a property owner committed the violation, both the contractor and the property owner shall be jointly and severally liable for the costs of correction and the Town may take action to collect against either or both.

**Subd. 5. Penalty.** Any person who violates this Article shall be guilty of a misdemeanor and subject to the penalties for such as provided in State law. Each day of existence of such violation shall constitute a separate offense. If convicted, the person may be assessed costs of prosecution as allowed by Minnesota Statutes, section 366.01, subdivision 10.

**Subd. 6. Savings Clause.** The failure of the Town Board to exercise, and any delay in exercising, any right under this Section, including enforcement, shall not operate as a waiver thereof and shall not constitute a waiver of the Town's interest, however created, in any right-of-way, easement, or any other type of property interest.

**ARTICLE THREE  
PARKING RESTRICTIONS AND TOWING**

**SECTION 3-1  
GENERAL PROVISIONS**

**Section 3-1.01. Purpose.** The purpose of this Article is to protect the health, safety, and welfare of the public, those traveling on town roads, those maintaining town roads, and town property by regulating parking, abandoned and junk vehicles, prohibiting the placement of objects on town roads, and providing for the towing of vehicles determined to be in violation of this Article. The prohibitions and regulations contained herein are in addition to, and are intended to supplement, state regulations. To the extent this Article may be more or less strict than any applicable federal, state, or local laws, rules, regulations, or ordinances, the stricter provision shall apply. This Article applies only to town roads and town property within Perch Lake Township, and expressly does not authorize or apply to the towing of vehicles located entirely on private property or public rights-of-way under the control of other road authorities.

**Section 3-1.02. Parking Enforcement Officers.** The duly elected supervisors of the town board are individually designated parking enforcement officers for the purposes of this ordinance and shall have all powers provided such officers under this ordinance, as well as Minnesota Statutes, chapter 168B, and are authorized to act on behalf of the town. Law enforcement officers shall have all the powers of a parking enforcement officer under this ordinance.

**Section 3-1.03. Designating a Towing Company.** The town board may designate one or more towing companies that a parking enforcement officer may contact to tow a vehicle in accordance with this ordinance. If one or more towing companies are designated, a parking enforcement officer shall use a designated company to the extent reasonably possible under the circumstances. The town board may enter into such agreements with the towing companies as it deems necessary to provide for the timely towing and storage of vehicles. A towing company towing or impounding a vehicle pursuant to this ordinance shall be responsible for impounding and properly storing and safekeeping the vehicle and its contents. Any towing company towing a vehicle upon order of the Town shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in the towing, storage, and sale or other disposal of the vehicles it tows.

**SECTION 3-2  
PARKING RESTRICTIONS**

**Section 3-2.01. Compliance.** Every vehicle parked upon a town road shall comply with the provisions of this Section. Parking or placing a vehicle in a location or under the circumstances prohibited hereunder is a violation of this Article and such vehicle is subject to towing and impoundment.

**Section 3-2.02. Prohibitions.** It is unlawful for a person to park a vehicle, or any portion of a vehicle, whether attended or unattended, on a town road in way which violates any of the following:

- (a) In a place prohibited by Minnesota Statutes, section 169.32;

- (b) In a place prohibited by Minnesota Statutes, section 169.34;
- (c) In a place or manner described in Minnesota Statutes, section 168B.035, subdivision 3(b);
- (d) So as to interfere with the maintenance of a town road by the town or its authorized contractor. For the purposes of this prohibition, maintenance includes, but is not limited to, snowplowing, grading, seal coating, and bituminous overlay; or
- (e) For longer than 72 consecutive hours from May 1<sup>st</sup> through October 31<sup>st</sup> each year.

**Section 3-2.03. Snow Season Parking.** It is unlawful for a person to park a vehicle, whether attended or unattended, during the snow season in a way which violates this ~~subdivision~~section. ~~The~~Each of the following constitute snow emergency regulations for the purposes of Minnesota Statutes, chapter 168B.

