

15 Regulations of Utility

15.1 Purpose

15.1.1 The purpose of this section is to provide minimal reasonable regulations as to the location and construction of public utilities facilities within any public easement, road easement or right-of-way within the town of West Lakeland. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. This chapter shall be interpreted consistently with Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the Town and users of the right-of-way.

15.1.2 Election to Manage the Public Rights-of-way

Pursuant to the authority granted to the Town under state and federal statutory, administrative, and common law, the Town hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

15.1.3 All Utilities Subject to This Section. All utilities operating or maintaining lines, facilities, or equipment within a town road right-of-way or upon public land are subject to the regulations of this article.

15.1.4 Administration. The Town Board is responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Board may delegate any or all of the duties hereunder.

15.2 Utility Construction in Road Cross-Section

All utilities shall construct their lines in accordance with the cross-section detailed drawing for utility installation as approved by the West Lakeland Town Board available upon request from the town clerk.

15.3 Utility Construction Permits

15.3.1 No utility company shall open, excavate, or disturb the surface of any public ground or right-of-way for any purpose without first having obtained a utility construction permit from the town clerk. The Town Clerk shall require proof of workers' compensation insurance coverage from either the utility or its subcontractor and insurance against claims for personal injury, including death, as well as claims for property damage prior to issuance of any utility construction permit. The Town may require a copy of the actual insurance policies.

15.3.2 The Utility shall indemnify and hold harmless the Town against liability, claims and lawsuits of any kind, arising directly or indirectly from any act of the contractor, its agents, suppliers, employees, or subcontractors in the course of the work.

15.3.3 Distribution System Permits. Prior to construction or installation of any lines, equipment, facilities, antennas, or other parts of a Distribution System, a Utility shall first obtain a utility construction permit from the Town. The application for a permit shall be submitted in duplicate to the Town. The application shall include:

- a scale area map showing the proposed location of the lines or equipment to be constructed.
- depictions and specifications for lines, cables, equipment, or facilities to be installed.
- and a road cross-sectional schematic showing the proposed location of any buried lines or cables.

A small wireless facility 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. The application shall be accompanied by a fee in an amount determined from time to time by the Town Board to cover the cost to the Town for expenses including but not limited to engineering and legal review.

15.3.4 The Town Clerk shall not issue the permit until the Town Engineer has approved the application in writing and until the Town has been reimbursed by the applicant for its actual expenses incurred in reviewing the application, including all professional consulting fees, and engineering fees, by the utility or they will be deducted from the escrow amount prior to the return of the escrow deposit.

15.3.5 Construction shall not commence until the Utility has deposited a letter of Credit or cash escrow with the Town, in an amount of 125% of the total cost of the restoration as estimated by the Town Engineer and held until released by the Town to assure that restoration will be completed equal to or better than the conditions which existed prior to the start of installation. The escrow amount shall be \$3,000.00 unless a different amount is recommended by the town engineer.

15.3.6 Service Connection Permits. Prior to any construction or relocation and reconstruction of any Service Connection, a Utility shall first obtain a utility construction permit from the Town Clerk. The application shall be accompanied by a map showing the address and location of the Service Line to be installed or reconstructed. The Town Clerk may issue the permit upon receipt of the completed application. The purpose of the permit is to provide the Town with information regarding the location, time and extent of the construction or excavation activity.

15.3.7 Repair or Maintenance Permits. Prior to any excavation or construction to repair or maintain any portion of a Distribution System, a Utility shall first obtain a utility construction permit from the Town Clerk. The application shall be accompanied by a map showing the location of the equipment or line to be repaired or excavated. The Town Clerk may issue the permit upon receipt of the completed application and obtaining approval from the township road supervisor. The purpose of the permit is to

provide the Town with information regarding the location, time and extent of the construction or excavation activity.

15.3.8 Emergencies. A Utility may excavate or perform other work without a permit where an emergency exists requiring the immediate repair of its lines or facilities. Within three (3) working days after effecting emergency repairs, the Utility shall make application for the appropriate permit. For emergency repair to a Distribution System, the permit shall include the Utility's certification that the repaired line has not been relocated or shall include map(s) and schematic(s) to show the relocation of the repaired line or equipment.

