

### ARTICLE III. - PUBLIC RIGHT-OF-WAY MANAGEMENT

#### Sec. 70-60. - Findings, purpose, and intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City of Blaine strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City of Blaine hereby ~~enacts~~ amends this ~~new chapter~~ article of this Code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050—7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

(Ord. No. 13-2264, 6-6-2013)

#### Sec. 70-61. - Election to manage the public rights-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant Minn. Stat. § 237.163, subd. 2(b), to manage rights-of-way within its jurisdiction.

(Ord. No. 13-2264, 6-6-2013)

#### Sec. 70-62. - Definitions.

The following definitions apply in this chapter of this Code. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

*Abandoned facility* means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. ~~[A facility is not abandoned unless declared so by the right-of-way user.]~~

*Applicant* means any person requesting permission to excavate or obstruct a right-of-way.

*City* means the City of Blaine, Minnesota ~~[. - For purposes of section 70-88, "city" means]~~ its elected officials, officers, employees and or agents.

Collocate or collocation means to install, mount, maintain operate, or replace a Small Wireless Facility on, under, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other government unit.

*Commission* means the state public utilities commission.

*Congested right-of-way* means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stat. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

*Construction performance bond* means any of the following forms of security provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- (4) Letter of credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

*Degradation* means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

*Degradation cost* subject to Minnesota Rule 7819.1100 means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

*Degradation fee* means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

*Department* means the public services department of the city.

*Department inspector* means any person authorized by the city to carry out inspections related to the provisions of this section.

*Director* means the public services manager of the city, or the city's designee.

*Delay penalty* means the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

*Emergency* means a condition that poses a danger to life or health; or of a significant loss of property; or requires immediate repair or replacement of facilities in order to restore service to a customer.

*Equipment* means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

*Excavate* means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way except horticultural practices of penetrating the boulevard area to a depth of 12 inches or less.

*Excavation permit* means the permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit. Overhead facilities, including setting utility service poles, do not require an excavation permit.

*Excavation permit fee* means money paid to the city by an applicant to cover the costs as provided in section 70-~~72~~73.

*Facility or facilities* means any tangible asset, including equipment, that is located in the right-of-way, including facilities placed underground ("underground facilities") and facilities installed above the ground, which may include, but is not limited to poles, utility cabinets, towers, wires, and related attachments,

including anchors and foundations, transit amenities and gas district regulator stations ("overhead facilities").

*High density corridor* means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

*Hole* means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

*Local representative* means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

*Management costs* means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to section 70-~~90-91~~ of this chapter.

*Micro wireless facility* means a small wireless facility that is no longer than twenty-four (24) inches long, fifteen (15) inches wide, and twelve (12) inches high, and whose exterior antenna, if any, is no longer than eleven (11) inches.

*Newspaper vending machine* means any device designed for and used to hold and dispense newspapers or other printed publications.

*Obstruct* means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

*Obstruction permit* means the permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein. Obstruction permits are required to install overhead facilities.

*Obstruction permit fee* means money paid to the city by a permittee to cover the costs as provided in section 70-~~7273~~.

*Patch* or *patching* means a method of pavement replacement that is temporary in nature. A patch consists of the compaction of the subbase and aggregate base, and the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

*Pavement* means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

*Permit* has the meaning given "right-of-way permit" in Minn. Stat. § 237.162.

*Permittee* means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

*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 nonprofit, and whether natural, corporate, or political.

*Probation* means the status of a person that has not complied with the conditions of this article.

Probationary period means one year from the date that a person has been notified in writing that they have been put on probation.

*Public right-of-way* or *right-of-way* means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service. Public grounds and property are also considered "public right-of-way" for purposes of this chapter with respect to "telecommunications right-of-way users".

*Registrant* means any person who has or seeks to have its equipment or facilities located in any right-of-way, or in any way occupy or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

*Restore* or *restoration* means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

*Restoration cost* means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

*Right-of-way permit* means ~~either~~ the excavation permit, ~~or the~~ obstruction permit, small-wireless-facility permit, or conditional/special use permit, or ~~both~~ any combination thereof, depending on the context, required by this ~~chapter~~ article.

*Right-of-way user* means:

- (1) A telecommunications right-of-way user as defined by Minn. Stat. § 237.162, subd. 4.
- (2) A person or entity owning or controlling a facility in the right-of-way that is used or intended to be used for providing a ~~utility~~ service, and who has a right under law, franchise, or ordinance to use the public right-of-way, including persons or entities who have installation and maintenance responsibilities by contract, lease, sublease, or assignment.
- (3) A person or entity owning or controlling a facility in the right-of-way that is used or intended for something other than providing utility service, including persons who have installation and maintenance responsibilities by contract, lease, sublease, or assignment.

