

ORDINANCE NO. ____-19

**CITY OF ST. LOUIS PARK
HENNEPIN COUNTY, MINNESOTA
AN ORDINANCE REPEALING
ST. LOUIS PARK CITY CODE SECTIONS 24.251-24.256
AND REPLACING THEM WITH SECTIONS 24.251-24.288
REGULATING CITY RIGHTS-OF-WAY
AND AMENDING APPENDIX A, FEE SCHEDULE
TO ADD PERMIT, RENT, MAINTENANCE, AND ELECTRIC FEES
FOR SMALL WIRELESS FACILITIES**

THE CITY OF ST. LOUIS PARK DOES ORDAIN:

Section 1. St. Louis Park City Code Chapter 24, Article VII, Division II is repealed in its entirety and replaced by adding the following:

Sec. 24.251 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.

Accordingly, the city hereby enacts this chapter of this Code relating to rights-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. 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 Minnesota Session Laws, Chapter 123; and 2017 Minnesota Session Laws, Chapter 94, substantially codified in Minnesota Statutes 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 and Minnesota Rule Chapter 7560 where possible. To the extent any provisions 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.

The City desires high quality wireless services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that small wireless facilities can create. These negative impacts include, but are not limited to, interference with right-of-way user sight lines, impacts to right-of-way user circulation, incompatible aesthetics with the surrounding area, fall zone risk, clear zone risk, creating navigation obstacles, interference with future travel way expansion plans, interference with the

delivery of other utility services, interference with storm water management facilities, and increased noise pollution.

To minimize these negative impacts, any person desiring to place a new wireless support structure in the right-of-way or collocate small wireless facilities on existing privately-owned wireless support structures in the right-of-way shall first obtain a small wireless facility permit from the City. Any person desiring to collocate small wireless facilities on existing wireless support structures owned or controlled by the City shall first enter into a standard small wireless facility collocation agreement. The purpose of these requirements is to comply with Minnesota Statutes Sections 237.162 and 237.163 while at the same time protecting the public health, safety, and welfare.

The City will consider impacts to the public health, safety and welfare when reviewing a small wireless permit application and a request to enter into a small wireless facility collocation agreement. The public health, safety and welfare can be best accommodated by locating small wireless facilities in the following order, which affords the greatest protection of the public:

- (1) Locate outside of the right-of-way.
- (2) Locate in the right-of-way on or adjacent to Principal Arterial, Other Arterial, Major Collector, or Minor Collector roads, as classified by the Metropolitan Council Functional Classification System.
- (3) Collocate on existing wireless support structures within the right-of-way.
- (4) Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure of the same height.
- (5) Locate on a new wireless support structure within the right-of-way that replaces an existing wireless support structure whose height is less than or equal to 50 feet.
- (6) Locate on a new wireless support structure within the right-of-way whose height is similar to nearby structures.
- (7) Locate on a new wireless support structure within the right-of-way whose height is less than or equal to 50 feet.

The City will also consider factors such as aesthetic compatibility of the small wireless facility with surrounding structures, ability to eliminate, underground, or screen ground-mounted equipment, dangers within the small wireless facility fall zone, distance of the small wireless facility from roads, sidewalks, trails and bicycle lanes, and future roadway, pedestrian, bicycle, water, wastewater, and storm water improvement plans for the site before issuing small wireless facility permit or entering into a standard small wireless facility collocation agreement.

Sec. 24.252. 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 to Minnesota Statutes Section 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

Sec. 24.253. 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. 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. Any person requesting permission to excavate or obstruct a right-of-way or to place a small wireless facility or wireless support structure in the public right-of-way.

Aesthetics. (also known as "Conceal" or "Concealment" or "Stealth Design") refers to state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the negative aesthetic impacts.

City. The City of St. Louis Park, Minnesota. For purposes of Section 24.281 city also means the city's elected officials, officers, employees and agents.

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 that is owned privately or by a local government unit.

Commission. The State Public Utilities Commission.

Congested right-of-way. 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. 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 Minnesota Statutes Section 15.73 subdivision 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.

Degradation. 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. 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 City of St. Louis Park Engineering Department

Director. The Engineering Director for the City of St. Louis Park.

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

Equipment. Any tangible asset used in the process of construction, installation, repair or maintenance of facilities in any right-of-way

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

Excavation permit. 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. Money paid to the city by an applicant to cover the costs as provided in section 24.263.

