

Right-of-Way Ordinance

City of Willmar, Minnesota

Dated: May, 2000

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Right-of-Way Ordinance
City Willmar, Kandiyohi County, Minnesota

An ordinance to enact a new Chapter of the Municipal Code of Ordinances to administer and regulate the public rights-of-way in the public interest, and to provide for the issuance and regulation of right-of-way permits

THE COUNCIL OF WILLMAR ORDAINS:

Chapter ___ of the _____ Code of Ordinances (hereafter "this Code") is hereby repealed in its entirety, and is replaced by the following new Chapter 1 (hereafter "this Chapter"), to read as follows:

Chapter 1
Right-of-Way Management

Sec. 1.01. 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 strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. A primary cause for the early and excessive deterioration of its rights-of-way is frequent excavation.

The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. Accordingly, the city hereby enacts this new chapter 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 a fair share of the 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 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 Minnesota Rules 7819.0050 - 7819.9950 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.

Sec. 1.02. 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.

Sec. 1.03. 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 carry 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 Willmar, Minnesota. For purposes of section 1.26, city means its elected officials, officers, subdivisions and affiliates, employees and agents.

"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 Minnesota Statutes, section 216D.04, subdivision 3, over a continuous length in excess of 500 feet.

"Construction Performance Bond" means a performance bond or other form of security posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in both a timely and quality manner. Any of the following forms of security can be provided at permittee's option:

- A. Individual project bond;
- B. Cash deposit;
- C. Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- D. Letter of Credit, in a form acceptable to the city
- E. Self-insurance, in a form acceptable to the city
- F. 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 Rules 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.

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

"Department" means the department of public works of the city.

"Department Inspector" means any person authorized by the city to carry out inspections related to the provisions of this chapter.

"Director" means the director of the department of public works of the city, or her or his designee.

"Central Business District" means that portion of the City designated by the City Council by resolution.

"Emergency" means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) 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.

"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.

"Excavation permit fee" means money paid to the city by an applicant to cover the costs as provided in Section 1.11.

"Facility or Facilities" means any tangible asset in the right-of-way required to provide Utility 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 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.

"In," when used in conjunction with "right-of-way," means over, above, in, within, on, or under a right-of-way.

"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; Minnesota Statutes Sections 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 1.28 of this chapter.

"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, by placing equipment described there in on the right-of-way for the duration specified therein.

"Obstruction Permit Fee" means money paid to the city by a permittee to cover the costs as provided in Section 1.11

"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.

"Permit" has the meaning given "right-of-way permit" in Minnesota Statutes, section 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 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 assign of any of the foregoing, or any other legal entity (which has or seeks to have equipment in any right-of-way). ~~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 chapter.

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

"Registrant" means any person who (1) has or seeks to have its equipment or facilities 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 place its facilities or equipment in the right-of-way

"Repair" means a temporary patch of the right-of-way necessary to make is usable for travel.

"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.

"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 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

"Right-of-Way Permit" means either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

"Right-of-Way User" means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 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.

"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) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, natural gas, cooling energy, or power services; services of a telecommunications right-of-way user, including transporting of voice or data information;
- (3) the services provided by a corporation organized for the purpose set forth in Minn. Stat. §300.03; services of a cable communications systems as defined in Minn. Stat. Chapter. 238;
- (4) the services provided by a district heating or cooling system; natural gas or electric energy or telecommunications services provided by the city;
- (5) cable communications systems as defined in Minn. Stat. Chapter 238. services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A;
- (6) Telecommunications Rights-of-Way user as defined in subsection 20-02 (ii) below. water, sewer, steam, cooling or heating services.

"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 had already been 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.

"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. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter.

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

Sec. 1.04 Administration.

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

Exemptions.

Work on service lines outside the paved street area to individual properties as provided by a public utility, as defined in Minn. Stat. 216B, §Subds. 4 and 6, are exempt from the requirements of Sections 1.06 through 1.08 and Section 1.12.

Sec. 1.05. Registration and Right-of-Way Occupancy.

Subd. 1. Registration. Each person who occupies, uses, or seeks to occupy or use, 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, or who has, or seeks to have, equipment or facilities in any right-of-way must register with the city. Registration will consist of providing application information and paying a registration fee.

Subd. 2. 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.

