

Williamstown Township
Ingham County, Michigan

Right-of-Way Ordinance

*Adopted by the Township Board
June 2, 2009*

McKENNA ASSOCIATES, INC.
Urban Planning – Landscape Architecture
235 E. Main St., Suite 105
Northville, Michigan 48167

Table of Contents

Article 1.00 – Title and Purpose	1
Section 1.1 – Title	1
Section 1.2 – Purpose	1
Article 2.00 – Definitions	2
Article 3.00 – Registration Required	3
Section 3.1 – Registration Required Prior to Work in the Right-of-Way	3
Section 3.2 – Exceptions	3
Section 3.3 – Registration Information	4
Article 4.00 – Permit Requirements	4
Section 4.1 – Permit Required	4
Section 4.2 – Permit Extension	5
Section 4.3 – Permit Application	5
Section 4.4 – Permit Conditions	5
Section 4.5 – Security	5
Section 4.6 – Exceptions	6
Article 5.00 – Standards for Construction or Installation	6
Section 5.1 – General Standards	6
Section 5.2 – Standards for Installation of Underground Utilities	7
Section 5.3 – Other Obligations	7
Article 6.00 – Denial of Permit	8
Article 7.00 – Emergencies	8
Article 8.00 – Revocation of Permits	8
Section 8.1 – Substantial Breach	8
Section 8.2 – Notice of Breach	9
Section 8.3 – Reimbursement for Costs	9
Article 9.00 – Appeal	9
Section 9.1 – Filing of an Appeal	9
Section 9.2 – Notice of Hearing	9
Section 9.3 – Hearing and Decision	9
Article 10.00 – Abandoned and Unusable Equipment and Facilities	10
Section 10.1 – Discontinued Operations	10
Section 10.2 – Removal of Abandoned Facilities	10

Article 11.00 – Indemnification and Liability 10
 Section 11.1 – Limitation of Liability..... 10
 Section 11.2 – Indemnification 10

Article 12.00 – Fees 11

Article 13.00 – Severability 11

Article 14.00 – Effective Date 11

**Williamstown Township
Ingham County, Michigan**

Right-of-Way Ordinance

AN ORDINANCE TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS.

WILLIAMSTOWN TOWNSHIP HEREBY ORDAINS:

ARTICLE 1.00 – TITLE AND PURPOSE

Section 1.1 – Title

This Ordinance shall be known and cited as the “Williamstown Township Right-of-Way Ordinance.”

Section 1.2 – Purpose

Williamstown Township recognizes that the public rights-of-way (ROW) within its geographic boundaries are assets held in trust for its citizens. The Township also recognizes that some persons, by placing their equipment in the ROW and charging the citizens for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, and although the installation of such facilities is in most cases necessary and proper use of the ROW, the Township must regulate and manage such uses.

To provide for the health, safety, and well-being of its citizens and to ensure the structural integrity of its streets and the appropriate use of the ROW, the Township strives to keep the ROW within its boundaries in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the ROW, one of the causes for the early and excessive deterioration of the ROW is frequent excavation and other intrusions into the sub-surface area.

This Ordinance imposes reasonable regulations on the placement and maintenance of equipment currently within the ROW or to be placed therein. It is intended to complement and not replace or contradict the Ingham County Road Commission or the Michigan Department of Transportation standards and regulations.

The provisions of this Ordinance shall not apply to ROW users exempted by the statutes of the state of Michigan.

ARTICLE 2.00 – DEFINITIONS

The following words, terms and phrases, as used herein, have the following meanings:

Applicant – Any person or entity requesting permission to excavate or obstruct a ROW.

Degradation – A decrease in the useful life of the ROW caused by excavation in or disturbance of the ROW, resulting in the need to reconstruct the ROW earlier than would be required if the excavation or disturbance did not occur.

Emergency – 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 services to a customer.

Equipment – Any tangible asset used to install, repair or maintain facilities in the ROW.

Excavate – To dig into or in any way remove or physically disturb or penetrate any part of a ROW.

Excavation Permit – A permit which must be obtained before a person may excavate in a ROW. An excavation permit allows the holder to excavate only in that part of the ROW described in the permit.

Franchise – Any person or entity with tangible assets or equipment in the ROW for the purposes of providing utility services to the general public having been previously approved by the Township by written agreement, contract, or by franchise ordinance.