Facility or facilities. Any tangible asset in the right-of-way required to provide Utility Service.

Facility or facilities. Any tangible asset(s) in the right-of-way required to provide utility service, including wireless service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by Minnesota Statutes Section 161.45 governing utility facility placement in state trunk highways.

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

Ground-Mounted Equipment. Equipment used in the operation of a wireless facility that is located on the ground and protrudes above the surface elevation of the ground.

Hazardous Materials. Shall be interpreted broadly and specifically includes, without limitation, asbestos containing materials, fuel, batteries or any hazardous substance, waste, or material as defined in any federal, state or local environmental or safety laws or regulation including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

High density corridor. 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. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

Local representative. 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. 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:

- (1) payment by a telecommunications right-of-way user for the use of the public right-of-way;
- (2) unreasonable fees of a third-party contractor used by the city as part of managing public right-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for the city; or
- (3) the fees and cost of litigation relating to the interpretation of Minnesota

Session Laws 2017, Chapter 94; 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 24.287 of this chapter.

Micro wireless facility. A small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

Obstruct. 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. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

Obstruction permit fee. Money paid to the city by permittee to cover the costs as provided in section 24.263.

Patch or patching. 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. 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 and includes a small wireless facility permit.

Permittee. Any person to whom a permit to excavate or obstruct a right-of-way or to whom a small wireless facility permit has been granted by the city under this chapter.

Permittee. Any person to whom a permit or small wireless facility permit to excavate or obstruct a right-of-way or to whom a small wireless facility permit has been granted by the city under this chapter.

Person. 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.

Potholing. Excavating the area above an underground facility to determine the precise location of the underground facility without damage to it, before excavating within three feet of the marked location of the underground facility.

Public Utility Structure: Includes a utility pole and any structure or pole supporting wires for communication or transmission of data or roadway lighting.

Registrant. 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.

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.

Public right-of-way or right-of-way. The area on, below, or above a public roadway, alleyway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service. (Note: this definition does not include other public grounds that may be the subject of other city requirements.)

Right-of-way permit/small wireless facility permit. Either an excavation permit or an obstruction permit or a permit to place a small wireless facility in the public right-of-way or any combination of the three depending on context, required by this chapter.

Right-of-way user. (1) A telecommunications right-of-way user as defined by Minnesota Statutes Section 237.162 Subdivision 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 Minnesota Statutes Section 216B.02 Subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes Chapter 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minnesota Statutes Chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or 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.

(1) a wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

(ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfers switches, cutoff switches, cable, conduit, vertical cable runs for connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or

(2) a micro wireless facility.

Small wireless facility permit fee. Money paid to the city by permittee to cover the costs as provided in section 24.263.

Supplementary application. 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.

Telecommunication right-of-way user. A person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way 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 division, a cable communication system defined and regulated under Minnesota Statutes Chapter 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minnesota Statutes Section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes Chapter 308A, are not telecommunications right-of-way users, except to the extent these entities are offering wireless services.

Temporary surface. 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. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Two year project plan. 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 and equipment and a wireless service network, including: (1) equipment associated with wireless service; (2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and (3) a small wireless facility. Wireless facility does not include: (1) wireless support structures, (2) wireline backhaul facilities, or (3) coaxial or fiber-optic cables between

utility poles or wireless support structures, or that are not otherwise immediately adjacent to or 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 a cable service under United States Code, title 47, section 522 clause (6).

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

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

Sec. 24-254. Administration.

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

Sec. 24-.255. Registration and right-of-way occupancy.

- (1) *Registration.* Each person who occupies or uses, or seeks to occupy or use, or seeks to place any equipment or facilities, small wireless facilities, or wireless support structures in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information.
- (2) *Registration prior to work.* No person may collocate, construct, install, repair, remove, relocate, or perform any other work on, or use any facilities, small wireless facilities, or wireless support structures, or any part thereof, in any right-of-way without first being registered with the city.
- (3) *Exceptions to registration.* 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 in the area of the 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 or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the Minnesota Statutes Chapter 216D, Gopher One Call Law.

Sec. 24-256. Registration information.

- (1) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:
 - (a) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and 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) 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, 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 coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (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.
 - (6) The city may require a copy of the actual insurance policies.
 - (7) If the person is a corporation, a copy of the certificate that is required to be filed as recorded and certified to by the Secretary of State.