*Service* ~~or utility service~~ includes:

- (1) Those services provided by a public utility as defined in Minn. Stat. § 216B.02, subds. 4 and 6;
- (2) Services of a telecommunications right-of-way user, including transporting of voice or data information;
- (3) Services of a cable communications systems as defined in Minn. Stat. ch. 238;
- (4) Natural gas or electric energy or telecommunications services provided by the city;
- (5) Services provided by a cooperative electric association organized under Minn. Stat. ch. 308A; and
- (6) Water, and sewer, including service laterals, steam, cooling or heating services.

*Service lateral* means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

Small wireless facility means a wireless facility that meets both of the following qualifications: (1) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and (2) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than twenty-eight (28) cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable conduit, vertical

cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Small-wireless-facility permit means the permit which, pursuant to this article, must be obtained before a person may install, place, maintain, or operate a small wireless facility in a public right of way to provide wireless service. A small-wireless-facility permit allows the holder to conduct such activities in that part of the right-of-way described in such permit. A small-wireless-facility permit does not authorize (1) providing any service other than a wireless service, or (2) installation, placement, maintenance, or operation of a wireline backhaul facility in the right of way.

Small-Wireless-Facility Permit Fee means money paid to the city by a permittee to cover the costs as provided in section 70-73.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend or supply additional information to, a permit that had already been submitted or issued.

Temporary surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

Transit amenity means a bus shelter or bench, with or without advertising, constructed and maintained at a designated transit stop along a public street, located on a public boulevard, for the convenience and comfort of persons waiting for buses or other transit vehicles.

Trench means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Telecommunication right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. § 16B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. chs. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this chapter article except to the extent such entity is offering wireless service.

Two-year project plan shows projects adopted by the city for construction within the next two years.

Utility originated projects means planned projects for replacement of existing facilities as a result of obsolescence, deterioration or to increase capacity or new projects to improve service or capacity. Projects to provide direct service within new developments are not included.

Utility pole means a pole that is used in whole or in part to facilitate telecommunications or electric service.

Wireless facility means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, that are not otherwise immediately adjacent to and directly associated with a specific antenna.

Wireless service means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

Wireless support structure means a new or existing structure in a right of way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

Wireline backhaul facility means a facility used to transport communications data by wire from a wireless facility to a communications network.

*Work in right-of-way permit* means a permit, on a form issued by the city, for minor work in the right-of-way typically done by private property owners or their contractors. This includes such work as mailbox banks, driveways or sewer and water utility service repairs and installations.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-63. - Administration.

The city may designate a principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city may delegate any or all of the duties hereunder.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-64. - Registration and right-of-way occupancy.

- (a) *Registration.* Each person who occupies or uses, or seeks to occupy or use, the right-of-way or any facilities located in the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information to and as required by the city, and paying a registration fee. If the work is to be performed by agent, contractor or subcontractor on behalf of a registrant, such application shall also be signed or preauthorized by the registrant.
- (b) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.
- (c) *Exceptions.* Persons engaged in the following activities in the right-of-way are not deemed to use or occupy the right-of-way, and are not governed by this section, but may be governed by other City Code of Ordinance sections or permit requirements such as a work in right-of-way permit.
  - (1) Planting or maintaining boulevard plantings in the right-of-way between their property and the street curb, subject to section 82-233, Intersection sight distance triangle, of the City Code of Ordinances.
  - (2) Installing non-vegetative landscaping items such as blocks, bricks, timber or rocks to a height of 12 inches or less above the existing ground.
  - (3) Installing, modifying or replacing private driveways. These activities may require a separate work in the right-of-way permit and are subject to the conditions of that permit.
  - (4) Installing, modifying, repairing or replacing private sewer and water services. These activities do require a separate work in the right-of-way permit and are subject to the conditions of that permit.
  - (5) Installing private irrigation systems or pet containment systems.
  - (6) Installing mail boxes or newspaper delivery boxes on a stand consisting of a post no larger than four inches by four inches.
  - (7) Federal, state county and city agencies.
  - (8) Persons installing newspaper vending machines must comply with section 70-~~93~~-94 of this article.

However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. ch. 216D, Gopher One Call Law.



If, for any reason, the city or its agents needs to perform work in the right-of-way, the owner may be required, at their expense, to remove any structures, landscaping or boulevard plantings and visibly mark any private irrigation or pet containment systems located within the right-of-way within seven days of being notified. Any expenses or damages arising from the work and subsequent removal and replacement of any structures, landscaping or boulevard plantings, or damages to unmarked irrigation and pet containment systems within the right-of-way is the sole responsibility of the owner.

- (d) *Franchise agreement.* Any service or utility provided by a person under a franchise with the city shall register pursuant to this section, but need not provide the registration information required by section 70-64 if such information has been received by the city in the administration of the franchise agreement.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-65. - Right to occupy rights-of-way.

