

ORDINANCE NO. 2022-02

VILLAGE OF YORKVILLE  
RACINE COUNTY, WISCONSIN

AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 38, ARTICLE II,  
DIVISION 3 OF THE CODE OF ORDINANCES OF THE VILLAGE OF YORKVILLE,  
RACINE COUNTY, WISCONSIN, RELATING TO THE OCCUPANCY OF PUBLIC  
RIGHTS-OF-WAY

THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE COUNTY,  
WISCONSIN, DO ORDAIN AS FOLLOWS:

1. That Chapter 38, Article II, Division 3 of the Code of Ordinances for the Village of Yorkville be, and hereby is, repealed and recreated to read as set forth on the attached Exhibit "A."
2. That this ordinance shall become effective upon adoption and publication as provided by law.

Adopted by the Village Board of the Village of Yorkville, Racine County, Wisconsin, this 14<sup>th</sup> day of March, 2022.

Ayes: 5

Nays: 0

Abstentions: 0

Absences: 0

VILLAGE OF YORKVILLE

By:   
Douglas Nelson, President

Attest:   
Michael McKinney, Administrator/Clerk

## EXHIBIT “A”

### Division 3. Excavations

#### Sec. 38-81. – Occupancy of public rights-of-way.

(a) *General Provisions.*

- (1) *Purpose and findings.* In the exercise of governmental functions, the village has priority over all other uses of the public rights-of-way. The village desires to anticipate and minimize the number of obstructions, degradation, and excavations taking place in the rights-of-way by regulating the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and are safe for public use, and to ensure that facilities are timely maintained, supported, protected or relocated to accommodate reconstruction or repairs. The taxpayers of the village bear the financial burden for the upkeep, maintenance and reconstruction of the rights-of-way and a primary cause for the early and excessive deterioration of the rights-of-way is the frequent excavation by persons who locate facilities therein.

The village finds increased use of the public rights-of-way results in increased costs to the taxpayers of the village and that these costs are likely to continue into the foreseeable future.

The village finds that the above-ground use of public rights-of-way creates special and unique public health, safety, and general welfare concerns for the village, including, but not necessarily limited to, traffic safety, sightline and vision triangle issues, break-away design consistent with other utility pole or structure requirements, public snow plowing and snow storage, property access and public parking, obstruction to municipal police, fire, and rescue services, and related issues.

The village finds that the preservation of prime farmland is one of its primary goals as set forth in the “2020-2050 Village of Yorkville Comprehensive Plan (“Comprehensive Plan”) and that maintenance of the agricultural drainage tile system found throughout the village is an essential part of accomplishing that goal.

The village finds that delays by occupants of the rights-of-ways in maintaining, supporting, protecting or relocating facilities, if they impact public construction projects, have the potential to significantly increase public works project costs borne by the taxpayers. Moreover, the village finds that some right-of-way occupants have a history of delays and non-responsiveness.

The village finds that rights-of-way, by definition, are limited in area, use, and availability, and, as a result, require regulation and limitation of use and occupancy, subject to all applicable state, federal, and constitutional laws and regulations and the provision of all necessary utility services to the public.

The village finds that occupancy and excavation of its rights-of-way causes costs to be borne by the village and its taxpayers, including but not limited to:

- a. Administrative costs associated with public right-of-way projects, such as permitting, inspection and supervision, supplies and materials.
- b. Management costs associated with ongoing management activities necessitated by public right-of-way users.
- c. Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.
- d. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life due to excavations in the public right-of-way.

In response to the foregoing facts and findings, the village hereby adopts this ordinance relating to access to, administration of, and issuance of permits to excavate, obstruct and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within its rights-of-way or to be placed therein in the future. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the village a framework within which to regulate and manage the public rights-of-way and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the village as they use the right-of-way of the village, as well as to ensure the structural integrity of the public rights-of-way.

- (2) *Definitions.* The following definitions apply in this ordinance. References hereinafter to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether capitalized or not.