- (8) 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.

(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. 24.257. Reporting obligations.

(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 city. 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:

- (a) The locations and 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 city will have available for inspection in the city’s office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

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

(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. 24.258. Permit requirement.

(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 the 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.
- (2) *Permit extensions.* No person may excavate or 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.
- (3) *Delay penalty.* In accordance with Minnesota Rule 7819.1000 subpart 3 and notwithstanding paragraph 2 of this section, the city shall establish and impose a delay penalty for unreasonable delays in the right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.
- (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.

Sec. 24.259. Small wireless facility permit requirement.

- A. *Small wireless facility permit.* Except as otherwise provided in this Code, no person may install a new or replacement wireless support structure for a small wireless facility or collocate a small wireless facility in a public right of way without first having obtained the appropriate small wireless facility permit from the city to do so.
- B. *Permit Application and Fee.* A written application for a small wireless facility permit shall be submitted to the Director on a form provided by the City. The applicant shall pay an application fee in the amount set forth in the Fee Resolution adopted by the City Council, as the same may be amended from time to time. The application will be processed in accordance with the requirements of Minnesota Statutes § 237.163, subd. 3c (b) and (c).C.
Consolidated Permit Application. An applicant may file a consolidated permit application to collocate up to fifteen (15) small wireless facilities, provided that the small

wireless facilities in the application:

- i. are located within a two-mile radius;
- ii. consist of substantially similar equipment; and
- iii. are to be placed on similar types of wireless support structures.

D. Permission from Owner. If the applicant seeks to collocate a small wireless facility on an existing wireless support structure, the applicant shall, at the time of application, provide the City with proof that it has obtained the necessary authority from the owner of the wireless support structure to collocate the small wireless facility on the structure.E.

Issuance of Permit and Conditions. Upon the Director's determination that the applicant has satisfied the requirements of this Section, the Director shall issue the small wireless facility permit. The Director may condition permit approval on compliance with the following:

- i. generally applicable and reasonable health, safety, and welfare regulations consistent with the City's authority to manage its public right-of-way;
- ii. reasonable accommodations for decorative wireless support structures or signs; and
- iii. any reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in the right-of-way. In rendering a decision on a consolidated permit application, the Director may approve a permit for some small wireless facilities and deny a permit for others, but may not use denial of one or more permits as a basis to deny all the small wireless facilities in the consolidated application.

G. *Term.* The term of a small wireless facility permit shall be equal to the length of time that the small wireless facility is in use, unless the permit is revoked.

H. *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.

I. *Special exceptions for small wireless facilities.* As required by state law, a person is not required to pay a small wireless facility permit fee, obtain a small wireless facility permit, or enter into a small wireless facility collocation agreement solely in order to conduct any of the following activities:

- (a) routine maintenance of a small wireless facility;
- (b) replacement of small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or

(c) installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

Persons that perform these excepted activities shall provide the city advance notification of these activities if the work will obstruct a public right-of-way.

Sec. 24.260. Permit applications.

Application for a permit under this chapter is made to the city. Excavation, obstruction, and small wireless facility permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

- (1) Registration with the city pursuant to this chapter;
- (2) Submission of a completed permit application form, including all required attachments, a scaled drawing showing the location and area of the proposed project and the location of all proposed facilities, a traffic control plan, a restoration plan, a timeline for the proposed project, and, if requested by the Director, a scaled drawing showing the location of all known existing facilities and a public notification plan. All such applications shall be consistent with the provisions of this Chapter and good engineering, safety, and maintenance practices shall be followed for the work or activity conducted under the right-of way permit.

The application shall require the applicant to defend, indemnify and hold the City harmless from all liability or claims of liability for bodily injury or death to persons, or for property damage, for those claims specified in Minnesota Rule 7819.1250, subpart 2.

- (3) Payment of money due the city for:
 - (a) permit fees, estimated restoration costs and other management costs;
 - (b) prior obstructions or excavations;
 - (c) any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
 - (d) Franchise fees or other charges, if applicable.
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (5) Posting an additional or larger construction performance bond for additional facilities when applicant requests a permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

- (6) If requested by the Director, an applicant for a right-of-way permit shall provide mapping information in accordance with Minnesota Rules 7819 .4000 and 7819.4100.
- (7) Before granting any permit under any of the provisions of this Chapter, the Director may impose such insurance, bonding, letter of credit, cash deposit, or other financial security requirements thereon as deemed necessary to properly safeguard persons or property exposed to the work or activity. Such insurance shall also protect the City and its employees from any suit, action or cause of action arising by reason of such work or activity.

