

ORDINANCE OF THE TOWN OF COTTAGE GROVE, WISCONSIN
Adopted pursuant to Sec. 25.01 of the Town of Cottage Grove Code

Title: Ordinance 2023-07-17a adopting Revisions to 08.03 Right-of-Way Permits

Code Section(s) created, amended, or repealed	<u>08.03</u>
Presented to Board by	<u>Town Attorney, Town Clerk</u>
Committee Review by	<u>None</u>
Date(s) Public Hearing(s) held (if required)	<u>June 19, 2023</u>
Date adopted	<u>July 17, 2023</u>
Vote	<u>5-0</u>
Date of posting of adoption of ordinance	<u>July 18, 2023</u>
Date of publication of adoption of ordinance	<u>Not required</u>

The Town Board of the Town of Cottage Grove does ordain as follows:
TCG Ord. Section 08.03 Right-of-Way Permits is hereby amended to read as follows:

08.03 RIGHT OF WAY PERMITS

(1) APPLICATION AND APPROVAL REQUIRED

(a) No person shall make any excavation or fill or install any culvert or make any other alteration in, under or through any Town highway, roadway, or right-of-way, or install any infrastructure in, under or through any Town highway, roadway, or right-of-way, or in any manner disturb any Town right-of-way, highway, roadway, or bridge without applying for and receiving a permit from the Highway Superintendent.

(b) The Highway Superintendent shall report approvals of right-of-way permits and any denials of right-of-way permits to the Town Board. Applications shall be made using a form approved by the Highway Superintendent and the Town Board. The application shall include Exhibit A Right-of-Way Fees, Deposits and Standards, a copy of which is attached hereto and incorporated by reference.

(c) The Highway Superintendent shall have the authority to approve the location and specifications of any alterations to Town highways, roadways, and rights-of-way. Additional conditions shall be considered and may be incorporated in the right-of-way permit, as determined by the Highway Superintendent and/or Town Board.

1. Where prudent or necessary, the Town may require review and input from the Town Engineer. Fees associated with such review shall be paid by the applicant, as set forth in Exhibit A.

(d) Any person granted a right-of-way permit ("Permit Holder") has the duty to restore any areas excavated, altered, disturbed or in any way modified by Permit Holder's work to a condition as good as or better than existed prior to said work. The Permit Holder shall notify the Town Highway Superintendent upon completion of its work in Town highways, roadways, and rights-of-way. Upon receipt of notice of completion, the Highway Superintendent or the Town Engineer shall inspect area disturbed and approve the Permit Holder's restoration thereof if restored to a condition as good as or better than existed prior to the work. If a Permit Holder fails to restore Town highways, roadways, or rights-of-way as required pursuant to this subdivision within five (5) days of the completion of the work or if the Permit Holder's restoration was not approved by the Highway Superintendent or Town Engineer, the Town may cause such restoration to occur and use the Permit Holder's deposit to pay for any costs incurred by the Town to restore Town highways, roadways, and rights-of-way.

(d)(e) As a condition of permit approval, the Town shall require and the applicant shall provide the following:

1. Permit Fee. Payment of the permit fee(s) is required prior to commencement of work to reimburse the town for costs incurred by the town in reviewing, inspecting, and monitoring work in Town highways, roadways, and rights-of-way. Current fees and standards for such work are set forth on Exhibit A, which is attached hereto and incorporated by reference. The fee amounts set forth on Exhibit A may be amended by resolution of the Town Board.
2. Deposit. A deposit to ensure proper construction, completion of work, restoration and absence of damages to Town highways, roadways, and rights-of-ways. The deposit shall be for 120% of the total amount of the estimated cost to restore the Town highway, roadway, or right-of-way to be disturbed to a condition as good as existed prior to the applicant's work, as such total amount is determined by either the Highway Superintendent or the Town Engineer. The applicant's deposit shall be in the form of i) an irrevocable letter of credit in a form acceptable to the Town; ii) cash; iii) certified or cashier's check. Upon completion of the work, restoration of any areas disturbed, and inspection approval by the Highway Superintendent or Town Engineer, the Town shall refund the deposit in a timely manner, less any damage, repair, completion, or excess inspection costs. The deposit amounts shall be determined on an application-by-application basis, as set forth on Exhibit A. The deposit amounts may be amended by resolution of the Town Board.
3. Restoration. In the event the Town is required to restore or repair damages any highway, roadway or right-of-way and the work undertaken by the Town exceeds the amount of the deposit, the applicant shall be invoiced for the excess amount in excess of its deposit and shall pay the invoice in full within 30 days of receipt of the invoice. Interest shall accrue on all delinquent amounts at the rate of 1 ½ percent per month. In the event the Town commences litigation to recover any delinquent amounts, the applicant shall be responsible for all litigation costs incurred by the Town, including reasonable attorney fees.
- 4.3. Insurance. A certificate of insurance naming the town as an insured and holding the Town free from all liability by reason of injury to third persons or property, and to pay any and all damages and costs arising from work in the Town highways, roadways, or rights-of-way.

(2) DAMAGE TO TOWN RIGHT-OF-WAY; PENALTY FOR VIOLATION

(a) Any damage caused to Town property and/or right-of-way due to any work done under a right-of-way permit is the responsibility of the ~~permit~~ Permit holder ~~Holder~~.

(b) Violations of this ordinance shall be punishable as Class C forfeitures, under TCG § 25.04.

(3) EFFECTIVE DATE

(a) The original ordinance was adopted on June 19, 2000. The ordinance was amended on May 2, 2016.

(b) The ordinance, as amended, shall take effect upon passage and publication as required by law.

**EXHIBIT A
TO TOWN OF COTTAGE GROVE ORDINANCE § 8.03
RIGHT-OF-WAY PERMIT FEES, DEPOSITS AND STANDARDS**

CALCULATION OF PERMIT FEES:	QUANTITY @ \$ PER	AMOUNT
<u>A base fee for permit to work in Town road right-of-way is to be paid per permit prior to commencement of work.</u>	<u> </u> @ \$55	\$ <u> </u>
<u>Borings, trenching (small trenching projects) or plowing fees apply to all borings, whether under the Town roadway or parallel to the Town road (such as a boring in the drainage ditch). The Town will need to review and monitor all boring, trenching or plowing to determine that the proposed location(s) are the best available locations in terms of the public interest in the project.</u>	<u> </u> @ \$45 per boring/trenching/plowing	\$ <u> </u>
<u>An open cut pavement fee applies any time roadway pavement is impacted. If the opening is not large enough for a roller compactor to be used, then a Type II patch shall be applied. (Type II patch detail drawings are available from the Town.) If the Applicant wishes to use an alternate patch type, the alternate must be approved by the Town Engineer. The Applicant shall pay the costs incurred for the Town Engineer's review of patches other than the Type II patch.</u>	<u> </u> @ \$220 per open cut	\$ <u> </u>
<u>A trenching fee is required for any trench in excess of 1,320 feet (large trenching projects)</u>	<u> </u> @ \$110 X # of lineal feet/1,000	\$ <u> </u>
<u>A construction of vault or other structure fee is required for vaults or other structures placed in the right-of-way. It does not apply to utility pedestals that are not installed on a concrete base. All structures should be placed at the right-of-way line and/or adjacent to existing structures.</u>	<u> </u> @ \$110 per vault/structure	\$ <u> </u>
Subtotal		\$ <u> </u>
For use by Permitting Authority Only		
<u>Engineering fees: -When Town Engineer review is needed, as requested by the Highway Superintendent, and approved by either the Town Board or the Town Chair, the Applicant shall pay all such fees incurred within 30 days of the invoice to the Applicant. Prepayment may be required in an amount and as determined by the Town Clerk-, following consultation with the Town Chair.</u>	All fees incurred by Town; prepayment of estimate may be required. Actual amount will be billed to the applicant if it exceeds the estimate, any excess deposit will be refunded	Pre-payment required \$ <u> </u>
<u>DEPOSIT (cash, irrevocable letter of credit, or certified or cashier's check) TO ASSURE PROPER CONSTRUCTION, COMPLETION, RESTORATION AND ABSENCE OF DAMAGES (see TCG s. 08.03(1)(e)2)</u>		\$ <u> </u>
TOTAL FEES AND DEPOSIT DUE PRIOR TO COMMENCEMENT OF WORK		\$ <u> </u>
<u>Notes regarding restoration: All affected areas must be restored to a condition as good or better than existed prior to disruption. Restoration of trench walls shall be sloped (rather than vertical) and trench compaction shall be as good as prior to disruption. The Permit Holder shall re-use native fill materials below the pavement to the full extent possible to avoid possible differential frost heave. The Permit Holder shall notify the Highway Superintendent upon completion of work. If restoration is not complete to the satisfaction to the Highway Superintendent or Town Engineer within 5 days of the completion of work, the Town may cause such restoration to occur and use the Permit Holder's deposit to pay for any costs incurred by the Town to complete the restoration.</u>		

