

**CITY OF CHAMPLIN
COUNTY OF HENNEPIN
STATE OF MINNESOTA**

**ORDINANCE AMENDING CHAPTER 50, ARTICLE IV. RIGHT-OF-WAY
MANAGEMENT**

Additions: Add

Deletions: Delete

This ordinance shall become effective following its passage and publication as required by law.

First Reading: November 28, 2022

Second Reading: December 12, 2022

Adoption: December 12, 2022

ARTICLE IV. RIGHT-OF-WAY MANAGEMENT

DIVISION 1. GENERALLY

Sec. 50-81. Findings, Purpose and Intent.

(a) The purpose of this article is to provide for the city:

- (1) ~~To manage its public rights of way and to recover its rights of way management costs~~ 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; and
- (2) ~~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 strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. To regulate the use of public rights-of-way by providers of telecommunication services, public utility services, and the like, in a fair, efficient, competitively neutral and substantially uniform manner, consistent with and to the extent authorized by state law, specifically Minn. Stats. §§ 237.162, 237.163, 237.79, 237.81 and 238.086 and Minnesota Public Utility Commission Rules, parts 7819.0050 through 7819.9950 where possible.~~

(b) ~~This article shall be interpreted consistently with Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (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 Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this article 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 article 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. To the extent any provisions of this article cannot be interpreted consistently with the Minnesota Public Utility Commission Rules, that interpretation most consistent with state statutes and other applicable statutory and case law is intended. This article shall not be interpreted to limit the regulatory and police power of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant to state statutes, to manage rights-of-way within its jurisdiction.~~

(Code 1977, § 15-1501)

Sec. 50-82. Definitions.

The following ~~definitions words, terms and phrases~~, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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, or otherwise place facilities in~~ a right-of-way.

City means the City of Champlin, Minnesota. For purposes of this article, the term "city" means its elected officials, officers, employees, agents or any commission, committee or subdivision acting pursuant to lawfully delegated authority.

City cost means the actual costs incurred by the city for managing rights-of-way including, but not limited to, costs associated with:

- (1) Registering applicants;
- (2) Issuing, processing, and verifying right-of-way permit applications;
- (3) Revoking right-of-way permits;
- (4) Inspecting job sites;
- (5) Creating and updating mapping systems;
- (6) Determining the adequacy of right-of-way restoration;
- (7) Restoring work inadequately performed;
- (8) Maintaining, supporting, protecting, or moving user equipment during right-of-way work;
- (9) Budget analysis;
- (10) Recordkeeping;
- (11) Legal assistance;
- (12) Systems analysis; and
- (13) Performing all of the other tasks required by this article, including other costs the city may incur in managing the provisions of this article except as expressly prohibited by law.

City inspector means any person authorized by the city to carry out inspections related to the provisions of this article.

Collocate or Collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

Commission means the ~~s~~State of Minnesota ~~P~~ublic ~~U~~tilities ~~e~~Commission.

Construction Performance Bond. Any of the following forms of security provided at permittee's option:

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the city;
- Self-insurance, in a form acceptable to the city;
- 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.

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. Stats. § 216D.04 subd. 3, over a continuous length in excess of 500 feet.

Degradation means ~~a decrease in the useful life the accelerated depreciation~~ 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 did not occur.

Degradation cost subject to Minn. R. ~~esota~~ Public Utilities Commission Rule, part 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 Minn. R. ~~esota~~ Public Utilities Commission 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. The Engineering department of the city.

Director. The director of the Engineering department of the city, or her or his designee.

Delay Penalty. 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:

- (1) Poses a clear and immediate danger to life or health, or of a significant loss of property; or
- (2) Requires immediate repair or replacement in order to restore service to a customer.

Equipment means any tangible ~~thing asset~~ used to install, repair, or maintain ~~facilities located~~ in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Excavation permit means the permit that, pursuant to this article, 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.

Excavation permit fee means money paid to the city by an applicant to cover costs.

Facility or facilities means any tangible asset in the right-of-way required to provide utility or telecommunications service.

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

High-density corridor means a designated portion of the public right-of-way within which right-of-way users having multiple and competing facilities may be required to bill 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 the 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 article.

Management Costs. 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 or small wireless facility 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 or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation 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 1.3150-142 of this chapter.

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

Obstruction permit means the permit which, pursuant to this article, 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 a right-of-way ~~by placing equipment described therein on the right-of-way~~ for the duration specified.

Obstruction permit fee means money paid to the city by a registrant to cover the costs as provided in this article.

