
**PREBLE TOWNSHIP
ORDINANCE TO MANAGE AND REGULATE
TOWNSHIP PUBLIC RIGHTS-OF-WAY
Ordinance No. 2006-01**

The Board of Supervisors of Preble Township, Fillmore County, hereby adopts and ordains this Ordinance to Manage and Regulate Township Public Rights-of-Way:

Section 1. Purpose and Authority. Preble Township owns or controls various township road and other public rights-of-way. Minnesota Statutes § 237.163 grants to Preble Township the authority and power to manage and regulate its public rights-of-way. Minnesota Statutes §§ 164.02 and 164.36 also grants to Preble Township the general road authority and power to manage and regulate its roads and road rights-of-way. Preble Township hereby elects, pursuant to the authority granted in Minnesota Statutes §§ 237.163, 164.02 and 164.36, to manage and regulate its township road and other public rights-of-way.

Section 2. Elect to Manage. Preble Township elects to manage and regulate its township road and other public rights-of-way, in accordance with the provisions of Minnesota Statutes § 237.163, 164.02 and 164.36 and Minnesota Rules 7819.

Section 3. Definitions. The definitions contained in Minnesota Rule 7819.0100 are hereby adopted by reference and incorporated within this ordinance. In addition to such definitions, the following individual definitions are adopted.

(a) “Applicant” means any person who submits a Permit Request for an Excavation or Obstruction Permit in accordance with this ordinance. A person includes (i) any telecommunications, wireless, electric, cable, video, gas, waste or other utility, (ii) any property owner or resident, (iii) any contractor or builder for a property owner or resident, or (iv) any other individual or entity.

(b) “Excavate” means to dig into, trench, or remove, physically disturb or penetrate the soil, gravel, rock, wall, culvert or any other part of the Right-of-Way. Excavate also means to build or install any permanent Facility within the Right-of-Way.

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(c) “Excavation Permit” means a permit issued by the Township Board to an Applicant to Excavate within a Right-of-Way. An Excavation Permit also means a permit to build or install any permanent Facility within the Right-of-Way.

(d) “Facility” means any tangible structure or asset in the Right-of-Way intended to provide public utility service, including cabling, piping, well, sign, tank, utility structure, tower, transformer, or connection or junction box.

(e) “Junk” means any scrap, trash, garbage, waste materials, parts, rubbish, or non-operating, wrecked or dismantled automobiles, vehicles, appliances, farm equipment, or construction machinery.

(f) “Obstruct” means to place a tangible object in the Right-of-Way so as to hinder or interfere with the free and open passage of any portion of the Right-of-Way for more than two hours.

(g) “Obstruction Permit” means a permit issued by the Township Board allowing an Applicant to temporarily Obstruct a Right-of-Way.

(h) “Permit Application” means a request or application (made on a Township Board approved application form) from an Applicant to obtain an Excavation Permit or an Obstruction Permit.

(i) “Permittee” means an Applicant to whom the Township Board has issued an Excavation or Obstruction Permit under this ordinance.

(j) “Right-of-Way” includes the definition of that term contained in Minnesota Statutes § 237.162, subd. 3, and also means the entire width between boundary lines of the traveled and nontraveled portions of a road, cartway or passage under the control and jurisdiction of Preble Township.

(k) “Township Board” means the Board of Supervisors of Preble Township.

Section 4. Prohibition Without Permit. No person shall Excavate or Obstruct a Right-of-Way, without first obtaining an Excavation or Obstruction Permit from the Township Board. No person shall install or place (permanently or temporarily) any Facility or Junk in the Right-of-Way, without first obtaining an Excavation or Obstruction Permit from the Township Board.

Section 5. Township Removal of Facility or Junk. The Township Board shall have the right to remove any Facility or Junk installed or placed in any Right-of-Way without an Excavation or

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Obstruction Permit. The Township Board shall have the right to charge the cost, and enforce the collection of such cost, of removing any Facility or Junk installed or placed in any Right-of-Way without an Excavation or Obstruction Permit, against any person installing or placing such Facility or Junk.

Section 6. Permit Required. An Excavation Permit shall be required for any person intending to (i) dig into, trench, or in any way remove, physically disturb or penetrate a part of the Right-of-Way, or (ii) build or install any Facility within the Right-of-Way. An Obstruction Permit shall be required for any person intending to place a tangible object in the Right-of-Way so as to hinder or interfere with the free and open passage of any portion of the Right-of-Way for more than two hours.