**Subd. 1. Snow Accumulation.** No parking is allowed on a town road when there is an accumulation of 2 or more inches of snow until after the town has completed plowing it; ~~or.~~

**Subd. 2. Time Parked.** During periods when less than 2 inches of snow has accumulated, or after the snow has been plowed and snow event has ended, no vehicle may be parked on a town road for more than 12 consecutive hours.

**Section 3-2.04. Truck Parking.** It is unlawful for a person to park a truck on a town road longer than 12 consecutive hours, except when loading or unloading is actively taking place.

**Section 3-2.05. Placing Objects Prohibited.** It shall be unlawful to place or leave any object or property, except a vehicle, on any portion of the travelled surface or shoulder of a town road. The town may cause any object or property placed or left in violation of this section to be immediately removed and the person who caused or allowed the object or property to be placed or left within the town road shall be responsible for fully reimbursing the Town for all costs it incurs to remove and dispose of the object or property.

**Section 3-2.06. Abandoned and Junk Vehicles.** It is unlawful for a person to park, store, leave, or to allow the parking, storage, or leaving of an abandoned vehicle or a junk vehicle on a town road or on town property and such vehicles are subject to towing and impoundment. Abandoned vehicles and junk vehicles create an unsightly condition tending to reduce property values, interfere with the maintenance and safe use of town roads, and constitute an attractive nuisance creating a hazard to the health, safety and welfare of minors.

### **SECTION 3-3 TOWING AND IMPOUNDING VEHICLES**

**Section 3-3.01. Towing Authorized.** The Town may tow and have impounded a vehicle parked or abandoned in violation of this Article as provided in this section.

**Section 3-3.02. Procedure for Towing Vehicles.**

**Subd. 1. Procedures.** A parking enforcement officer shall comply with the following procedures before ordering a vehicle towed pursuant to this Article.

**Subd. 2. Citation and Towing Report.** A parking enforcement officer shall issue a citation and towing report regarding the vehicle in violation of this Article. The towing report shall describe the vehicle, the license plate number, and the reasons for towing. The citation and towing report may be on the same form. The parking enforcement officer and the tow driver shall both sign the towing report.

**Subd. 3. Waiting Period.** If the vehicle is not moved or otherwise made to comply with this Article within four hours of the issuance of the towing report, the parking enforcement officer may order the vehicle towed and impounded.

**Subd. 4. Immediate Towing.** A parking enforcement officer may order the immediate towing and impoundment of a vehicle, upon the issuance of a towing report and without allowing for a waiting period, if it is parked or located so as to:

- (a) Violate the snow season parking prohibition contained in this Article;
- (b) Interfere with snowplowing the traveled portion of a town road;
- (c) Block a driveway, alley, town road, or fire hydrant;
- (d) Be within 30 feet of a stop sign and visually blocking the stop sign;
- (e) Be within a designated no parking area;
- (f) Constitutes an accident or traffic hazard to the traveling public as determined by a parking enforcement officer;
- (g) Prevent egress by a lawfully parked vehicle; or
- (h) Violate state law allowing the immediate towing of a vehicle.

**Subd. 5. First Notice.** Within five days of towing a vehicle, excluding Saturdays, Sundays, and legal holidays, the town or the towing company shall mail or otherwise deliver written notice of the towing to the registered owner and all lienholders of the vehicle. If the town provides the notice, it shall provide a copy of the notice to the towing company and if the towing company provides the notice it shall provide a copy to the town. If the owner or lienholders cannot be identified, the notice required by this subdivision shall be published at least once in the town's official newspaper. The notice shall include the following information:

- (a) The date the vehicle was towed;
- (b) The place the vehicle was towed from;
- (c) The reason(s) the vehicle was towed;
- (d) The year, make, model, and vehicle identification number of the vehicle;
- (e) The place where the vehicle is being held;
- (f) Information about the right to reclaim the vehicle and who to contact; and

- (g) The failure to reclaim the vehicle constitutes a waiver by them of any right, title, and interest in the vehicle and its contents and consent to dispose of both.

