

**SPRING LAKE TOWNSHIP
SCOTT COUNTY, MINNESOTA**

ORDINANCE NO. 06-004

An Ordinance Regulating Activities in the Spring Lake Township Public Rights-of-Way, Including The Construction, Installation, Operation, Repair, Maintenance, Removal And Relocation Of Facilities And Equipment In The Public Ground Of The Town And Providing Penalties For The Violation Thereof

The Town Board for the Town of Spring Lake, Scott County, Minnesota, hereby ordains:

Section 1.00: Purpose and Authority.

1. **Purpose.** The primary objectives of this Ordinance are to protect public safety, reduce interferences with public travel, protect the public's interest in its Rights-of-Way, and to provide for the efficient and uniform administration of the Town's road Rights-of-Way. The Board finds that the regulations, requirements, and restrictions, as set forth in this Ordinance, are in the best interests of the health, safety, and welfare of the Town's citizens.
2. **Authority.** As a road authority, the Board has broad authority to regulate what occurs within the Town's road Rights-of-Way. This authority is found in Minnesota Statutes § 365.10, subd.17, a variety of sections in chapters 160, 164, 165, 222, 237, 429, and other chapters, as well as the rules associated with those chapters.

Section 2:00. Definitions.

For the purposes of this Ordinance, the following terms shall have the meaning given them in this section.

1. **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.
2. **Board.** "Board" means the Town Board of Supervisors of Spring Lake Township, Scott County, Minnesota.
3. **Facilities.** "Facilities" means any tangible assets in the Public Right-of-Way or on Public Ground required to provide utility services.
4. **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.
5. **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, brass, iron, steel, and any other old or scrap ferrous or nonferrous material.
6. **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 non-profit, and whether natural, corporate, or political. Examples include, but are not limited to:

- a. A business, corporation, business trust, partnership or association or any other legal entity or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier or utility, and any successor or assignee of any of them;
 - b. A social or charitable organization; and
 - c. Any type or combination of political subdivision, which includes the executive, judicial, or legislative branch of the state, a local governmental unit, or a combination of any of them.
7. **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.
8. **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 roadway or utility easements of the Town.
9. **Utility Service.** "Utility Service" includes (1) services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications Right-of-Way User, including the transporting of voice or data information; (3) services provided by a cable communications system as defined in Minnesota Statutes, chapter 238; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling, or heating services.
10. **Right-of-Way User.** "Right-of-Way User" means: (1) a telecommunications Right-of-Way User as defined by Minnesota Statutes, section 237.162, subdivision 4; (2) a Person owning or controlling a facility in the Public Right-of-Way that is used or is intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the Public Right-of-Way ; or (3) any Person who would construct, install, repair, remove, open, disrupt or disturb any Public Ground within the Town.
11. **Town.** "Town" means the organized government of Spring Lake Township, Scott County, Minnesota.

Section 3:00. Cultivation and Landscaping and Erosion Control.

1. **Cultivation.** No Person may cultivate, plant, harvest, or maintain agricultural crops, trees, bushes, or shrubs within a Right-of-Way.
2. **Landscaping.** No Person may cultivate, plant, or maintain grasses, flowers, trees, shrubs, vegetables, or other vegetation in any manner that obstructs visibility of a road or otherwise interferes with, obstructs, or renders dangerous for passage of a Right-of-Way. No Person may place watering systems, or sprinkler heads within a Right-of-Way.
3. **Erosion Control.** No land owner or permit applicant shall cause or conduct any land disturbing activity within a Town Right-of-Way which causes erosion or sedimentation or which results in damages to water or soil resources or off-site impacts. No land disturbing activity in shall cause active gully erosion or negative off-site impacts. A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized.

Section 4:00. Obstructions and Junk.

1. **Obstructions.** No Person may place, maintain, or allow any obstruction in a Right-of-Way other

than those specifically permitted by this Ordinance, by state law or rule, or by written approval of the Board. Items prohibited by this section include, but are not limited to the following; fences, posts, structures, piled materials, hay bales, vehicles, trailers, campers, equipment, or any other items that interfere with the safe use or the maintenance of the Right-of-Way. No Person shall park a functioning vehicle in a Right-of-Way in such a way as to unreasonably interfere with the safe use of a road or the maintenance of the Right-of-Way.

2. **Junk.** No Person shall place or maintain Junk in a Right-of-Way.

Section 5:00. Alteration of Grade.

No Person may alter or change the depth or contour of any portion of any ditch or embankment in a Right-of-Way without written approval of the Board.

Section 6:00. Unauthorized Maintenance.