Sec. 24.261. Issuance of permit; conditions.

- (1) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
- (2) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes sections 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules chapter 7560.
- (3) *Small wireless facility conditions and design criteria.* 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
 - a. Small wireless facilities shall co-locate on existing structures. Exceptions shall be granted by the City Engineer when co-location will impair the primary purpose and intent of existing structures or any attachments thereto.
 - b. 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.
 - c. When installing a new wireless support structure, the new structure shall not impair or reduce the effectiveness of existing or planned structures, signage or other equipment intended to provide or improve public health, welfare and/or safety.

- d. Equipment design and mounts shall be designed to minimize visual impact.
- e. No wireless support structure installed within the right of way shall exceed 50 feet above ground level in height except that a wireless support structure that replaces an existing wireless support structure in the public right-of-way that is greater than 50 feet above ground level in height may be placed at the height of the existing wireless support structure.
- f. No wireless facility constructed in the right-of-way after May 30, 2017 may extend more than ten feet above a wireless support structure existing on May 30, 2017.
- g. 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.
- h. Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure;
- i. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of the structure.
- j. The small wireless facilities (with the exception of antenna) must be located inside the structure. The antenna must be mounted within two (2) inches of the support pole.
- k. The small wireless facility must use the same color and/or finish as the structure it is mounted to. Alternative colors and finishes may be approved by the City Engineer to improve aesthetics and/or compatibility with other attachments to the structure.
- l. Wires servicing small wireless facilities must be located inside the wireless support structure, mounting brackets, and underground.
- m. Small wireless facilities mounted to the exterior of, or projecting outside of the wireless support structure must maintain a vertical clearance of at least nine (9) feet between the facility and the grade at the base of the structure.

- n. No stickers, signs, or decals are allowed to be visible on small wireless facilities. The exception to this rule are safety alerts required by law. The city may impose reasonable requirements to preserve the design, appearance or intended purpose of a structure when collocation is proposed.
- o. Small wireless facilities and support facilities must comply with city's noise regulations.
- p. All wireless support structures must meet the requirements of the adopted wireless support structure design criteria. New structures, replacement of existing structures and modifications to existing structures shall be at the expense of the applicant.
- q. Preference shall be given to locating small wireless facilities in the boulevard, rather than medians.
- r. To facilitate maintenance and visibility, wireless facilities and wireless support structures shall maintain at least eight feet of clearance from other poles, furniture, landscaping, art and other objects located in the right-of-way.
- s. Wireless support structures proposed to be installed on a block with an approved streetscape plan must install a structure consistent with the design required by the plan.
- t. Equipment associated with the antenna of a small wireless facility may be located on the ground if the City Engineer determines there is not sufficient space to locate the equipment on the structure. The equipment shall meet the following requirements:
 - (1) Ground-mounted equipment shall not disrupt traffic or pedestrian circulation and shall not interfere with vehicle or pedestrian intersection sight lines;
 - (2) Ground-mounted equipment shall not create a safety hazard;
 - (3) The ground-mounted equipment shall be located where the side lot line meets the front lot line. If this is not feasible, then it shall be located in an area so to minimize impacts on adjacent property;
 - (4) If placed above grade, ground-mounted equipment must be limited to three feet in height and 28 cubic feet in cumulative size;
 - (5) The equipment shall not impede pedestrian travel on sidewalks and trails. A minimum travel path of six feet in width shall be maintained between the equipment and the edge of sidewalk and/or other

obstructions.

- (6) The colors and/or materials of ground equipment protective screening shall be designed to blend into the streetscape, match existing buildings adjacent to the right of way or shall be wrapped in a public art graphic. The design of ground equipment shall minimize their visual impact in the right of way.
- (7) Equipment located on the ground shall be encased in a protective screening enclosure so that no wires, cables or sharp edges are exposed.