**Subd. 6. Second Notice.** If the vehicle remains unclaimed after 30 days from the date the first notice was sent, the town or towing company shall send the owner and lienholders a second notice. The notice shall be sent by certified mail, return receipt requested.

**Section 3-3.03. Retrieving Impounded Vehicles.** An owner shall contact the towing company directly in order to reclaim a vehicle towed and impounded pursuant to this Article. The towing company may charge the reasonable costs of services provided in the towing, storage, and inspection of the vehicle before releasing the vehicle. The towing company shall be responsible for requiring sufficient proof of ownership before releasing a vehicle or its contents. A registered owner of a vehicle may retrieve the contents of a vehicle without charge and without retrieving the vehicles when authorized to do so pursuant to Minnesota Statutes, section 168B.07, subdivision 3.

**Section 3-3.04. Disposal of Unclaimed Vehicles.** The towing company shall be responsible for properly disposing of the unclaimed vehicles and their contents impounded pursuant to this Article in accordance with the authority provided to impound lots under law to sell or otherwise dispose of impounded vehicles. The towing company shall not dispose of or sell an unclaimed vehicle for at least 45 days after the first notice and 15 days after the second notice.

**Section 3-3.05. Penalty.** Violation of this Article is a petty misdemeanor and the cost of prosecution may be added to the penalty imposed. A vehicle found in violation of this Article is subject to towing, impoundment, and sale or other disposal as provided herein and as authorized by law. The town may take such actions as allowed it under law to enforce this Article and to recover the costs incurred related to the enforcement, towing, impoundment, and disposal of vehicles including, but not limited to, placing a lien on a vehicle and certifying the costs as a service charge against the vehicle owner's property under Minnesota Statutes, section 366.012.

**ARTICLE FOUR  
UTILITIES IN RIGHTS-OF-WAY**

**SECTION 4-1  
GENERAL PROVISIONS**

**Section 4-1.01. Findings, Purpose and Intent.** It is the purpose of this Article to establish reasonable regulations, requirements, and restrictions regarding the use of Town right-of-ways in order to protect the health, safety and welfare of Town residents, those traveling on Town roads, and the general public. It is also the purpose of this Article to protect the cumulative investment the public has made to construct, maintain, and improve the Town's roads by requiring those undertaking utility projects in and near the Town's right-of-ways to obtain a permit from the Town and to be responsible for restoring the right-of-ways directly or indirectly impacted by the project to at least the same or better condition they were in prior to the project. Finally, this Article provides for the recovery by the Town of its actual expenses incurred related to such projects.

**Section 4-1.02. Election to Manage Right-of-Ways.** Pursuant to the authority granted the Town under state and federal statutory, administrative and common law, the Town hereby elects, pursuant to Minnesota Statutes, section 237.163, subdivision 2(b), to manage its right-of-ways within the Town. This Article shall not be interpreted to limit the regulatory and police powers of the Town to adopt and enforce general ordinances and policies necessary to protect the health, safety and welfare of the public.

**Section 4-1.03. ~~Definitions and Interpretation.~~**

~~**Subd. 1. Definitions.** The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~**Subd. 2. Interpretation.** Every provision of this Article shall be construed, if possible, to give effect to all its provisions and consistent with at least the minimum requirements imposed by any applicable law. Any references to state statutes or rules shall include any amendments made thereto and any successor statutes or rules. Such statutes and rules are incorporated herein to the extent necessary to give effect to the provisions of this Article.~~

**SECTION 4-2  
PERMITTING REQUIREMENTS**

**Section 4-2.01. Permit Requirements.**

**Subd. 1. Permit Required.** Except as otherwise provided in this Article, no person may obstruct or excavate any right-of-way, or locate facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the Town to do so.