Patch or patching means a method of pavement replacement that is temporary in nature. A patch consists of:

- (1) The compaction of the subbase and aggregate base; and
- (2) 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.

Performance and restoration bond means any of the following forms of security:

- (1) ~~Individual project bond;~~
- (2) ~~Cash deposit;~~
- (3) ~~Security in a form listed or approved under Minn. Stats. § 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; or~~
- (6) ~~Blanket bond for projects within the city or other form of construction bond for time specified in a form acceptable to the city.~~

Permit means "right-of-way permit" in this article as defined in Minn. Stats. § 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 article.

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.~~any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assignee of any of the foregoing, or any other legal entity which has or seeks to have equipment located in any right-of-way.~~

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

Probation 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 means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the city has an interest, including other

dedicated rights-of-way for travel purposes and utility easements of the city. The term "public right-of-way" does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

Registrant means any person who:

- (1) Has or seeks to have its equipment located in any right-of-way; or
- (2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment located in the right-of-way and, accordingly, is required to register with the city.

Restore or Restoration. 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. 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, or both, depending on the context, required by this article.

Right-of-way user means:

- (1) A telecommunications right-of-way user as defined by Minn. Stats. § 237.162, subd. 4; or
- (2) A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise or ordinance to use the public right-of-way.

Rules means rules 7819.0050—7819.9950 adopted by the Minnesota Public Utility Commission.

Service or ~~Utility~~ Service means and includes:

- (1) Those services provided by a public utility as defined in Minn. Stats. § 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 cable communications systems as defined in Minn. Stats. 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. Stats. ch. 308A; and
- (6) Water, sewer, service laterals, steam, cooling and heating services.

Service Lateral. 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. 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 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.

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

Telecommunications right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control the same, that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this article, a cable communications system defined and regulated under Minn. Stats. ch. 238, and telecommunications activities related to providing natural gas or electric energy services, a public utilities as defined in in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 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 except to the extent such entity is offering wireless service. are not included in this definition. This definition shall be consistent with Minn. Stats. § 237.162, subd. 4.

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 placement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

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

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

Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.

Wireless Facility. 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, or not otherwise immediately adjacent to and directly associated with a specific antenna.

Wireless Service. 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. 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.

(Code 1977, § 15-1502)

Sec. 50-83. Administration.

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

(Code 1977, § 15-1503)

Sec. 50-84. Registration, bonding and right-of-way occupancy.

- (a) Registration. Each person ~~authorized who occupies, uses, or seeks to occupy or use, or seeks to occupy or use, the right-of-way or any equipment located in the right-of-way, including persons with installation and maintenance responsibilities~~ by lease, sublease or assignment, ~~or who has, or seeks to have, equipment located in any right of way~~ must register with the city. Registration will consist of providing application information to and as required by the city, ~~, paying a registration fee as set forth in chapter 22, and posting a performance and restoration bond.~~
- (b) Construction ~~The p~~Performance and restoration bond required shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this article, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this article or any other applicable laws, regulations or standards. During periods of construction, repair or restoration of rights-of-way or equipment in rights-of-way, the performance and restoration bond shall be in an amount sufficient to cover 100 percent of the estimated cost of such work, as documented by the person proposing to perform such work, or in

such lesser amount as may be determined by the city, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this article. Sixty days after completion of the work, the performance and restoration bond may be reduced in the sole determination of the city.

- (c) Registration Prior to Work. No person shall construct, install, repair, remove, relocate, or perform any other work on, or use any ~~equipment facilities~~ or any part thereof, ~~located in~~ any right-of-way without first being registered with the city.
- (d) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens or in the area of right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits to satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article. ~~However, excavations deeper than 12 inches are subject to permit requirements.~~ However, nothing herein relieves a person from complying with the provisions of Minn. Stats. ch. 216D, Gopher One Call Law.

(Code 1977, § 15-1504)

Sec. 50-85. Right to occupy rights of way; payment of fees. Reserved.

Editor's note: Ord. No. XXX adopted on Nov. XX, 2022 repealed Section 50-85 [insert other descriptive information as required]

- (a) ~~Any person required to register under section 50-84, 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:~~
 - (1) ~~Timely pays all fees as provided herein; and~~
 - (2) ~~Complies with all other requirements of law.~~
- (b) ~~The grant of 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 the ordinance from which this article is derived, as it may be from time to time be amended and, further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the city or other body or authority.~~

(Code 1977, § 15-1505)

Sec. 50-86. Franchise; franchise supremacy.

