

ORDINANCE NO. 2007-3

**AN ORDINANCE GOVERNING THE USE OF
PUBLIC GROUND OF THE TOWN OF NEW LONDON AND
PROVIDING PENALTIES FOR THE VIOLATION THEREOF**

**THE TOWN BOARD OF SUPERVISORS OF THE TOWN OF NEW LONDON
ORDAIN:**

On the effective date of Ordinance No. 2007-3, Ordinance No. 2007-1 is repealed in its entirety.

SECTION 1. DEFINITIONS. The terms defined in this Section have the meanings given them.

1-1. Person. “Person” means an individual or entity subject to the 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, but not a public utility.

1-2. Facility. “Facility” means any tangible asset in the public right-of-way or on public ground required to provide utility services.

1-3. Public Utility. Those utility companies which are regulated by the Public Utilities Commission of the State of Minnesota and subject to the rules and regulations of that Commission.

1-4. Public Ground. “Public Ground” includes Public Right-of-Way and other land owned or otherwise controlled by the Town for park, open space or similar public purpose, which is held for use in common by the public.

1-5. Public Right-of-Way. “Public right-of-way” means the area on, below, or above a public roadway, highway, street, cartway, alley, bicycle lane, and public sidewalk in which the Town has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the Town.

1-6. Right-of-Way User. “Right-of-way user” means any person who has a right under law, franchise, or ordinance to use the public right-of-way.

SECTION 2. PERMIT PROCEDURE.

2-1. Permit Required by Persons. A person may not construct, install, repair, remove or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the Town.

2-1-1. Application. Application for a permit is made to the Town Clerk or to any Town Supervisor. This provision may be waived by the Town in the event of an emergency. The form of Application shall be as determined by the Town from time to time.

2-1-2. Issuance of Permit. If the Town Board determines that the applicant has satisfied the requirements of this Ordinance a permit may be issued. An applicant may contest a permit denial or the conditions of approval by written notice to the Clerk requesting Town Board reconsideration within fourteen (14) days of the denial.

2-1-3. Permit Fee. The application must be accompanied by the appropriate permit fee.

2-1-4. Security for Completion of Work. The Township may require that prior to commencement of work, the person deposit with the Town security in the form of certified check, letter of credit, or construction bond, in a sufficient amount as determined by the Town for the completion of the work. When the Town requires security, the security will be held until the work is completed plus a period of 2 months thereafter to guarantee that restoration work has been satisfactorily completed.

2-1-5. Inspection of Work. When the work is completed, such Person must request an inspection by the Town. The Town will determine if the work has been satisfactorily completed, and provide such Person with a written report of the inspection and approval.

2-1-6. Escrow and Payment of Fees. At the time of application, the applicant shall be required to place cash in escrow with the Township. The Town Board shall determine the required amount of escrow after consultation with the Town Engineer. The escrow shall be an amount sufficient to guarantee payment of all engineering, planning, and legal expenses related to the project incurred by the Township before and after the application for the review and issuance of the project permit, monitoring of the permit conditions, inspections of all right-of-way improvements, and enforcement of the permit. The Township shall withdraw funds from the escrow as needed to reimburse itself for the costs it incurs. If at anytime the Town Board determines the amount of the escrow will not be sufficient to fully reimburse the Township's costs, the permittee shall escrow such additional amounts with the Township as determined by the Town Board within 15 days of the Township providing written notice of the need for additional escrow. The applicant shall be liable to the Township for any legal, planning and engineering costs incurred by the Township for which escrow funds are insufficient to reimburse the Township.

2-2. Notice Required by Public Utility

2-2-1. Notice Requirement. Except in emergencies, Utility Companies are required to notify the Town before initiating an excavation, an obstruction lasting more than two hours, or of an obstruction of more than one lane of traffic. The notice must include: the name, address, and telephone number of the utility company and any contractors involved in the excavation; the anticipated start of completion dates; the typical depth of the lines; and the general location of the work.

2-2-2. Permit Not Required for Public Utilities. When the Public Utility complies with the Notification requirement of this Ordinance, the Town waives the requirement for a written permit. The Public Utility is required to restore the public ground to its prior condition as required by State Regulation and by this Ordinance.

2-2-3. Fee not required. No fee is required with the filing of a Notification under this section of the Ordinance.

SECTION 3. RESTORATION AND RELOCATION.

3-1. Restoration. Upon completion of the work contemplated by a permit, such Person must restore the general area of the work, including the pavement and its foundations, to the same or better condition than existed prior to commencement of the work necessitating a permit.

3-2. Relocation of Facilities in Public Ground. A Person with Facilities in Public Ground must give the Town written notice and obtain a permit prior to its initiated relocation of facilities. Such Person initiated relocation shall be at such Person's expense.

3-3. Town Required Relocation. A Person with Facilities in Public Ground shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in public ground whenever the Town, in writing, requires such relocation.

3-4. Relocation Where Public Ground Vacated. If the Town vacates a right-of-way that contains the facilities of a Person with Facilities in Public Ground and the right-of-way vacation does not require the relocation of such Person's facilities, the Town shall, except when it would not be in the public interest, reserve to and for itself and all such Persons having facilities in the vacated right-of-way, the right to install, maintain, and operate facilities in the vacated right-of-way and to enter upon the right-of-way at any time to reconstruct, inspect, maintain, or repair the facilities.

SECTION 4. DEFAULT.

