

**TOWN OF SUMNER
ORDINANCE 2019-0715
PRIVILEGES TO TOWN PROPERTY BY RESOLUTION**

STATE OF WISCONSIN

Town of Sumner
Jefferson County

The Town Board of the Town of Sumner, Jefferson County, Wisconsin has specific authority under Wisconsin Statute 66.0425, 86.07 to adopt this ordinance.

This Ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, does ordain as follows:

SECTION 1 – TITLE: This Ordinance shall be known as Town of Sumner Ordinance 2019-0715, Privileges to Town Property by Resolution.

SECTION 2 - PURPOSE AND INTENT: The purpose and intent of this ordinance is the promotion of public health and safety; to allow property owners to remediate detriments to their property; and to regulate the way a privilege is obtained. This ordinance provides a process to obtain privileges for placing obstructions or excavations within the town highways and right-of-ways, making alterations of any sort to town property, and prohibits using bridges for advertising. Ordinance 2019 -0715A, Privileges to Town Property by Permit allows for a simplified process of obtaining privileges when it is appropriate to the circumstances.

SECTION 3 – ADOPTION: This ordinance is adopted in conformance with Wisconsin Statutes 86.0425 and 86.07.

SECTION 4 – DEFINITIONS:

- A. Privilege means a grant of authority by the Town Board to an applicant, at their expense, to place an obstruction, excavation, temporary encroachment, or alteration within or on a town highway, town right-of-way, bridge, or public structure.
- B. Manure hose means any hose, pipeline, or other conduit, whether temporary or permanent in nature, for the transmission of liquid manure within or across the right-of-way of a highway to a destination for spreading in a farm field or for storage.
- C. Excavating means by manual or mechanical means.
- D. Town highway means the as-traveled paved or graded lanes and includes the right-of-way to the point where it abuts an established property line.
- E. Resolution means an authorization in written form that may be approved by a majority vote of the Sumner Town Board describing the action or activities being authorized..

SECTION 5 – APPLICATION FOR PERMIT: A privilege may be granted only as provided in this section or under Ord. 2019-0715A.

- A. A person may apply to the Town for a privilege. A privilege may be granted if the applicant assumes primary liability for damages to person or property by reason of the granting of the privilege, and is obligated to remove an obstruction or excavation upon 10 days' notice by the town and waives the right to contest in any manner the validity of this section or the amount of compensation charged. The Town may attach conditions to a privilege, including but not limited to:
 - 1. The applicant may be required to file a bond that does not exceed \$10,000 that runs to the town and to 3rd parties that may be injured, and that secures the performance of the conditions specified in this subsection.
 - 2. If there is no established lot line by certified survey map or other-wise, a plan view rendering of the property may be required and the town may impose any conditions on the privilege that it considers advisable.
 - 3. Engineering, design plans, or other project plans may be required by the Plan Commission for their thorough review of a proposed privilege.

- B. An application for a privilege is required of any person seeking a privilege.
- C. When an application is made for privileges under this ordinance, and there is agreement between the Town Board Chair and the Plan Commission Chair that there are conditions that warrant waiving the Plan Commission review of the application and waiving the requirement for permitting by Resolution of the Town Board, a permit may be granted by the Town Board Chair in accordance with Ordinance 2019-0715A.
- D. Compensation for a privilege shall be paid into the general fund and shall be fixed by the Town Board. [see Section 8 – Fees]
- E. The holder of a privilege is not entitled to damages for removal of an obstruction or excavation, and if the holder does not remove the obstruction or excavation upon due notice, it shall be removed at the holder's expense.
- F. Third parties whose rights are interfered with by the granting of a privilege have a right of action against the holder of the privilege only.
- G. Subsections (A) to (F) do not apply to the following as defined in Wisconsin Statutes: telecommunications carriers, s. 196.01 (8m), telecommunications utilities, as defined in s. 196.01 (10), alternative telecommunications utilities, as defined in s. 196.01 (1d), public service corporations, or cooperatives organized under chap. 185 to render or furnish gas, light, heat, or power, or to cooperatives organized under chap. 185 or 193 to render or furnish telecommunications service, but the carriers, utilities, corporations and associations shall secure a permit from the Town for temporary obstructions or excavations in a highway and are liable for all injuries to person or property caused by the obstructions or excavations.
- H. This section does not apply to an obstruction or excavation that is in place for less than 90 days, and for which another permit has been granted by the proper official of the Town.
- I. This section does not apply if a permit has been issued under s. 86.07 (2) with respect to a manure hose, or written consent has been given under s. 86.16 (1) with respect to a pipe or pipeline, transmitting liquid manure within or across the right-of-way of a highway.
- J. This section applies to an obstruction or excavation by any other municipality within the Town.
- K. When a request for a privilege in the Town right-of-way is located in any of the flood districts regulated under Jefferson County Zoning, the applicant will be responsible for the permits that may be required by Jefferson County or other authorities with jurisdiction over floodplains.
- L. State statutes allow that any person who violates this section may be fined not less than \$25 or more than \$500 or imprisoned for not less than 10 days or more than 6 months or both. The decision as to fines or otherwise will be made by the Sumner Town Board following the guidelines of Wisconsin statutes.

