

ORDINANCE No. 2019-01

**AN ORDINANCE REGARDING TOWN RIGHT-OF-WAY
USE BY UTILITIES**

The Town Board of the Town of Lucas, Dunn County, Wisconsin, do ordain as follows:

SECTION I. ADOPTION AND RENUMBERING OF PROVISIONS.

Sections 6-3-6 and 6-3-7 of the Town of Lucas Code of Ordinances are renumbered to Sections 6-3-7 and 6-3-8 respectively; Section 6-3-6 of the Town of Lucas Code of Ordinances is adopted to read as follows:

Sec. 6-3-6 Town Right-of-Way Use By Utilities.

(a) **Statement of Purpose.**

- (1) **Utilities Accommodation Generally.** The Town of Lucas constructs, maintains, and operates a Town highway system, providing critical infrastructure to citizens, agribusiness, and general business alike. Utility companies provide service to population centers as well as to individual users. Both the Town of Lucas and utility companies typically provide facilities which consider future as well as present infrastructure needs. Cooperation between these entities is essential if the public is to be served in a cost-efficient manner consistent with the respective public service needs, obligations, and interests.
- (2) **Purpose of the Town Highway System.** The primary purpose of the Town of Lucas highway system is to provide a safe and convenient means for the vehicular transportation of people and goods. Any permitted use and occupancy of Town highway and road right-of-way for non-transportation purposes is subordinate to the primary interests of the traveling public.
- (3) **Purpose of Utility Accommodation Standards.** The purpose of this Section is to describe the standards that shall be satisfied by any utility whose facility currently occupies, or will occupy in the future, any highway or road right-of-way or bridge over which the Town of Lucas has jurisdiction and maintains.

- (b) **Utility Accommodation.**
- (1) **Permitted Accommodation.** The Town of Lucas will generally permit utility facilities on and within right-of-ways of Town highways, roads, and bridges when:
 - a. Such use and occupancy does not adversely affect the primary functions of the Town highways, roads, and/or bridges or materially impair their safety, operational, and/or visual qualities;
 - b. There would be no conflict with the provisions of federal, state, or local laws, ordinances, or regulations or the accommodation provisions stated herein; and
 - c. The occupancies would not increase the difficulty or future cost of highway, road, or bridge construction or maintenance.
 - (2) **Additional Provisions.** Nothing in this Section shall be construed as limiting the rights of the Town of Lucas to impose additional restrictions or requirements and/or deviations from those prescribed in this Section in any permit where the Town Board or its designee deems it advisable to do so.
 - (3) **Alteration Requests.**
 - a. If the utility encounters a hardship during installation that prevents installation in accordance with the Town-issued permit, the utility can:
 1. Make a request for an alteration in writing to the Town Board, which shall consider such request within ten (10) business days; or
 2. The utility may make changes to the permitted installation, at the risk of having to relocate the installation at its own cost if there is not subsequent agreement with the Town.
 - b. In all cases, the utility shall explain in writing the changes made or proposed to be made. Such notification shall identify the hardship and include maps indicating the permitted locations of the installations and the actual as-built locations of the installations.
 - c. The Town Board has the final determination authority as to the validity of the hardship. If the Town Board determines that the changes were made primarily due to the contractor's preference, and not due to a hardship, the Town shall direct that the utility take appropriate corrective action within ten (10) days of written notice from the Town. For clarification purposes, but not limited to, examples of hardships are: solid rock, uncrossable swamps or wetlands, cemeteries, or similar features or circumstances that make construction physically or economically unfeasible. Financial hardship alone might not constitute a hardship.
- (c) **Alterations to Permitted Facilities.** The utility shall properly alter the permitted facilities as necessary to facilitate alteration, improvement, safety control, or maintenance of the highway, road, bridge, or right-of-way as may be ordered by the Town Board. All costs for constructing, maintaining, altering, and relocating the permitted facilities shall be the sole responsibility

of the utility, unless a specific Town-executed utility parcel or agreement otherwise provides.

(d) **Permit Required.**

(1) **When Permit Required.** A utility shall obtain a permit from the Town of Lucas before any use or occupancy of a Town highway, road, or bridge right-of-way is allowed or authorized.

(2) **Permit Authorization To Use and/or Occupy Town Right-of-Way.**

- a. By issuance of a permit, the Town officially determines that, subject to all applicable provisions and conditions of this Section, the permit, and the Town of Lucas Code of Ordinances, a specified utility use and/or occupancy of Town right-of-way is not adverse to the public interest at the time of permit approval.
- b. In issuing a permit, the Town of Lucas does not warrant that public title to the right-of-way is free and clear, does not certify that the Town has sole ownership, and does not indicate any intention to defend the utility in its peaceful use and occupancy of said lands. The permit does not transfer or convey any land nor grant, give, or convey any land right, right in land, or easement.
- c. Written permit authorization from the Town of Lucas does not relieve the utility from compliance with all applicable federal and state laws and codes, and local ordinances and regulations, which affect the design, construction, materials, and/or performance of the work. The Town's authorization shall not be construed as superseding any other governmental agency's more restrictive requirements.
- d. Each Town-issued permit shall require that proper indemnification language protecting the Town be a part of the approval document.
- e. The utility shall retain a copy of the permit in its files, at a minimum, during the entire time the facility is located on, over, or under Town right-of-ways.