15.4 Restoration Work

After undertaking any work requiring the opening of any public way or public ground the utility shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition. The work shall be completed as promptly as weather permits, and if the utility shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the public way or public ground in the said condition, the town shall have, after demand to the utility to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of the utility. The utility shall pay to the town the cost of such work done for or performed by the town, including its administrative expense and overhead, plus ten percent (10%) additional as liquidated damages. This remedy shall be in addition to any other remedy available to the town.

15.5 Relocation of Utilities

15.5.1 Relocation of Utilities in Public Ways. If the Town determines to vacate for a Town improvement project, or to grade, regrade, or change the right-of-way lines of any Public Way, or construct or reconstruct any Utility System in any Public Way, it may order the utility to relocate its Facilities presently therein. The Town shall give the utility reasonable notice of plans to vacate for a Town improvement project, or to grade, regrade, or change the line of any right-of-way or to construct or reconstruct any Town Utility System. If a relocation is ordered within five (5) years of a prior relocation of the same Facilities at Utility expense, the Town shall reimburse for non-betterment expenses on a time and material basis, unless a subsequent relocation is required because of the extension of a Town Utility System to a previously unserved area. Service to previously unserved areas shall be at the Utility's expense. Nothing in this Article requires the Utility to relocate, remove, replace, or reconnect at its own expense its facilities where such relocation, removal replacement or reconstruction is solely for the convenience of the Town and is not reasonably necessary for the construction or reconstruction of a Public Way or Town Utility System or other Town improvement. In no case shall the Town be liable to the utility for failure to specifically preserve right-of-way under Minn. Stat. 160.29.

15.5.2 Relocation of Utility in Public Ground. The Town may require the Utility to relocate or remove its Facilities from Public Ground upon a finding by the Town that the facilities have become or will become substantial impairment of the public use to which the Public Ground is or will be located. The relocation or removal shall be at the Utility's expense. The provisions of this section apply only to facilities constructed upon Public Ground in reliance on a Service Areas license and Utility does not, by this provision, waive its rights under a recorded easement document or prescriptive right in favor of the utility.

15.5.3 Relocation when public ground vacated. The vacation of any public ground shall not deprive the utility of the right to operate and maintain its facilities therein. Unless ordered under the provisions of this section, the utility need not relocate until the reasonable cost of relocating and the loss and expense resulting from such relocation is first paid to the utility. When the vacation is for the benefit of the town in the furtherance of a public purpose, the utility shall relocate at its own expense.

15.6 Street Improvements, Paving or Resurfacing

15.6.1 The Town shall give the Utility reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the Town will start the work, and, if more than one street is involved, the order in which this work is to proceed. The notice shall give to the utility a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to allow the Utility to make any additions, alterations or repairs to its facilities the Utility deems necessary.

15.6.2 In cases where streets are at final width and grade and the Town has installed underground sewer mains and Service Connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, and the Utility's main is located under such street, the Utility may be required to install Service Connections prior to such paving or resurfacing, whenever it is apparent that service will be required during the five (5) years following the paving or resurfacing.

15.7 Location of Facilities

15.7.1 Location of Above-Ground Facilities. Above ground Utilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways. A permit to construct facilities on Public Grounds or Public Ways may be disallowed by the Town Board of supervisors upon finding that the proposed facility constitutes a hazard in the right-of-way. A "hazard in the right-of-way" is any construction, at any location within the full width of the right-of-way, which because of position, siting and proximity to the traveled portion of the right-of-way and because of strength, density and mass of construction would be the kind of impediment to a motor vehicle traveling at the posted speed limit sufficient to cause bodily harm to a

vehicle's passengers when impacted by said vehicle after it has left the traveled portion of the right-of-way. Upon such a finding, the Utility shall be required to construct its facility outside of the right-of-way. The Utility's construction, reconstruction, operation, repair, maintenance, and location of aboveground facilities shall be subject to other reasonable regulations of the Town.