- (a) *Payment of fees.* Any person required to register under section 70-64 which occupies, uses or places its equipment in the right-of-way is hereby granted a right to do so if and only so long as it timely pays all fees as provided herein and complies with all other requirements of law, to be determined in the sole opinion of the city.
- (b) *Conditions.* The grant of such right is expressly conditioned on and is subject to the police powers of the city, continuing compliance with all provisions of law now or hereinafter enacted, including this chapter as it may be amended from time to time and further, is specifically subjected to the obligation to obtain any and all additional required authorizations whether from the city or other body or authority.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-66. - Franchise; franchise supremacy.

The city may, in addition to the requirements of this chapter, require any person which has or seeks to have facilities located in any right-of-way to obtain a franchise to the full extent permitted by law now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this chapter whether granted prior or subsequent to enactment of this chapter, shall control and supersede the conflicting terms of this chapter. All other terms of this chapter shall be fully applicable to all persons whether franchised or not.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-67. - Registration information.

- (a) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:
  - (1) Each registrant's name, Gopher One Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
  - (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - (3) A certificate of insurance or self-insurance:

- a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;
  - b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:
    - 1. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and
    - 2. Placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
  - c. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
  - d. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and
  - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- (4) The city may require a copy of the actual insurance policies.
  - (5) If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. § 300.06 as recorded and certified to by the secretary of state.
  - (6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
  - (7) Such other information as the city may require.
- (b) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-68. - Reporting obligations.

- (a) *Operations.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for ~~[utility-]~~service originated projects with the city. Registrants must use commercially reasonable efforts to anticipate and plan for all upcoming projects and include all such projects in a construction or major maintenance plan. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

The plan shall include, but not be limited to, the following information:

- (1) The locations and the estimated beginning and ending dates of all ~~[ utility-originated ]~~-projects ~~projected by the utility~~, to be commenced during the next calendar year (in this section, a "next-year project"); and
- (2) To the extent known, the tentative locations and estimated beginning and ending dates for all ~~[utility-originated]~~-projects contemplated for the five years following the next calendar year (in this section, a "five-year project").



- (3) The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects, including city projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

- (b) *Additional next-year projects.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-69. - Permit requirement.

- (a) *Permit required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

- (1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and/or to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein. Excavation permits are not required for overhead facilities, including installation of poles for utility services.
- (2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment, facilities, vehicles or other obstructions described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

An obstruction permit ~~is~~ may not be required for obstructions of eight hours or less for the purpose of repairing or maintaining previously installed facilities. An obstruction permit is required by a registrant to install overhead or above-ground facilities in a public right-of-way, including excavation of holes for the installation of supporting poles and structures.

- (3) *Small wireless facility permit.* A small-wireless-facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked. No small-wireless-facility permit is required to solely conduct (1) routine maintenance of a small wireless facility; (2) replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or (3) installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes, however, a service provider is required to make written notice of such activities to the city if the work will obstruct a public right of way.
- (4) *Special/Conditional Use Permit.* A special or conditional use permit is required to install a new wireless support structure for the siting of a small wireless facility in a right of way in a district or area that is zoned for single-family residential use or within a historic district established by federal or state law or city ordinance as of the date of application for a small wireless facility permit.

- (b) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:
  - (1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and
  - (2) A new permit or permit extension is granted.
- (c) *Delay penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3, and notwithstanding subsection (b) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council ordinance. A delay penalty shall not be imposed if the delay in project completion is due to force majeure, including inclement weather, labor disputes, acts of God or other circumstances beyond the control of the registrant, and recognizing registrant's need to respond to emergencies in other communities.
- (d) *Permit display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(Ord. No. 13-2264, 6-6-2013)

#### Sec. 70-70. - Permit applications.

Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- (1) Registration with the city pursuant to this chapter;
- (2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and defined area of the proposed project and the location of all known existing and proposed facilities, as determinable from existing records, within the defined project area.
- (3) Payment of money due the city for:
  - a. Permit fees, estimated restoration costs and other management costs;
  - b. Prior obstructions or excavations;
  - c. Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
  - d. Franchise fees or other charges, if applicable.
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
- (5) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

(Ord. No. 13-2264, 6-6-2013)

#### Sec. 70-71. - Issuance of permit; conditions.

- (a) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall either issue a permit or provide reasons in writing for denial of the application.
- (b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all

requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

(c) *Small wireless facility conditions.* In addition to subd. (b), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

- (1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (2) No new wireless support structure installed within the right-of-way shall exceed fifty (50) feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding fifty (50) feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- (3) No wireless facility may extend more than ten (10) feet above its wireless support structure.
- (4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and existing wireless support structure or other facilities in and around the right-of-way.
- (5) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
- (6) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement or relocation requirements on the replacement of such structure.

