

ORDINANCE 2017-03

AN ORDINANCE BY THE BECKER TOWN BOARD REGARDING MANAGEMENT OF TOWN RIGHT OF WAYS IN BECKER TOWNSHIP

The Board of Supervisors of the Becker Town Board, hereby ordains:

SECTION 1. Findings

1. The Town of Becker is bisected by U.S. Hwy. No. 10, County State Aid Hwy. No. 23, and other major traffic-generating corridors, which attract residential, commercial and industrial land uses and development.
2. Commercial, industrial and residential land development within the Town of Becker is being accelerated by similar development in the adjoining cities of Big Lake and Becker, lying to the east and south of the Town.
3. The Town of Becker has prepared and adopted a comprehensive land use plan, zoning ordinance, and other regulations to ensure the orderly and efficient development and maintenance of property and public infrastructure within the Township.

SECTION 2. Purpose

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights of way, the Town strives to keep its rights of way in a state of good repair and free from unnecessary encumbrances.

The regulations and management of encumbrances within the Town rights of way is necessary to ensure the safety of the travelling public, allow for property stormwater management and drainage, and allow for proper maintenance of the roadway and public utilities. Minnesota Statute §160.2715, states any obstruction of public right of way is a misdemeanor offense

punishable by law. Minnesota Statute §160.27, states that it is within the Town’s authority to remove unauthorized advertisements, buildings or structures from the road right of way.

SECTION 3. Intent

The Town hereby enacts this new Ordinance relating to right of way permits and administration to replace Ordinance 2011-02. This Ordinance imposes reasonable regulation on the restriction of obstructions; as well as the placement, and maintenance of facilities and equipment currently within its rights of way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Ordinance, persons excavating and obstructing the rights of way will bear financial responsibility for their work. Finally, this Ordinance provides for recovery of out of pocket and projected costs from persons using the public rights of way.

This Ordinance shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Section 237.16, 237.162, 237.163, 267.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the Town and users of the right of way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this Ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law intended. This Ordinance shall not be interpreted to limit the regulatory and police powers of the Town to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

SECTION 4. Ordinance

Upon the foregoing Findings, Purpose, and Intent, the Becker Town Board of Supervisors does hereby repeal Ordinance Number 2011-02 in its entirety and adopt the following Ordinance:

Subd. 1. Definitions.

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.

Board: Board means the Town Board of Supervisors of Becker Township, Sherburne County, Minnesota.

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.

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.

Person: Person means an individual, corporation, business trust, partnership or association or any other legal entity.

Right of Way: Right of Way means 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.

Subd. 2. Prohibited Installations and Activities. It shall be unlawful, without written consent of the Town Board, for any person to place within any Township easement or right of way, any construction improvements, buildings, structures, headwalls, rocks or boulders greater than six inches in diameter (MnDOT 3601 Class I Riprap is acceptable), soils, landscaping items, or engage in any activity prohibited by Minnesota Statute §160.2715, or any other installation which may interfere with proper sight distance, vehicular safety, stormwater drainage, road maintenance operations, weed and brush control or in any manner endanger or impede the public use and proper maintenance of the easement or right of way.

1. **Landscaping.** It shall be unlawful for any person to plant trees, shrubbery, crops or other vegetation within the right of way which may obstruct vehicle operator sight distance or lead to soil erosion or impede drainage.
2. **Drainage.** It shall be unlawful for any person to disrupt, dam, impede or slow the drainage of any ditch within an easement or right of way or other public waterways providing stormwater drainage for the roadway system, or cast or direct surface or subsurface waters into road right of way except through natural drainageways.
3. **Permitted Installations.** The following installations are permitted if constructed in accordance with standards approved by the Town Engineer: Side slopes constructed to a slope ratio no steeper than 3:1, (horizontal to vertical). Standard mailbox installations; permitted roadways; properly constructed driveways or field entrance approaches to the public road; roadway appurtenances such as signs or delineators; approved culverts providing drainage for permitted approaches.
4. **Culverts.** All culvert installations shall be approved, in writing, by the Town Engineer prior to construction of the proposed approach. In general, only corrugated metal, reinforced concrete or dual-walled corrugated polyethylene pipe culvert materials will be approved by the Engineer. All culvert installations are to include apron end sections. The minimum pipe diameter is to be 15 inches.