(i) *Small wireless facility agreement.* A small wireless facility shall only be collocated on a wireless support structure owned or under the control of 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:

- a. Management costs;
- b. Up to \$150 per year for rent to collocate on the city structure;
- c. \$25 per year for maintenance associated with the collocation;
- d. A monthly fee for electrical service as follows:
 1. \$73 per radio node less than or equal to 100 maximum watts;
 2. \$182 per radio node over 100 maximum watts; or
 3. The actual cost of electricity, if the actual costs 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 apply for or enter into any individual license, franchise, or other agreement with the city 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. 24.262. Time for review of applications.

- (1) *Deadline for action.* The city shall approve or deny a small wireless facility permit application for collocation of a small wireless facility on a preexisting structure within 60 days after filing of a complete application. The city shall approve or deny a small wireless facility permit application for construction of a new wireless support structure within 90 days after filing of a complete application. The small wireless facility permit, and any

associated building permit application, shall be deemed approved if the city fails to approve or deny the application within 90 days of receipt of a complete application.

- (2) *Tolling of deadline for action.* The 90-day deadline for action may be tolled if:
- a. The city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities. In such case, the city may extend the 90-day deadline for all such applications by an additional 30 days by informing the affected applicants in writing of such extension.
 - b. 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 clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the city's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon applicant's submittal of additional documents or information in response to a notice of incompleteness, the city has 10 days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the 90-day deadline for action.
 - c. The city and applicant may agree in writing to toll the review period.

Sec. 24.263. Permit fees.

- (1) *Excavation permit fee.* The city shall impose an excavation permit fee in an amount sufficient to recover the following costs:
- a. city management costs; and
 - b. degradation costs, if applicable.
- (2) *Obstruction permit fee.* The city shall impose an obstruction permit fee in an amount sufficient to recover city management costs.

- (3) *Small wireless facility permit fee.* The city shall impose a small wireless facility permit fee for the placement of small wireless facilities and wireless support structures in the public right-of-way in an amount sufficient to recover:
 - a. city management costs; and
 - b. city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- (4) *Costs of initial engineering survey and preparatory construction work associated with collocation.* Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover costs associated with a proposed attachment.
- (5) *Payment of permit fees.* No excavation, obstruction, or small wireless facility permit shall be issued without payment of the respective excavation, obstruction, or small wireless facility permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.
- (6) *Nonrefundable.* Permit fees that were paid for a permit that the city has revoked are not refundable.

Sec. 24.264. Standards for Construction or Installation.

- A. *General Standards.* Excavation, backfilling, patching, restoration, and all other work performed in the right-of-way must be done in conformance with all applicable Minnesota Statutes and Administrative Rules, including without limitation Rules 7819.5000 and 7819.5100, all requirements of the City Code, and local guide specifications and standard details that are consistent with Minnesota Statutes Sections 237.162 and 237.163. Installation of service laterals must be performed in accordance with Minnesota Rules Chapter 7560 and the City Code. The permit holder shall comply with the following additional standards when performing the work authorized under the right-of-way permit:
 - (1) Take such precautions as are necessary to avoid creating unsanitary conditions.
 - (2) Conduct the operations and perform the work in a manner that insures the least obstruction to and interference with traffic.
 - (3) Take adequate precautions to insure the safety of the general public and those who require access to abutting property.
 - (4) Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties.

- (5) Comply with the Minnesota Manual of Uniform Traffic Control Devices at all times during construction or installation.
- (6) Exercise caution at all times for the protection of persons, including employees, and property.
- (7) Protect and identify excavations and work operations with barricade flags and, if required, by a flag person in the daytime and by warning lights at night. All traffic control devices shall conform to the latest addition of the Minnesota Manual on Uniform Traffic Control Devices, including the latest edition of the Field Manual for Temporary Traffic Control Zone Layouts.
- (8) Provide proper trench protection as required by the Occupational Safety and Health Administration in order to prevent cave-ins endangering life.
- (9) Protect the root growth of trees and shrubbery.
- (10) If possible, provide for space in the installation area for other right-of-way users.
- (11) Maintain access to all properties and cross streets as possible during construction and installation and maintain emergency vehicle access at all times.
- (12) Maintain alignment and grade unless otherwise authorized by the City. Changes not approved by the City will require removal and reconstruction.
- (13) During plowing or trenching of facilities, a warning tape must be placed at a depth of twelve (12) inches above copper cables with over two hundred (200) pairs and above fiber facilities.
- (14) Below concrete or bituminous paved road, sidewalk and trail surfaces, directional bore facilities must be installed in conduit of a type determined by the permit holder.
- (15) The placing of all facilities must comply with the National Electric Safety Code, as incorporated by reference in Minnesota Statutes section 326B.35.
- (16) At the direction of the Director, facilities being installed or relocated within a high density corridor shall be placed in a common conduit system or share other common structures.
- (17) A Minnesota licensed surveyor shall be used to locate property lines, install property pins, and replace any destroyed property pins at corners.
- (18) Excavations, trenches, and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the City.
- (19) Excavations, trenches, and jacking pits shall be protected when unattended to prevent entrance of surface drainage.
- (20) All backfilling must be placed in six inch (6") layers at optimum moisture and compacted with the objective of attaining ninety-five percent (95%) of Standard