The city may, in addition to the requirements of this article, require any person that has or seeks to have equipment 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 provisions of this article, whether granted prior or subsequent to enactment of the ordinance from which this section is derived (excluding the city's police powers which shall always be reserved to the city), shall control and supersede the conflicting terms of this article; provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the city may be cumulative in the sole determination of the city or unless otherwise negotiated by the city and the franchise grantee. All other terms of this article shall be fully applicable to all persons whether franchised or not.

(Code 1977, § 15-1506)

Sec. 50-87. Registration information.

(a) Registration shall be requested on an application form produced by the City. The information provided to the city at the time of registration shall include, but not be limited to:

- (1) The registrant's name, gopher state 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 his designee shall be available 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. Shall be on a form approved by the city;
 - b. Shall verify that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state; or is covered by self-insurance which the city determines to provide the city with protections equivalent to that of a state-licensed insurance company, legally independent from the registrant;
 - c. Shall verify 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 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 equipment and collapse of property.
 - d. Shall ~~mean name~~ 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;
 - e. Shall require that the city be notified 30 days in advance of cancellation of the ~~policy or material modification of a coverage term~~; and
 - f. Shall indicate comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage ~~in amounts~~ established by the city in amounts sufficient to protect the city and the public and carry out the purposes and policies of this article.
 - g. The city may require a copy of the actual insurance policies.

(4) If the registrant is a corporation, a copy of the certificate required to be filed under ~~Minn. Stats. § 300.06, Minnesota State Statutes, as amended, and as recorded and certified to by the secretary of state;~~

(5) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency. ~~registrant's certificate of authority from the state public utilities commission, where the registrant is lawfully required to have such certificate from said commission;~~ and

(6) Any other information ~~Such other information deemed necessary by the City Engineer to adequately protect the health, safety, and welfare of the city. as the city may require.~~

(b) The registrant shall keep all of the information listed in subsection (a) of this section current at all times by providing to the city information of changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

(Code 1977, § 15-1507)

Sec. 50-88. 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 underground facilities 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 specific locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (a "next-year project"); and
- (2) To the extent known, The tentative locations and beginning and ending dates for all projects contemplated for the five years following the next calendar year (a "five-year project"). The term "project" as used in this subsection (a)(2), shall include both next-year projects and five-year projects. By January 1 of each year the city will have available for inspection in its offices a composite list of all projects of which it has been informed in the annual plans. All registrants are responsible for keeping themselves apprised 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 that was 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. may, for good cause shown, allow a registrant to submit additional next-year projects. The term "good cause," as used in this subsection (b), includes, but is not limited to, the criteria set forth in this article concerning the discretionary issuance of permits.

(Code 1977, § 15-1508)

Sec. 50-89. Installation requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent in accordance with Minn. Stats. § 237.162, and subd. 8(3), Minn. Stats. § 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 50-141(b) of this ordinance, subd. 8; and the Minnesota Public Utility Commission Rules, all work performed in the right of way shall be done in conformance with the "Standard Specifications for Street Openings" as promulgated by the city and at a location as may be required by section 50-90. The city may enforce local standards pursuant to its inherent and historical police power authority, so long as such standards do not impose greater requirements than those found in the Minnesota Public Utility Commission Rules.

(Code 1977, § 15-1518)

Sec. 50-90. Location and Relocation of Facilities ~~of equipment~~.

- (a) Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the city engineer, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- (ab) *Undergrounding.* Unless otherwise permitted by an existing franchise or Minn. Stats. § 216B.34, or unless existing aboveground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment, and the replacement of old equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the city in writing, and such agreement is reflected in applicable permits.
- (bc) *High-density Corridor.* The city may assign specific high-density corridors within the right-of-way or any particular segment therefor as may be necessary, for each type of equipment 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 equipment may~~ designate the proper corridor for the equipment at issue and such equipment must be located accordingly. In the event the city desires to establish a high-density corridor, it shall include the elements required in Minnesota Public Utility Commission rule 7819.0200.
- (de) *Movement of equipment.* Any registrant whose ~~equipment facilities~~ is located, prior to ~~enactment of the ordinance from which this section is derived~~, 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 its equipment is located, move that equipment to its 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.
- (ee) *Nuisance.* One year after the passage of the ordinance from which this section is derived, any ~~facilities equipment~~ found in a right-of-way that has not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the equipment and restoring the right-of-way to a useable condition.
- (fe) *Limitation of space.* To protect health, safety and welfare ~~of the public, 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 equipment~~ within the right-of-way. ~~If there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use 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 need 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 equipment~~ 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.