- (a) Excavation Permit. An excavation permit is required to excavate within a right-of-way related to the installation, repair, replacement, or removal of facilities.
- (b) Obstruction Permit. An obstruction permit is required to obstruct a right-of-way by placing equipment described therein on the right-of-way, to the extent and for

the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

- (c) Combination Permit. If a proposed utility project involves both the excavation and obstruction of a right-of-way, a person may apply for a combination excavation/obstruction permit.
- (d) Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent and for the duration specified therein.

**Subd. 2. Exclusions.** The Town, its agents, and contractors performing work for the Town shall not be required to obtain permits from the Town to excavate or obstruct a right-of-way. Contractors performing work for the Town shall be required to erect and maintain such signs and other traffic control devices as are necessary to warn of the work and to protect public safety.

**Subd. 3. Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless: (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and (ii) a new permit or permit extension is granted.

**Subd. 4. Delay Penalty.** In accordance with Minnesota Rules, part 7819.1000, subpart 3, the Town may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.

**Subd. 5. Permit Display.** Permits issued under this Article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Town.

**Section 4-2.02. Permit Applications Generally.** Application for a permit is made to the Town. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

**Subd. 1. Application.** Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

**Subd. 2. Fees.** Payment of money due the Town for:

- (a) Permit fees, estimated restoration costs and other management costs;
- (b) Any outstanding amounts related to prior obstructions or excavations;
- (c) Any undisputed loss, damage, or expense suffered by the Town because of applicant's prior excavations or obstructions of the right-of-ways or any emergency actions taken by the Town; and
- (d) Franchise fees or other charges, if applicable.

**Subd. 3. Disputed Fees.** Payment of disputed amounts due the Town by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

**Subd. 4. Bond.** Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the Town deems the existing construction performance bond inadequate under applicable standards.

**Section 4-2.03. Small Wireless Facility Permit Application.** In addition to the requirements of Section 4-2.02, the provisions of this Section shall apply to applications for small wireless facility permits.

**Subd. 1. Deadline for Action.** The Town shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the Town fails to approve or deny the application within the review periods established in this section.

**Subd. 2. Consolidated Applications.** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the director, provided that all small wireless facilities in the application:

- (a) Are located within a two-mile radius;
- (b) Consist of substantially similar equipment; and
- (c) Are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the Town may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

**Subd. 3. Tolling of Deadline.** The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- (a) The Town receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the Town may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension;
- (b) The applicant fails to submit all required documents or information and the Town provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the Town shall have ten days to notify the applicant in writing of any still-missing information; or
- (c) The Town and a small wireless facility applicant agree in writing to toll the review period.

**Section 4-2.04. Issuance of Permit; Conditions.**

**Subd. 1. Permit Issuance.** If the applicant has satisfied the requirements of this Article, the Town shall issue a permit.

**Subd. 2. Conditions.** The Town may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

**Subd. 3. Small Wireless Facility Conditions.** In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- (a) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application;
- (b) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the Town's written authorization, provided that the Town may impose a lower height limit in the applicable permit to protect the public health, safety, and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit;
- (c) No wireless facility may extend more than 10 feet above its wireless support structure;
- (d) Where an applicant proposes to install a new wireless support structure in the right-of-way, the Town may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way;
- (e) Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the Town may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure; and
- (f) Where an applicant proposes to replace a wireless support structure, the Town may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

**Subd. 4. Small Wireless Facility Agreement.** A small wireless facility shall only be collocated on a wireless support structure owned or controlled by the Town, or any other Town asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the Town. The standard collocation agreement may require the payment of the following:

- (a) Up to \$150.00 per year for rent to collocate on the Town structure;
- (b) \$25.00 per year for maintenance associated with the collocation; and

- (c) A monthly fee for electrical service as follows:
  - (1) \$73.00 per month per radio node less than or equal to 100 maximum watts;
  - (2) \$182.00 per radio node over 100 maximum watts; or
  - (3) The actual costs of electricity, if the actual costs exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter, or affect any then-existing agreement between the Town and the applicant.