(d) *Small wireless facility agreement.* A small wireless facility shall only be issued after the applicant has executed a standard small wireless facility collocation and lease agreement with the city. The standard collocation agreement may require payment of the following:

- (1) Up to \$150 per year for rent to collocate on the city structure;
- (2) \$25 per year for maintenance associated with the collocation;
- (3) If the provider obtains electrical service through the city, a monthly fee for electrical service as follows:
  - a. \$73 per radio node less than or equal to 100 maximum watts;
  - b. \$182 per radio node over 100 maximum watts; or
  - c. the actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit provided, however, ~~that~~ the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter, or affect any then-existing agreement between the city and applicant.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-72. – Action on small-wireless-facility permit applications.

(a) *Deadline for action.* The city shall approve or deny a small wireless facility permit application within ninety (90) days after filing of such application. The small wireless facility permit, and any associated

building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

- (b) Consolidated applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- (1) are located within a two-mile radius;
- (2) consist of substantially similar equipment; and
- (3) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

- (c) Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- (1) The city receives applications from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities within a seven (7) day period. In such cases, the city may extend the deadline for all such applications by thirty (30) days by informing the affected applicants in writing of such extension.
- (2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness, with specificity as to the missing information, to the applicant within thirty (30) days of receipt of the application. Upon submission of additional documents or information, the city shall have ten (10) days to notify the applicant in writing of any still-missing information.
- (3) The city and small wireless facility applicant agree in writing to toll the review period.

Sec. 70-~~72~~73. - Permit fees.

- (a) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:
  - (1) The city management costs.
  - (2) Degradation costs, if applicable.
  - (3) Restoration, if done or caused to be done by the city.
- (b) *Obstruction permit fee.* The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city costs allocated to obstruction permits.
- (c) *Small wireless facility permit fee.* The city shall impose a small wireless facility permit fee in an amount sufficient to recover:
  - (1) management costs, and;
  - (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- (d) *Conditional/Special use permit fee.*

- (~~e~~) *Delay penalty.* The city may, at its discretion, establish and impose by ordinance of the city council a delay penalty for unreasonable delays in excavations or obstructions in the right-of-way. A

delay penalty will not be imposed for delays due to force majeure, including inclement weather, labor disputes, acts of God, or other circumstances beyond the control of the applicant. Before imposing a delay penalty, the city will recognize and take into consideration the applicant's need to respond to emergencies in other communities or areas.

(~~if~~<sup>fe</sup>) *Payment of permit fees.* No excavation permit, ~~or~~ obstruction permit, small-wireless-facility permit, or conditional use permit shall be issued without payment of ~~excavation or obstruction~~ corresponding permit fees. Permittees that typically obtain large numbers of permits each year may request that permit fees be billed to the permittee quarterly rather than at the time of each individual permit application. Approval of any such request will be at the sole discretion of the city and subject to a billing agreement between the city and the permittee.

(~~if~~<sup>lf</sup>) *Nonrefundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in section 70-~~82~~ 83 are not refundable. Any refunded permit fees shall be reduced by all city costs up to and including the date of refund.

(~~if~~<sup>he</sup>) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~73~~ 74. - Right-of-way patching and restoration.

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under section 70-7~~6~~ 7. The permittee must inspect the area of the work and use reasonable care to maintain the same condition for 12 months thereafter.
- (b) *Patch and restoration.* Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
  - (1) *City restoration.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.
  - (2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000. If, 12 months after completion of the restoration of the right-of-way, the city determines that the right-of-way has been properly restored, the surety on the performance bond shall be released.
  - (3) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee to cover city costs associated with a decrease in the useful life of a public right-of-way caused by excavation. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- (c) *Standards.* The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100.
- (d) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents and shall maintain it for 12 months following its completion. During this 12-month period it shall, upon notification from the city, correct all restoration work to the extent necessary using the method required by the city. When corrective work is necessary to restore

service or to insure safety, work shall be completed within five days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under section 70-7[6]7. Where corrective work is required, but is not necessary to restore service or to insure safety, work shall be done promptly upon receipt of notice.

- (e) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures, and shall allow the permittee ten days from the receipt of said written notice to cure said failure or failures, or to respond with a plan to cure. In the event the permittee fails to cure or fails to respond hereunder, the city at its option may perform the necessary work, and the permittee shall pay to the city, within 30 days of billing, the actual cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-74[75]75. - Joint applications.

- (a) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- (c) *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-75[76]76. - Supplementary applications.

- (a) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.
- (b) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-76[77]77. - Other obligations.