15.7.2 Field Location. The Company shall provide field locations for any of its underground facilities within a reasonable period of time on request by the Town. The period of time will be considered reasonable if it compares favorably with the average time required by the municipalities in the same county to locate municipal underground facilities for the utility.

15.8 Licensee's Annual Report

The Utility Company shall provide an annual revised Town map showing location of its Distribution System in the Town.

15.9 General Conditions Applicable to Service Area Licenses for Natural Gas Utilities

15.9.1 Indemnification

15.9.1.1 The Service Area license shall indemnify, keep, and hold the Town free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits or license, or the operation of the Utility's facilities located in the Town. The Town shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the Town's negligence as to the issuance of licenses or permits for, or inspection of, the Utility's plans or work. The Town shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by the Utility, and such performance is nevertheless ordered or directed by the Town after notice of Utility's determination.

15.9.1.2 In the event a suit is brought against the Town under circumstances where this license condition applies, the utility at its sole cost and expenses shall defend the Town in such suit if written notice thereof is promptly given to the Utility within a period wherein the utility is not prejudiced by lack of such notice. If the Utility is required to indemnify and defend, it will thereafter have control of such litigation, but the Utility may not settle such litigation without the consent of the Town, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense immunity otherwise available to the Town and the utility, in defending any action on behalf of the Town. The Town shall be entitled to assert in any action every defense or immunity that the Town could assert in its own behalf.

15.9.2 Adequate Supply. The Service Area licensee shall furnish and supply to the Service Area inhabitants an adequate supply of gas, as long as available, under such

pressure and conditions as may be reasonably required under such rules and regulations as may be established by this Article, and the Minnesota Public Utilities Commission, or other such regulatory body as may hereinafter be established under the laws of the State of Minnesota and given jurisdiction thereof.

15.9.3 Public Safety. By acceptance of its Service Area license, the licensee acknowledges that the Town may enact ordinances which affect the licensee's right and duties with respect to Pipeline safety and construction and acknowledges that where such public safety is a bona fide municipal concern, such ordinances shall effectively serve to amend this Article and the rights and duties contained herein. The licensee specifically consents to such amendments, even though they may be unilateral in nature.

15.9.4 Assignment of Service Area Licenses

15.9.4.1 A licensee, upon notice to the Town, shall have the right and authority to assign all rights conferred upon it by this Article to any person. The assignee of such rights, by accepting such assignment, shall become subject to the regulations and conditions of this Article.

15.9.4.2 The areas of the Town not described in any Service Area license are deemed open areas. Any Utility which is able to provide service to an open area may make application for a Service Area license or for expansion of an existing Service Areas license.

15.9.5 Review or Revocation of a Service Area License

15.9.5.1 The Town Board may review a Service Area license upon the request of any person or upon its own initiative.

15.9.5.2 A Service Area license may be revoked or reduced in its area upon the Town Board making any one or more of the following findings:

- The licensee has failed to meet the general conditions of this Article or the specific conditions of its license;
- The licensee has failed to operate the utility within the Town in accord with this Article;
- Any just cause.

15.9.5.3 A Violation of any condition set forth in a permit shall be a violation of this Article. Failure to correct said violation within thirty (30) days of written notice from the Town Board shall automatically terminate the permit. All costs incurred by the Town in reviewing the permit shall be the responsibility of the utility.

15.9.6 Application for Service Area License. Application for a Service Area license shall be made in writing to the Town Clerk and shall include such maps, schematics, diagrams, and narrative descriptions as are necessary to describe or depict: the existing distribution system, the existing service connections, the proposal for extension of the

distribution system and a well-defined schedule and calendar for construction of the extension to the Distribution System. A non-refundable fee to defray a portion of the Town's costs for conducting a public hearing shall accompany the application.

15.9.7 Expansion of Service Area. A Service Area licensee may make application to expand its Service Area in the same manner as an initial license application.

15.10 General Conditions Applicable to permits for Small Wireless Utilities. In addition to Section 15.3, the erection or installation of a wireless support structure, 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.

15.10.1 A small wireless facility shall only be collocated on the specific support structure, under the attachment specifications, and at the height indicated in the applicable permit application(s).