Section 7. Permit Applications. An Applicant for an Excavation or Obstruction Permit shall submit an application (on the form adopted by the Township Board) to the Township Clerk, providing the following information:

- Name, address, telephone and fax number of the Applicant.
- Name, address, telephone and fax number of the local representative or contact person of Applicant.
- Name, address, telephone and fax number of any contractors, excavators or builders who propose to perform any part of the Excavation or Obstruction.
- A complete and thorough written description of all proposed work intended to be performed by Applicant in the Right-of-Way.
- A complete and thorough written description of each Right-of-Way location where Applicant proposes to perform any part of the Excavation or Obstruction, including offsets from property lines and distances from Right-of-Way centerlines.
- A scaled drawing showing (i) the specific location of the proposed Excavation or Obstruction, (ii) the location, measurements and depth of any Facility which Applicant proposes to install in the Right-of-Way, and (iii) illustrations and descriptions of aboveground appurtenances.
- The mapping information required in Minnesota Rules 7819.4100.
- A statement of whether Applicant proposes (i) to restore the Right-of-Way to the same condition before the proposed work, or (ii) elect to pay a degradation fee in lieu of restoration.
- The start and completion dates of the proposed work at each Right-of-Way location.
- A construction performance bond from an insurer acceptable to the Township Board.
- The required permit fee.

Section 8. Incomplete Applications. If a Permit Application received by the Township Board is incomplete, the Township Board will notify the Applicant within 15 days of receipt by the Township Clerk that additional information is required before the Permit Application will be considered.

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Incomplete Permit Applications are invalid and shall be deemed rejected unless all required information is submitted to the Township Board within 30 days of the date the Township Board notifies the Applicant the Permit Application was incomplete.

Section 9. Permit Application Fee. All Permit Applications must be accompanied by a non-refundable Permit Application Fee. The purpose of the fee is to compensation the Township Board and Preble Township for its costs associated with reviewing and considering the Permit Application.

Section 10. Automatic Permit. A Permit Application shall be deemed approved and a permit automatically issued to Applicant if the Township Board does not notify Applicant of the denial of a permit, within 60 days of the date on which the Township Clerk received Applicant's Permit Application.

Section 11. Permit Conditions. The Township Board may impose reasonable conditions upon the issuance of an Excavation or Obstruction Permit, to protect (i) the integrity of the Right-of-Way, and (ii) the health, safety and welfare of neighboring property owners and residents or roadway users.

Section 12. Location of Facility. The Township Board may impose restrictions on the location, size, design and appearance of any Facility which Applicant proposes to be located in the Right-of-Way. The Township Board may assign specific corridors or locations within the Right-of-Way for each Facility. The Township Board may prohibit the installation or placement of any Facility within the Right-of-Way if necessary, in the Township Board's sole judgment, to protect (i) the integrity of the Right-of-Way, and (ii) the health, safety and welfare of neighboring property owners and residents or roadway users.

Section 13. Permit Denial. The Township Board may deny a Permit Application if (i) Applicant refuses to complete all required information in its Permit Application, or provide the Township Board with any additional requested information, (ii) Applicant's proposed work would substantially damage or permanently obstruct the Right-of-Way and Preble Township's ability to maintain the Right-of-Way, (iii) Applicant's proposed Work would adversely affect the health, safety or welfare of neighboring property owners and residents or roadway users, or (iv) Applicant is perpetrating or attempting to perpetrate a fraud or deceit upon Preble Township or its residents and property owners.

Section 14. Work Standards. All work in the Right-of-Way shall be performed according to the standards contained in Minnesota Rules 7819.1100, or any applicable Preble Township requirements. All telecommunications Facilities to be installed in a Right-of-Way shall be installed according to the requirements contained in Minnesota Rules 7819.5000, in addition to all other applicable federal, state and local requirements. All gas and electric Facilities to be installed in a Right-of-Way shall be installed according to the requirements contained in Minnesota Rules 7819.5100, subp. 2, in addition to all other applicable federal, state and local requirements.

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Section 15. Warning Signs. A Permittee shall place and install all necessary warning signs as needed to warn the public of its Excavation or Obstruction. A Permittee shall comply with the standards established by the Minnesota Department of Transportation in determining the need for signage, the type of signs and their location.

Section 16. Alteration of Right-of-Way Grade. No person may alter or change the depth, direction or contour of any portion of any ditch or embankment in a Right-of-Way, without the prior written approval of the Township Board.

Section 17. Cultivation. No person may install, plant or maintain any agricultural crops, trees, bushes, shrubs, posts, signage or fencing in a Right-of-Way. No person may install, plant or maintain any grasses, flowers or other vegetation in a Right-of-Way that would obstruct the Right-of-Way or render it dangerous for passage.