*Administrator/clerk* means the appointed administrator/clerk of the village.

*Applicant* means any person requesting permission to excavate, cut into, bore into, obstruct and/or occupy a right-of-way.

*Bridge* means any bridge or culvert or series of culverts.

*Degradation* means the decrease in the useful life of the paved portion of the right-of-way, excluding the sidewalk right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

*Emergency* means a condition that (1) poses a clear and immediate danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

*Excavate* means to dig into or in any way remove, physically disturb, penetrate or in any manner affect the existing condition any part of a right-of-way.

*Facilities* means all equipment, whether publicly or privately owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include, but is not limited to, poles, wires, pipes, cables, underground

conduits, ducts, manholes, vaults, fiber optic cables, lines, laterals and other structures and appurtenances.

*In*, when used in conjunction with right-of-way, means over, above, across, within, in, on or under a right-of-way.

*Local representative* means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service, and to make decisions for and act as a responsible party on behalf of that applicant regarding all matters within the scope of this ordinance.

*Municipal Code* means the Municipal Code of the Village of Yorkville, as amended.

*Obstruct* means to place any object in a right-of-way so as to hinder free and open passage over any part of the right-of-way.

*Permittee* means any person or utility to whom a permit to occupy, excavate or obstruct a right-of-way has been granted under this ordinance.

*Person* means corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees, receivers, heirs, personal representatives, agents and all others acting on their behalf.

*Repair* means to perform construction work necessary to make the right-of-way useable for travel or its intended use according to village specifications, or to restore equipment to an operable condition.

*Restore* means the process by which the excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed to village specifications.

*Right-of-way* means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane, drainage ditches, shoulders, and public sidewalk in which the village has an interest, including other dedicated rights-of-way for travel purposes.

*Section* without reference to the Municipal Code shall mean a subsection within Section 38-81.

*Utility* means a public utility as defined in Wis. Stat. §196.01(5) and includes a telecommunications carrier, as defined in Wis. Stat. §196.01(8)(m).

*Village* means the Village of Yorkville, Wisconsin, a municipal corporation.

- (3) *Administration.* The village administrator/clerk or his/her designee is responsible for administration of the rights-of-way of the village and the permits and ordinances related thereto.
- (4) *Exemption.* The Village and its contractors are exempt from the provisions of Section 38-81.

(b) *Permit to install in, excavate, or otherwise occupy right-of-way required.*

- (1) No cut, excavation, or service connection or disconnection shall be made by any person or utility in any village property or right-of-way unless a permit under this Section is applied for, the fee paid for, the permit issued by the administrator/clerk, obtained and held under this ordinance and then only in strict accord with all provisions and requirements of this ordinance. An application for a permit for a project involving an open cut in the paved portion of the village's right-of-way must be approved by the village board before the permit's issuance by the administrator/clerk. The administrator/clerk may require village board approval of other applications that, in the opinion of the administrator/clerk, significantly impact village rights-of-way or the public's use of village rights-of-way.
- (2) No person or utility shall undertake to perform the work of making any connection with, disconnection from, installing or repair of any facilities, gas pipe, water pipe, sewer, communication, cable, or electric line or facility laid or constructed in any road or public ground, or to repair or remove any such item without having obtained a permit under this Section authorizing such work. No annual permit fee is required but individual permits and permit fees for each excavation are required.
- (3) Every cut, excavation and service connection or disconnection in any village property that is not a right-of-way shall also require, in addition to the permit, payment of fees and fulfillment of other requirements set forth in this ordinance, and separate permission, lease(s) and/or easement(s) from the village board, as applicable. Such additional permission is discretionary with the Village Board, is not a matter of right regardless of whether a permit has been applied for and/or issued under this ordinance. Compliance with this ordinance does not take the place of such additional required permission.

