

TOWN OF LAFAYETTE

PROTECTION OF TOWN HIGHWAYS FROM DAMAGE CAUSED BY CONSTRUCTION

ORDINANCE 6 - 03

The Town Board of the Town of LaFayette, Walworth County, Wisconsin, does hereby ordain as follows:

SECTION 1.0 PURPOSE

The purpose of this ordinance is to protect the substantial capital investment placed in the Town roads and highways and to minimize spending public funds for unnecessary repairs. It is also the purpose of this ordinance to maintain Town roads in the best possible conditions so as to promote and protect the health, safety and welfare of Town residents and the users of such thoroughfares.

SECTION 2.0 AUTHORITY

The Town Board of the Town of LaFayette has the specific statutory authority, powers and duties, pursuant to § 82.03, WI Statutes, to regulate the damage to highways.

SECTION 3.0 DEFINITIONS

- A. "Person" is defined as any natural person, driver, operator, principal, agent, lessor, lessee, employee, partnership or corporation or its officers.
- B. "Damage" to highways shall be deemed to be any damage, adverse condition or change in a Town road which causes or contributes to the need for repair or replacement of any portion of a Town road or highway, including asphalt, base, shoulder work, ditch work, culvert work or bridge work, or any other damage to public property on or adjacent to a public road or right-of-way in the Town of LaFayette. In the event that this ordinance is complied with, it shall be the burden of the Town to establish that such damage has occurred. In the event that this ordinance is not complied with, the existence of damage to the highways at or adjacent to the alleged violator's project or which occurs over the route of travel of the alleged violator's vehicles, shall be presumed to have been caused by the alleged violator's vehicles, unless such violator can establish otherwise.

SECTION 4.0 WEIGHT RESTRICTION VIOLATIONS

- A. Any person violating the weight restrictions on any roads or highways in the Town of LaFayette shall be deemed to have caused or contributed to the damage of said road or highway by way of excessive wear and tear or by way of specific damages if the same can be established. Actual damages may also be ordered in addition to the fine.
- B. In addition to any other violation of local, county, Administrative Code or State Statute, ordinance or rule, a separate citation may be issued against any person violating this ordinance.
- C. Any person owning or leasing a vehicle or operating or causing to be operated a vehicle which is in excess of Wisconsin State Statute weight limits or Wisconsin Department of Transportation Administrative Code restrictions shall be fined as a penalty for damage to any road or highway as follows:

Fifty dollars (\$50) plus an amount equal to ten cents (\$.10) per pound which is in excess of the most restrictive weight limitation as defined in said ordinance, rule, Administrative Code or Statute.

SECTION 5.0 CONSTRUCTION AND TRANSPORTATION PERMITS

Any person intending to engage in any project or construction in the Town involving the use of local roads which fall under the Town's jurisdiction, the same to be deemed to be highways that are either state or county trunk highways, or interstate highways, shall apply to the Town for a permit to use such roadways in the event that any vehicle, including load, shall exceed sixteen thousand pounds (16,000 #), also known as eight (8) ton. This requirement shall exist in addition to any weight restrictions that are imposed by the Town delineating any road as a Class B highway.

The applicant shall provide to the Town the following information:

- A. The name and address of the applicant.
- B. Description of the project with sufficient specificity for the Town to ascertain to what extent the Town roads shall be used and potentially damaged.
- C. A specific description of the routes of travel.
- D. A specific plan proposed by the applicant to avoid or minimize any road damage.
- E. A signed consent and agreement requiring that both the applicant and the project owner shall be liable for any road damage or costs of repairs as a result of their use of Town roads.
- F. A project schedule.
- G. A 24 hour phone number where the applicant can be contacted during the term of the project.
- H. A cash bond in the amount of five hundred dollars (\$500).

SECTION 6.0 PERMIT APPROVAL

Upon receipt under this section, the Town clerk shall refer such application to the Town Board and the Town Department of Public Works supervisor or chief. The Department of Public Works shall prepare a written response regarding the sufficiency of the application, a summary of concerns to be addressed to protect Town roads, and a personal inspection of the area to be used in such construction. The Department of Public Works shall photograph the immediate area of the work to be done and any other area of road that is, in the Department's belief, susceptible to road damage. The Department of Public Works shall make a reasonable effort to notify the person obtaining the permit so they may be present when the photographs are being taken.

After receiving the report from the DPW, the Town Board shall review the same to determine whether or not the Town's interests in protecting its roadways are adequately protected by virtue of the application and the plan to minimize Town road damage, as well as the recommendation of the Department of Public Works.

The Town Board shall give its approval within forty five (45) days of receipt of the application, or such application shall be deemed denied.

SECTION 7.0 INSPECTION

After a permit has been issued, the Department of Public Works shall regularly inspect the roadway which is permitted to be used by the applicant under this section. Any failure of the Town Department of Public Works to inspect the property shall not be a defense in any action to recover fines or damages under this section.

SECTION 8.0 NOTICE

The person obtaining the permit shall, within five (5) business days of completing the project or construction, provide written notice to the Town of LaFayette that such project is completed. At such time, the Department of Public Works shall cause an inspection of the roadway that has been used under the permit and a report shall be submitted to the Town Board either recommending the release of the cash bond upon a finding that no damage has occurred or a recommendation to the Town Board as to what damage has occurred and the estimated cost thereof. Such recommendation shall be provided to the Town within ten (10) business days of completion of the road inspection by the Department of Public Works.

SECTION 9.0 FINES AND FORFEITURES

In addition to any other fines and forfeitures that are established above, or under state statute or administrative code regulations, each violation of this section shall subject the violator to a fine of no less than fifty dollars (\$50) per day, no more than five hundred dollars (\$500) per day, plus courts costs and penalty assessments. In addition, actual damages as determined by the Township may be assessed. The estimate of damages by the Department of Public Works or the payment of any actual costs of repair shall be deemed prima facia evidence of the amount of damages expended by the Town of LaFayette in effectuating any repair.

SECTION 10.0 SEVERABILITY

In the event that any portion of this ordinance is deemed to be unenforceable or is set aside by a court of law, then each and every remaining provision or clause to this ordinance, including separate sections as to fines and damages, shall be deemed to be severable and shall remain fully enforceable as if unaffected by such decision.

This Ordinance adopted by the Town Board of the Town of LaFayette of this 8th day of April 2009.

Bruno Schiffleger, Chair

Passed this day: 04.08.2009

Barbara A. Fischer, Town Clerk-Treasurer

Filed this day: 04.08.2009