

Best Practices for Accommodating Utilities in the Right of Way

Wisconsin Towns Association
Road School

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Introduction

- I. Town Authority to Regulate Activities in the Right of Way
- II. Adoption of a Town Utility Access Policy for Town ROWs



Town Authority to Regulate Activities in the Right of Way

86.07(2) – Digging in Highways

- Generally prohibits excavations, fill, or other alterations/disturbance in any highway without a permit.
- Under a permit, the work shall be constructed subject to the town's rules and regulations.
- The permittee is liable to the town for all damages which occur during the progress of said work or as a result thereof.
- Specifically authorizes the town to make additional rules, regulations and conditions for the preservation of highways and the safety of the public.

Town Authority to Regulate Activities in the Right of Way

86.16 Utility lines on highways; place of poles; penalty

- Entities allowed, with the written consent of the town, to construct and operate lines, wires, pipes, etc., to transmit voice, video, data, messages, water, liquid manure, heat, light, or power along, across, under, or within the limits of the highway.

Town Authority to Regulate Activities in the Right of Way

66.0831 – Interference with Public Service Structure

- A contractor working in the ROW generally “may not interfere with, destroy or disturb the structures of a public utility . . . In a manner that interrupts, impairs or affects the public service for which the structures may be used, without first obtaining written authority from the . . . appropriate authority.”
- Generally requires a public utility to temporarily protect/relocate its facilities for other work to be performed, with appropriate notice, and at the contractor’s cost.
- For municipal/town/county work, the public utility is required to cover these costs.

Town Authority to Regulate Activities in the Right of Way

66.0425 – Privileges in Streets

- Authority to place an obstruction or excavation . . . within a highway in a town . . . other than by general ordinance affecting the whole public.
- “A privilege may be granted only as provided in this section.”
- Limited applicability to telecommunications providers, public service corporations, cooperatives, temporary obstruction's, and manure pipes but these generally must secure a permit from the proper official.
- Includes provisions relating to liability, bond requirements, obstruction removal.

Town Authority to Regulate Activities in the Right of Way

86.02 – Injury To Highway

- “Any person who shall injure any highway by obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs or timber thereon, or by any other act, shall be liable in treble damages, to be recovered by the political division chargeable with the maintenance of highway injured, and the amount recovered shall be credited to the highway maintenance fund.”

Key Provisions in the Draft Policy

- Adoption Recommendations (Page 1)
- General Utility Accommodation Standards (Sec. 2.D)
- Determination of the location of the ROW (Sec. 4.B)
- Indemnification (Sec. 3 and detail in sample permit)
- Cleanup and Restoration (Sec. 22)
- Annual Service Connection Permit (Sec. 11)
- Relocation (Sec. 12.E)
- Flagging (Sec. 13)
- Vegetation (Sec. 19.E)
- Specific Requirements for Communications, Electric, and Pipelines (Sec. 24-26)
- Sample Permit Form (Page 35)

Key Provisions in the Draft Policy

- Adoption Recommendations (Page 1)
 - Work with your Town Attorney.
 - Work with your local utilities.
 - Prepare any relevant appendices.

Key Provisions in the Draft Policy

- General Utility Accommodation Standards (Sec. 2.D, p. 8)

“The Town shall not authorize a utility accommodation unless the accommodation will not adversely affect the primary functions of the highways or materially impair their safety, operational, or visual qualities, there will be no conflict with the provisions of Federal, State, or local laws or regulations or this UAP, and the accommodation will not significantly increase the difficulty or future cost of highway construction or maintenance.”

Key Provisions in the Draft Policy

- Determination of the location of the ROW (Sec. 4.B., p 8)

B. Design Responsibility

The utility shall be responsible for the engineering design for all utility facilities and for the determination of the location and the legal validity of the Town right-of-way. Town approval of a permit does not warrant that the utility's determination of the location of the Town right-of-way is correct. Nothing in this UAP or an approved permit is a warranty by the Town that the Town holds rights in the right-of-way necessary to issue a permit. The Town shall not be required to defend the utility in the utility's peaceful use and occupancy of the right-of-way location approved for utility work in a permit.

Key Provisions in the Draft Policy

- Indemnification (Sec. 3, p 8, and detail in sample permit, p 35)

SECTION 3 - INDEMNIFICATION

As specified in the Town's permit form, and regardless of whether a utility has obtained a permit for utility work, a utility shall save, defend, and hold the Town, its officers, employees, and agents harmless from all liability associated the utility's projects, except to the extent liability is caused by the negligence or wanton or intentional acts or omissions of the Town or its officers, employees, or agents.

The Town shall not be liable to a utility for any claims by the utility relating to the issuance of a permit by the Town.

Key Provisions in the Draft Policy

- Cleanup and Restoration (Sec. 22, p 23)

“The utility shall be responsible for restoring the highway and the adjacent right-of-way to its original condition (or as close to its original condition as possible) within two weeks after completion of the facility installation. Exceptions may be allowed (e.g. in the case of bad weather or winter work) with prior approval from the Town. Failure of the utility to make prompt and satisfactory restorations of the highway or adjacent right-of-way may cause the Town to arrange for restoration by others at the utility’s expense.”

Key Provisions in the Draft Policy

- Annual Service Connection Permit (Sec. 11, p. 13)
 - “A utility may apply for an annual service connection permit (ASCP) from the Town which allows the utility to make routine customer service connections without a separate permit for each connection . . .”
 - Also allows extension of the existing distribution line up to a maximum of 300 feet to facilitate a service connection.

Key Provisions in the Draft Policy

- Relocation (Sec. 12.E., p 15)

E. Relocation of Existing Utilities

Upon order by the Town, a utility shall relocate or alter a utility facility to facilitate alteration, improvement, safety control, or maintenance of the Town highway or the accommodation of another right-of way user. All costs of complying with such an order shall be the obligation of the ordered utility, unless a specific utility agreement to which the Town is a party provides otherwise or unless another right-of-way user is responsible for all or a portion of the costs.

Key Provisions in the Draft Policy

- Flagging (Sec. 13, p 16)

A. General Policy

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All utility pedestals, cabinets, transformers, and other aboveground (i.e., not flush with the ground) structures located within the highway right-of-way shall be adequately marked. Markers shall be installed and maintained by the utility owner. The Town will not be liable for damage done to aboveground utility structures, including when conducting mowing and snow plowing activities, that are not adequately marked.

Key Provisions in the Draft Policy

- Vegetation (Sec. 19.E., p 19)

E. Vegetation

“No tree or shrub shall be sprayed, cut, trimmed, or damaged to facilitate the installation of a utility facility unless specifically authorized by a permit. . . At no time shall trees or other vegetation be cut on Town right-of-way without approval of the Town.”

Where to Find the Draft Policy

WTA Website – Information Library

- Under heading “Highways and Right of Way”
- “WTA Sample Utility Accommodation Policy 2024”

Other Considerations

- What method should a town use to adopt a ROW policy?
- How should a town administer a ROW policy?

Questions?

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