(c) *Application for permit.*

Written application for a right-of-way permit shall be made to the administrator/clerk prior to any occupancy. Permit applications shall contain and will be considered complete only upon compliance with each of the following requirements:

- (1) *Application Form.* An accurate and complete written permit application form shall be submitted to the administrator/clerk. The application shall be signed and dated by a duly authorized representative of the applicant. The application form shall be in such form, content and requirements as the administrator/clerk may determine and/or direct from time-to-time. The application form shall contain, at a minimum, the following information:
  - a. Each applicant's name, diggers hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
  - b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of application.

- c. A detailed description of the scope and plan of the excavation work and repair/restoration proposed, including a description of the property and name of the right-of-way, if applicable, the approximate location of the excavation(s), the purpose for the excavation, and the method by which the excavation is to be made.
  - d. Indemnification language protecting and holding harmless the village and its elected and appointed officials, officers, employees, agents, contractors and representatives from and against any and all injury, payments, penalties and damages arising from any and all intentional and negligent activities of the applicant and the applicant's appointed officials, officers, employees, agents, contractors and representatives.
  - e. The application shall be signed by the applicant's authorized representative or agent. If the work is not to be performed by the applicant directly, the person engaged to do the work shall co-sign the application and the permit shall be issued in the name of the person performing the work along with the applicant.
- (2) *Form and Drawings.* Submission of the completed permit application form as established by the administrator/clerk, including all required attachments, drawings showing the location and area of the proposed facilities, and the size and depth of the cut, excavation or service connection or disconnection. The proposed excavation must accommodate all existing underground facilities within the proposed route.
- (3) *Insurance Certificate.* Except for a utility governed by Chapter 196 of the Wisconsin Statutes, the applicant shall file certificates of insurance with the administrator/clerk giving evidence of liability insurance in the following minimum amounts:

Worker's Compensation	Statutory Limits
Commercial Automobile Liability	\$2,000,000.00 per Accident for Bodily Injury and Property Damage Liability Combined.
Commercial General Liability	\$2,000,000.00 per Occurrence for Bodily Injury and Property Damage Liability Combined.

The village board may reduce the liability insurance limits required or require higher amounts of liability insurance depending on the scope of the project. The village and its officials, employees and agents shall be named as additional insureds on the commercial general and automobile liability policies. The insurance shall cover liability to third parties for the acts of the applicant and applicant's officials and employees, agents, contractors, representatives and related others. The insurance shall cover bodily injury and property damage for the individual incidents and aggregates required by the administrator/clerk. Such insurance shall not be cancelled or reduced without the insurer giving at least 10 days prior written notice to the administrator/clerk. Cancellation or reduction of

insurance shall automatically suspend the permit, and no further work shall be done under such permit until a new certificate of insurance complying herewith is filed with the administrator/clerk. The certificate of insurance shall remain in full force and effect for not less than one year from the date of the Village's final inspection and acceptance after completion of the project. The insurance requirements under this subsection may be applied to a utility if the administrator/clerk has reasonable grounds to question the financial responsibility or compliance ability of the utility.

- (4) *Bond.* A bond in the form of cash, performance bond issued by a licensed company in Wisconsin or irrevocable letter of credit issued by a financial institution acceptable to the village shall be deposited or filed with the administrator/clerk and preserved by the village treasurer prior to the issuance of the permit. The amount of the cash bond, performance bond, or letter of credit shall be determined by village board resolution, setting forth a schedule based upon such factors as the estimated cost of the project and restoration of village right-of-way and village property disturbed. The bond or letter of credit shall be payable to the village upon demand by the administrator/clerk for any actual or suspected violation of any provision of this ordinance. The administrator/clerk shall be able to demand payment upon the bond or letter of credit in whole or in-part at any time and from time-to-time. The bond or letter of credit shall be in such further form, content and requirements as the administrator/clerk and village attorney may determine necessary and/or desirable to effect the intent of this ordinance. The Village need not resort to any other remedy or provide any prior notice to the applicant or permittee before making demand upon, resorting to or receiving payment from the bond or letter of credit. In the event the cash bond, performance bond or letter of credit shall be insufficient for such purposes, the permittee shall be liable to the village for the excess cost over the amount of the bond or the amount collected by the village on the irrevocable letter of credit. The bond or letter of credit shall remain in full force and effect for one (1) year from the date of the Village's final inspection and acceptance after completion of the project. The bond requirements under this subsection may be applied to a utility if the administrator/clerk has reasonable grounds to question the financial responsibility or compliance ability of the utility.
- (5) *Certificate of Authority.* A copy of the applicant's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the applicant is lawfully required to have such certificate from said commission or other state or federal agency.
- (6) *Corporate or Similar Certificate.* If the registration is a corporation, LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Wisconsin Department of Financial Institutions.
- (7) *Site Plan.* Each application shall contain, attached thereto, an accurate diagram and description of the excavation site.
- (8) *Payment.* Payment of the permit fees and costs as set forth in this ordinance, including unpaid fees or costs due for prior excavations as well as any loss, damage, or expense suffered by the village because of applicant's prior excavations of village rights-of-way or any emergency actions taken by the village.

