

ORDINANCE NO. 2009 -04

AN ORDINANCE REGULATING THE USE OR OCCUPATION OF RIGHTS OF WAY WITHIN THE VILLAGE OF WARSAW, OHIO

WHEREAS, there is an increased demand and need for placement of utility and communication facilities and structures within the Village of Warsaw;

WHEREAS, the Village of Warsaw is concerned with the placement of utility structures within the Village and desires to promote efficient and logical placement of utility structures so as to promote the public health, safety, and welfare of the Village;

WHEREAS, the Village of Warsaw desires to protect real estate within the Village from impairment and destruction of value; and

WHEREAS, the Village of Warsaw desires to promote and require reasonable accommodation of all uses of Rights of Way and to establish the priority of use of Rights of Way when all requested usage of Rights of Way cannot be accommodated;

NOW, THEREFORE BE IT ORDAINED by the Council of the Village of Warsaw, Coshocton County, Ohio that Ordinance 2009-04 is hereby enacted, which shall be entitled Warsaw Right of Way Ordinance, and shall be enacted as follows:

Section 1. DEFINITIONS

(a) "Applicant" means any person, firm, or corporation applying for a Permit hereunder.

(b) "Construct" or "construction" means, but is not limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs, or installing Facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the Right of Way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the Right of Way.

(c) "Emergency" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

(d) "Permit" means the non-exclusive grant of authority to use or occupy all or a portion of the Village's Rights of Way granted pursuant to this Ordinance.

(e) "Permittee" means any person issued a Permit pursuant to this Ordinance to use or occupy all or a portion of the Rights of Way in according with the provisions of this Ordinance and such Permit.

(f) "Right of Way" or "Rights of Way" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right of way now or hereafter held by the Village which shall, within its proper use, entitle a Permittee, in accordance with the terms hereof and of any Permit, to the use thereof for the purpose of installing or

operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any Permit. Right of Way shall also include public property, but only to the extent the use or occupation thereof is specifically granted in a Permit.

Section 2. COMPLIANCE REQUIRED

No person, firm, or corporation shall erect, place, construct, or maintain or cause to be erected, placed, constructed, or maintained any facility, fixture, appliance, or pole for any guy line, wire, or electrical conductor of any description whatsoever, upon or across any Right of Way within the Village without first having applied for and obtained a Permit as provided in this Ordinance.

Section 3. PERMIT APPLICATION

Before any person, firm, or corporation begins any work involving a Right of Way, the person shall make an application for a Permit to the Village Administrator, specifying the location, construction, and use of such facility, fixture, appliance, or pole for any guy line, wire, or electrical conductor of any description whatsoever, the starting date of the work, and the anticipated completion date.

Section 4. RIGHT OF WAY PERMIT

- (a) The Village Administrator shall review the application for a Permit for compliance with Section 3 of this Ordinance and determine if a Permit may be issued. Such Permit shall specifically be subject to all of the terms, provisions, and conditions of all ordinances of the Village, including those pertaining to any franchise rights of the public utility.
- (b) If after reviewing the application, the Village Administrator determines that the Village Engineer's review is required, the application shall be forwarded to the Village Engineer for review.
- (c) If after reviewing the application, the Village Administrator determines that a Permit may be issued, the Applicant shall submit a fee of fifty dollars (\$50.00) to the Village. The Village Administrator shall also determine if a bond is required, and, if so, the bond shall be submitted by the Applicant prior to issuance of the Permit. The bond may be in cash or certified check or may be a surety bond satisfactory to the Village Administrator. The bond shall not exceed the maximum cost necessary to reimburse the Village should it be necessary for the Village to complete that portion of the work involving its Rights of Way.
- (d) The work shall be performed under the direction of the Village Administrator in accordance with the specifications approved by the Village Administrator. If the work does not proceed according to the Village Administrator, the Village Administrator may withdraw the Permit and turn the matter over to the Village Engineer to proceed in accordance with Sections 5 and 6 of this Ordinance.

Section 5. RESPONSIBILITIES OF VILLAGE ENGINEER

The Village Engineer shall review any application forwarded to him by the Village Administrator for compliance with Section 3 of this Ordinance and shall advise the Applicant in writing of the suggested method of new or remedial work, and the time allotted to complete such work. The Village Engineer shall also advise the Applicant of the estimated cost of the work in the Right of Way, and suggest a bond. The bond shall not exceed the maximum cost necessary to reimburse the Village should it be necessary for the Village to complete that portion of the work involving the Right of Way.

Section 6. RIGHT OF WAY PERMIT AFTER REVIEW BY VILLAGE ENGINEER; BOND

The Village Administrator shall issue a Right of Way Permit to the Applicant after the Village Engineer has submitted his recommendations in writing to the Applicant and after the Applicant has agreed to such recommendations and submitted a bond, as recommended by the Village Engineer, and has paid the fee for the Permit in the amount of fifty dollars (\$50.00).