#### **Section 4-2.05. Permit Fees.**

**Subd. 1. Establishing Fees.** The Town Board shall establish the following fees by resolution, or as part of its general fee schedule, and update the fees as it determines is appropriate:

- (a) **Excavation Permit Fee.** The Town shall establish an excavation permit fee in an amount sufficient to recover the Town's management costs, and to the extent applicable, degradation costs.
- (b) **Obstruction Permit Fee.** The Town shall establish the obstruction permit fee and shall be in an amount sufficient to recover the Town's management costs.
- (c) **Combination Permit Fee.** The Town shall establish a combination permit fee and shall be in an amount sufficient to recover the Town's management costs, and to the extent applicable, degradation costs.
- (d) **Small Wireless Facility Permit Fee.** The Town shall establish the obstruction permit fee and shall be in an amount sufficient to recover the following costs:
  - (1) Management costs; and
  - (2) Engineering, make-ready, and construction costs associated with the collocation of small wireless facilities.

**Subd. 2. Payment of Permit Fees.** No excavation permit, obstruction permit, combination permit, or small wireless facility permit shall be issued without payment of the applicable permit fees. The Town may allow applicant to pay such fees within thirty (30) days of billing.

**Subd. 3. Non-Refundable.** Permit fees that were paid for a permit that the Town has revoked for a breach as provided in this Article are not refundable.

**Subd. 4. Fees.** All fees provided for in this Article shall be determined by Town Board and shall be designed to recover the actual costs the Town incurs related to the particular project and in managing its right-of-ways.

#### **Section 4-2.06. Right-of-Way Patching and Restoration.**

**Subd. 1. Timing.** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited due to unseasonal or other weather conditions which reasonably prohibit the work.

**Subd. 2. Patch and Restoration.** Permittee shall patch its own work. The Town may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

- (a) Town Restoration. If the Town restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the roadway settles due to permittee's improper backfilling, the permittee shall pay to the Town, within thirty (30) days of billing, all costs associated with correcting the defective work.
- (b) Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules, part 7819.3000.
- (c) Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**Subd. 3. Standards.** The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the Town and shall comply with Minnesota Rules, part 7819.1100.

**Subd. 4. Duty to Correct Defects.** The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the Town shall correct all restoration work to the extent necessary, using the method required by the Town. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Town, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited by unreasonable weather conditions.

**Subd. 5. Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the Town, or fails to satisfactorily and timely complete all restoration required by the Town, the Town 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 restoring the right-of-way. If permittee fails to pay as required, the Town may immediately exercise its rights under the construction performance bond.

#### **Section 4-2.07. Supplementary Applications.**

**Subd. 1. Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work 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 obstructed or excavated must before working in that greater area: (i) make application for a permit extension and pay any additional fees required thereby; and (ii) be granted a new permit or permit extension.

**Subd. 2. Limitation on Dates.** A right-of-way 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. This supplementary application must be submitted before the permit end date.

#### **Section 4-2.08. Additional Obligations.**

**Subd. 1. Compliance with Other Laws.** Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the Town or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, sections 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules, Chapter 7560. 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.

**Subd. 2. Prohibited Work.** Except in an emergency, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

**Subd. 3. Interference with Right-of-Way.** A permittee shall not so obstruct a right-of-way in a way that interferes with the natural free and clear passage of water through the gutters or other waterways. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with Town parking regulations and are located such that they do not create a safety hazard. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

**Subd. 4. Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D, Minnesota Rules, Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Town.

**Section 4-2.09. Indemnification and Liability.** By accepting a permit under this Article, permittee agrees to defend and indemnify the Town in accordance with the provisions of Minnesota Rules, part 7819.1250.

#### **Section 4-2.10. Denial or Revocation of Permit.**

**Subd. 1. Failure to Meet Requirements.** The Town may deny a permit for failure to meet the requirements and conditions of this Article if the Town determines that the denial is necessary to protect the health, safety, and welfare, or if the Town determines such denial is necessary to protect the right-of-way and its current use.