Subd. 3. Exceptions. The following are not subject to the requirements of this subsection:

- (a) Persons planting or maintaining boulevard plantings or gardens.
- (b) Persons erecting fences, installing driveways, sidewalks, curb and gutter, or parking lots.
- (c) Persons engaged in snow removal activities.
- (d) Federal, State, County and City agencies.
- (e) Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this subsection.

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

Sec. 1.06. Registration Information.

Subd. 1. Information Required. The information provided to the Director ~~city~~ at the time of registration shall include, but not be limited to:

- (a) Each registrant's name (and e-mail address if applicable), Gopher One-Call registration certificate number, address, telephone and facsimile numbers.

(b) 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 available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(c) The agent for service of process.

(d) A certificate of insurance or self-insurance:

(1) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, which the Director determines to provide the City with protections equivalent to that of a Minnesota licensed insurance company, legally independent from the registrant; ~~or a form of self insurance acceptable to the city;~~

(2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) 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;

(3) Naming the city as an additional insured as to whom the coverage's required herein are in force and applicable and for whom defense will be provided as to all such coverage;

(4) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

(5) 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.

(e) The city may require a copy of the actual insurance policies.

(f) If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.

(g) 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.

Subd. 2. 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 fifteen (15) days following the date on which the registrant has knowledge of any change.

Sec. 1.07. Reporting Obligations.

Subd. 1. 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 Director ~~city~~. Such plan shall be submitted using a format designated by the Director ~~city~~ and shall contain the information determined by the Director ~~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:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

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

By January 1 of each year the Director ~~city~~ will have available for inspection in the city's office a composite list of all projects of which the Director ~~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.

Subd. 2. 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.

Sec. 1.08. Permit Requirement.

Subd. 1. 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.

(a) **Excavation Permit.** An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and 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.

(b) **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 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.

Subd. 2. *Permit Extensions.* No person may excavate/obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subd. 3 and notwithstanding subd. 2 of this Section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.

Subd. 4. *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.

Subd. 5. *City of Willmar Project Excavations.* The City of Willmar shall be required to quarterly file with the office of the Director a list of city project excavations undertaken and completed in lieu of individual excavation and obstruction permits. Any work requiring street patching requires an individual excavation permit.

Sec. 1.09. Permit Applications.

An application for a permit shall be made on forms provided by the City and shall be accompanied by the fees set forth. If the work is to be performed by an agent, contractor or subcontractor on behalf of a registrant, such application shall be signed by the registrant. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (a) Registration with the city pursuant to this chapter;
- (b) Scaled drawings showing the location of all facilities owned by the applicant and improvements proposed by the applicant.

(c) A description of the methods that will be used for installation.

(d) A proposed schedule for all work.

(e) The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work.

(f) The location of any public streets, sidewalks or alleys that will be disrupted by the work.

(g) A description of methods for restoring any public improvements disrupted by the work.

(h) Payment of money due the city for permit fees, estimated restoration costs and other management costs; prior obstructions or excavations; 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; franchise fees or other charges, if applicable.

(i) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

(j) Any other information reasonably required by the City Engineer.

(k) When an Excavation Permit is requested for purposes of installing additional equipment, and the posting of a Performance Bond for the additional equipment is insufficient, the posting of an additional or larger Performance Bond of the additional equipment may be required. ~~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.~~

Sec. 1.10. Issuance of Permit; Conditions.

Subd. 1. Permit Issuance. If the Applicant has satisfied the requirements of this chapter, the city shall issue a permit.

Subd. 2. 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 to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public. ~~or when necessary to protect the right-of-way and its current use.~~

Sec. 1.11. Permit Fees.

Subd. 1. Excavation Permit Fee. The city shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

- (a) the city management costs;
- (b) degradation costs, if applicable.

Subd. 2. Obstruction Permit Fee. The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

Subd. 3. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of the required fees before the issuance of such a permit unless the applicant shall agree ~~excavation or obstruction permit fees.~~ ~~The city may allow Applicant to pay such fees within thirty (30) days of billing.~~

Subd. 4. Non Refundable. permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 1.21 are not refundable.

Subd. 5. 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.

Subd. 6. City Project Permit Fees. No excavation permit or obstruction permit fee shall be charged for City of Willmar projects.

Sec. 1.12. Right-of-Way Patching and Restoration.

Subd. 1. 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 extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 1.16.

