

**ORDINANCE NO. 2012-4**

**HAVEN TOWNSHIP  
SHERBURNE COUNTY, MINNESOTA**

**ORDINANCE REGARDING INSTALLATION OF UTILITIES AND OTHER  
IMPROVEMENTS ON TOWNSHIP PROPERTY OR WITHIN ROAD RIGHT-OF-WAY**

No one may do construction or other improvement or place any culverts on Township property or place any culverts, utilities or other obstructions within any Township right-of-way without first obtaining a Permit from the Town Board. The Permit shall contain such terms and conditions, and be in a form as approved by the Town Board. The Town Board may establish a reasonable fee for the Permit.

The Town Board may designate one of its members to issue the Permit. The Town Board may employ engineers, advisors and other experts to assist the Town Board in determining that all conditions of the Permit are met. As a condition to the Permit, the Applicant shall pay all costs for employing such persons, and pay all other costs incurred by the Township in issuing, administering or enforcing the Permit.

If in the future the Town Board determines that a change is needed in the roadway or ditches within the Township right-of-way, or to other improvements or structures on Township property, the permittee or applicant shall pay all costs of relocating their culvert, driveway, property, utility or structure to accommodate the Township plans.

1. **Elect to Manage.** The Board hereby elects, pursuant to Minnesota Statutes, section 237.163, subdivision 2, to manage Rights-of-Way under its jurisdiction under Minnesota Statutes, sections 237.162 and 237.163, and all other applicable laws, for the purposes of Minnesota Rules chapter 7819.

2. **Permit Required.** Except in emergencies, no Person or Company may Excavate or Obstruct a Right-of-Way without first obtaining a permit from the Board. An Excavation Permit is required to Excavate any portion of a Right-of-Way for the purpose of placing, repairing, or removing a culvert, utilities, other property or Facilities. An Obstruction Permit is required to obstruct a Right-of-Way. To obtain a permit, a Person must provide the town clerk, or designee, with a written Permit Request for the proposed Excavation or Obstruction as provided in this section. If a proposed Excavation project includes an Obstruction at the same site, an Applicant need not submit a separate Permit Request for an Obstruction Permit if the request for the Excavation Permit includes a description of the proposed Obstruction.

3. **Permit Requests.** Requests for an Obstruction or Excavation Permit must be made on the application form adopted by the Board. If the Board has not adopted an application form, Permit Requests must be in writing and contain at least the following information:

- Name, address, phone number, and fax number of the Applicant;
- Name, address, phone number, and e-mail address of a local representative that will serve as the designated contact person on behalf of the Applicant;

- Name, address, phone number, and fax number of all sub-contractors that will be performing any part of the Excavation or Obstruction;
- A written description of the work to be performed in the Right-of-Way at each location including whether the work will involve Excavation and/or the Obstruction of a Right-of-Way;
- A scaled drawing showing the specific location of the work to be performed and the location and approximate depth of any Facilities installed within a Right-of-Way;
- After the work is complete, the Applicant shall provide the Town with an “as-built” drawing showing actual placement, location and depth of all Facilities;
- Subject to Board approval, whether the Applicant intends to restore the Right-of-Way or elect to pay a degradation fee in lieu of restoration;
- The start and completion dates for the work at each location; and
- Certificate of Insurance.

A. Incomplete Requests. If a Permit Request received by the Board is incomplete, the Board will notify the Applicant within 15 days of the information that is needed in order to complete the request. Incomplete Permit Requests are invalid and shall be deemed rejected unless all the required information is submitted to the Board within 30 days of the date the Board notified the Applicant its Permit Request was incomplete.

B. Permit Request Fee. All Permit Requests must be accompanied by a Permit Request fee as determined from time to time by the Board. The purpose of this fee is to compensate the Board for its costs associated with reviewing the Permit Request. A Permit Request is not complete and will not be considered unless it is accompanied by the required fee.

4. **Indemnification.** By making a Permit Request an Applicant agrees to, and all Excavation and Obstruction Permits are issued on the condition that a permittee, defend, indemnify and hold harmless the Town in accordance with the provisions of Minnesota Rule 7819.1250. This includes payment of all Town costs, supervisor fees, experts, engineering and attorneys’ fees and costs.