- (g) *Joint Trenching.* All facilities shall 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 shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in conformance with Minn. Rules part 7819.5100, subd. 2, governing standards.
- (h) *Delay to City project.* If the utility owner fails to meet the relocation schedule due to circumstances within the utilities control, the City may charge the utility owner for all costs incurred by the City because the relocation is not completed in the scheduled timeframe.

(Code 1977, § 15-1525)

Sec. 50-91. Relocation of equipment. Reserved.

Editor's note: Ord. No. XXX adopted on Nov. XX, 2022 repealed Section 50-91 [insert other descriptive information as required]

~~The person must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its equipment and facilities in the right of way whenever the city requests such removal and relocation, and shall restore the right of way to the same condition it was in prior to said removal or relocation. The city may make such requests in order to prevent interference by the company's equipment or facilities with:~~

- (1) ~~A present or future city use of the right of way for a public project;~~
- (2) ~~The public health or safety; or~~
- (3) ~~The safety and convenience of travel over the right of way.~~

(Code 1977, § 15-1526)

Sec. 50-92. Pre-excavation equipment location.

In addition to complying with the requirements of Minn. Stats. §§ 216D.01—216D.09 (One Call Excavation Notice System), before the start date of any right-of-way excavation, each registrant who has facilities or equipment located in the area to be excavated shall mark the horizontal and approximate vertical placement of all said facilities equipment. Any registrant whose facilities equipment are is less than 20 inches below a concrete or asphalt surface shall

notify and work closely with the excavation contractor in an effort to establish the exact location of his equipment and the best procedures for excavation.

(Code 1977, § 15-1527)

Sec. 50-93. Damage to other equipment.

- (a) 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.
- (b) Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. 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.

(Code 1977, § 15-1528)

Sec. 50-94. Right-of-way vacation.

- (a) *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 shall be governed by Minn. R. esota Public Utility Commission rule 7819.3200.
- (b) ~~If the vacation requires the relocation of registrant or permittee equipment and:~~
 - (1) ~~If the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs;~~
 - (2) ~~If the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the city and the registrant or permittee; or~~
 - (3) ~~If the vacation proceedings are initiated by a person or persons other than the registrant or permittee such other person or persons must pay the relocation costs.~~

(Code 1977, § 15-1529)

Sec. 50-95. Indemnification and liability.

- (a) ~~By reason of the acceptance of a registration or the grant of a right of way permit, the city does not assume any liability:~~
 - (1) ~~For injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city; or~~

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

(b) By registering with the city, or by accepting a permit under this article, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Public Utility Commission Rule 7819.1250.

(Code 1977, § 15-1530)

Sec. 50-96. Future uses. Reserved.

Editor's note: Ord. No. XXX adopted on Nov. XX, 2022 repealed Section 50-96 [insert other descriptive information as required]

~~In placing any equipment, or allowing it to be placed in the right of way, the city is not liable for any damages caused thereby to any registrant's equipment that is already in place. No registrant is entitled to rely on the provisions of this article, and no special duty is created as to any registrant. This article is enacted to protect the general health, welfare and safety of the public at large.~~

(Code 1977, § 15-1531)

Sec. 50-97. Abandoned and unusable equipment.

(a) Discontinued Operations. A registrant who has determined to discontinue ~~all or a portion of its operations in the city must with respect to any equipment in any right-of-way, or segment or portion thereof, in the city must either:~~

(1) ~~Provide information satisfactory to the city that the registrant's obligations for its facilities equipment in the right-of-way under this article have been lawfully assumed by another registrant; or~~

(2) ~~Submit to the city a proposal and instruments for transferring ownership of its equipment to the city. If a registrant proceeds under this clause, the city may, at its option:~~

~~a. Purchase the equipment;~~

~~b. Require the registrant, at its own expense, to remove it; or~~

~~c. Require the registrant to post an additional bond or an increased bond amount sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the equipment.~~

(b) Removal. Equipment of a registrant that fails to comply with the preceding subsection and which, for two years, remains unused shall be deemed to be abandoned. Abandoned

equipment is deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to:

- (1) Abating the nuisance;
- (2) Taking possession of the equipment and restoring it to a useable condition;
- (3) Requiring removal of the equipment by the registrant or by the registrant's surety; or
- (4) Exercising its rights pursuant to the performance and restoration bond.

