

ADOPTING A BASIC TOWN ROAD ADMINISTRATION ORDINANCE

One thing that nearly every town has in common is they are responsible for the administration of town roads. Keeping the roads open and maintained is a substantial part of this responsibility. Towns frequently need to protect town road rights-of-way from those who would cause damage to them.

Most property owners along town roads respect the right-of-way and are grateful for the work the town board does to keep the roads maintained. But town boards sometimes struggle with property owners who attempt to use rights-of-way as an extension of their property, damaging roads and drainage structure, interfere with maintenance, and otherwise endanger the public. Many statutes exist to help regulate public rights-of-way, but some road issues are either not addressed by statute or statutes are not clear enough to be useful. Even when a statute set clear rules, obtaining enforcement of these statutes by the sheriff's department and the county attorney's office can be difficult.

Some towns use a road right-of-way ordinance to provide greater control over their roads and to address issues unique to the township. What follows is a sample ordinance that addresses some of the issues to promote the safe use and maintenance of town rights-of-way.

Before adopting an ordinance, the town should consult with their township attorney regarding whether adopting the ordinance will assist the town in fulfilling their goals. Ordinances adopted improperly are likely to be ineffective.

I. REGULATING UTILITIES IN THE RIGHTS-OF-WAY

The regulation of utilities in the right-of-way is specifically controlled by statute and rule. This ordinance does not provide for the specific regulation of utilities. In order to do so, the ordinance would need to contain additional provisions in order to comply with the law allowing local regulation. A sample add-on section to this sample written to address utilities is provided in Information Library Document Number: **TP8000A** (Regulating Utilities in Town Road Right-of-Way).

II. ADOPTING ROAD ADMINISTRATIVE ORDINANCE

There are several methods to adopt a road administrative ordinance. The recommended method is for the board to seek elector authorization to adopt an ordinance of this type at an annual or special town

meeting under Minn. Stat. § 365.10, subd. 17. If authorized, the board would then proceed under the requirements of Minn. Stat. § 365.125 to adopt the ordinance at a board meeting by motion. Refer to Information Library Document Number: **TP6000** (Town Ordinances) for additional information about adopting ordinances. A town board may be able to adopt some or all of their desired road administrative ordinance without elector approval, through their role as the road authority, but such approval is an additional basis to support the enforceability of the ordinance.

III. ENFORCING ROAD ADMINISTRATIVE ORDINANCE

The town is responsible for enforcing any ordinances that it adopts. Procedures for enforcing an ordinance are critical and need to be decided upon with the town's local attorney before the board adopts an ordinance. Failing to think through enforcement issues could actually expose the town to greater liability than it had before adopting the ordinance. In short, a town board should not adopt an ordinance, when it does not have the commitment or resources to adequately administer and enforce.

_____ TOWNSHIP
_____ COUNTY, MINNESOTA

Ordinance # _____
An Ordinance Regulating
Town Road Rights-of-Way

The Board of Supervisors of the Town of _____ ordains:

Section 1.00. Purpose and Authority.

1. **Purpose.** The primary objectives of this ordinance are to protect public safety, reduce interferences with public travel, protect the public's interest in its Rights-of-Way, and to provide for the efficient and uniform administration of the Town's road Rights-of-Way. The Board finds that the regulations, requirements, and restrictions, as set forth in this ordinance, are in the best interests of the health, safety, and welfare of the Town's citizens.
2. **Authority.** As a road authority, the Board has broad authority to regulate what occurs within the town's road Rights-of-Way. This authority is found in Minn. Stat. § 365.10, subd. 17, a variety of sections in chapters 160, 164, 165, 169, 222, 237, and other chapters, as well as the rules associated with those chapters.

Section 1.01. Definitions.

For the purposes of this ordinance, the following terms shall have the meaning given them in this section.

1. **Approach.** "Approach" means the area of the Right-of-Way between the traveled surface of the road and the adjacent property that is intended to provide access for vehicles or equipment from the road to the adjacent property.
2. **Board.** "Board" means the town board of supervisors of _____ Township, _____ County, Minnesota.
3. **Headwall.** "Headwall" means rock, concrete, masonry, metal, timber or other similar materials placed on the sides of an approach as support, to prevent erosion, or for decorative purposes.
4. **Junk.** "Junk" means old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, garbage, waste materials, rubbish, rubber debris, appliances, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
5. **Person.** "Person" means an individual, corporation, business trust, partnership or association or any other legal entity.

6. **Right-of-Way.** “Right-of-Way” the area on, below or above the public roadway, bicycle lane, and public sidewalk in which the town has an interest, including for travel purposes and utility, and drainage easement.
7. **Town.** “Town” means the organized government of _____ Township, _____ County, Minnesota.

Section 2.1. Cultivation and Landscaping.

1. **Cultivation.** No person may cultivate, plant, harvest, or maintain agricultural crops, trees, bushes, or shrubs within a Right-of-Way.
2. **Landscaping.** No person may cultivate, plant, or maintain grasses, flowers, vegetables, or other vegetation in any manner that obstructs visibility of a road or otherwise interferes with, obstructs, or renders dangerous for passage a Right-of-Way. No person may place watering systems or sprinkler heads within a Right-of-Way.