Obstruct – To place any tangible object in a public ROW so as to hinder free and open passage over that or any part of the ROW for an aggregate period of four (4) hours or more in conjunction with the issuance of a ROW permit.

Obstruction Permit – A permit which must be obtained before a person may obstruct a ROW, allowing the holder to hinder free and open passage over the specified portion of that ROW by placing equipment described therein on the ROW for the duration specified in the permit.

Patch or Patching – A method of pavement replacement that is considered temporary in nature.

Permit Holder – Any person to whom a permit to excavate, obstruct, or place equipment or facilities in a ROW has been granted by the Township under this Ordinance.

Person – A private individual or authorized representative or agent of an entity subject to all laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Registrant – Any person or entity that digs, excavates, intrudes or has or seeks to have its facilities or equipment located in any ROW for temporary or permanent placement.

Restoration – The process by which the ROW and surrounding area, including pavement, foundation, and turf areas, are returned to the same or better condition and life expectancy than existed immediately before excavation.

Right-of-Way (ROW) – The strip of land over which an easement exists to allow facilities such as public roads, highways, streets, bicycles lanes, sidewalks, communications, and power lines to be built.

ROW Permit – Either an excavation permit or obstruction permit or both, depending on the context required by this Ordinance.

ROW User – 1) A telecommunications ROW users, 2) a person owning or controlling a facility in the public ROW that is used or is intended to be used for providing utility service and who has a right under the law, franchise, or ordinance to use the public ROW, or 3) other registrants approved by the Township Supervisor.

Utility or Utility Service – Services provided by 1) a public utility as defined by Michigan statutes, 2) services of a telecommunications ROW user, 3) services provided by a cable or wireless communications system, 4) natural gas, electric energy or telecommunications services provided by a local unit of government, 5) water, sewer, fire and alarm communications, storm sewer, light, energy, or power services, including wind generation.

ARTICLE 3.00 – REGISTRATION REQUIRED

Section 3.1 – Registration Required Prior to Work in the Right-of-Way

No one shall construct, install, repair, remove, relocate or perform any work within any ROW in Williamstown Township without first being registered pursuant to this Section. Such registration shall be made on an application form provided by the Township. Registration shall be required each calendar year. A franchised service or utility service shall be registered pursuant to this Section but need not annually provide registration information as required by Section 3.3 if such information has been submitted pursuant to a franchise agreement or ordinance.

Section 3.2 – Exceptions

The following are not subject to the registration requirements in Section 3.1. The Township Supervisor shall be responsible for interpretation of Section 3.2.

1. Person or persons planting or maintaining pre-approved boulevard surface plantings or gardens.
2. Person or persons installing mail boxes or a private sidewalk from the street or curb to dwelling unit or commercial structure.
3. Person or persons engaged in commercial or private snow removal activities.
4. Person or persons installing street furnishings or irrigation systems.

Section 3.3 – Registration Information

The registrant shall provide the following at the time of registration and shall promptly notify the Township of changes in such information:

1. Registrant’s name, address, telephone number, fax number, and e-mail address.
2. Name, address, telephone number, fax number, and e-mail address of the person responsible for fulfilling the obligations of the registrant.
3. Unless exempted by previous or existing agreements or ordinances, a current Certificate of Insurance from a company licensed to do business in the State of Michigan providing minimum coverage in the following amounts:

General Liability

Public Liability, including premises, products and complete operations
Bodily Injury Liability -- \$1,000,000 each person, \$3,000,000 each occurrence
Property Damage Liability -- \$3,000,000 each occurrence

Comprehensive

Automobile Liability Insurance, including owned, non-owned and hired vehicles
Bodily Injury Liability -- \$1,000,000 each person, \$3,000,000 each occurrence
Property Damage Liability -- \$3,000,000 each occurrence

Such certificates shall name the Township as an additional insured as to whom the coverage required herein are in force and applicable and for who defense will be provided as to all such coverage. Such certificates shall require that the Township be notified thirty (30) days prior to cancellation of the policy.

4. A 24-hour emergency number.
5. An acknowledgement by the registrant of the indemnification pursuant to the Ordinance.
6. Such additional information as the Township may require.