No Person may work, maintain, improve, or repair the traveled portion of a Right-of-Way without the written approval of the Board.

Section 7:00. Doing Damage.

No Person shall cause damage to a Right-of-Way without the written approval of the Board. Any Person doing damage within a Right-of-Way with approval of the Board shall return the Right-of-Way to at least the same condition it was in prior to the damage.

Section 8:00. Mailboxes, Signs, and Newspaper Boxes.

1. **Mailboxes.** Mailboxes and newspaper boxes are permitted within a Right-of-Way if they do not interfere with, obstruct, or render dangerous for passage of a road. Mailboxes placed within a Right-of-Way must comply with all of the standards in Minnesota Rules Chapter 8818. The Board may remove and replace mailboxes that do not comply with the standards as provided in Minnesota Statute, Section 169.072.
2. **Signs.** No sign of any nature may be placed or allowed to remain in any Right-of-Way except an official traffic sign placed by a governmental authority or other signage expressly permitted by state law.

Section 9:00. Approaches and Headwalls.

1. **Approaches.** No Person may construct or reconstruct any Approach to a road without first obtaining approval by the Board. A Person may be required to submit a map or drawing of the existing or proposed Approach when seeking approval.
2. **Culverts.** A Person constructing or reconstructing an Approach may be required to install a culvert meeting the specifications set out by the Board if the Board determines a culvert is necessary for a suitable Approach to the road and to promote adequate drainage of the Right-of-Way.
3. **Costs.** A Person constructing or reconstructing an Approach to an existing road shall be

responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals and the cost of a culvert if one is required. Property owners are responsible for maintaining all Approaches and associated culverts on their property at their own cost.

4. **Headwalls.** No Person may construct or reconstruct any Headwall in a way that interferes with the safe use or maintenance of a Right-of-Way.

Section 10:00. General Provisions

1. **Damage to Public Facilities.** Any Person who damages or destroys public Facilities located in the right-of-way, including streets, alleys, lanes, curbs, ditches, gutters, sidewalks, trails, sanitary and/or storm sewers, water main, street lights and poles, or other publicly owned property, or causes such actions to occur, shall be liable for the costs of repair and/or replacement resulting from such damage or destruction.
2. **Obstruction of Public Ground.** No Person shall encumber or obstruct any street, alley, lane, ditch or gutter, sidewalk, trail or other 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.
3. **Recovery of Costs for Damage or Obstruction.** When any damage, destruction, obstruction or encumbrance of any kind occurs or is put, placed, or left in the right of way, including streets, alleys, lanes, curbs, ditches, gutters, sidewalks, trails, or other public place, the Town shall attempt to notify the Person who damaged, destroyed, put, placed, or left such obstruction or encumbrance to remove the obstruction or encumbrance or repair the damage or destruction within a specified amount of time. If such Person fails or refuses to remove such obstruction or encumbrance within the specified amount of time, the Town may have such obstruction or encumbrance removed by Township employees or contractors, in which case the Town shall make an itemized account of any expenses incurred in or by reason of such removal. The Town may recover from the Person who damaged, destroyed, put, placed, or left such obstruction or encumbrance as well as any Person who caused such actions to occur, all such expenses incurred by the Town by sending an invoice or, by Town Board order, by any other lawful means, including a civil suit. All invoices sent pursuant to this subdivision shall be paid within 30 days of mailing of such invoice. 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 damaged, destroyed, put, placed, or left such obstruction or encumbrance in the Right of Way or who authorized or caused such actions to occur.
4. **Unloading.** Unless otherwise prohibited by the Town, a Person may unload materials from a vehicle parked in the right-of-way for a period not exceeding two (2) hours, provided that the vehicle is parked in such a manner that two cars are able to safely pass that parked vehicle at the same time.
5. **Driveway Installation.** No Person or entity shall install or connect a driveway or an Approach to a Town road located within a Public Right-of-Way without first obtaining a Driveway permit.

Section 11:00. Enforcement and Penalties.

1. **Enforcement.** The Town Board, the Board's designee (i.e. Township Road Authority, or duly authorized representatives) shall enforce this Ordinance. The duly authorized representative shall initiate appropriate action for any violations of this Ordinance at the direction of the Board and through the Township Attorney as deemed necessary.