- (9) *Notice of Change.* The applicant shall keep all of the information listed above current at all times by providing to the administrator/clerk information as to changes within three (3) working days following the date on which the applicant has knowledge of any change.
  - (10) *One Permit Per Site.* A separate permit must be applied for and held, and a separate fee paid, for each site, excavation, cut and/or project, except as otherwise authorized by the village board. A separate permit is required for a new or emergency excavation at a previously permitted site if the previous work or excavation was completed.
  - (11) *Permits Not Transferable.* Permits are not transferable to a different person or utility. Permits are not transferable from place to place.
  - (12) *Permit Posting Required.* A photocopy of each issued village excavation permit shall be conspicuously posted and maintained at the site until the project is completed.
- (d) *Installation/excavation/occupancy permit fee.* The permit fee shall be established by the village in an amount sufficient to recover the costs incurred by the village. This fee shall recover administrative and inspection costs, excavation costs, as well as degradation costs, as defined below. Payment of said fees shall be collected prior to issuance of the permit. However, the administrator/clerk may establish a fee collection process from governmental agencies and utilities to expedite the permitting system and recognize that certain excavations are deemed emergencies.
- (1) *Waiving of fees.* Fees shall not be waived unless the work involved is a direct result of the administrator/clerk's or designee's demand that facilities owned by a utility be removed or relocated, or unless waived by the village board upon review of the administrator/clerk's or designee's decision.
  - (2) *Fee schedule.* The minimum fee for each excavation permit shall be as set forth by resolution of the village board, a copy of which shall be maintained by the administrator/clerk and posted on the village's website. The fee for a permit issued after commencing work, except in cases of emergency as determined by the administrator/clerk, shall be double the fees set forth herein. This permit fee shall be in addition to any forfeiture provided for elsewhere in the Municipal Code.
- For those permit applications which provide for a substantial undertaking of excavation within the public right-of-way attended by disruption of the general public and traffic, the administrator/clerk is authorized to assess the actual cost of the village employee's or consultant's time engaged in the review and inspection of the anticipated work.
- (3) Permit fees paid for a permit that the village has revoked are not refundable.
- (e) *Right-of-way repair/restoration.*
- (1) The permittee shall be required to repair the public right-of-way to current village specifications, subject to inspection and acceptance by the administrator/clerk or



designee. In addition to repairing its own work, the permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the village. The permittee shall reconstruct, relocate or replace any drain tile line which may be disturbed or damaged by its work so as to provide for the continued operation of such drain tile line, whether or not such drain tile was located or otherwise discovered before commencement of its work. The administrator/clerk or designee, shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the village.