SECTION 6 - EXCAVATING IN HIGHWAYS OR USING BRIDGES FOR ADVERTISING

- A. State statutes allow that any person who draws, paints, prints or pastes upon any culvert, bridge or guard rail on any highway shall be fined not less than \$10 or more than \$200 or imprisoned for not more than 30 days or both. The decision as to fines or otherwise will be made by the Sumner Town Board following the guidelines of Wisconsin statutes.
- B. No person shall make any excavation or fill or install any culvert or make any other alteration in any highway or in any manner disturb any Town highway or bridge without a permit from the Town for the specific activity. Such permit shall contain the statement and be subject to the condition that the work shall be constructed subject to such rules and regulations as may be prescribed by the Town and be performed and completed to its satisfaction, and in the case of temporary alterations that the highway or bridge shall be restored to its former condition, and that the permittee shall be liable to the Town for all damages which occur during the progress of said work or as a result thereof.
- C. Nothing in this ordinance shall abridge the right of the Wisconsin Department of Transportation, the Jefferson County Board or its highway committee to make such additional rules, regulations and conditions not inconsistent herewith as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any such permit conditional thereon.
- D. If any culvert is installed or any excavation or fill or any other alteration is made in violation of the provisions of this subsection, the highway may be restored to its former condition by the Town. Any person who violates this subsection shall be punished by a

fine of not less than \$5 or more than \$100, or by imprisonment not exceeding 6 months, or both. The decision as to fines or otherwise will be made by the Sumner Town Board following the guidelines of Wisconsin statutes.

- E. Restricting or depriving used access to highways from abutting lands through the use of posts under any program to delineate driveways is prohibited.
- F. The prohibitions in this section do not apply to highway authorities in the performance of their duties.

SECTION 7 – PROCESSING A PRIVILEGE BY RESOLUTION: An applicant for a privilege shall follow the process A - E. below to attain a privilege if warranted acceptable to the Sumner Town Board.

- A. A complete and signed application for a privilege shall be submitted to the Town Clerk no later than the 15th day of the month by 3:00 p.m. CST - in advance of a scheduled Plan Commission meeting.
- B. Subject to the review of the Town Clerk and the Plan Commission Chair, additional requested or required documents must be submitted within 15 days of the scheduled Plan Commission Meeting.
- C. If, after review of the full application the Town Chair in coordination with the Plan Commission Chair determine the documents support a Privilege by Permit [Ordinance 2019-0715A], the Town Chair will issue the permit within 10 days.
- D. When it is determined that the privilege requires a review by the Plan Commission, the applicant or a representative shall appear at the scheduled Plan Commission meeting to answer any question that may be needed for the Commission's thorough review.
- E. The recommendation of the Plan Commission will be conveyed to the Town Board for their next scheduled meeting for the Town Board's determination on the request for a privilege.
- F. If the Town Board approves the application, with or without conditions, the Town Board will enter a Resolution for a roll-call vote that may grant the privilege that meets the requirements of this ordinance and states the conditions of the privilege.
- G. If the request for a privilege is denied by the Town Board, the applicant can utilize the Municipal Administrative Review process to appeal the denial of the request.

SECTION 8 - PENALTY: Penalties under sect. 66.0425 and sect. 86.07 Wis. stats. shall apply.

SECTION 9 – FEES: A permit Application Fee of \$100 will be applied to the request for a privilege. A Plan Commission Hearing Fee of \$240 and a Town Review Fee of \$100 shall apply in addition to \$100.00 Permit Application Fee. The fees may be altered from time to time on the town's schedule of fees. The permit fee shall double after the fact.

SECTION 10 – ENFORCEMENT: The Town Chairman or his designee shall enforce the provisions of this Ordinance. The Town Chairman is authorized to institute whatever legal proceedings or issue whatever citation he may deem necessary to effect compliance with or penalize persons for violating the provisions of this Ordinance.

SECTION 11 - NONEXCLUSIVITY: Adoption of this ordinance in no way precludes the adoption, existence, or use of any other Town ordinance providing for enforcement of any law or ordinance relating to the same or other subject matter.

SECTION 12 - SEVERABILITY: The provisions of this Ordinance shall be deemed severable and it is expressly declared that the Town of Sumner, Jefferson County, would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provision of this ordinance or the application to any person or circumstances is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected.

EFFECTIVE DATE: This ordinance will become effective upon passage and the day after publication in accordance with sect. 60.80 Wis. stats. Adopted this 15th day of July, 2019.

_____ John Dohner, Jr. Chairman

_____ Randall Burdick, Supervisor I

_____ Rosemary Olson, Supervisor II

ATTEST: _____ Glendan Rewoldt Clerk

Ayes: _____ Noes: _____ Absent: _____ Abstain: _____

Published: _____

Posted: _____