2. **Violation Occurs.** Whenever the Town Board or the Board's designee (i.e. Township Road Authority, or duly authorized representatives) determines that a violation has occurred or exists on property within the Township, the owner or occupant of such property shall be notified of the fact in writing. The notice shall be served in Person or by certified or registered mail. If the property is not occupied and ownership of the property cannot be ascertained, or in the event that Personal service cannot be made, or certified or registered mail is returned, notice is deemed served when posted on the property or deposited in the U.S. Mail.
3. **Immediate Correction.** In the event that a violation is deemed by the Township to constitute an immediate danger, the Township may initiate immediate removal of such hazard without prior notification of the owner or occupant of such property. As soon thereafter as practical the Township shall provide written notice to the owner or occupant of the premises of the actions taken. The notice shall be served in Person or by certified or registered mail. If the property is not occupied and ownership of the property cannot be ascertained, or in the event that Personal service cannot be made, or certified or registered mail is returned, notice is deemed served when posted on the property or deposited in the U.S. Mail. All expenses incurred by the Township to remove the hazard will be charged against said parcel and will be the responsibility of the owner.
4. **Thirty Days Written Notice.** A written notice pursuant to this section shall specify the violation and the steps required to correct said violation and the time, not to exceed thirty days (30 days) within which the corrections must be completed. If the violation is not corrected, then the Township may take actions necessary to bring the violation into compliance and seek redress.
5. **Appeals.** A Person served with a written notice may appeal to the Town Board for a hearing. A Hearing notice shall be given at least ten days (10 days) prior to the date of the hearing before the Town Board and will be served in the manner as described in Paragraph 2 of this Section. In order to expedite matters, the Township may at its discretion, include notice of the aforementioned hearing in the original notice of violation.
6. **Hearing.** If after conducting a hearing on the matter the Town Board determines that correction of the violation is necessary to protect the public health, safety and welfare, then the Township may correct the violation, or cause the same to occur, in any manner and using any method that it finds appropriate.
7. **Prosecution.** Any Person who violates a Section, Subdivision, paragraph, or provision of this Ordinance shall be subject to prosecution. Each day of non-compliance with any terms of this Ordinance shall be considered a separate violation and a separate criminal act.
8. **Penalties.** Violation of this Ordinance is a petty misdemeanor offense, punishable by up to the maximum amount allowed by state statute, and as amended from time to time, plus costs of prosecution. Each day of continuing violation may be deemed a separate and distinct violation of the Ordinance.
9. **Types of Remedies.**
 - 9.1 **Civil Remedies.** The Township may, at its discretion, seek any and all available civil remedies available to it at law or equity, including injunctive relief. In the event that civil remedy is pursued, the Township may seek reimbursement of any and all costs, disbursements, witness or other fees, as well as reasonable attorney's fees expended by the Township in order to enforce this Ordinance.
 - 9.2 **Other Remedies.** Each right or remedy accruing to the Township under this Ordinance or at law is separate and distinct and may, at the Township's discretion, be exercised independently or simultaneously with any other right or remedy.

Section 12:00. Permit Procedures for Right-of-Way Users.

The prohibitions, requirements, and restrictions contained in this Ordinance do not apply to: Town officers, employees, or agents while operating within the course and scope of their duties for the Town; or contractors while performing services within the scope of a contract with the Town.

1. **Permission and Permit Procedures Permit Required.** 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. The Town shall require a separate permit of a Right-of-Way User for each location where construction, installation, or other disturbance of the Public Ground is to occur. Each permit shall state specifically the locations of any Facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the Town.
2. **Application.** Application for a permit is made to the Town Clerk. A Person shall apply for a permit or renewal of a permit a minimum of two (2) weeks before starting work and must submit detailed plans for street or sidewalk use and pedestrian safety on major projects. This provision or portions thereof may be waived by the Town in the event of an emergency.
3. **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. The Town Board shall hear any permit denial contest within forty-five (45) days of the Clerk's receipt of the contest notice. Nothing in this Ordinance precludes the Town from requiring a franchise agreement with the applicant, as allowed by law, in addition to the issuance of a permit set forth herein.
4. **Permit Fee.** The application must be accompanied by a nonrefundable permit application fee as established in Town Fee Ordinance (in addition to the escrow deposit) to cover the Township's administrative costs.
5. **Security for Completion of Work.** For work performed by any Person other than the adjacent property owner, prior to commencement of work, the Person must deposit with the Town security in a minimum amount of Ten Thousand Dollars (\$10,000) to insure the completion of the work. Unless otherwise agreed to by the Township, said security shall be in the form of a utility bond, right-of-way bond, certified check or a letter of credit (in a form acceptable to the Township). The security is in addition to the Permit Fee and may be held for up to 24 months. Upon written request all or part of the security may in the Board's sole discretion be released prior to the expiration of the 24 month period. Upon application of the Person, providing such information as the Town may require, if two or more work projects are to be constructed during a calendar year, the Town may accept, in lieu of separate security for each project, a single security for multiple projects in such form and amount as determined, in the discretion of the Town Board, to be sufficient to assure completion of all projects which may be in progress at any one time during that calendar year and to guaranty that restoration work will be satisfactorily completed. The security will then be returned to the Person with interest if required by law and then interest at the applicable statutory rate.