NOTES REGARDING FEES, DEPOSITS AND STANDARDS:

1. **Permit to work in Town right-of-way:** The fee in subsection a. above is required for all permits, and is to be paid per permit prior to commencement of work. Additional fees may be required as set forth in b. to f., and a deposit shall be required to assure completion of work to town standards.
2. **Borings, Trenching or Plowing:** This fee applies to all borings, whether under the town roadway or parallel to the town road (such as a boring in the drainage ditch). The Town will need to review and monitor all boring, trenching or plowing to determine that the proposed location(s) are the best available locations in terms of the public interest in the project. The public interest includes issues such as impact on Town road structure, future drainage ditch cleaning and so forth.
3. **Open Cut Pavement:** This fee applies any time roadway pavement is impacted. If the opening is not large enough for a roller compactor to be used, then a Type II patch. The Type II patch requires a 7-inch-thick / high early strength concrete layer beneath the asphalt. (Type II patch detail drawings are available from the Town.) If the Applicant wishes to use an alternate patch type, the alternate must be approved by the Town Engineer. The Applicant shall pay the costs incurred for the Town Engineer's review of patches other than the Type II patch.
4. **Construction of Vault or Other Structure:** This fee applies to all vaults or other structures placed in the right of way. It does not apply to utility pedestals that are not installed on a concrete base.
5. **Restoration:** Where open cuts occur or restoration is required, restoration of trench walls shall be sloped (rather than vertical) and trench compaction shall be as good as prior to disruption. The Applicant shall re-use native fill materials below the pavement to the full extent possible to avoid possible differential frost heave.
- 6.1. **Engineering fees:** Where Town Engineer review is needed, as requested by the Highway Superintendent, and approved by either the Town Board or the Town Chair, the Applicant shall pay all such fees incurred within 30 days of the invoice to the Applicant. Prepayment may be required in an amount and as determined by the Town Clerk and/or Town Treasurer, following consultation with the Town Chair.

Adopted this 17th day of July, 2023 by a vote of 5 in favor, 0 against and 0 abstaining.



Kris Hampton, Town Chair

ATTEST:



Kim Banigan, Town Clerk-Treasurer

AFFIDAVIT OF POSTING OF TOWN OF COTTAGE GROVE ORDINANCE

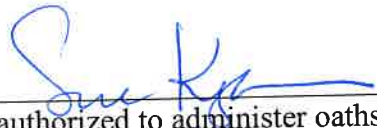
STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

I, Kim Banigan, Cottage Grove Town Clerk-Treasurer, being first duly sworn, on oath, state as follows: On July 18, 2023 the above resolution was duly posted on the Town of Cottage Grove's internet site and on the Cottage Grove Town Hall Bulletin board, all in accordance with TCG §25.01(4) and Wis. Stats., §60.80.



Kim Banigan, Town Clerk-Treasurer

Subscribed and sworn to before me this 18th day of July, 2023.



(Signature of person authorized to administer oaths)

My commission expires _____, or is permanent

Notary Public, or Deputy Clerk
Official title, if not a notary)