(e) Any registrant who has abandoned facilities unusable equipment in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, during the next scheduled excavation, or construction, unless this requirement is waived by the city.

(Code 1977, § 15-1532)

Sec. 50-98. Reservation of regulatory and police powers.

(a) A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

The city, by the granting of a right of way permit, or by registering a person under this article, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under the constitution and statutes of the state or the ordinance 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 of registration under those ordinances agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be 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 deemed to agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such powers.

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

(Code 1977, § 15-1533)

Sec. 50-99. Severability.

(a) If any portion section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court or administrative agency 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.

(b) ~~If a regulatory body or a court of competent jurisdiction should determine by a final, nonappealable order that any permit, right or registration issued under this article or any portion of this article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the city council to issue such revocable permit and the power to revoke it.~~

(c) ~~Nothing in this article precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.~~

(Code 1977, § 15-1534)

Sec. 50-100. Nonexclusive remedy.

~~The remedies provided in this article and other ordinances of the city are not exclusive or in lieu of other rights and remedies that the city may have at law or in equity. The city is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public rights of way, including damages to the rights of way, whether or not caused by a violation of any of the provisions of this article or other provisions of the city.~~

(Code 1977, § 15-1535)

Secs. 50-1001—50-1278. Reserved.

DIVISION 2. PERMIT

Sec. 50-1289. Permit Required.

(a) Permit Required. Except as otherwise provided for in this article, no person may obstruct or excavate any right-of-way, or install or place facilities in the 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 allow the holder 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 equipment~~ described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required ~~by a registrant to allow the holder to hinder free and open passage over the specified portion of the right-of-way by placing equipment, vehicles, or other obstructions~~ described therein on the right-of-way for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(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.

(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 ~~Minn. Rule Minnesota Public Utility Commission Rules~~, part 7819.1000, subd. 3, and notwithstanding the provisions 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 resolution.

(d) *Permit Display.* Permits issued under this article shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the city ~~inspector and authorized city personnel~~.

(Code 1977, § 15-1509)

Sec. 50-12930. Permit Applications.

(a) Application for a permit shall be made to the city ~~on forms approved by the City Engineer~~. 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 article;

(2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed ~~equipment facilities and all other~~ information deemed relevant by the City Engineer;

(3) Payment of all money due to the city for:

- a. Permit fees and costs due;
- b. Prior obstructions or excavations;

- c. Any loss, damage, or expense suffered by the city as a result of prior excavations or obstructions of the rights-of-way of any emergency actions taken by the city; and
- d. Franchise fees, 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.

(b) When an excavation permit is requested for purposes of installing additional ~~equipment~~facilities, and a performance and restoration bond which in existence is insufficient with respect to the additional ~~equipment~~facilities in the sole determination of the city, the permit applicant may be required by the city to post an additional performance and restoration bond in accordance with this article.

(Code 1977, § 15-1510)

Sec. 50-1301. Issuance of Permit; conditions.

- (a) Permit Issuance. If the city determines that the applicant has satisfied the requirements of this division, the city may issue a permit.
- (b) Conditions. The city may impose any reasonable conditions upon the issuance of a permit and the performance of the applicant thereunder in order to:
 - (1) ~~P~~rotect the public health, safety and welfare; ~~or when necessary -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.~~
 - (2) ~~Ensure the structural integrity of the right of way;~~
 - (3) ~~Protect the property and safety of other users of the right of way;~~
 - (4) ~~Minimize the disruption and inconvenience to the traveling public; and~~
 - (5) ~~Otherwise efficiently manage the use of the right of way.~~
- (c) Small Wireless Facility Conditions. In addition to subdivision 2, 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 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 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 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 any 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, such equipment shall be consistent with the City's aesthetic standards regarding wireless equipment as adopted by the City Engineer. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the City Engineer shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.
- (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.
- (7) A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.

(d) *Small Wireless Facility Agreement.* A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation 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) 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.

Sec. 50-131. Action on Small Wireless Facility Permit Applications.

(a) *Deadline for Action.* The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established

by state law. 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 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 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 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 to the applicant within 30 days of receipt of the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.
- (3) The city and a small wireless facility applicant agree in writing to toll the review period.

(Code 1977, § 15-1511)

Sec. 50-132. Permit Fees.

