

## ORDINANCE NO. 68

### AN ORDINANCE GOVERNING THE CONSTRUCTION, INSTALLATION, OPERATION, REPAIR, MAINTENANCE, REMOVAL AND RELOCATION OF FACILITIES AND EQUIPMENT USED FOR THE TRANSMISSION OF TELECOMMUNICATIONS OR RELATED SERVICES IN THE PUBLIC GROUND OF THE TOWN OF WHITE BEAR AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

THE TOWN BOARD OF SUPERVISORS OF THE TOWN OF WHITE BEAR ORDAIN:

**SECTION 1. DEFINITIONS.** The terms defined in this Section have the meanings given them.

**1-1. Company.** A natural or corporate person, business association or other business entity including partnerships and sole proprietorships, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks to, or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the Town.

**1-2. Facilities.** Communication lines or equipment of any kind, including, but not limited to, lines or equipment for the transmission of audio, video, or data, or other similar communications services, not otherwise governed by Minnesota Statutes, Chapter 238, including all trunks, lines, cables, wires, optical fibers or other fiber optic cables, laser equipment, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, towers, and any necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along any public ground.

**1-3. Public Ground.** Highways, roads, streets, alleys, sidewalks, skyways, public ways, utility easements and public easements in the Town.

### **SECTION 2. PERMIT PROCEDURE.**

**2-1. Permit Required.** A company may not construct, install, repair, remove or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the Town. The Town shall require a separate permit of a company for each location where construction, installation, or other disturbance of the public ground is to occur. Each permit shall state specifically the locations of any facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the Town.

**2-2. Application.** Application for a permit is made to the Town Clerk. A company shall apply for a permit or renewal of a permit a minimum of two (2)

weeks before starting work and must submit detailed plans for street or sidewalk use and pedestrian safety on major projects. This provision or portions thereof may be waived by the Town in the event of an emergency.

**2-3. Issuance of Permit.** If the Town Board determines that the applicant has satisfied the requirements of this Ordinance a permit may be issued. An applicant may contest a permit denial or the conditions of approval by written notice to the Clerk requesting a Town Board reconsideration within fourteen (14) days of the denial. The Town Board shall hear any permit denial contest within forty-five (45) days of the Clerk's receipt of the contest notice. Nothing in this Ordinance precludes the Town from requiring a franchise agreement with the applicant, as allowed by law, in addition to the issuance of a permit set forth herein.

**2-4. Permit Fee.** The application must be accompanied by the permit fee as established in Ordinance No. 54 (Fees & Charges).

**2-5. Security for Completion of Work.** Prior to commencement of work, the company must deposit with the Town security in the form of certified check, letter of credit, or construction bond, in a sufficient amount as determined by the Town for the completion of the work. The securities will be held until the work is completed plus a period of 2 months thereafter to guarantee that restoration work has been satisfactorily completed. Upon application of the company, providing such information as the Town may require, if two or more work projects are to be constructed during a calendar year, the Town may accept, in lieu of separate security for each project, a single security for multiple projects in such form and amount as determined, in the discretion of the Town Board, to be sufficient to assure completion of all projects which may be in progress at any one time during that calendar year and to guaranty that restoration work will be satisfactorily completed. The security will then be returned to the company with interest if required by law and then interest at the applicable statutory rate.

**2-6. Inspection of Work.** When the work is completed, the company must request an inspection by the Town. The Town will determine if the work has been satisfactorily completed, and provide the company with a written report of the inspection and approval.

**2-7. Penalty.** Failure to secure required permits prior to beginning construction, excavation, installation, or work of any kind in public ground, shall constitute a misdemeanor under this Ordinance.

### **SECTION 3. RESTORATION AND RELOCATION.**

**3-1. Restoration.** Upon completion of the work contemplated by a permit, the company must restore the general area of the work, including the pavement and its foundations, to the same or better condition than existed prior

to commencement of the work necessitating a permit. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the Town may put it in the same condition at the expense of the company. The company must, upon demand, pay to the Town the direct and indirect cost of the work done for or performed by the Town, including, but not limited to, the Town's administrative costs.

**3-1.1.** To recover its costs, the Town will first drawn on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the Town.

**3-2. Company Initiated Relocation.** The company must give the Town written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the Town, such approval shall not be unreasonably withheld.

**3-3. Town Required Relocation.** The company must promptly, with due regard for seasonal working conditions, permanently relocate its facilities whenever the Town, in writing, requires such relocation.

**3-4. Relocation Where Public Ground Vacated.** The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the Town. If the vacation proceedings are initiated by the Town, the Town must pay the relocation costs. If the vacation proceedings are initiated by the company, the company must pay the relocation costs unless otherwise agreed to by the Town, company, and other persons.

#### **SECTION 4. COMPANY DEFAULT.**

**4-1. Notice.** If the company is in default in the performance of the work authorized by the permit, including, but not limited to, restoration requirements for more than 30 days after receiving written notice from the Town of the default, the Town may terminate the rights of the company under the permit, subject to the Town's absolute right to revoke at any time in the exercise of the Town's police powers. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.