- (a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or



other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. § 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

- (b) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- (d) *Trenchless excavation.* As condition of all applicable permits, permittees employing trenchless excavation methods including but not limited to horizontal directional drilling shall follow all requirements set forth in Minn. Stat. ch. 216D and Minnesota Rules chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.
- | (e) *Traffic control.* The permittee shall take appropriate measures to assure that during the performance of the work, traffic conditions as nearly normal and as practical shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public. The city may permit the closing of streets to all traffic for a period of time prescribed by the city if, in the sole opinion of the city, such closure is necessary. The permittee shall implement traffic control measures and use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the Minnesota Department of Transportation. The following steps shall be taken before any roadway may be closed or restricted to traffic:
  - (1) The permittee must receive the approval of the city.
  - (2) The permittee must notify the chiefs of the police and fire departments, the school district transportation coordinator, the ambulance service serving the city, the metropolitan council transit operations, Anoka County Traveler Transportation Coordinator and the U.S. Post Office of any streets so closed or restricted.
  - (3) Upon completion of construction work the permittee shall notify the chiefs of the police and fire departments, the school district transportation coordinator, the ambulance service serving the city, the metropolitan council transit operations, Anoka County Traveler Transportation Coordinator and the U.S. Post Office before traffic is moved back to its normal flow so that any necessary adjustments may be made.
- | (f) *Access to fire stations and fire hydrants.* The work shall be performed and conducted so as not to unreasonably interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants or plugs, and passageways leading to fire escapes or fire fighting equipment shall be kept free of piles of material or other obstructions.
- | (g) *Vehicular and pedestrian crossings.* The permittee shall erect and maintain suitable barriers to confine dirt from trenches or other excavations in order to prevent such dirt from encroaching upon roadways as much as possible. When necessary, the permittee shall construct and maintain adequate and safe crossings over excavations and across roadways under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Vehicular and pedestrian crossings shall be constructed and maintained of adequate size and strength to safely accommodate vehicular and pedestrian traffic.
- | (h) *Interference with utilities.* The permittee shall not unreasonably interfere with any existing utility without the written consent of the city and the utility company or person owning the utility. If it

becomes necessary to remove an existing utility, it shall be done by its owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee.

- (i) *Pedestrian facilities*. When pedestrian facilities, such as sidewalks or trails, are impacted due to the work, pedestrian accommodations must be provided to the maximum extent feasible. These accommodations must have accessibility features up to the level of the disturbed route. Signage and devices, as necessary, must be provided to direct pedestrians safely through the work zone.

If an existing pedestrian route is impacted by a short-term or short duration work zone that is attended with project personnel, establishing an alternate pedestrian route may not be necessary if the work can be stopped and pedestrians can navigate the work zone safely. Pedestrians may be delayed for a short period of time for project personnel to move equipment and material to facilitate passage. Project personnel may also assist pedestrians with disabilities.

- (j) *Protection of the public*. The permittee shall erect such barriers and provide such warning devices about the site of the excavation work as shall prevent danger to persons using the city street or sidewalks, and such protective barriers shall be maintained until the work shall be completed or the danger removed.
- (k) *Excavated material*. All material excavated from trenches and piled adjacent to the trench or any street shall be piled and maintained in such a manner as not to endanger those working in the trench, pedestrians, or users of the streets and so that as little inconvenience as possible is caused to those using streets and adjoining property. Appropriate protections must be utilized to prevent the migration of Excavated Materials caused by wind, water or other erosion means.
- (l) *Damage to existing improvements*. All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repairs shall conform to the requirements of this Code.
- (m) *Clean up operations*. As the excavation work progresses, all streets and private property shall be thoroughly cleaned of all rubbish, excess earth, rocks, and other debris resulting from such work. All clean up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the city.
- (n) *Private irrigation systems, invisible dog fences and landscaping*. Any damage done to existing private irrigation systems, invisible dog fences and landscaping during the progress of the project shall be repaired by the permittee at their expense and shall be completed to the satisfaction of the city. The permittee shall protect the root growth of significant trees both in and adjacent to the right-of-way.
- (o) *Property corners and monuments*. The permittee shall replace, with the services of a Minnesota licensed land surveyor, any property corners or monuments disturbed as a result of the project.
- (p) *Notification*. The permittee must provide 48-hour written notice to abutting property owners before commencement of any project work that may disrupt the use of and access to the abutting property.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~177~~178. - Denial of permit.

- (a) *Reasons for denial*. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. The city may deny a permit if the utility has failed to comply with previous permit conditions. The city may withhold issuance of a permit until the applicant is in compliance with the conditions of a previous permit.
- (b) *Procedural Requirements*. The denial of a right of way permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three (3) business days of the decision to deny a permit. If an application is denied, the right-

of-way user may cure the deficiencies identified by the city and resubmit its application. If the application is resubmitted within thirty (30) days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within thirty (30) days after submission.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~78~~79. - Installation requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits, city specifications, city design standards and/or agreements referenced in section 70-~~83~~84(b) of this chapter.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~79~~80. - Inspection.