Section 18. Site Inspection. Preble Township board members, staff and others authorized by the Township Board may inspect the worksite at any time during or upon completion of the work. At any time, Preble Township may order cessation of work which poses a serious threat to the life, health, safety or welfare of the public.

Section 19. Restoration of Right-of-Way. A Permittee must restore the Right-of-Way to at least the same condition that existed before the Excavation. If there is a dispute between the Township Board and the Permittee over the level of restoration required, the Permittee shall restore the Right-of-Way according to the applicable standards established in plates 1 to 13 identified in Minnesota Rules 7819.9900 to 7819.9950. If a Permittee elects in its Permit Application to pay a degradation fee in lieu of restoring the Right-of-Way, the fee will be in an amount the Township Board determines necessary to have the Right-of-Way restored according to the applicable standards in plates 1 to 13. A Permittee electing to pay a degradation fee remains responsible for replacing and compacting the subgrade and aggregate base material in the Excavation. If a Permittee fails to restore the Right-of-Way within 5 calendar days after the completion of the Excavation, the Township Board may restore the Right-of-Way according to the applicable standards in plates 1 to 13. The Township Board shall then provide the Permittee with a statement of its actual costs for restoring the Right-of-Way. Payment in full of the statement is due upon receipt and must be received by the Township Board no later than 30 days from the date of the statement.

Section 20. Revocation of Permit. The Township Board may, at any time, revoke any issued Excavation or Obstruction Permit, if (i) there is a material breach of the terms and conditions of any statute, rule, ordinance or the permit, (ii) there is a material violation of a provision of the permit, (iii) Applicant perpetrates or attempts to perpetrate a fraud or deceit upon Preble Township or its residents and property owners, (iv) Applicant materially misrepresents facts in its Permit Application, (v) Applicant fails to complete the proposed work in a timely manner, or (vi) Applicant

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fails to correct, in a timely manner, work that does not conform to applicable standards or conditions. Applicant will cease any further work in the Right-of-Way upon a revocation of the permit.

Section 21. Relocation of Facility. Upon the Township Board's request, a person with a Facility located in the Right-of-Way shall promptly, and at its own expense, permanently remove and relocate the Facility (i) to prevent interference with a public project, including ditch or road improvements, repair and maintenance, (ii) to protect the integrity of the Right-of-Way, or (iii) to protect the health, safety and welfare of neighboring property owners and residents or roadway users.

Section 22. Abandoned Facility. A Person is required to remove any abandoned Facility in conjunction with Preble Township Right-of-Way repair, maintenance, excavation or construction, unless expressly such removal is expressly waived by the Township Board.

Section 23. Fees and Penalties. All fees and penalties provided for in this ordinance shall be established, from time to time, by Township Board resolution, in compliance with Minnesota Rule 7819.0100, and shall be made available to the public upon request. All fees, penalties and other charges imposed in this ordinance are non-refundable.

Section 24. Enforcement. Upon discovery of a violation of this ordinance, the Township Board may issue a correction order to the violator order the person to correct such violation by a designated time deadline. If the violator fails or refuses to comply with the correction order, the Township Board may cause Preble Township to correct the violation. The cost of correcting the violation and penalties shall be the responsibility of the violator. If the Township Board provides for the correction of the violation, all expenses incurred by Preble Township, including reasonable attorneys fees and costs, shall be charged to the violator. If the correction costs and penalties are not paid upon demand, the Township Board may seek enforcement of such collection in the appropriate Minnesota federal or state courts.

Section 25. Penalty. Any person who violates this ordinance shall be guilty of a misdemeanor and subject to the penalties for such as provided by law. Each day of existence of such violation shall constitute a separate and distinct offense. If convicted, the violator may be assessed costs of prosecution as allowed by Minnesota Statutes § 366.01, subd. 10.

Section 26. Waiver. The failure of the Township Board to exercise, or to timely exercise, any right under this ordinance, including enforcement, shall not operate as a waiver of any violation, and shall not constitute a waiver of Preble Township's rights or interests in any Right-of-Way.

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Dated: January 17, 2006

Gerald Peter
Supervisor

Brad Kelly
Supervisor

Attest:

David Larson
David Larson, Township Clerk

David Williams
Supervisor

Return Recorded Document To:
David Larson, Township Clerk
Rural Route 2 - Box 160
Mabel, Minnesota 55954
Telephone: 507.864.2690