Section 2.2. Obstructions and Junk.

1. **Obstructions.** No person may place, maintain, or allow any obstruction in a Right-of-Way other than those specifically permitted by this ordinance, by state law or rule, or by written approval of the Board. Items prohibited by this section include, but are not limited to, fences, posts, structures, piled materials, hay bales, vehicles, trailers, campers, equipment, or any other items that interfere with the safe use or the maintenance of the Right-of-Way. No person shall park a functioning vehicle in a Right-of-Way in such a way as to unreasonably interfere with the safe use of a road or the maintenance of the Right-of-Way.
2. **Junk.** No person shall place or maintain Junk in a Right-of-Way.

Section 2.3. Alteration of Grade.

No person may alter or change the depth or contour of any portion of any ditch or embankment in a Right-of-Way without written approval of the Board.

Section 2.4. Unauthorized Maintenance.

No person may work, maintain, improve, or repair the traveled portion of a right-of-way without the written approval of the Board.

Section 2.5. Damage to Right of Way

No person shall cause damage to a Right-of-Way without the written approval of the Board. Any person doing damage within a Right-of-Way with approval of the Board shall return the Right-of-Way to at least the same condition it was in prior to the damage or be charged the town’s costs to repair the damage.

Section 2.6. Mailboxes, Signs and Newspaper Boxes.

1. **Mailboxes.** Mailboxes and newspaper boxes are permitted within a Right-of-Way if they do not interfere with, obstruct, or render dangerous for passage a road. Mailboxes placed within a Right-of-Way must comply with all of the standards in Minnesota Rules chapter 8818. The Board may remove and replace mailboxes that do not comply with the standards as provided in Minnesota Statute section 169.072.
2. **Signs.** No sign of any nature may be placed or allowed to remain in any Right-of-Way except an official traffic sign placed by a governmental authority or other signage expressly permitted by state law, or by permission of the town.

Section 2.7. Approaches and Headwalls.

1. **Approaches.** No person may construct or reconstruct any approach to a road without first obtaining approval by the Board. A person may be required to submit a map or drawing of the existing or proposed approach when seeking approval.
2. **Culverts.** A person constructing or reconstruction an approach may be required to install a culvert meeting the specifications set out by the Board if the Board determines a culvert is necessary for suitable approach to the road and to promote adequate drainage of the Right-of-Way.
3. **Costs.** A person constructing or reconstructing an approach to an existing road shall be responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals and the cost of a culvert if one is required. Property owners are responsible for maintaining all approaches and associated culverts on their property at their own cost.
4. **Headwalls.** No person may construct or reconstruct any headwall in a way that interferes with the safe use or maintenance of a Right-of-Way.

Section 3.1. Town and Contractors.

The prohibitions, requirements, and restrictions contained in this ordinance do not apply to: the Town; town officers, employees, or agents while operating within the course and scope of their duties for the Town; or contractors while performing services within the scope of a contract with the Town.

Section 4.1. Permission.

1. **Limitations.** Any person receiving permission or a permit from the Board as provided in this ordinance must comply with all applicable federal, state, and local laws and rules as well as all applicable Town ordinances, resolutions, specifications, regulations, and policies. Any person receiving permission or a permit must comply with all conditions, requirements, and limitations the Board expresses as part of the permission or permit. Failure

to comply with any of the conditions, requirements, or limitations shall void the permission or permit and could place the person in violation of this ordinance.

Section 5.1. Enforcement and Penalty.

1. **Correction Order.** Upon discovery of a violation of this ordinance, the Board may issue a correction order to the violator ordering the person to correct the violation by a certain time. If the violator fails to comply with the correction order by the time indicated in the order, the Board may provide for the correction of the violation. Issuance of a correction order does not preclude imposition of the penalty set forth in this ordinance.
2. **Immediate Correction.** If the Board determines that the violation creates an immediate threat to public safety, the Board will make a good faith effort to notify the violator to immediately correct the situation. If the Board is not able to promptly reach the violator, or if the violator fails to immediately correct the situation upon notification, the Board will provide for the correction of the violation.
3. **Cost of Correction.** The cost of correcting a violation shall be the responsibility of the violator. If the Board provides for the correction of the violation, all expenses incurred, including reasonable attorney's fees, shall be billed to the violator. If the bill is not paid by the due date, the Board may exercise any lawful options available to it to collect the amount due.
4. **Penalty.** Any person who violates this ordinance shall be guilty of a misdemeanor and subject to the penalties for such as provided in State law. Each day of existence of such violation shall constitute a separate offense. If convicted, the person may be assessed costs of prosecution as allowed by Minnesota Statutes section 366.01, subdivision 10.

Section 6.1. Savings Clause.

The failure of the Board to exercise, and any delay in exercising, any right under this Ordinance, including enforcement, shall not operate as a waiver thereof and shall not constitute a waiver of the Town's interest, however created, in any right-of-way, easement, or any other type of property interest.

Section 7.1. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Adopted this _____ day of _____, 20__ by the Board of Supervisors of the
Town of _____.

BY THE BOARD

Town Chairperson

Attest: _____

Town Clerk