5. **Written Permit.** The Applicant may not undertake the proposed Excavation or Obstruction until the Board issues the Applicant a written permit. The Board will require a written permit if, in its sole discretion, it determines the potential impact on the public or Right-of-Way requires additional review or safeguards. When considering Permit Requests requiring a written permit, the Board may condition the issuance of a written permit on the Applicant: providing the Board with additional information; providing a completion certificate as authorized in Minnesota Rule 7819.1300; providing the Town a construction performance bond with a term of at least 24 months as authorized by Minnesota Rule 7819.3000 before the Excavation occurs; require the restoration of the Right-of-Way be performed in accordance with Board established specifications and drawings; and complying with such other reasonable requirements as the Board determines are necessary to protect the public health, safety, and welfare or the Right-of- Way and its current uses.

- A. **Written Permit Fee.** When a written permit is required, the Applicant is required, in addition to paying the Permit Request fee, to reimburse the Board for the actual costs it incurs related to issuing the permit including, but not limited to, costs of reviewing the request, conducting inspections, hiring professionals, and other costs actually incurred that exceed the Permit Request fee and directly relate to the Applicant's request. The Board shall provide the Applicant a written statement of costs incurred. Payment in full of the written permit fee is due upon receipt of the statement and must be received by the Board no later than 30 days from issuance of the statement. In the alternative, the Board and the Applicant may agree to an advanced payment of the written permit fee. Failure to pay the written permit fee within the required period shall result in the immediate suspension of the permit and may result in the revocation of the permit as provided herein.

6. **Limitations.** Permitted Excavations or Obstructions are limited to the area and time periods described in the Permit Request or written permit. A permittee must seek a new permit if it wishes to Excavate or Obstruct outside of the originally permitted work area or time frame.

7. **Delay Penalty.** A permittee that does not complete its Obstruction, Excavation, or restoration of the Right-of-Way at a particular location within 10 days of the completion date on the permit shall pay the Town a delay penalty (as determined by the Town Board) for each day of delay. If a permittee is able to establish to the Board that one or more days of the delay was caused by circumstances beyond its control, the Town Board retains the authority to decide whether the delay penalty shall apply to any or none of the days of the delay.

8. **Telecommunication Facilities.** Telecommunication facilities to be installed in a Right-of-Way shall be installed according to the requirements set out in Minnesota Rule 7819.5000 in addition to all other applicable federal, state, and local requirements.

9. **Gas and Electric Facilities.** Gas and electric facilities to be installed in a Right-of-Way shall be installed according to the requirements set out in Minnesota Rule 7819.5100 in addition to all other applicable federal, state, and local requirements.

10. **Restoration Required.** A permittee must restore the Right-of-Way to at least the same condition that existed before the Excavation. If there is a dispute as to the level of restoration required, the permittee shall restore the Right-of-Way according to the applicable standards established in plates 1 to 13 set out in Minnesota Rule 7819.9900 to 7819.9950. If a permittee elects in its Permit Request and Town Board agrees, the permittee may pay a degradation fee in lieu of restoring the Right-of-Way, the fee will be in an amount the Board determines necessary for the Town to have the Right-of-Way restored according to the applicable standards established in plates 1 to 13. A permittee electing to pay a degradation fee remains responsible for replacing and compacting the subgrade and aggregate base material in the Excavation.

- A. Correct Defects. Upon notice by the Board, a permittee shall correct any defects in the work it performs to restore a Right-of-Way. The work to correct the defects shall be completed within 7 days of the notice. If the permittee is not able to complete the corrective work within 7 days because of circumstances beyond its control, the permittee shall complete the work as soon as is possible.
- B. Failure to Restore. If a permittee fails to restore the Right-of-Way within 5 calendar days after the completion of an Excavation, or fails to correct defects in an earlier restoration as provided herein, the Board has the option of restoring the Right-of-Way according to the standards established in plates 1 to 13 set out in Minnesota Rule 7819.9900 to 7819.9950. The Town shall provide a statement of its actual costs for restoring, or correcting defects to, the Right-of-Way to the permittee. Payment in full of the statement is due upon receipt and must be received by the Board no later than 30 days from the date of the statement. If the permittee fails to pay the billed amount, the Town may exercise its rights under the construction performance bond.

11. **Permit Denial.** The Board may deny a Permit Request if the Applicant has failed to pay any fees, penalties, or other amounts due as the result of previous Excavations or Obstructions unless the failure to pay is based on a good faith dispute over the amount owed. If the amount owed the Town is in dispute, an Applicant can become eligible to submit an additional Permit Request by placing the full amount the Town claims is still owed in escrow until the dispute is resolved. The Board may also deny a Permit Request for failure to meet the requirements of this section or if it determines the denial is necessary to protect the public health, safety, and welfare.

12. **Warning Signs.** A permittee shall supply, place, and maintain warning signs as needed to warn the public of its Excavation or Obstruction. A permittee shall comply with the standards established by the Minnesota Department of Transportation in determining the need for signage, the type of signs, and their location.