**4-2. Town Action on Default.** If the company is in default in the performance of the work authorized by the permit, the Town may, after the above notice to the company, and failure of the company to cure the default, take such

action as may be reasonably necessary to abate the condition caused by the default. The company must reimburse the Town for the Town's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under Section 2-5 will be applied by the Town first toward payment for such reimbursement.

## **SECTION 5. OTHER CONDITIONS OF USE.**

**5-1. Use of Public Ground.** Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established therein, including, but not limited to (i) the right of inspection by the Town at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Section 3-3 and 3-4; and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission, and other State and Federal laws, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes, Chapter 216D.

**5-2. Location.** The facilities must be placed in a location agreed to by the Town. The company shall give the Town forty-five (45) days advanced written notice of the company's proposed location of facilities within the public ground. No later than 45 days after the Town's receipt of the company's written notice, the Town will notify the company in writing of the Town's acceptance or rejection of the proposed location. If the Town rejects the company's proposed location, the Town shall propose alternative locations. The Town does not waive or forfeit its right to reject the location of facilities by failure to respond within 45 days.

**5-3. Emergency Work.** A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event, the company must request a permit not later than the second working day thereafter, and comply with the applicable conditions of the permit. In no event may the company undertake such an activity which will result in the closing of a street or alley without prior notification to the Town.

**5-4. Street Improvements, Paving or Resurfacing.** The Town will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the Town will start the work; and (iv) if more than one street is involved, the sequences in which the work is to proceed.

**5-5. Company Protection of Facilities.** A company must take all reasonable measures to prevent its facilities from causing damage to persons or property. A company must take all reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property or the elements. The company must take all reasonable protective measures when the Town performs work near the facilities.

**5-6. Guarding of Obstructions or Dangers.** If a company shall obstruct any public ground, such company shall keep such obstruction or obstructions properly guarded at all times. From sunset to sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in such a manner that they will give proper warning of said obstruction. The Town may require any other restrictions or safety regulations as may be in the public interest.

**5-7. Prior Service Connections.** In cases where the Town is undertaking the paving or resurfacing of streets and the facilities are located under such street, the company may be required to install service connections prior to the paving or resurfacing if it is apparent that service will be required during the five year period following the paving or resurfacing.

## **SECTION 6. INDEMNIFICATION.**

**6-1. Scope.** The company will indemnify, keep, and hold the Town, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the facilities affecting public ground, unless such injury or damage is the result of the negligence of the Town, its elected officials, employees, officers, or agents. The Town will notify the company of claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.

**6-2. Claim Defense.** If a claim or action is brought against the Town under circumstances where indemnification applies, the company, at its sole expense, shall defend the Town if written notice of the claim or action is given to the company within a period wherein the company is not prejudiced in the defense of such claim or action by lack of such notice. If the company undertakes the defense, the company shall have complete control of such claim or action, but it may not settle without the consent of the Town, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Town. In defending any action on behalf of the Town, the company is entitled to assert every defense or immunity that the Town could assert in its own behalf.

**SECTION 7. EFFECTIVE DATE AND APPLICABILITY TO EXISTING FACILITIES.** Companies with facilities, in, on, over, under, or along public

ground on the effective date of this Ordinance must take prompt action to comply with this Ordinance and the permits authorized by this Ordinance. A company, however, is not required to reapply for a permit obtained from the Town prior to the effective date of this Ordinance. A company is not required to pay the difference between the permit fee of a previously obtained permit and the equivalent newly obtained permit under this Ordinance. All other provisions of this Ordinance apply to existing facilities.

**SECTION 8. ACCEPTANCE OF REQUIREMENTS.** By receiving a permit pursuant to this Ordinance, the company accepts and agrees to comply with all of the requirements of this Ordinance.

**SECTION 9. PUBLIC GROUND OTHER THAN RIGHT-OF-WAY.** Nothing in this Ordinance is intended to grant to the company authority beyond that given by Minnesota Statutes, Section 222.37, for use of the public right-of-ways for construction and operation of facilities. If the Town allows the company to use its non-right-of-way public ground, the terms of this Ordinance apply to the extent they are consistent with the contract, statutory, and common law rights the Town owns in such property.

**SECTION 10. SEVERABILITY.** Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

**SECTION 11. EFFECTIVE DATE.** This Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Town Board of the Town of White Bear, Minnesota, this 5<sup>th</sup> day of September, 1995.

APPROVED:

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ROBERT J. WEISENBURGER, Chairman

ATTEST:

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WILLIAM F. SHORT, Clerk-Treasurer

Board of Supervisors:  
ROBERT J. WEISENBURGER, Chairman  
RICHARD A. SAND, Supervisor  
LINDA J. FORD, Supervisor

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Historical Notes

1995

Ordinance, Title and Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 passed September 5, 1995, and effective September 20, 1995 by Weisenburger (chair); Sand and Ford; Short (Clerk-Treasurer).