The Town may draw on said security to complete work not performed by the permit holder, to reimburse itself for costs incurred in the enforcement of this Ordinance, including attorney fees, to repair or correct deficiencies or other problems which occur in the right-of way during the period in which the security is in place, or to otherwise fulfill the obligations of the permit holder under this Ordinance. This remedy is in addition to any other remedies available to the Town.

6. **Escrow Deposit.** For work done by the adjacent property owner, the applicant shall provide to the Township for deposit in an escrow fund, Seven Hundred and Fifty Dollars (\$750) for any costs incurred by the Township relating to work within the right-of-way including, but not limited to, repairing damage to any roadways as a result of the applicant's activities. The Town may draw on said escrow to complete work not performed by the permit holder, to reimburse itself for costs incurred in the enforcement of this Ordinance, including attorney fees, to repair or correct deficiencies or other problems which occur in the right-of-way, or to otherwise fulfill the obligations of the permit holder under this Ordinance. This remedy is in addition to any other remedies available to the Town. If additional escrow is required or Township costs are incurred beyond the escrow amount, applicant shall be billed directly for such costs and applicant agrees to furnish additional monies as requested by the Township. Any amounts not utilized from this escrow fund shall be returned to the applicant, without interest, when all work with the right of way has been completed, all financial obligations to the Township have been satisfied, and the Town Board has approved the final inspection.

7. **Limitations.** Any Person receiving permission or a permit from the Board as provided in this Ordinance must comply with all applicable federal, state, and local laws and rules as well as all applicable Town Ordinances, resolutions, specifications, regulations, and policies. Any Person receiving permission or a permit must comply with all conditions, requirements, and limitations the Board expresses as part of the permission or permit. Failure to comply with any of the conditions, requirements, or limitations shall void the permission or permit and could place the Person in violation of this Ordinance.

Section 13:00. Restoration and Relocation.

1. **Restoration.** Upon completion of the work contemplated by a permit, the permit holder 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. The work must be completed as promptly as weather permits. If the permit holder does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the Public Ground to the same condition, the Town may put it in the same condition at the expense of the permit holder. The permit holder must, upon demand, pay to the Town the direct and indirect cost of the work done for or performed by the Town, including, but not limited to, the Town's administrative costs within 30 days of being billed for such costs.

2. **Right-of-Way User Initiated Relocation.** A Right-of-Way User must give the Town written notice and obtain a permit prior to a Right-of-Way User initiated relocation of Facilities. A Right-of-Way User initiated relocation shall be at the Right-of-Way User's expense.

3. **Town Required Relocation.** A Right-of-Way User shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the Town, in connection with: (1) a present or future use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

4. **Public Ground Vacated and Relocation is not Required.** If the Town vacates a right-of-way that contains the Facilities of a Right-of-Way User and the right-of-way vacation does not require the relocation of the Right-of-Way User's Facilities, the Town shall, except when it would not be in the public interest, reserve to and for itself and all Right-of-Way Users 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.

5. **Public Ground Vacated and Relocation is Required.** If the Town vacates a right-of-way that

contains the Facilities of a Right-of-Way User and the right- of-way vacation requires the relocation of the Right-of-Way User's Facilities, payment of the relocation costs must be determined as follows: (1) if the vacation proceedings are initiated by the Right-of-Way User, the Right-of-Way User must pay the relocation costs; (2) if the vacation proceedings are initiated by the local government unit for a public project, the Right-of-Way User must pay the relocation costs unless otherwise agreed to by the local government unit and the Right-of-Way User; or (3) if the vacation proceedings are initiated for the purpose of benefiting a Person other than the Right-of-Way User, the benefited Person must pay the relocation costs.