- (2) *Guarantees.* The permittee guarantees its work and shall maintain it for 36 months following its completion. During this period, it shall, upon notification from the administrator/clerk or designee, correct all work to the extent necessary, in accordance with village specifications. Said work shall be completed within ten business days of the receipt of the above notice, not including days during which work cannot be done due to circumstances constituting force majeure.
  - (3) *Failure to repair/restore.* If the permittee fails to repair/restore the right-of-way to the condition required by the administrator/clerk or designee or fails to satisfactorily and timely complete all work required by the administrator/clerk or designee, the village at its option may do such work. In that event the permittee shall pay to the village, within 30 days of billing, the cost of repairing/restoring the right-of-way.
- (f) *Inspection.*
- (1) *Notice of completion.* When the work under any permit hereunder is begun and completed, the permittee shall notify the administrator/clerk or designee.
  - (2) *Site inspection.* Permittee shall make the work site available to the administrator/clerk or designee and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
  - (3) *Authority of administrator/clerk or designee.* At the time of inspection, the administrator/clerk or designee may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The administrator/clerk or designee may issue an order to the applicant or permittee for any work that does not conform to applicable village standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the applicant or permittee shall present proof to the administrator/clerk or designee that the violation has been corrected. If such proof is not presented within the required time, the administrator/clerk or designee may revoke the permit pursuant to subsection (i).
- (g) *Ongoing management fees.* The cost of trimming trees or cutting grass around facilities is an ongoing expense to the village. Such costs will be determined and a fee to offset costs may be assessed against permit holders in the future.
- (h) *Compliance with other laws.* Obtaining a permit to excavate, install in and/or occupy the right-of-way does not relieve the applicant or permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other village,

county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(i) *Revocations, suspensions, refusals to issue or extend permits.*

(1) The administrator/clerk or designee may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

- a. Issuance of a permit or installation of facilities for the requested date or location would interfere with another project occupying the same right-of-way, an exhibition, celebration, festival or other event.
- b. Misrepresentation of any fact by the applicant or permittee.
- c. Failure of the applicant or permittee to maintain required bonds and/or insurance.
- d. Failure of the applicant or permittee to complete work in a timely manner.
- e. The proposed activity is contrary to the public health, safety, or welfare.
- f. The proposed activity requires above-ground structures causing safety issues including, but not limited to, sight-line safety, vision triangles, break-away structures, public plowing and snow storage, obstruction to municipal police, fire, and rescue services, and related issues with the use of the right-of-way.
- g. The extent to which right-of-way space where the permit is sought is available.
- h. The competing demands for the particular space in the right-of-way.
- i. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permittee or applicant.
- j. The applicability of village ordinances, or other regulations of the right-of-way, including, but not limited to, Wis. Stats. §§ 86.16 (prohibiting interference with use of highway by the public) and 182.17 (prohibiting poles in front of residence or occupied business), that affect the location, type, height, size and/or use of facilities in the right-of-way.

(2) *Discretionary issuance.* The administrator/clerk or designee may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the permittee or applicant to comply with state or federal law or village ordinances or an order of a court or administrative agency.

(3) *Appeals.* Any person aggrieved by a determination made with respect to the repair or restoration of a public right-of-way, or by a decision of the administrator/clerk or designee revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the village board. A request for review shall be filed within ten days of the decision being appealed. Following a hearing, the village board may affirm, reverse or modify the decision of the administrator/clerk or designee.

(j) *Work done without a permit.*

(1) *Emergency situations.* Each person or utility shall immediately notify the village by verbal notice on an emergency phone number provided by the village of any event regarding its facilities that it considers to be an emergency. The person or utility may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the person or utility shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this ordinance.

If the village becomes aware of any emergency regarding a person's or utility's facilities, the village may attempt to contact the local representative of each person or utility affected, or potentially affected, by the emergency. The village may take such action it deems necessary to protect public safety or property as a result of the emergency, the cost of which shall be borne by the person or utility whose facilities occasioned the emergency.

(2) *Non-emergency situations.* Except in an emergency, any person or utility who, without first having obtained the necessary permit, excavates, installs facilities within or otherwise attempts to occupy a right-of-way shall be subject to a stop-work order or other appropriate legal remedy, and must subsequently obtain a permit, and shall, in addition to any penalties prescribed by the Municipal Code, pay double the normal fee for said permit, pay double all the other fees required by this ordinance or other provisions of the Municipal Codes, deposit with the village the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this ordinance.