5. **Abatement Procedure.** Upon discovery of a violation of this Ordinance, the Town Board or Town Engineer may issue an abatement order to the violator advising the person to correct the violation within a reasonable time. If the violator fails to comply with the abatement order by the time indicated, the Board may provide for abatement of the violation by the Town. Issuance of an abatement order does not preclude imposition of the penalty set forth in this ordinance.
6. **Emergency Abatement.** If the Board determines that the violation poses an immediate threat to public safety, the Board shall make a good faith effort to notify the violator to immediately correct the violation. If the Board is not able to promptly reach the violator or if the violator fails to comply with the correction order upon notification, the Board may provide for the abatement of the violation by the Town.
7. **Assessment of Costs.** The Town Board may deem the abatement of any violation of this Ordinance to be a public nuisance or it may initiate a public improvement pursuant to Ch. 429 of Minnesota Statutes, and in either case provide that the cost of abating the violation shall be the responsibility of the violator and owner of the property on which the violation occurs. If the Board provides for the abatement of the violation pursuant to this section, all expenses incurred by the Town, including reasonable attorney's fees and engineering fees, shall be the responsibility of the violator and the owner. If such costs remain unpaid 30 days after billing, the Town Board may certify such costs to the County Auditor for collection in a single installment as a special assessment against the owner's property abutting the site of the violation.
8. **Appeal of Costs.** If the recipient of such billing or the recipient's representative or estate disputes the reasonableness of the charges, the aggrieved party may appeal the reasonableness of the charge to the Town Board; provided notice of appeal in writing is made to the Town Clerk within 15 days after the Town Clerk has mailed a notice of delinquency to the violator and the owner. The Town Board shall then hear and pass on the reasonableness of the costs at its next regularly scheduled or special Town Board meeting.
9. **Persons Notified.** All notices regarding described violations shall be served by U.S. Mail on the violator and on all owners of record as shown in the files of the Sherburne County Recorder.
10. **Penalties.** Any person who violates this Ordinance shall be guilty of a misdemeanor offense and subject to the penalties for such as provided in State law. If convicted, the person may be assessed cost of prosecution as allowed by Minnesota Statute §366.01, Subd. 10.
11. **Shared Liability.** For purposes of this Ordinance, owner means the owner of record of the property abutting the right of way on which the violation of this ordinance occurs, as

contained in the records of the Sherburne County Recorder. For purposes of this Ordinance, violator means the person or entity which installs or constructs or maintains a violation of this Ordinance. After service of an abatement order both the owner and the violator are liable for all criminal and civil costs and penalties associated with the violation and its abatement.

Subd. 3. Prohibited Activities in the Right of Way and Public Property. It is unlawful for any person, except (1) a Town employee acting within the course and scope of his or her employment, (2) a contractor acting within the course and scope of a contract with the Town, or (3) a franchisee acting within the course and scope of its franchise from the Town, to make any excavation, opening or tunnel in, over, across or under a street or other public property, including all Town right of way, without first having obtained a permit from the Township Engineer as herein provided. Provided, however, that a franchisee shall give the Town twenty-four (24) hours' notice prior to commencing any such work on streets or other public property.