Section 14:00. Permit Holder Default

1. **Notice.** If the Right-of-Way User has failed to comply with the terms and conditions of the permit, including, but not limited to, restoration requirements for more than 30 days after receiving written notice from the Town of the default, the Town may terminate the rights of the Right-of-Way User 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. The notice of default shall be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice shall either be Personally served on the Right-of-Way User or served by the certified mail to the address of the Right-of-Way User provided on the permit application.
2. **Town Action on Default.** If the Right-of-Way User is in default in the performance of the work authorized by the permit, the Town may, after the above notice to the Right-of-Way User, and failure of the Right-of-Way User to cure the default within 30 days, take such action as may be reasonably necessary to abate the condition caused by the default. The Right-of-Way User shall reimburse the Town for the Town's costs and expenses, including costs of collection and attorney fees incurred as a result of the Right-of-Way User's default. The security posted may be applied by the Town first toward payment of said costs and expenses. Notwithstanding the 30-day notice period provided for in paragraph 1 above, in the event that a default by the Right-of-Way User 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, provided that the Town makes good-faith, reasonable efforts to notify the Right-of-Way User as soon as is practicable of the default, the projected irreparable harm, and the intended actions of the Town to remedy said harm.

Section 15:00. Other Conditions of Use by Right-of-Way Users.

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. The Facilities are subject to additional conditions of the permit as established therein, including, but not limited to (i) the right of inspection by the Town at reasonable times and places; (ii) the obligation to relocate the Facilities pursuant to Section 13; and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission, and other State and Federal laws, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes, Chapter 216D.
2. **Location.** The Facilities must be placed in a location agreed to by the Town. The company shall give the Town forty-five (45) days advanced written notice of the company's proposed location of Facilities within the Public Ground. No later than 45 days after the Town's receipt of the company's written notice, the Town will notify the company in writing of the Town's acceptance or rejection of the proposed location. If the Town rejects the company's proposed location, the Town shall propose alternative locations. The Town does not waive or forfeit its right to reject the location of Facilities by failure to respond within 45 days.

3. **Emergency Work.** A Right-of-Way User 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, the Right-of-Way User must request a permit not later than the second working day thereafter, and comply with the applicable conditions of the permit. In no event may the Right-of-Way User undertake such an activity, which will result in the closing of a street or alley without prior notification to the Town.
4. **Street Improvements, Paving or Resurfacing.** The Town will give the Right-of-Way User written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice shall contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the Town will start the work; and (iv) if more than one street is involved, the sequences in which the work is to proceed.
5. **Company Protection of Facilities.** A Right-of-Way User must take all reasonable measures to prevent its Facilities from causing damage to Persons or property. A Right-of-Way User must take all reasonable measures to protect its Facilities from damage that could be inflicted on the Facilities by Persons, property or the elements. The Right-of-Way User must take all reasonable protective measures when the Town performs work near the Facilities.
6. **Guarding of Obstructions or Dangers.** If a Right-of-Way User shall obstruct any Public Ground, such Right-of-Way User shall keep such obstruction or obstructions properly guarded at all times. From sunset to sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in such a manner that they will give proper warning of said obstruction. The Town may require any other restrictions or safety regulations as may be in the public interest.
7. **Prior Service Connections.** In cases where the Town is undertaking the paving or resurfacing of streets and the Facilities are located under such street, the company may be required to install service connections prior to the paving or resurfacing if it is apparent that service will be required during the five year period following the paving or resurfacing

Section 16:00. Indemnification by Right-of-Way Users.

1. **Scope.** The Right-of-Way User 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, unless such injury or damage is the result of the negligence of the Town, its elected officials, employees, officers, or agents, except that the right of way user will be required to indemnify the Town for any claims based on the local government unit's negligent or otherwise wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of the permit granted to the permit holder.
2. **Claim Defense.** If a claim or action is brought against the Town under circumstances where indemnification applies, the Right-of-Way User at its sole expense, shall defend the Town. If the Right-of-Way User undertakes the defense, the Right-of-Way User shall not settle without the consent of the Town. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Town. In defending any action on behalf of the Town, the company is entitled to assert every defense or immunity that the Town could assert in its own behalf.

Section 17:00. Effective Date and Applicability to Existing Facilities.

Right of way users 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. A company, however, is not required to reapply for a permit obtained from the Town prior to the effective date of this Ordinance. A company 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 18:00. Acceptance of Requirements.

By receiving a permit pursuant to this Ordinance, the Right-of-Way User accepts and agrees to comply with all of the requirements of this Ordinance.

Section 19:00. Validity and 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 20:00. Savings Clause.

The failure of the Board to exercise, and any delay in exercising, any right under this Ordinance, including enforcement, shall not operate as a waiver thereof and shall not constitute a waiver of the Town's interest, however created, in any Right-of-Way, easement, or any other type of property interest.

Section 21:00. Effective Date.

This Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Town Board of Supervisors of the Town of Spring Lake, this 10th day of July, 2008.

APPROVED:

SPRING LAKE TOWNSHIP

Gene Berens, Chairman

ATTEST:

Kathy Nielsen, Clerk