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.
- (b) *Site inspection.* Permittee shall make the work-site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. Permittee shall schedule, with the city, all inspections in a timely manner as indicated on the permit.
- (c) *Authority of director.*
  - (1) At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
  - (2) The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes so long as the nonconformance constitutes a "substantial breach" as set forth in Minn. Stat. § 237.163, subd. 4(c)(1)—(5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to section 70-~~82~~83.
  - (3) The cost of any action taken by the city shall be paid by the permittee.
  - (4) The director may require that the permittee immediately cease work if the permittee has recently performed work without regard for public safety. Such work without regard for public safety may include, but not be limited to, causing by means of work within the right of way, damage to two or more utility facilities within 48 hours or damage to three or more utility facilities within one week. Should such work without regard for public safety occur, the director reserves the right to require:
    - a. That the permittee cease work immediately;
    - b. Prepare a new safety plan to prevent future occurrences;
    - c. Present said safety plan to the director or the director's staff for approval 24 hours after the order to cease work;

- d. That the permittee not return to work until the safety plan satisfies the director; and
- e. The director instructs the permittee that it is okay to return to work by form of a written letter.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~80~~81. - Work done without a permit.

- (a) *Emergency situations.* Each registrant shall immediately notify the director or the director's designee of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

- (b) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the City Code, deposit with the city the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~84~~82. - Supplementary notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~82~~83. - Revocation of permits.

- (a) *Substantial breach.* The city reserves its right, as provided herein and in accordance with Minn. Stat. § 237.163, subd. 4, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - (1) The violation of any material provision of the right-of-way permit;
  - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
  - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
  - (4) The failure to maintain the required bonds and/or insurance;
  - (5) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

- (6) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 70-80~~79~~.
- (b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall ~~make a written demand upon the permittee to remedy such violation~~follow the procedural requirements of Sec. 70-78(b) of this article. In addition, ~~The~~the demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- (c) *Response to notice of, breach.* Within a time period established in a written notification of breach received from the city, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- (d) Cause for Probation. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside the permit authorization.
- (e) Automatic Revocation. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.
- (f[e]) Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~83~~84. - Mapping data.

- (a) *Information required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, ~~owed~~owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.
- (b) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rule 7560.0150, subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subsection (b) and with applicable Gopher State One Call Law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for:
- (1) Payments to contractors working on a public improvement project including those under Minn. Stat. ch. 429, and
  - (2) City approval of performance under development agreements, or other subdivision or site plan approval under Minn. Stat. ch. 462.

The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~84~~85. - Location and relocation of facilities.

(a) *Placement, location, and relocation of facilities* must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

~~(b) *Undergrounding.* Unless otherwise agreed in a franchise or other agreement between the applicable right-of-way user and the city, facilities in the right-of-way must be located or relocated and maintained underground in accordance with section \_\_\_\_\_ of the city code.~~

~~(b)~~ (e) *Corridors.* The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

~~(dc)~~ *Nuisance.* One (1) year after the passage of this article, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or right it has at law or in equity, including but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

~~(ede)~~ *Limitation of space.* To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

~~(def)~~ *Joint trenching.* All facilities must be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate and no safety hazards are created, all utilities must be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines must be placed in conformance with state rules governing safety standards.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~85~~86. - Pre-excavation facilities location.

In addition to complying with the requirements of Minn. Stat. § 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said



facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~86~~87. - Damage to other facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~87~~88. - Right-of-way vacation.

*Reservation of right.* If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rule 7819.3200.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~88~~89. - Indemnification and liability.

Issuance of a permit does not impose any liability on the city for (i) injuries to persons, damage to property or loss of service claims by parties other than the permittee or the city, or (ii) claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.

By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend, indemnify and hold harmless the city, its officials, officers, employees and agents in accordance with the provisions of Minnesota Rule 7819.1250.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~89~~90. - Abandoned and unusable facilities.

- (a) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.
- (b) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~90~~91. - Appeal.

- (a) *Appealing denial, revocation, or fees.* A person that has been denied registration, has been denied a right-of-way permit, has had its right-of-way permit revoked, or believes that the fees imposed on the

user by the city are not in conformity with Minn. Stat. § 237.163, subd. 6, or disputes a determination of the director regarding subsection 70-843(b) of this article may have the denial, revocation or fee imposition reviewed, upon written request by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the city council affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~94~~92. - Reservation of regulatory and police powers.

The city by the granting of a right-of-way permit, or by registering a person under this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or which may be hereafter vested in the city under the Constitution and Statutes of the State of Minnesota or the Charter of the city to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a right-of-way permit or by registration under those ordinances agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same maybe from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such powers.