**Subd. 2. Procedural Requirements.** The denial or revocation of a permit must be made in writing and must document the basis for the denial. The Town must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the Town and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The Town must approve or deny the resubmitted application within 30 days after submission.

**Section 4-2.11. Installation Requirements.** The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, parts 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, Chapter 7560 and this Article.

## **SECTION 4-3 INSPECTIONS AND ENFORCEMENT**

### **Section 4-3.01. Inspections.**

**Subd. 1. Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.

**Subd. 2. Site Inspection.** Permittee shall make the work site available to the Town and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

**Subd. 3. Authority of Town Representative.** The Town Representative is authorized to issue the following orders and to take such actions as may be needed to administer and enforce this Ordinance.

- (a) **Cease Work Order.** At the time of inspection, the Town Representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- (b) **Correction Order.** The Town Representative may issue an order to the permittee for any work that does not conform to the terms of the permit or other 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 permittee shall present proof to the Town Representative that the violation has been corrected. If such proof has not been presented within the required time, the Town Representative may revoke the permit as provided herein.

### **Section 4-3.02. Work Done Without a Permit.**

**Subd. 1. Emergency Situations.** Each right-of-way user shall immediately notify the Town Representative of any event regarding its facilities that it considers to be an emergency. The right-of-way user may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Article for the actions it took in response to the emergency.

**Subd. 2. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the Town, deposit with the Town the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Article.

**Section 4-3.03. Supplementary Notification.** If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the Town of the accurate information as soon as this information is known.

**Section 4-3.04. Revocation of Permits.**

**Subd. 1. Substantial Breach.** The Town reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right-of-way permit;
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by a Town Representative.

**Subd. 2. Written Notice of Breach.** If the Town determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the Town shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Town, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**Subd. 3. Response to Notice of Breach.** Within 24 hours of receiving notification of the breach, permittee shall provide the Town with a plan, acceptable to the Town, that will cure the breach. Permittee's failure to so contact the Town, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

**Subd. 4. Reimbursement of Town Costs.** If a permit is revoked, the permittee shall also reimburse the Town for the Town's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

#### **SECTION 4-4 MISCELLANEOUS PROVISIONS**

**Section 4-4.01. Location and Relocation of Facilities.** Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules, parts 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to townships.

**Section 4-4.02. Right-of-Way Vacation.** If the Town vacates a right-of-way that contains the facilities installed pursuant to a permit issued by the Town, the rights of the owner of the installed facilities in the vacated right-of-way are governed by Minnesota Rules, part 7819.3200.

**Section 4-4.03. Abandoned and Unusable Facilities.**

**Subd. 1. Discontinued Operations.** A right-of-way user who has determined to discontinue all or a portion of its operations in the Town must provide information satisfactory to the Town that the right-of-way user's obligations for its facilities in the right-of-way under this Article have been lawfully assumed by another person.

**Subd. 2. Removal.** Any right-of-way user who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Town.

**Section 4-4.04. Appeal.** A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are not in conformity with Minnesota Statutes, sections 237.163, subdivision 6; or (4) disputes a determination of the Town Representative regarding compliance with this Article or of permit conditions may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the Town Board. The Town Board shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the Town Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Adopted this \_\_\_ day of \_\_\_\_\_ ~~2020~~2021.

**BY THE TOWN BOARD**

\_\_\_\_\_  
Town Chairperson

Attest: \_\_\_\_\_  
Town Clerk

Document comparison by Workshare 10.0 on Wednesday, December 23, 2020  
11:37:37 AM

Input:	
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Description	DOCSOPEN-#667723-v3-Perch_Lake_Township_Right-of-Way_Ordinance
Document 2 ID	PowerDocs://DOCSOPEN/667723/4
Description	DOCSOPEN-#667723-v4-Perch_Lake_Township_Right-of-Way_Ordinance
Rendering set	Standard

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Format change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Moved to	3
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