(e) **Required Permit Application Information.**

(1) **General Requirements.** A utility's request to use and occupy the right-of-way cannot be considered until adequate required information is provided to the Town by the applicant; an application request shall not proceed to review until such that time sufficient application information is filed with the Town, as determined by the Town. The amount of application detail will vary with the complexity of the installation and right-of-way involved, but must include the appropriate permit form, drawings and sketches, and installation information so that the effect on the highway, road or bridge operation, traffic safety, and visual qualities can be evaluated.

(2) **Permit Application Form.**

- a. Utilities shall use the permit application form which is available from the Town at <http://townoflucas.org/> or from the Town Clerk. Alteration of the Town permit application form by the applicant is prohibited and shall be cause for application rejection or permit

revocation. Additional information can be provided as an attachment to the form.

- b. One (1) original of the permit application form, with attachments, shall be submitted per application to the Town Clerk via regular mail, courier service, or delivered in person.
- c. As applicable, the applicant shall provide on the application: name and business address; telephone, cellphone and fax numbers; email address; and a specific contact person.

(3) **Permit Application Illustrations.** Each permit application shall provide adequate drawings, illustrations or sketches sufficient to show the existing and/or proposed location of all utility facilities within the Town right-of-way with respect to the existing highway, road, and/or bridge, and any planned improvements to such infrastructure. The details provided shall include dimensions from the proposed utility installation to the commonly accepted right-of-way line and to the edge of the traveled way. For highway/road crossings, a cross-section detail showing the depth of bury or overhead clearance is required along with the location of any bore pits, if needed. The distance reference from the crossing to the nearest public roadway intersection is also required. Approximate distances from the proposed installation/facility to side road intersections, county lines, etc., shall be submitted to the Town with all permit application illustrations.

(4) **Installation Information.** The utility shall provide the following installation information to the Town:

- a. This information shall include, but is not limited to, a general description of the location, size, type, nature, and extent of the utility facilities proposed to be installed or to be adjusted, and the impact of the proposed facilities on the utility's existing facilities that remain in place within the right-of-way.
- b. The utility shall provide a description of proposed construction procedures, special traffic control and protection measures, proposed access points, coordination of activities with the highway contractor (when applicable), and vegetation proposed to be removed.
- c. When an attachment to a road structure, such as a bridge, is proposed, additional information is required. This information shall include, but not be limited to, bridge number, weight of lines, hanger spacing, hanger details, and expansion/contraction details.

(5) **Fees.** Under this Section, the following fees shall be paid to the Town at the time of permit application:

- a. Permit Application & Review Fee: Fifty Dollars (\$50.00).
- b. Open Cuts Across Gravel Roadways: One Hundred Dollars (\$100.00).
- c. Open Cuts Across Paved Roadways: Two Hundred and Fifty Dollars (\$250.00).

(f) **Location Requirements.**

- (1) **General Location Requirements.** Utility facilities shall be located in such a manner to minimize the need for later adjustment to:
 - a. Accommodate proposed highway, road, and/or bridge improvements.
 - b. Permit servicing or expanding such lines without obstruction or interference to the free flow of traffic.
 - c. Provide adequate vertical and horizontal clearance between an underground utility facility and a structure or other highway facility to allow maintenance of all facilities.
 - d. Be outside of the forty-five degree (45°) cone of support for the footings of all highway structures.
- (2) **Crossing Location.** Utility facilities and installations shall satisfy the following:
 - a. Utility facilities shall cross the highway or road on a line as nearly perpendicular to the highway/road alignment as possible.
 - b. Conditions which are generally unsuitable or undesirable for underground crossings should be avoided. Crossing locations to be avoided include:
 1. Deep cuts.
 2. Near footings of bridges and retaining walls.
 3. Across highway/road intersections at grade or ramp terminals.
 4. At cross drains where the flow of water may be obstructed.
 5. Within basins of an underpass drained by a pump.
 6. In wet or rocky terrain where it will be difficult to attain minimum burial depth.
- (3) **Underground Longitudinal Location.**
 - a. The longitudinal location of underground utility facilities within the right-of-way shall provide as much clearance from the traveled way as conditions will allow. Such lines shall be on uniform alignment and be located at or as near as practical to the right-of-way line.
 - b. To maintain a reasonable uniform utility alignment, location variances may be allowed when irregular-shaped portions of the right-of-way extend beyond the normal right-of-way limits. No utility lines are allowed in the ditch bottom or on the slope from the road shoulder.
- (4) **Above-Ground Longitudinal Location.**
 - a. The longitudinal location of above-ground utility facilities shall be outside of the clear zone. Such lines shall be on a uniform alignment and be located at or as near as practical to the right-of-way line. Exceptions may be granted when no other location is feasible or when the clear zone extends to the right-of-way line.
 - b. If any above-ground utility facility is within the clear zone or is determined to be in a location that has a higher than average accident potential, the Town may require:

1. The utility facility to be constructed of approved yielding or breakaway material; or
 2. The utility facility to be protected by a Town-approved barrier such as beam guard, crash cushion, etc. To maintain a reasonably uniform utility alignment, location variances may be allowed when irregular-shaped portions of the right-of-way extend beyond the normal right-of-way limits.
- (5) **Existing Utilities.** When a utility facility exists within the right-of-way of an existing or proposed highway/road, it may remain provided it does not adversely affect highway/road safety based on sound engineering judgment and economic considerations. The existing utility facility shall be relocated if:
- a. It conflicts with any construction or maintenance activities; or
 - b. It is located longitudinally under the pavement or shoulder for a reconditioning or reconstructed project; or
 - c. Is found to not be within accepted standards for depth of bury, or overhead clearance or in locations not acceptable to the Town.
 - d. Exceptions may be granted by the Town for Subsections (e)(5)a-b above based on sound engineering judgment and economic considerations.
- (g) **Construction Standards Requirements.**
- (1) **Minimum Clearance Standards.** All installations shall meet or exceed the minimum clearance requirements of the *Wisconsin Highway Maintenance Manual* Chapter 09 "Right-of-Way Use and Permits", Section 15 Utility Accommodation, Subject 25 Location Requirements.
 - (2) **Traffic Control.** All installation projects shall provide traffic control according to the *Facilities Development Manual*, Wisconsin Department of Transportation, Chapter 11 Design, Section 50 Traffic Control.
 - (3) **Town-Specific Standards.** In addition to the above standards, utility installations in Town right-of-ways shall comply with Sections 6-3-1 and 6-3-2 of the Town of Lucas Code of Ordinances pertaining to excavations and site restoration.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. CONFLICTING PROVISIONS REPEALED.

All Ordinances in conflict with any provision of this Ordinance are hereby repealed.

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All Ordinances in conflict with any provision of this Ordinance are hereby repealed.


SECTION IV. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 8th day of January, 2019.

TOWN OF LUCAS, WISCONSIN


Chairperson


Town Clerk

INTRODUCED: 12/11/18

ADOPTED: 1/8/19

PUBLISHED: _____
(POSTED)

State of Wisconsin:
County of Dunn:

I hereby certify that the foregoing Ordinance is a true, correct, and complete copy of an Ordinance duly and regularly enacted by the Lucas Town Board on the 8 day of Jan, 2019 and that said Ordinance has not been repealed or amended and is now in full force and effect.

Dated this 8 day of Jan, 2019.



PERMIT APPLICATION
Construct / Operate / Maintain Utilities Within Town Right-of-Way

APPLICANT/COMPANY INFORMATION

Applicant/Company Name: _____

Current address: _____

City: _____	State: _____	ZIP Code: _____
Phone: _____	Fax: _____	

Plans prepared by: _____ Phone: _____

LOCATION INFORMATION

Name of Town Road(s): _____

Closest Intersection: _____

ADDITIONAL INFORMATION

Annual Service Connection Permit?	Yes / No	Utility Work Order #:
Fee Required?	Yes / No	Amount Due: \$
Certificate of Insurance?	Yes / No	<input type="checkbox"/> Security Deposit Check No.

DESCRIPTION OF PROPOSED WORK

Utility Type: Electric Gas/Petroleum Communications Water Sanitary Sewer
 Private Line Transmission Distribution Service Facility Size/Capacity: _____

Orientation: Overhead Underground Parallel to Road Centerline Town Road Tunnel
 Bridge Attachment

Work Type: New Construction Improve/Repair Existing Maintenance
 Removal Abandon in Place

Construction Methods: Plow Trench Bore Cased
 Suspend on Poles/Towers Open Cut Road
 Tree Cutting/Removal Chemical Treatment of Trees/Brush Erosion Control Measures Taken Yes / No

ALL OTHER INFORMATION

Any/All Other Information: _____

Name of Utility Representative Responsible for Construction: _____ Phone: _____

Estimated Starting Date: _____ Estimated Completion/Restoration Date: _____

SIGNATURES

The applicant understands and agrees that the permitted work shall comply with all permit provisions and conditions of the Utility Accommodation Policy of the Town of Lucas in effect at the time of this application, and with any special provisions listed below or attached hereto, and any all plans, details, or notes attached hereto and made a part thereof.

Signature of applicant: _____ **Date:** _____

FOR OFFICE USE ONLY

ISSUING JURISDICTION

The foregoing application is hereby approved and permit issued by the Permit Authority subject to full compliance by the Applicant with all provisions and conditions in the Utility Accommodation Policy of the Town of Lucas including the Indemnification as included in 96.03 of the WCHA Utility Accommodation Policy in effect on the date of this application.

Other Permit Information Attached: Yes / No

FEES:	PERMIT ISSUED BY:
Fee Received: \$ _____	Name: _____ Title: _____
Check #: _____	Date: _____ Telephone: _____
Date Issued: _____	
Road Project #: _____	
Permit #: _____	