

RESOLUTION NO. 961-16

A RESOLUTION ESTABLISHING PROCEDURES FOR EMPLOYEES REQUIRED TO ENTER ONTO PRIVATE PROPERTY TO MAINTAIN OR REPAIR WATER, SANITARY SEWER AND STORM SEWER FACILITIES

WHEREAS, town employees must enter onto private property from time to time to repair or maintain municipal water, sanitary sewer and storm sewer lines in both emergency and non-emergency circumstances; and

WHEREAS, the Board of Trustees desires to establish procedures for town employees to follow when entering private property for these purposes.

BE IT RESOLVED by the Town of Fowler Board of Trustees as follows.

1. Definitions.
 - a. “Rights-of-Way” are properties held by the town that include an existing or future street or alley including the area often referred to as the “parking” that ordinarily extends a distance ranging from five feet to fifteen feet on either side of the street and that includes the public sidewalk. One may determine the existence and width of rights-of-way by reference to the town map. Town employees may enter onto the town’s rights-of-way at any time without notice.
 - b. “Easements” are an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose. In this case the purpose is to construct, maintain and replace city owned infrastructure. Town employees may enter onto private property within an easement held by the town to construct, maintain, or replace town infrastructure subject to limits and conditions set forth in a controlling easement deed or agreement.
 - c. “Private Property” is any real property not held by the town or other governmental entity and where no easement exists.
2. Routine Individual Shut Offs. In order to avoid inconvenience to a property owner or possessor, town employees will make reasonable efforts to notify a property owner or possessor prior to shutting off potable water to perform routine maintenance on an individual water meter or the service line extending from the water main to the meter. Notice may be given by knocking on the door, by telephone, by posting the property, by mail or by printing a notice in the newspaper where multiple properties will be affected. Employees shall always attempt to minimize customer inconvenience and treat customers with respect but employees are not required to obtain permission of the owner or possessor to work on town owned equipment or facilities unless entering private property.

3. Entry onto Private Property.

a. Water Meters.

- i. *Moving The Meter.* Where water meters are located within private property, the Public Works Superintendent shall provide the utility board with a cost estimate and a time line to move the existing meter pit to a point within the town rights-of-way adjacent to the property line. Alternatively, the Public Works Superintendent may install a remote meter reading unit that allows employees to read the meter from the town rights-of-way.
- ii. A condition of continued municipal water service is the ability of the town to read a customer's water meter. Where a customer refuses to allow town employees access to the water meter for meter readings and non-emergency maintenance or repairs, the town shall give seven days written notice and then terminate potable water service until the meter is moved to a town right-of-way. The town will exercise good faith efforts to move the meter as soon as possible.

b. Non-Emergency Repairs on Private Property.

- i. A non-emergency repair is any repair to a town owned water, sanitary sewer or storm sewer facility located on private property where the repair is not required for the health, safety or welfare of the citizens or to preserve water. This determination is in the sole discretion of the Superintendent of Public Works or designee.
- ii. In case of a non-emergency repair the following procedure will be followed.
 1. town shall give the property owner a minimum of four days' written notice commencing on the date of posting or the date of entry into the U.S. Mail postal stream by either: (a) posting notice on the door of the property or other conspicuous location on the property, or (b) delivering notice to the owner or possessor of the property by first class mail using the most recent mailing address on file with the town.
 2. The notice shall include the time and date of the repair, an estimated length of time required for the repair, and whether any utility service will be temporarily disconnected.

c. Emergency Repairs on Private Property.

- i. An emergency repair is a repair required for the immediate protection of the health, safety or welfare of the citizens or to preserve water.

- ii. In case of an emergency repair on private property the following procedure will be followed.
 - 1. The Superintendent of Public Works or designee shall knock on the door and give personal notice of the situation.
 - 2. If no one answers the door and it is during normal working hours, Superintendent of Public Works or designee shall contact town hall to determine if the owner or possessor has provided a phone number that can be used to contact the owner or possessor. If a phone number is available, the Superintendent of Public Works or designee shall use best efforts to contact the owner and give personal notice of the situation.
 - 3. Once personal notice is given the repairs may begin.
 - 4. If it is not possible to give notice after good faith efforts and the emergency involves water, if required, due to the nature of the emergency, the Superintendent of Public Works or designee shall disconnect the water service until such time as notice can be given.
 - 5. In cases where it is not possible to give notice and it is impossible to disconnect the water or where the emergency involves another service, the Superintendent of Public Works or designee shall make whatever repair is required to avoid harm to the public and shall notify the owner or possessor after the fact by placing notice on the door of the property or on a conspicuous location on the property.

d. Refusal to Allow Entry

- i. If cases where a property owner or possessor refuses or delays entry onto private property where an emergency repair is required, the property owner shall be liable for all damage resulting from the delayed repair.
- ii. If required to mitigate the emergency, following a property owner's or possessor's refusal, the town shall locate and disconnect the utility line on the town's right-of-way. In such cases, the disconnection shall continue until, as a condition of reconnection, the property owner provides the town with a bond or a cash deposit in the amount of ten-thousand dollars (\$10,000) to protect the town and any third parties who may be damaged from any future refusals to allow entry resulting in delay or inability of the town to effect an emergency repair. The bond will be released or the cash deposit returned when the real property at issue is transferred to a third party.

4. Conflicts. All resolutions or parts of resolutions in conflict with this resolution are hereby repealed or amended to the extent necessary to conform to this resolution.

5. Severability. If any section, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional by a decision of any Court, such decision shall not affect the validity of the remaining portions of this resolution.

ADOPTED, PASSED AND APPROVED this 28th day of March 2016.

Charles R. Hitchcock, Mayor

ATTEST:

Kelly Lotrich, Town Clerk