In addition to repairing its own work, the permittee must restore the right-of-way and surrounding areas, including the pavement and its foundation, 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 thirty-six (36) months thereafter.

Subd. 2. 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.

(a) **City Restoration.** If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.

(b) **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.

(c) **Patching, Restoration, and Degradation Fees.** If the city patches or restores the right-of-way involved in a city project, fees shall not be charged for restoration or degradation.

Subd. 3 Permit Fees. All permit fees shall be established consistent with the provisions of Minnesota Rules 7819.1000.

Subd. 4. 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. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

Subd. 5. Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. 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 unseasonal or unreasonable under Section 1.16.

Subd. 6. 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 at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the 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.

Subd. 7. Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a permittee shall pay to the City a degradation fee to cover city costs associated with a decrease in the useful life of a public right-of-way caused by excavation and repairs. Payment of a degradation fee does not relieve permittee of the obligation to make necessary right-of-way repairs.

Sec. 1.13. Joint Applications.

Subd. 1. Joint application. registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2. 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.

Subd. 3. *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.

Sec. 1.14. Supplementary Applications.

Subd. 1. *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 (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. *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.

Sec. 1.15. Other Obligations.

Subd. 1. *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 Minn. Stat. 216D.01-.09 (Gopher One Call Excavation Notice System). 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.

Subd. 2. 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.

Subd. 3. 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.

Sec. 1.16. Denial of Permit.

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.

Sec. 1.17. 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 "The Standard Specifications for Street Openings" as promulgated by the Director and at a location as required by Section 20-23. ~~7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163.~~

Sec. 1.18. Inspection.

Subd. 1. 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.

Subd. 2. *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.

Subd 3. *Authority of Director.*

(a) 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.

(b) The director may issue an order to the permittee for any work, which 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 (10) 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 Sec. 1.21.

Sec. 1.19. *Work Done Without a Permit.*

Subd. 1. *Emergency Situations.* Each registrant shall immediately notify the director of any event regarding its facilities, which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) 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.

Subd. 2. *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.

Sec. 1.20. 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.

Sec. 1.21. Revocation of Permits.

Subd. 1. **Substantial Breach.** The city reserves its right, as provided herein, 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:

(a) The violation of any material provision of the right-of-way permit;

(b) 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;

(c) Any material misrepresentation of fact in the application for a right-of-way permit;

(d) 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

(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.19.

Subd. 2. 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 ~~A~~-substantial breach, as stated above, will allow the city, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, 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. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

Subd. 4. 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 of the permit authorization.

Subd. 5. 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.

Subd. 6. 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.

Sec. 1.22. Location and Relocation of Facilities.

Subd. 1. 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.

Subd. 2. Corridors. The city may assign 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. (Note: this is not intended to establish "high density corridor," city wishing to establish high density corridor should follow PUC rules.]

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.

Subd. 3. Nuisance. One year after the passage of this chapter, 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 rights 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.

Subd. 4. 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.

Sec. 1.23 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 placement of all said facilities. Any registrant whose facilities are less than twenty (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.

Sec. 1.24. 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 thirty (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 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.

Sec. 1.25. Right-of-Way Vacation.

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

Sec. 1.26. Indemnification and Liability

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

Sec. 1.27. Abandoned and Unusable Facilities.

Subd. 1. 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; or

Remove as outlined in Subd. 2.

Subd. 2. 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.

Sec. 1.28. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, 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. A decision by the city Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 1.29 Reservation of Regulatory and Police Powers.

A Permittee's or registrant's rights are subject to 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.

Sec. 1.30. Severability.

If any 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.

If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Chapter or any portions of this Chapter 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 sixty (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.

ARTICLE II. CURB CUTS

Sec. 2.01 Removal of Existing Curb; Joints Between Existing Curb and New Entrance.

In making curb cuts, the existing curb shall be removed in complete whole sections. No cutting, sawing, or breaking of the existing curb shall be made at the existing joints in the existing curb.

Sec. 2.02 Repair of Pavement Disturbed by Curb Cut Work.

Any portion of the existing pavement structure disturbed during curb cut work shall be repaired with similar materials of equal or greater structural capacity. Repair limits shall be defined by right angle saw cuts so oriented to provide the least noticeable surface patch.

Sec. 2.03 Time Limit on Curb Cut Work.

On existing streets improved with curb and gutter, the period between removing the existing curb and constructing the new entrance shall not exceed thirty (30) days.