- (a) *Registration fee.* The registration fee shall be established to recover the cost of administration, review and recording of the permit.
- (b) *Excavation permit fee.* The excavation permit fee shall be established by the city in an amount as set forth in chapter 22, sufficient to recover the following costs:
 - (1) The city management cost;
 - (2) The degradation of the right-of-way that will result from the excavation, if applicable, and
 - (3) Restoration, if done or caused to be done by the city.

(c) *Obstruction permit fee.* The obstruction permit fee shall be established by the city and shall be in an amount as set forth in chapter 22, sufficient to recover the city management cost, including, but not limited to; administration, plan review, recording of permit, map review, testing result review and inspection.

(d) *Disruption fees.* The city may establish and impose a disruption fee, as set forth in chapter 22, as a penalty for unreasonable delays in excavations, obstructions, or restoration. Disruption fees will not be imposed if the delay in completion is due to circumstances beyond the control of the applicant, including without limitation, inclement weather, acts of God or civil strife.

(d) *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.

(e) *Payment of permit fees.* No excavation permit, or obstruction permit, or small cell permit shall be issued without payment of all required fees. The city may allow required prior to the issuance of such a permit unless the applicant shall agree (in a manner, amount, and substance acceptable to the city) applicant to pay such fees within 30 days of billing therefore. All permit fees shall be doubled during a probationary period.

(f) *Non Refundable.* Permit fees that were paid for a permit that the city revoked for a breach are not refundable. Any refunded permit fees shall be less all city costs up to and including the date of refund.

(g) *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. Use of permit fees. All obstruction and excavation permit fees shall be used solely for city management, construction, maintenance and restoration costs of the right of way.

(Code 1977, § 15-1512)

Sec. 50-133. Right-of-way Patching and Restoration.

(a) *Timing.* The work to be done under the permit, and the restoration and 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 constituting force majeure or when work was prohibited as unseasonal or unreasonable, all in the sole determination of the city. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the

commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for 36 months thereafter.

(b) *Patch and Restoration.* ~~The 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. It's application for an excavation permit, the permittee may choose to have the city restore the right-of-way. In any event, the city may determine to perform the right-of-way restoration and shall require the permittee to pay a restoration fee, as set forth in chapter 22, to provide for reimbursement of all costs associated with such restoration. In the event the permittee elects not to perform restoration, the city may, in lieu of performing the restoration itself, impose a fee to fully compensate for the resultant degradation as well as for any and all additional city costs associated therewith. Such fee for degradation shall compensate the city for costs associated with a decrease in the useful life of the right-of-way caused by excavation and shall include a restoration fee component. Payment of such fee does not relieve the permittee from any restoration obligation, including, but not limited to, replacing and compacting the subgrade base material and the excavation. The restoration fee will not include the cost to accomplish these responsibilities.~~

- (1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If, during the 36 months following such restoration, the right-of-way settles due to the permittee's excavation or restoration, the permittee shall pay to the city, within 30 days of billing, ~~all the cost of costs associated with correcting the defective work. repairing said right-of-way.~~
- (2) *Permittee restoration.* If the permittee ~~chooses at the time of application for an excavation permit to restores~~ the right-of-way itself, ~~it shall at the time of application for an excavation permit such permittee shall post an a construction performance bond in accordance with Minn. Rule 7819.3000. additional performance and restoration bond in an amount determined by the city to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, 24 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 and restoration bond posted 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, as set forth in chapter 22. 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 the work~~ according to the standards and with the materials specified by the city and in compliance with Minnesota Public Utility Commission rule 7819.1100.

~~The city shall have the authority to prescribe the manner and extent to the restoration, and may do so in written procedures of general application or on a case-by-case basis. The city, in exercising this authority, shall be guided but not limited by the following standards and considerations:~~

(1) The number, size, depth and duration of the excavations, disruptions or damage to the right of way;

(2) The traffic volume carried by the right of way;

(3) The character of the neighborhood surrounding the right of way;

(4) The pre-excavation condition of the right of way;

(5) The remaining life expectancy of the right of way affected by the excavation;

(6) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right of way that would otherwise result from the excavation, disturbance or damage to the right of way; and

(7) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right of way that would otherwise take place.

Notwithstanding the foregoing, the maximum limits of restoration methods and area requirements the city will impose are found in plates 1 to 13 shown in Minnesota Public Utility Commission Rules, parts 7819.9900 to 7819.9950.

(d) Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar 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 unseasonable or unreasonable. By choosing to restore the right of way itself, the permittee guarantees its work and shall maintain it for 24 months following its completion. During this 24 month period it shall, upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five calendar 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, all in the sole determination of the city.