13. **Site Inspection.** A permittee shall make its work-site available at all reasonable times to Town representatives to conduct inspections of the site during the work and at its completion.

14. **Permit Revocation.** The Board may issue an order revoking a permit if a permittee fails to comply with the requirements of this section, its permit, or is conducting the work in such a way as to pose an unreasonable risk to the public. An order revoking a permit is effective five days from the date of issuance if the permittee does not come into full compliance and otherwise corrects the items stated in revocation order. The Board shall have the authority to order the immediate cessation of work if it determines any portion of the work poses a serious threat to life, health, safety, or well-being of the public. If the Board revokes a permit, it shall provide for the restoration of the Right-of-Way and the permittee shall pay all costs the Town incurs associated with the restoration to the standards established in plates 1 to 13 set out in Minnesota Rule 7819.9900 to 7819.9950.

15. **Emergencies.** An Excavation or Obstruction Permit is not required in order for a Person to respond to emergencies related to their Facilities. However, within two business days after the occurrence of the emergency the Person shall apply for the necessary permits, pay the fees associated with those permits, and comply with the requirements to obtain those permits and of this section.

16. **Relocation of Facilities.** Any person or company may be required by the Town Board, at the person or company's own expense, to promptly and permanently remove and relocate its Facilities or property located in the Right-of-Way when the Town Board finds that it is necessary to prevent interference in connection with: the Town's present or future use of the Right-of-Way for a public project; the public health, safety, and welfare; or the safety and convenience of travel over the Right-of-Way. A Person shall also pay for the relocation of its Facilities upon the vacation of the Right-of-Way as provided for in Minnesota Rule 7819.3200, Subd. 2.

17. **Right-of-Way Vacation.** If the Board vacates all or a portion of a Right-of-Way containing Facilities and the vacation does not require the relocation of those Facilities, the Board shall, except when it would not be in the public interest, reserve to and for itself and all those having Facilities in the vacated Right-of-Way, the right to install, maintain, and operate facilities in the vacated Right-of-Way and to enter upon the Right-of-Way at any time to reconstruct, inspect, maintain, or repair the Facilities.

18. **Abandoned Facilities.** A Person is required to remove any of its abandoned Facilities in conjunction with other Right-of-Way repair, Excavation, or construction unless expressly waived by the Board in a specific situation upon the request of the Person. "Abandoned Facility" has the meaning provided in Minnesota Rule 7819.0100, Subd. 2.

19. **Fees and Penalties.** All fees and penalties provided for in this section shall be established from time to time by Board resolution in compliance with Minnesota Rule 7819.1000 and made available to the public upon request. Unless indicated otherwise in a franchise, the fees and penalties provided for here are in addition to any franchise fees a permittee may be required to pay. All fees, penalties, and other charges imposed under this section are non-refundable.

20. **Notices.** For the purposes of the Board providing notice under this section, the Board shall be deemed to have satisfied its notice obligation if it provides the required period of notice by mail, fax, or e-mail to the Applicant's designated local representative.

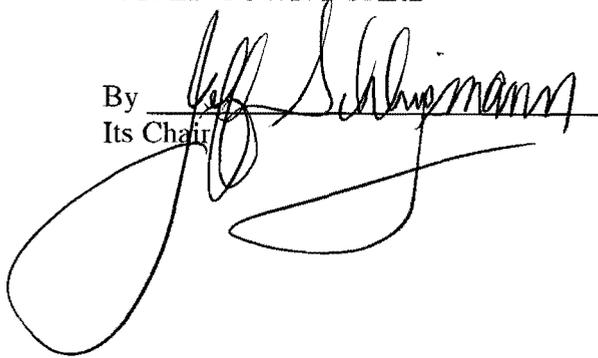
21. **Town Contractors.** This Ordinance does not apply to persons under contract with the Town Board while doing work under the Town Contract.

22. **Repeal.** Upon adoption and completion of publication so that this Ordinance is in effect, Haven Ordinance No. 99-100 is repealed.

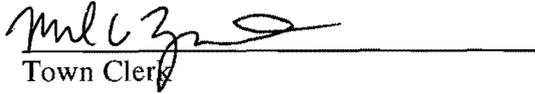
Approved by the Haven Town Board on September 17, 2012.

HAVEN TOWN BOARD

By  
Its Chair

A large, stylized handwritten signature in black ink, appearing to read "Jeff Schumann". The signature is written over a horizontal line.

ATTEST:

A handwritten signature in black ink, appearing to read "M. C. Z...". The signature is written over a horizontal line.

Town Clerk