Any permit issued pursuant to this section is subject to the future exercise of the police power by the city and the issuance or termination of such will not entitle the permittee to any compensation from the city by virtue of the exercise of such police power.

Any conflict between the provisions of a registration or of a right-of-way permit and any other present or future lawful exercise of the city's regulatory or police powers shall be resolved in favor of the latter.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~92~~93. - Transit amenities.

No person shall place or maintain any transit amenity on public right-of-way in the city unless they shall have obtained a permit and have complied with the provisions of this chapter.

- (1) *Procedure for issuance of permits*. The city will take into account such things as comments or complaints from adjacent property owners, ridership numbers at the proposed location, and the locations of other transit amenities along a transit route when considering the issuance of a permit. A permit to install and maintain a transit amenity on or along any public sidewalk or right-of-way may be issued by the city to a person complying with the following requirements:
  - a. The person, firm or corporation desiring such a permit shall make application to the city pursuant with section 70-70, and include the requested location and detailed plans and specifications of each proposed transit amenity and any other such information as may be deemed necessary by the city.
  - b. The location of each transit amenity shall be placed at an active, designated pickup location for the public transit system.
  - c. If the transit amenity placement is proposed to be located within Anoka County or Minnesota Department of Transportation right-of-way, written permission must be secured from Anoka County or the Minnesota Department of Transportation and filed with the city.
  - d. All permits shall expire as of the 31st day of December next following the date of issuance thereof, unless renewed. At least 30 days prior to the expiration of any permit, the holder

may make written application for renewal thereof, accompanied by the permit fee in an amount as set forth by city council ordinance. Renewal of permits shall not be automatic. Some factors used in considering permit renewal will be the level of demonstrated demand by the public for the transit amenity and comments or complaints from adjacent property owners.

- e. If plans and specifications of the transit amenity or location of the transit amenity are not to be changed, the application for renewal shall be sufficient if the applicant gives their name and address and the location and number of the transit amenity for which a renewal permit is desired. Whenever a transit amenity for which a permit has been issued is sold or title or control thereof transferred or assigned, a new permit shall be required and obtained for its maintenance.
- f. If the application is for permits for more than one transit amenity at the same or different locations, a separate number and permit shall, when issued, be assigned and granted for each transit amenity authorized to be installed, but each such permit issued shall be valid only for the particular location designated therein.

(2) *Locations where transit amenities are prohibited*. No permit shall be issued for the installation of any such transit amenity:

- a. Without the approval of the city.
- b. In any locations, districts or zones as established by the city council.
- c. At any location where the distance from the face of curb to the inside sidewalk line is less than six feet.
- d. At any location more than 50 feet from the nearest point of intersection within a street unless the designated bus stop is in such other location.
- e. At any location within 500 feet of another transit amenity in the same direction of travel, unless multiple amenities are permitted at a single location. Multiple amenity locations must be approved by resolution of the city council. For the purposes of this section, multiple amenity locations are defined as locations with more than one bus bench or shelter; bus shelters with interior benches will constitute a single amenity site.
- f. At any location that is in conflict with public or private infrastructure or poses a health or safety concern to the public, as solely determined by the city.
- g. Bus shelters may not be located within the AG, FR, RE, R-1, R-1A, R-1AA, R-1B, or R-2 zoning districts unless located along a collector or arterial street or at a public facility.

(3) *Revocation*.

- a. The application for installation and maintenance of any transit amenity shall be denied if the city shall find that the maintenance of the transit amenity at the proposed location would tend to unduly obstruct passage along any public sidewalk or public way or to create a hazard, or otherwise be detrimental to the public safety, convenience or welfare.
- b. Any permit may be revoked, or the application for renewal thereof denied, for failure to comply with the provisions of this chapter, or for misrepresentation of any material facts in the application, or for any reason which would have been ground for denial of the original application, or where in the judgment of the city, maintenance has become inappropriate. No revocation or denial shall be made arbitrarily or inequitably as between different applicants.

(4) *Standards and maintenance*.

- a. Each permitted transit amenity shall be installed parallel with the curb and set back not less than 30 inches from the face of the curb.