(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 repairs required by the city, the city at its option may perform or cause to be performed such work. In that event, the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required in this subsection, the city may exercise its rights under the construction performance and restoration bond.

(Code 1977, § 15-1513)

Sec. 50-134. Joint applications.

- (a) Joint application. Registrants may jointly make application for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) With city project. Registrants who join in and during 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.
- (c) Shared fees. Registrants who apply for permits for the same obstruction or excavation, which is not performed by the city, 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.

(Code 1977, § 15-1514)

Sec. 50-135. 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 perform any work outside the area specified in the permit, except as provided herein. Any permittee which, who determines that an area greater than that specified in the permit must be obstructed or excavated, before working in that greater area, must:
 - (1) Make application for a permit extension and pay any additional fees necessitated; and
 - (2) 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, he must make application 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. The supplementary application must be done before the permit end date.

(Code 1977, § 15-1515)

Sec. 50-136. 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, franchises or other authorizations and to pay all fees required by the city, any other city, county, state or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stats. §§ 216D.01—216D.09 (Gopher One Call Excavation Notice System) and Minn. R. ch. 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 performs the work.

- (b) *Prohibited Work.* Except in the case of an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be performed 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 may not be parked with or adjacent to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit.
- (d) *Trenchless excavation.* As a 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 Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

(Code 1977, § 15-1516)

Sec. 50-137. Denial or Revocation of Permit.

- (a) The city may, in accordance with Minn. Stats. § 237.163, subd. 4, deny any application for a permit as provided in this article.
 - (1) *Mandatory denial.* Except in the case of an emergency, no right-of-way permit will be granted:
 - a. To any person required by section 50-84 to be registered who has not done so;
 - b. To any person required by section 50-88 to file an annual report but has failed to do so;
 - c. For any next-year project not listed in the construction and major maintenance plan required under section 50-88 unless the person used reasonable efforts to anticipate and plan for the project;
 - d. For any project that requires the excavation of any portion of a right-of-way that was constructed or reconstructed within the preceding five years;
 - e. To any person who has failed within the past three years to comply, or is presently not in full compliance, with the requirements of this article;
 - f. To any person as to whom there exists grounds for the revocation of a permit under section 50-141; or
 - g. If, in the sole discretion of the city, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The city, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.

(2) *Permissive denial.* The city may deny a permit in order to protect the public health, safety and welfare, to protect interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The city may also consider one or more of the following factors:

- a. The extent to which right-of-way space where the permit is sought is available;
- b. The competing demands for the particular space in the right-of-way;
- c. The availability of other locations in the right-of-way or in other rights-of-way for the equipment of the permit applicant;
- d. The applicability of this article or other regulations of the right-of-way that affect location of equipment in the right-of-way;
- e. The degree of compliance of the applicant with the terms and conditions of its franchise; if any, this article, and other applicable ordinances and regulations;
- f. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
- g. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or
- h. The balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

(3) *Discretionary issuance.* Notwithstanding the provisions of this section, where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when said applicant was required to submit its list of next-year projects, the city may issue a permit in any case where the permit is necessary to:

- a. Prevent substantial economic hardship to a customer of the permit applicant;
- b. Allow such customer to materially improve its utility service; or
- c. Allow a new economic development project.

(4) *Permits for additional next-year projects.* Notwithstanding the provisions of subsections (1)–(3) of this section, the city may issue a permit to a registrant who was allowed under section 50-88(b) to submit an additional next-year project, or in the event the registrant demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such permit to be subject to all other conditions and requirements of law, including such conditions as may be imposed under section 50-131(b).

(b) Procedural Requirements. The denial or revocation of a 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 business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 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 30 days after submission.

(Code 1977, § 15-1517)

Sec. 50-138. Inspection.

- (a) Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300 or other as built documentation as deemed necessary by the city engineer. the permittee shall notify the city.
- (b) Site Inspection. The permittee shall make the work site available to the city inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of work.
- (c) Authority of Director. At the time of inspection, the director city inspector may order the immediate cessation of any work that poses a serious threat to the life, health, safety or well being of the public. The director city inspector may issue an order to the permitteeregistrant for any work that does not conform to the terms of the permit or other applicable standards, conditions or codes. 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 registrant permittee shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to section 50-1421.

(Code 1977, § 15-1519)

Sec. 50-139. Work done without a permit.