(k) *Location of facilities.*

(1) *Underground.* Unless in conflict with state or federal law, except when existing above-ground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

(2) *Limitation of space.* The village may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons or utilities to occupy and use the right-of-way. In making such determination, the village shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect public health, safety or welfare.

- (3) *Attachment to bridges.* Whenever an applicant or permittee under this section requests permission to attach pipes, conduits, cables or wires to any village bridge structure, the applicant shall pay a fee of \$1,000.00 upon the granting of such permission to defray administrative expense in the analysis and inspection of such installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the village.
- (l) *Relocation and protection of facilities.* A person or utility shall promptly and at its own expense maintain, support, protect or relocate its facilities in the right-of-way whenever the village, or its agent, acting in its governmental capacity, requests such action to allow for public work in the right-of-way. The village, or its agent, shall issue a due date for completion of the work to the representative of the person or utility of not less than 72 hours, which due date shall be reasonable and based upon the actions to be undertaken by the person or utility. If requested, the person or utility shall restore the right-of-way following the completion of the work. If a person or utility fails to perform the actions required herein by the due date, in addition to all other available legal remedies available to the village, the person or utility shall be subject to forfeitures as provided in the Municipal Code. Notwithstanding the foregoing, a person or utility shall not be required to remove or relocate its facilities from a right-of-way which has been vacated in favor of a nongovernmental entity unless the reasonable costs thereof are first paid to that person therefore.
- (m) *Village right to self-help.* In the event that a person or utility does not proceed to maintain, support, protect or relocate its facilities as ordered in subsection (l), the village may arrange to do the work and bill the registrant, said bill to be paid within 30 days of the date of its mailing to the registrant.
- (n) *Abandoned facilities.*
- (1) *Discontinued operations.* A person who has determined to discontinue its operations in the village must either:
- a. Provide information satisfactory to the village that its obligations for its facilities under this ordinance have been lawfully assumed by another person or utility; or
  - b. Submit to the village a proposal and instruments for dedication of its facilities to the village. If a person proceeds under this clause, the village may, at its option:
    1. Accept the dedication for all or a portion of the facilities; or
    2. Require the person, at its own expense, to remove the facilities in the right-of-way at ground or above-ground level; or
    3. Require the person to post a bond or provide payment sufficient to reimburse the village for reasonably anticipated costs to be incurred in removing the facilities.

However, any person who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the village waives this requirement in writing.

- (2) *Abandoned facilities.* Facilities of a person who fails to comply with sections (n)(1)a or b., and which, for two years, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a public nuisance. In addition to any remedies or rights it has at law or in equity, the village may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the person, or the person's successor in interest.
- (3) *Public utilities.* This section (n) shall not apply to a public utility, as defined in Wis. Stats. § 96.01(5), that is required to comply with Wis. Stats. § 196.81.
- (o) *Reservation of regulatory and police powers.* The village, by the granting of a permit to excavate, install facilities within, obstruct and/or occupy the right-of-way, does not surrender in any manner or to any extent lose, waive, impair or lessen the lawful powers and rights which it now has or which may be hereafter granted to the village under the Constitution and Statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee, by its acceptance of a permit to excavate, install facilities within, obstruct and/or occupy the right-of-way, agrees that all lawful powers, rights, and regulatory powers shall be in full force and effect, and permittee is subject to the regulatory and police powers of the village to adopt and enforce general ordinances and ordinances necessary to protect the health, safety and welfare of the public, and is deemed to agree to comply with all applicable general ordinances and ordinances enacted by the village pursuant to such powers.
- (p) *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.
- (q) *Penalty.* Except as otherwise provided herein, and in addition to all other legal remedies available to the village, any person who violates this ordinance or fails to comply with the provisions hereof shall be subject to forfeitures as provided in the Municipal Code.

**Secs. 38-84 - 38-110. Reserved.**