ARTICLE 4.00 – PERMIT REQUIREMENTS

Section 4.1 – Permit Required

No registrant or other person may obstruct or excavate any ROW without first having been issued a ROW permit pursuant to this Section, except as otherwise provided in this Ordinance.

1. Excavation. A permit shall be required to excavate that part of the ROW described in each permit that may hinder free and open passage over the specified portion of the ROW when placing or repairing facilities therein.
2. Obstruction. A permit shall be required for an obstruction by a registrant if the work proposed may hinder free and open passage over the specified portion of the ROW by placing or repairing equipment described therein within the ROW.
3. Pole Attachment. A permit shall be required in order to attach a wireless telecommunications facility or any other device to an existing public utility structure in the public ROW.

Section 4.2 – Permit Extension

No person shall execute or obstruct the public ROW beyond the date or dates specified in the permit or do any work outside the work specified in the permit unless such person makes a supplementary application before the expiration of the permit. The Township Board may extend the permit expiration date upon making the determination that the delay in completion is due to compelling reasons, such as but not limited to: unseasonable weather, unexpected soil conditions, unexpected dewatering requirements, other agency permit delays, or other circumstances beyond the control of the permit holder.

Section 4.3 – Permit Application

An application for a ROW permit shall be made on forms provided by the Township. If the work is to be performed by an agent, contractor, or subcontractor on behalf of the registrant, such application shall be signed by the registrant. The application shall be accompanied by the following:

1. Scaled drawings showing the location of all know existing facilities and improvements proposed by the applicant.
2. Detailed description of any above ground devices to be installed including dimensions.
3. A description of the methods that will be used for installation.
4. A proposed schedule for all work.
5. The location of any public streets, roads, highways, bicycle paths, or sidewalks that will be temporarily closed to traffic and the proposed detour routes with appropriate signage.
6. A description of methods for restoring any public improvements disrupted by the work.
7. Any other information reasonably required by the Township.

Section 4.4 – Permit Conditions

The Township shall grant a ROW permit upon finding the work will comply with the requirements of this Article. The Township may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the public health, safety, and welfare, to insure the structural integrity of the ROW, to insure completion of the restoration of the ROW within a specified period, to protect the property and safety of other users of the ROW, and to minimize the disruption and inconvenience to the traveling public. More specifically, conditions may be imposed to:

1. Require greater safety measures than proposed in the interest of public
2. Limit the time frame during special events planned in the community.
3. Minimize vehicular and pedestrian traffic disruption.
4. Assure proper restoration, with trees, shrubs and grass.

Section 4.5 – Security

A performance guarantee in an amount to be determined by the Township shall be required from each applicant to insure completion of the restoration of the ROW within a specified period. The performance guarantee shall be in a form that is approved by the Township Attorney. The applicant, at its option, may post security sufficient to cover all projects contemplated for the current calendar year. Security required pursuant to this Section shall be subject to the conditions that the holder will perform the work in accordance with this Ordinance and applicable regulations and will pay to the Township any cost incurred by the Township in performing work pursuant this Ordinance.

Section 4.6 – Exceptions

No ROW permit shall be required for the following:

1. Surface landscaping work.
2. Private sidewalks, street furnishings, posts, pillars and mailboxes.
3. Snow removal.
4. Irrigation systems.
5. Piercing or drilling a street or sidewalk pavement for the purpose of exploratory examination or utility depth determination. However, any drilling site must be restored to pre-existing conditions.

ARTICLE 5.00 – STANDARDS FOR CONSTRUCTION OR INSTALLATION

Section 5.1 – General Standards

The permit holder shall comply with the following general standards when performing work authorized under the permit:

1. Take such precautions as are necessary to avoid creating unsafe conditions. Observe and comply with all laws, rules and regulations of the state, county and local governments.
2. Conduct the operations in a manner as to insure the least obstruction to and interference with traffic.
3. Take adequate precautions to insure the safety of those who require access to abutting property.
4. Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties.
5. Comply with the Michigan Manual of Uniform Traffic Control Devices at all times during construction or installation.
6. Protect and identify excavations and work operations with barricade flags and, if required, by flagmen in the daytime and by warning lights at night.
7. Provide proper trench protections as required by O.S.H.A.
8. Protect the root growth of trees and shrubbery.