4-1. Notice. If the Person with Facilities in Public Ground has failed to comply with the terms and conditions of the permit, the Town may terminate the rights of such Person under the permit, subject to the Town's absolute right to revoke the permit at any time in the exercise of the Town's police powers.

4-2. Town Action on Default. If the Person with Facilities in Public Ground is in default of the permit, the Town may, after notice to such Person, and failure of such Person to cure the default within 30 days, take such action as may be reasonably necessary to abate the condition caused by the default. That Person shall reimburse the Town for the Town's costs and expenses, including costs of collection and attorney fees incurred as a result of such Person's default. Notwithstanding the notice requirement in the event that a default will reasonably result in irreparable harm to the environment or to public or property, the Town may immediately prevent, reduce or otherwise mitigate such irreparable harm. In that case the Town shall make a good-faith, reasonable effort to notify such Person as soon as is practicable of the default, the projected irreparable harm, and the intended actions of the Town to remedy said harm.

SECTION 5. OTHER CONDITIONS OF USE.

5-1. Use of Public Ground. Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground.

5-2. Location. The facilities must be placed in a location agreed to by the Town.

5-3. Emergency Work. A Person with Facilities in Public Ground may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event, such Person must request a permit not later than the second working day thereafter, and comply with the applicable conditions of the permit.

5-4. Protection of Facilities. A Person with Facilities in Public Ground must take all reasonable measures to prevent its facilities from causing damage to persons or property. Such Person must take all reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property or the elements. Such Person must take all reasonable protective measures when the Town performs work near the facilities.

SECTION 6. GENERAL PROVISIONS

6-1. Damage to Public Facilities. Any person who damages or destroys public facilities located on Public Ground shall be liable for the costs of repair and/or replacement resulting from such damage or destruction.

6-2. Obstruction of Public Ground. No person shall encumber or obstruct any public place within the corporate limits of the Town by placing therein or thereon any building, structure, building or construction materials, rock, sand, soil, wood, or other impediment, material or substance whatsoever, or by making any excavation or opening therein, without first having obtained permission in writing from the Town to do so. Nor shall any person use public ground for parking or storing motor vehicles, trailers, or other implements at any time.

6-3. Recovery of Costs for Damage or Obstruction. When any damage or obstruction of any kind occurs in the right of way or other public place, the Town shall attempt to notify the person responsible as well as the owner of the abutting property if they are not the same person, to remove the obstruction or repair the damage within a specified amount of time. If such person fails or refuses to comply, the Town may have such obstruction removed or the damage repaired, in which case the Town shall make an itemized account of any expenses incurred. The Town may recover from the person who caused such damage or obstruction, all such expenses incurred by the Town by any means authorized by law. Any expenses incurred by the Town but not otherwise recovered may be recovered by special assessment of property located within the Town which is owned by the person who caused such actions to occur.

6-4. Driveway and/or Culvert Installation. No person or entity shall install or connect a driveway to a Town road located within a public right-of-way without first obtaining a Driveway permit unless that person has obtained a building permit which includes the driveway. Any such driveway shall be subject to use of a culvert if it is determined that a culvert is required for that location.

SECTION 7. INDEMNIFICATION.

7-1. Scope. The Person with Facilities in Public Ground will indemnify, keep, and hold the Town, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the facilities affecting public ground.

7-2. Claim Defense. If a claim or action is brought against the Town under circumstances where indemnification applies, the Person with Facilities in Public Ground at its sole expense, shall defend the Town. If such Person undertakes the defense, such Person shall not settle without the consent of the Town. This section is not a waiver of any defense or immunity otherwise available to the Town. In defending any action on behalf of the Town, such Person is entitled to assert every defense or immunity that the Town could assert in its own behalf.

SECTION 8. EFFECTIVE DATE AND APPLICABILITY TO EXISTING FACILITIES. Persons with facilities, in, on, over, under, or along public ground on the effective date of this Ordinance must take prompt action to comply with this Ordinance and the permits authorized by this Ordinance. Such Person, however, is not required to reapply for a permit obtained from the Town prior to the effective date of this Ordinance. Such Person is not required to pay the difference between the permit fee of a previously obtained permit and the equivalent newly obtained permit under this Ordinance. All other provisions of this Ordinance apply to existing facilities.

SECTION 9. ACCEPTANCE OF REQUIREMENTS. By receiving a permit pursuant to this Ordinance, such Person accepts and agrees to comply with all of the requirements of this Ordinance.

SECTION 10. PUBLIC GROUND OTHER THAN RIGHT-OF-WAY. Nothing in this Ordinance is intended to grant to such Person authority beyond that given by Minnesota Statutes, Section 222.37, for use of the public right-of-ways for construction and operation of facilities. If the Town allows such Person to use its non-right-of-way public ground, the terms of this Ordinance apply to the extent they are consistent with the contract, statutory, and common law rights the Town owns in such property.

SECTION 11. PENALTY. Any person who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punished pursuant to the applicable State statute regarding misdemeanor penalties as may be amended from time to time, plus the cost of prosecution. Each day in which any violation occurs shall be deemed a separate offense. The Town may, in its discretion, seek any civil remedies available to it as well, including injunctive relief. Each right or remedy accruing to the Town under this ordinance or at law is separate and distinct, and may, in the Town's discretion, be exercised independently or simultaneously with any other right or remedy.

SECTION 12. SEVERABILITY. Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

SECTION 13. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Town Board of the Town of New London, Minnesota, this 30th day of August, 2007.

APPROVED:

Mark Mertens

Chairman

ATTEST:

Nancy Hammerschmidt

Clerk