15.10.2 No new wireless support structure installed within the right-of-way shall exceed 35 feet in height, 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 35 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

15.10.3 No wireless facility may extend more than 10 feet above its support structure.

15.10.4 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.

15.10.5 No new support structures shall be placed less than 5 feet from the street curb, edge of street pavement, edge of driveway, or edge of pedestrian ways.

15.10.6 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.

15.10.7 Any initial engineering survey and preparatory construction work associated with collocation shall be paid by the applicant.

15.10.8 All facilities and support structures shall use design, materials, colors, textures, screening, and landscaping to blend in within the surrounding natural setting and built environment. All facilities shall be designed to minimize the visual impact and appear to be compatible with the surroundings.

15.10.9 No lights, reflectors, flashers, or other illuminating devices shall be affixed to any small wireless support structure except as required by the Federal Aviation Administration, Federal Communications Commission, or the Town.

15.10.10 No stickers, signs, or decals shall be visible on any small wireless facility or wireless support structure, except;

- safety alerts required by law,
- one sign not over ten square inches indicating the name of the manufacturer or installer.

15.10.11 Small wireless facilities and/or wireless support structures shall not be placed in a position that disrupts traffic or pedestrian circulation or interferes with vehicular or pedestrian sight lines.

15.10.12 All facilities shall be designed to prevent unauthorized climbing or entry.

15.10.13 All facilities shall be maintained in good condition, appearance, order, and repair.

15.10.14 Permits shall be conspicuously displayed or otherwise available at all times at the work site and shall be available for inspection by the Town.

15.10.15 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.

15.10.16 A right-of-way user shall promptly and at its own expense, with due regard for seasonal limitations, temporarily or permanently remove and relocate its small wireless facilities and wireless support structures in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the Town, in conjunction with:

- a present or future Town use of the right-of-way for a public project.
- the public health or safety.
- the safety and convenience or travel over the right-of-way.

15.11 Utility Construction Permit Application

15.11.1 Permit Required. Prior to utility installation, within the town road rights-of-way, a utility company shall first obtain a Utility Construction Permit from the Town. 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.

15.11.2 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 Town, provided that all small wireless facilities in the application:

- are located within a two-mile radius,
- consist of substantially similar equipment,
- are to be placed on similar types of wireless support structures

15.11.3 Permit Application. Application for the Utility Construction Permit shall be made by completing a form provided by the Town. The permit shall contain the following information:

15.11.3.1 The name and address of the utility to be performing the installation.

15.11.3.2 A general description of the work to be performed and the method used for placement.

15.11.3.3 The location of the proposed utility installation and shown on a Utilities Placement Map.

15.11.3.4 The proposed time frame for beginning and completing the work.

15.11.3.5 Description of restoration work and any trimming.

15.11.4 Restoration. Town road rights-of-way shall be restored by the permittee to the same or better condition as they were immediately prior to the placement of the utility. 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 Minn. Rule 7819.1100. Restoration must be completed within the dates specified in the permit, increased because of circumstances beyond the control of the permittee or unseasonal conditions.

15.12 Abandoned and Unusable Facilities.

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

15.12.2 *Removal.* Any registrant 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.

15.13 Resident Complaints Against Utilities

Upon notification from the utility company of completion of the project, the Town Clerk will put a notice of same in the Town legal newspaper. Any resident with a complaint regarding the installation or restoration may notify the Town Clerk who in turn will notify the Utility. The Utility will have thirty (30) days to correct this problem and notify the Town of its actions. If the problem is not resolved, to the Town's satisfaction, the Town shall use the escrow funds to correct the problem. All costs incurred by the Town for this procedure shall be paid by the Utility.

15.14 Initial Service Area License Fees

15.14.1 License fees shall be paid by the licensee to defray the Town's cost in granting a license and in administering the regulations of this Article.

15.14.2 The license fees for licenses awarded are due and payable to the Town of West Lakeland by the licensees on January 1 of each year.

15.15 Criminal Prosecution.

Any utility that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty for a misdemeanor under state law.