9. Maintain maximum access to all properties and cross streets as possible during construction operation and maintain emergency vehicle access at all times.
10. Locate all property lines near the ROW and replace any disturbed property corner markers and monuments. A Michigan licensed surveyor must be used in the replacement of disturbed property corners and monuments.
11. All work performed in the ROW shall be done in conformance with the Ingham County Road Commission or Michigan Department of Transportation construction standards, as applicable.
12. Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.
13. No road surface damaging lugs, cleats, or equipment may be used or driven upon paved street surfaces.
14. Dirt, trash and other debris shall be periodically removed and properly disposed of during construction.

Section 5.2 – Standards for Installation of Underground Utilities

The permit holder shall comply with the following standards when installing facilities underground:

1. Underground facilities must be placed as far off the roadway as possible to provide access from outside the paved area.
2. Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved.
3. All work performed in the ROW shall be done in conformance with the Ingham County Road Commission or Michigan Department of Transportation construction standards, as applicable.
4. The facilities shall be located so as to avoid traffic signals and signs.
5. Underground facilities shall not be installed between a hydrant and an auxiliary valve.
6. Underground facilities shall not be installed within five (5) feet of hydrants, valves, lift stations or manholes in areas where utility easements exist beyond the ROW.
7. Buried fiber facilities must be placed in a conduit of a type determined by the ROW user unless the permit holder obtains a waiver from the Township.

Section 5.3 – Other Obligations

1. **Compliance with Other Laws.** The permit holder must obtain all other necessary permits, licenses, and approvals and pay all required fees. The permit holder shall comply with all requirements of local, state, and federal laws. A permit holder shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the ROW pursuant to its permit, regardless of who does the work.
2. **Prohibited Work on Paved Roads.** Except in an emergency, and with the approval of the Ingham County Road Commission, no ROW excavation or obstruction may be done when load restrictions are in place or when conditions are unreasonable for such work.

ARTICLE 6.00 – DENIAL OF A PERMIT

The Township may deny a permit based on any of the following grounds:

1. Failure to register pursuant to the requirements of this Ordinance.
2. The proposed schedule for work would conflict or interfere with an exhibition, celebration, festival, or other similar event.
3. The proposed schedule conflicts with scheduled total or partial reconstruction of the ROW.
4. The applicant is unable to comply with the requirements of this Ordinance.
5. The Township determines that denial is necessary to protect the health, safety and welfare of the public or to protect the ROW and its current use.
6. Any above ground devices must fit the rural character of the Township and must not block traffic sight lines.

ARTICLE 7.00 – EMERGENCIES

Each registrant shall immediately notify the Township and all other affected parties or property owners of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. If the registrant has not been issued the required permit, the registrant shall, within two (2) business days after the occurrence of the emergency apply for the necessary permits and fulfill the remaining requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the emergency.

If the Township becomes aware of an emergency regarding a registrant's facilities, the Township shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The Township may take whatever action deemed reasonably necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

ARTICLE 8.00 – REVOCATION OF PERMITS

Section 8.1 – Substantial Breach

The Township may revoke a ROW permit if there is a substantial breach of the terms or conditions of any statute, this Ordinance, rules or regulations, or any condition of the permit. A substantial breach shall include, but is not limited to, the following:

1. The violation of any material provision of the permit.
2. Any material misrepresentation of fact in the application for a permit.
3. The failure to maintain the required bonds or other security and insurance.
4. The failure to complete the work in a timely manner.
5. The failure to correct, in a timely manner, work that does not conform to applicable standards, conditions or codes, upon inspection and notification by the Township of the faulty condition.

6. An evasion or attempt to evade any material provision of the ROW permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Township or its citizens.
7. The failure to comply with the term and conditions of any applicable federal, state, county, or local laws, rules and regulations, including the provisions of this Ordinance.

Section 8.2 – Notice of Breach

If the Township determines that a permit holder has committed a substantial breach of a term or condition of any statute, this Ordinance, rule or regulation, or any condition of this permit, the Township shall notify the permit holder in writing to remedy such violation within a reasonable period of time or be subject to potential revocation of the permit. The Township may impose additional or revised conditions on the permit to mitigate or remedy the breach.

Section 8.3 – Reimbursement for Costs

If a permit is revoked, the permit holder shall reimburse the Township for its reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with the revocation.