Proctor. Compaction shall be accomplished with hand, pneumatic, or vibrating compactors as appropriate.

- (21) Backfill material shall be subject to the approval of the Director. The Director may permit backfilling with the material from the excavation provided such material is acceptable to the Director.
 - (22) Compacted backfill shall be brought to bottom of the aggregate base of the approved street section.
 - (23) All work performed in the right-of-way shall be done in conformance with local guide specifications and standard details, unless a less stringent standard is approved by the Director.
 - (24) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.
 - (25) No lugs damaging to roadway surfaces may be used.
 - (26) Dirt or debris must be removed daily during construction, which may require the use of a mechanical sweeper.
 - (27) Above-ground utility markers may not be installed except as authorized by the Director.
 - (28) Above-ground utility cabinets, pedestals, and boxes shall be identified with a durable external sign or marker reflecting the name and contact information of the owner of the facility.
 - (29) Other reasonable standards and requirements of the Director.
- B. Standards for Installation, Relocation or Replacement of Underground Utilities. The right-of-way permit holder shall comply with the following standards when installing facilities underground:
- (1) Longitudinal installations, relocations, or replacement under streets, sidewalks and trails are prohibited unless otherwise approved by the Director.
 - (2) Crossing of streets, sidewalks, trails, and hard surfaced driveways shall be directional bored at a minimum depth of sixty (60) inches unless otherwise approved by the Director.
 - (3) Buried facilities below concrete or bituminous paved street, trail, and sidewalk surfaces must be placed at a minimum depth of sixty (60) inches. Other buried facilities shall be placed at a minimum depth of three (3) feet and a maximum depth of four (4) feet unless an alternate location is approved in advance by the Director.
 - (4) If construction is open cut, the permit holder must install the visual tracers within twelve (12) inches and over buried facilities. If other construction methods are used, substitute location methods will be considered.

- (5) The permit holder shall register with Gopher State One Call and comply with the requirements of that system.
 - (6) Compaction in a trench shall be ninety-five percent (95%) of Standard Proctor and copies of test results must be submitted to the Director. Tests will be required at the discretion of the Director. Tests must be conducted by an independent testing firm at locations approved by the Director. The Director may require recompaction and new tests if densities are not met.
 - (7) The facilities shall be located so as to avoid traffic signals and signs, which are generally placed a minimum of three (3) feet behind the curb.
 - (8) When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and when directed by the City, the permit holder shall excavate an observation hole over the utility to ensure that the City utility is not damaged.
 - (9) All junction boxes or access points shall be located no closer than ten (10) feet from City hydrants, valves, manholes, lift stations, or catch basins unless an alternate location is approved by the City.
 - (10) Underground facilities shall not be installed between a hydrant and an auxiliary valve.
 - (11) Buried telecommunications facilities must have a locating wire or conductive shield, except for dielectric cables.
 - (12) Buried fiber facilities must be placed in a conduit of a type determined by the right-of-way user unless the permit holder obtains a waiver from the City.
- C. Standards for Installation, Relocation, or Replacement of Overhead Facilities. The right-of-way permit holder shall comply with the following standards when installing facilities, other than small wireless facilities, overhead:
- (1) All wires shall be a minimum of eighteen (18) feet above paved surfaces and at a location that does not interfere with traffic signals, overhead signs, or street lights.
 - (2) Facilities shall be co-located on poles where possible.
 - (3) Placing overhead facilities on both sides of the right-of-way is prohibited unless specifically approved by the Director.
- D. Trenchless Excavation. A right-of-way permit holder employing trenchless excavation methods, including but not limited to horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560, and shall employ potholing or open cutting over existing underground utilities before excavating as determined by the City.