Section 7. DEPOSITS FOR VILLAGE ENGINEER'S REVIEW AND INSPECTION COSTS

When the Village Administrator forwards an application to the Village Engineer for his review, the Applicant is required to deposit five hundred dollars (\$500.00) with the application. Fees for the Village Engineer's review, administration, overhead expenses, and site supervision or inspections shall be deducted from this deposit. In the event the Village determines to utilize persons other than the Village Engineer for such inspections or site supervision, a deposit of five hundred dollars (\$500.00) shall be required before a Permit may be issued and the fees for such inspections shall also be deducted from this deposit. If the actual costs exceed the deposit, the Applicant shall pay the additional costs incurred within seven (7) days of receipt of a statement indicating the amount due. In the event the actual costs plus fifteen percent (15%) overhead are less than the amount deposited by the Applicant, the Village shall refund the balance.

Section 8. PERMIT FOR UNDERGROUND CONSTRUCTION

(a) No person, firm, or corporation shall lay or construct or cause to be laid or constructed any subways, conduits, ducts or pipes in the streets, avenues or alleys within the Village without first having obtained a Permit therefor.

(b) No person, firm, or corporation shall lay or construct or cause to be laid or constructed any subways conduits, ducts or pipes in any public grounds or in any real property of the Village, without first having obtained a Permit therefor.

(c) Any person, firm, or corporation so placing wires underground in any street, alley or public ground of the Village shall, upon written notice from the proper authorities of the Village that a sewer or water main is to be repaired or constructed, comply in such manner as will necessitate the moving or altering the same at his or its expense, so as to permit the constructing or repairing of the sewer or water main where ordered. Should any such person or company fail to comply with such notice, the conduit may be altered

or moved by the Village, and the cost and expense thereof recovered from such person, firm, or corporation.

Section 9. USE OF POLE LINE BY VILLAGE

All applications for permits to erect poles in the streets and alleys of the Village shall provide that the Village may use the poles to be so erected and attach thereto the necessary cross arms, wires, or other electrical appliances as may be deemed necessary for the police and fire signal service of the Village. No permit shall be issued by the Village Administrator for the erection of such poles where an application and Permit does not provide for the privileges required by the Village, as herein contained.

Section 10. PRIORITY OF USE OF RIGHTS OF WAY

When all requested usage of Rights of Way by Permittees cannot be accommodated, the following priorities of use shall apply: (1) the Village shall have first priority; (2) another governmental entity, with the Village's concurrence, or other uses required by law shall have second priority; (3) telecommunication and utility entities and general uses shall have third priority.

Section 11. NONCOMPLIANCE; REMEDY OF VILLAGE

(a) If for any reason the proposed work is done, is being done, or is proposed to be done in a manner other than that specified in the approved application and/or the Engineer's recommendations, the Village Administrator shall send written notice to the Permittee, specifying where the Permittee has failed to comply and give the Permittee five (5) days to correct the deficiency. If the Permittee fails to correct the deficiency within five (5) days, the Village Administrator may, at his option, consider the Permit void and cause the work to be completed in accordance with the approved application and/or the Engineer's recommendations and forfeit the bond to the extent of the cost to the Village of the work performed.

(b) In the event the Village Administrator determines the manner in which the Permittee is performing such work has created an Emergency situation wherein Village and/or private property or personnel is being endangered or damaged by such performance, then the Village Administrator is authorized to notify the Permittee to stop work immediately. The notification may be verbal, to be followed by an order to be issued in writing; shall be effective upon its issuance; and shall be considered a stop work order, the violation of which may be enjoined by the Village upon proper application to the appropriate court.

(c) In the event the status of the work at the time such stop work order is issued is such that a clear and present danger to Village personnel or property exists, the Village may undertake any appropriate measure to alleviate potential danger and the costs for all such measures shall be borne by the applicant, including but not limited to engineering fees, materials, labor and all other costs.

(d) The Applicant may appeal such stop work order to the Village Council, which shall thereafter decide such appeal within fourteen (14) days after the filing of such appeal with the Village Clerk. If the Permittee fails to satisfy the Village Council that it may

safely and appropriately complete the work, then the Permit shall be declared void and the Village Council shall cause the work to be completed in accordance with the approved application and/or the Village Engineer's recommendations, at the Permittee's expense.

Section 99. PENALTY

Whoever violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than 100 hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In addition to the penalty imposed herein, the Village shall have the further right to institute injunctive proceedings or seek other equitable relief against any violator.

Passed: February 18, 2009 _____

Ronald Davis _____
Ronald Davis, Mayor

Attest: Cheryl Jones _____
Fiscal Officer

This instrument prepared by:
William Todd Drown, Solicitor
FOLLAND & DROWN, LPA
555 Chestnut Street
Coshocton, Ohio 43812