- (a) Emergency situations. Each registrant shall immediately notify the city, or the city's designee, of any event regarding its equipment that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order 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 article for the actions it took in response to the emergency. In the event that the city becomes aware of an emergency regarding a registrant's equipment, the city may 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 in order to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.
- (b) Nonemergency situations. Except in the case of an emergency, any person who, without first having obtained the necessary permit, obstructs or evicts a right-of-way must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by city ordinance, including, but not limited to, criminal fines and penalties, 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 article.

(Code 1977, § 15-1520)

Sec. 50-140. Supplementary notification.

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

(Code 1977, § 15-1521)

Sec. 50-141. Revocation.

(a) *Substantial Breach.* Registrants hold permits issued pursuant to this article as a privilege and not as a right. The city reserves its right, as provided herein and in accordance with Minn. Stats. § 237.163, subd. 4, to revoke any right-of-way permit, without fee refund, in the event of 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 the 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 50-138(c).

(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. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the city, at the city's discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(c) *Response to Notice of the Breach.* Within 24 hours of receiving notification of the breach, the permittee shall contact the city with a plan, acceptable to the city inspector, that will correct the breach for its correction. The permittee's failure to so contact the city inspector, the permittee's failure to timely submit an acceptable plan, or the permittee's

failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit. Further, the permittee's failure to so contact the city ~~inspector~~, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one (1) full year.

- (d) Cause for Probation. From time to time, the city may establish a list of conditions of the permit that, 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 rights-of-way ~~grossly~~ outside of the permit authorization.
- (e) Automatic Revocation. If a permittee, while on probation, commits a breach as outlined above, the permittee's permit will automatically be revoked and the permittee will not be allowed further permits for one full year, except for emergency repairs.
- (f) Reimbursement of city cost. If a permit is revoked, the permittee shall also reimburse the city for the reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Code 1977, § 15-1522)

Sec. 50-142. Appeals.

- (a) A right-of-way user ~~A person~~ may have a denial, revocation, or fee imposition reviewed by the city council, upon written request, if he:
 - (1) Has been denied registration;
 - (2) Has been denied a right-of-way permit;
 - (3) Has had its right-of-way permit revoked; or
 - (4) Believes that the fees imposed on the user by the city do not conform with Minn. ~~Stat. § 237.163, subd. 6 to the requirements of law.~~
 - (5) Disputes a determination of the director
- (b) 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.
- (c) Upon affirmation by the city council of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the city and the person. If the parties cannot agree on an arbitrator, the matter must be resolved by a three person arbitration panel made up of one arbitrator selected by the city, one arbitrator selected by the person, and one arbitrator selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the city and the person. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly

~~and equally bear with the other party the expense of the third arbitrator and of the arbitration.~~

~~(d) Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.~~

~~(Code 1977, § 15-1523)~~

Sec. 50-143. Mapping data.

(a) *Information Required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (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, 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 a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration. Except as provided in subsection (b) of this section, each registrant shall provide, as a part of its permit application, the following information:

- (1) The location and approximate depth of the applicant's mains, cables, conduits, switches, and related equipment and facilities with the location based on:
 - a. Offsets from the property lines, distances from the centerline to the public right of way, and curblines as determined by the city;
 - b. Coordinates derived from the coordinates system being used by the city; or
 - c. Any other system agreed upon by the applicant and the city.
- (2) The type and size of the utility facility;
- (3) A description showing aboveground appurtenances;
- (4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map;
- (5) Any facilities to be abandoned, if applicable, in conformance with Minn. Stats. § 216D.04, subd. 3; and
- (6) Mapping data shall be provided by the applicant with specificity and in the format requested by the city for inclusion in the mapping system used by the city. If such format is different from what is currently utilized and maintained by the registration, the registrant may provide such information in the format that they currently are utilizing. The permit application fee may include the cost to convert the data furnished by the applicant to a format currently in use by the city.

(b) *Service Lateral.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 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 subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after

Dec. 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 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 future permits to the offending permittee or its subcontractors. Information regarding equipment of telecommunications right of way users constructed or located prior to May 10, 1997, need only be supplied in the form maintained; however, all telecommunications right of way users must submit some type of documentary evidence regarding the location of equipment within the rights of way of the city.

~~(c) At the request of any registrant, any information requested by the city, which qualifies as a "trade secret" under Minn. Stats. § 13.37(b), shall be treated as trade secret information as detailed therein. With respect to the provision of mapping data, the city may consider unique circumstances from time to time required to obtain mapping data.~~

(Code 1977, § 15-1524)

Secs. 50-144—50-169. Reserved.