1. **Application.** Application for a permit to make an excavation in a Town street, right of way, or other public property shall set forth the name and address of the applicant, the place, purpose and size of the excavation, and such other information as may be required by the Town Engineer for investigation hereinafter provided for, and shall be submitted to the Town Engineer.
2. **Guarantee of Performance.** The Applicant will provide the Town with financial guarantee in the amount of \$500 for a single permit, or \$5,000 for unlimited permits in a single year as a guarantee of performance. The guarantee shall be in the form of a Construction Performance Bond or Letter of Credit.
3. **Issuance of Permit.** The Town Engineer shall issue such permit after:
 - A. Completion of plan review and investigation,
 - B. Payment of all applicable application fees and performance guarantees,
 - C. Agreement by the applicant to the conditions of time and manner as aforesaid;
 - D. Agreement in writing by the applicant to pay all actual cost of repairs over and above such estimate, and,
 - E. Agreement in writing by the applicant to be bound by all of the provisions of this Ordinance.
4. **Protection of the Town and the Public.**
 - A. **Non-Completion or Abandonment.** Work shall progress expeditiously to completion in accordance with any time limitation placed thereon by the Town so as to avoid unnecessary inconvenience to the public. In the event that work is not performed in accordance therewith, or shall cease or be abandoned without due cause, the Town may, after six hours' notice in writing to the holder of the permit of its intention to

do so, correct the work, fill the excavation and repair the public property, and the cost thereof shall be paid by the permit holder.

- B. Insurance.** Prior to commencement of the work described in the application, the applicant shall furnish the Town satisfactory written evidence that the applicant will keep in effect public liability insurance of not less than \$500,000 for any person, \$500,000 for any occurrence and property damage insurance of not less than \$25,000, issued by an insurance company authorized to do business in the State of Minnesota, and on which the Town is named as a co-insured.
 - C. Indemnification.** Before issuance of a permit, the applicant shall, in writing, agree to indemnify and hold the Town harmless from any liability for injury or damage arising out of the action of the applicant in performance of the work, or any expense whatsoever incurred by the Town incident to a claim or action brought or commenced by any person arising therefrom.
- 5. Street, Right of Way, or Public Property Patching and Restoration.**
- A. Timing.** The work to be done under the right of way work permit, and the patching and restoration of the right of way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable.
 - B. Patch and Restoration.** Permittee shall patch its own work. The Town may choose either to have the permittee restore the right of way or to restore the right of way itself.

 - a. Town Restoration.** If the Town restores the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the Town, within thirty (30) days of billing, all costs associated with having to correct the defective work.
 - b. Permittee Restoration.** If the permittee restores the right of way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.
 - c. Degradation Fee in Lieu of Restoration.** In lieu of right of way restoration, a right of way user may elect to pay a degradation fee. However, the right of way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
 - C. Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified by the Town and shall comply with Minnesota Rule 7819.1100.

- D. Duty to Correct Defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the Town Engineer, must correct all restoration work to the extent necessary, using the method required by the Town. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Town Engineer, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.
- E. Failure to Restore.** If the permittee fails to restore the right of way in the manner and to the condition required by the Town, or fails to satisfactorily and timely complete all restoration required by the Town, the Town at its option may do such work. In that event the escrow money deposited with the Town at the time of permit application will be used to pay for the work. If the cost of the restoration work exceeds the escrow balance the permittee shall pay to the Town, within thirty (30) days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the Town may exercise its rights under the construction performance bond.
6. **Cost Adjustment.** Within sixty days following completion of such permanent repairs, the Town Engineer shall determine and compare the actual costs of repairs with the estimated costs paid to the Town pursuant to Subdivision 3 of this Section, furnish to the permit holder an itemized statement thereof, and claim additional payment from, or make refund (without interest) to, the permit holder, as the case may be.
7. **Alternate Method of Charging.** In lieu of the above provisions relating to cost and cost adjustment for street openings, the Town may charge on the basis of surface square feet removed, excavated cubic feet, or a combination of surface square feet and excavated cubic feet, on an established unit price uniformly charged.

SECTION 5.

This Ordinance, its rules and regulations shall take effect and be in full force immediately following its adoption and publication by the Becker Town Board of Supervisors.