- b. No bench shall be more than 42 inches high nor more than 30 inches wide or seven feet long.
  - c. Bus shelters are limited to a maximum dimension of 120 square feet and ten feet in height, unless a specific site as determined by the city requires a larger shelter due to the special nature of the transit stop.
  - d. Each transit amenity shall have the permit number displayed in a conspicuous place.
  - e. Benches and shelters shall be installed on a level and stable base on a concrete slab, with an extension to a sidewalk or curb line in compliance with current Americans with Disabilities Act (ADA) standards as applicable or required unless otherwise authorized by the city.
  - f. At no time may a transit amenity be installed on or otherwise encroach upon any sidewalk, trail, or other walkway or conveyance.
  - g. It shall be the duty of the permittee to maintain, at the permittee's cost, each transit amenity at all times in a safe condition at its proper location and to inspect each bench periodically in order that it may be properly maintained. Transit amenities shall be kept at all times in a clean and useable condition. Ice and snow shall be removed from the transit amenities and the vicinity in such a manner that each transit amenity shall be accessible within 72 hours of a snow fall or other weather event. Trash and debris shall be removed weekly. Weeds and grass shall be maintained at less than six inches in length. Any graffiti shall be removed and any damage to the transit amenity shall be repaired within two days of discovery or receipt of notice from the city.
  - h. When directed by the city as necessary to address refuse and litter issues, transit amenity sites shall be equipped with an architecturally complementary trash receptacle. The permittee, at their cost, shall maintain and empty the trash receptacle weekly.
- (5) *Advertisements.* Advertising may be allowed upon a transit amenity in accordance with the following standards:
- a. No advertising matter or sign shall be displayed upon any bench except only upon the front surface of the backrest and may not be lighted, flashing or moving.
  - b. Advertising matter or signs on shelters must be located on the far end wall of the shelter away from the direction of travel for the transit route serving the stop.
  - c. Advertising panels on a bus shelter are limited to two panels measuring a maximum of 24 square feet per panel.
  - d. No advertising matter or sign shall display the words "STOP," "LOOK," "DRIVE IN," "DANGER," or any other word, phrase or symbol which might interfere with, mislead or distract traffic.
- (6) *Removal of transit amenities.*
- a. Upon the revocation or expiration of any permit without renewal, if the permittee fails to promptly remove a transit amenity, the city may do so within ten days after written notice given by mail directed to the address of the permittee on file, and if the permittee shall fail to pay the cost of removal and storage thereof within a period of 60 days after the giving of such notice, the permittee's rights in said transit amenity shall be forfeited, but such forfeiture shall not excuse the permittee from the payment of the cost of removal and storage of said transit amenity.
  - b. The permittee shall move benches or shelters immediately upon request of the city, at the permittee's expense, should temporary or permanent removal be made necessary by construction or repair work in the vicinity of the transit amenity or if the transit amenity poses a safety hazard or interferes with pedestrian or vehicular travel within the right-of-way.

- c. The permittee shall remove, at the permittee's expense, benches or shelters within 30 days if a transit stop is no longer active at the location of the transit amenity.

(7) *Insurance and bonding.*

- a. Applicants for permits shall maintain insurance in accordance with subsection 70-67(a)(3).
- b. The insurance shall be maintained in its original amount by the permittee at the permittee's expense at all times during the period for which the permit is in effect.
- c. In the event that two or more permits are issued to one permittee, one such insurance policy may be furnished to cover two or more benches or shelters and the insurance policy shall be of a type in which coverage shall automatically be restored immediately after the occurrence of any accident or loss from which liability may thereafter accrue. Such policy shall not be terminated without 30 days prior written notice to the city.
- d. Before a permit is issued, the applicant shall post a performance bond, in an amount determined to be sufficient by the city and in a form approved by the city, conditioned on the applicant removing and disposing of the transit amenity and foundation, restoring the site to its previous grade, and restoring and maintaining vegetative cover as appropriate.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~93~~94. - Newspaper vending machines.

No person shall place or maintain any newspaper vending machines on public right-of-way in the city unless they have notified the city in writing, on a form provided by the city, of the location of the vending machine.

- (1) *Placement conditions*—~~.~~ Placement of newspaper vending machines shall comply with the following conditions.
  - a. Shall be placed no closer than four feet from the roadway curb or edge of the roadway where no curb exists.
  - b. Shall not obstruct or block any portion of a sidewalk or trail.
  - c. No more than one newspaper vending machine per publisher may be placed within 800 feet of any other newspaper vending machine of that same publisher.
  - d. No newspaper machine may be attached to a public or private facility within the public right-of-way such as utility poles, transit amenities, roadway signs or fire hydrants.
  - e. No newspaper vending machine may be placed in a public right-of-way adjacent to a property zoned residential and containing four residential units or less.
- (2) *Removal.* The permittee shall remove a newspaper vending machine immediately upon request of the city, at the permittee's expense, should temporary or permanent removal be made necessary by construction or repair work in the vicinity of the newspaper vending machine or if the newspaper vending machine poses a safety hazard or interferes with pedestrian or vehicular travel within the right-of-way.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~94~~95. - Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

(Ord. No. 13-2264, 6-6-2013)

Sec. 70-~~95~~96. - Penalties for violation of section.

Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1,000.00, or by imprisonment not to exceed 90 days, or both, or any different amounts adopted by statute.

(Ord. No. 13-2264, 6-6-2013)