ARTICLE 9.00 – APPEAL

Section 9.1 – Filing of an Appeal

Any person aggrieved by 1) the denial of a permit application; 2) the denial of a registration; or 3) the revocation of a permit, may appeal to the Township Board by filing a written notice of appeal with the Township Clerk within twenty (20) days of the action causing the appeal.

Section 9.2 – Notice of Hearing

The Township Board shall hear the appeal at its next regularly-scheduled meeting unless the time is extended by mutual agreement of the parties. Notice of the date, time, place and purpose of the hearing shall be mailed to the appellant.

Section 9.3 – Hearing and Decision

The Township Board shall, at the hearing, consider any evidence offered by the appellant, the Township and any other person wishing to be heard. The Township Board shall issue a written decision within thirty (30) days of the completion of the hearing.

ARTICLE 10.00 – ABANDONED AND UNUSABLE EQUIPMENT AND FACILITIES

Section 10.1 – Discontinued Operations

A registrant who has determined to discontinue all or a portion of its operations in the Township must provide information satisfactory to the Township that the registrant's obligations for its facilities in the ROW under this chapter have been lawfully assumed by another registrant.

Section 10.2 – Removal of Abandoned Facilities

Any registrant who has abandoned facilities in any ROW shall remove the facilities from the ROW to the extent that such facilities interfere with any other ROW repair, excavation, or construction, unless this requirement is waived by the Township Supervisor. A record of the removal of abandoned facilities shall be maintained at the Township, along with any plans that illustrate the location of such facilities.

ARTICLE 11.00 – INDEMNIFICATION AND LIABILITY

By registering with the Township and accepting a permit granted under this Ordinance, a registrant or permit holder agrees as follows:

Section 11.1 – Limitation of Liability

By reason of the acceptance of a registration or the grant of a ROW permit, the Township does not assume any liability for: 1) injuries to persons, damage to property or loss of service claims by parties, or 2) claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permit holders or activities of registrants or permit holders.

Section 11.2 – Indemnification

A registrant or permit holder shall indemnify, keep and hold the Township, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair, or operation of its equipment and facilities, or out of any activity undertaken in or near the ROW, whether or not any act or omission complained of is authorized, allowed, or prohibited by a ROW permit. The foregoing does not indemnify the Township for its own negligence except for claims arising out of or alleging the Township's negligence in issuing the permit or in failing to properly to adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permit holder or the Township, and registrant or permit holder, in defending any action on behalf of the Township, shall be entitled to assert in any action every defense or immunity that the Township could assert on its own behalf.

If the registrant or permit holder is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permit holder may not settle the litigation without the consent of the Township. Such consent will not be unreasonably withheld.

ARTICLE 12.00 – FEES

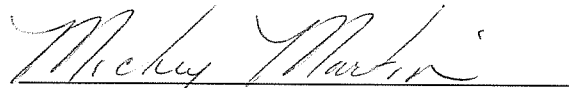
Fees for review of applications and enforcement of this Ordinance shall be established by resolution of the Williamstown Township Board.

ARTICLE 13.00 – SEVERABILITY

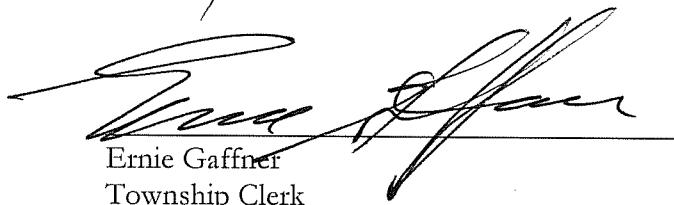
If any article, section, sub-section, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency or competent jurisdiction, such article, section, sub-section, clause, phrase or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remainder thereof.

ARTICLE 14.00 – EFFECTIVE DATE

Motion to approve having been made by Treasurer Eyster and seconded by Supervisor Martin, this Ordinance was made and passed by the Board of Trustees of Williamstown Township of the 2nd day of June, 2009. This Ordinance shall take effect on the 14th day of June, 2009, upon publication in the Williamston Enterprise, a newspaper of general circulation in Williamstown Township.



Mickey Martin
Township Supervisor



Ernie Gaffner
Township Clerk

McKENNA ASSOCIATES, INC.
June 18, 2009
o:\wpwork\clients.u-z\williamstown\cs_08\right-of-way ordinance.doc