Section 24.265. Right-of-way patching and restoration.

- (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 circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 24.268.

- (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 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, 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) *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. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- (3) *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.
- (4) *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 under Section 24.268.
- (5) *Failure to restore.* If the right-of-way permit holder fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the City may complete the restoration. The right-of-way permit holder shall reimburse the City for its reasonable costs incurred in completing the restoration and shall pay any delay penalty and/or degradation fee imposed by the City within thirty (30) days of invoice from the City. If a right-of-way permit holder fails

to pay as required, the City may exercise its rights under the construction performance bond and deny future right-of-way permit applications.

- (6) *Delay Fee.* The City may establish and impose a delay fee for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration, or for work not completed prior to right-of-way permit expiration. The delay fee and associated fees shall be established from time to time by City Council resolution. No delay fee shall be imposed if the delay is due to circumstances beyond the control of the permit holder, including without limitation inclement weather, acts of God, or civil strife.

Sec. 24.266. Joint applications.

- (1) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (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.

Sec. 24.267. Supplementary applications.

- (1) *Limitation on area.* A right-of-way permit or small wireless facility 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, (ii) be granted a new permit or permit extension.
- (2) *Limitation on dates.* A right-of-way permit or small wireless facility permit is valid only for the dates specified in the permit. No permittee may begin 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. 24.268. Other obligations.

- (1) *Compliance with other laws.* Obtaining a right-of-way permit or small wireless facility

permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

- (2) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation or collocation of a small wireless facilities or installation or maintenance of a wireless support structures may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (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.
- (4) *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 Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

Sec. 24.269. Right of Way Prohibitions.

- A. *Dumping in Streets.* It is a misdemeanor for any person to throw or deposit in any public right-of-way any solid, recyclable, or yard waste, including but not limited to nails, dirt, glass, cans, discarded cloth or clothing, construction debris, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease, petroleum products or other automotive fluids or to empty any water containing salt or other injurious chemical thereon. It is a violation of this Section to haul any such material inadequately enclosed or covered thereby permitting the same to fall upon the street.
- B. *Fires.* It is a misdemeanor for any person to build or maintain a fire upon a public right-of-way.

- C. Hazardous Materials. It is a misdemeanor for any person or right-of-way user to generate, store, dispose or transport to or over the right-of-way, any Hazardous Materials. Any and all hazardous materials in the right-of-way as defined in this ordinance must be removed except as otherwise permitted by the Director.
- D. Signs. It is a misdemeanor for any person to place or maintain a sign within any public right-of-way except as otherwise permitted by the Director.
- E. Placing Snow or Ice in a Public Right-of-Way. It is a misdemeanor for any person not acting under a specific contract with the City or without written permission from the Director to remove snow or ice from private property or a private driveway and cause the same to obstruct, encroach upon, encumber, or interfere wholly or partially with any public right-of-way, including but not limited to a public roadway, street, sidewalk, walkway, bike or trail way, easement, park, or other public property.

Where permission is not granted by the Director, the City may remove the snow or ice from the public right-of-way and the person shall be initially responsible for payment of all direct and indirect costs of removing the snow or ice from the street. If not paid within thirty (30) days of invoice, collection shall be by civil action or assessment against the property as any other special assessment.
- F. Each day that any person continues in violation of this subdivision shall be a separate offense and punishable as such.

Sec. 24.270. Denial of permit.

- (1) *Reasons for denial.* The city may deny an application for 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.
- (2) *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 a telecommunications right-of-way user in writing within three business days of the decision to deny a permit. If a permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the city and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of denial, it may not be charged an additional filing or processing fee. The city must approve or deny the revised application within 30 days after the revised application is submitted.

Sec. 24.271. Revocation of permits.

- (1) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit or small wireless facility 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 or small wireless facility permit;
 - (b) An evasion or attempt to evade any material provision of the right-of-way permit or small wireless facility 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 or small wireless facility 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 Section 24.273.
- (2) Written notice of breach. If the Director determines that the permit holder has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the right-of-way permit or small wireless facility permit, the Director shall notify the permit holder of the breach in writing and demand that the permit holder remedy the violation. The notice and demand shall inform the permit holder that continued violations may result in revocation of the right-of-way permit or small wireless facility permit. In the notice and demand, the Director may also impose additional or revised conditions on the right-of-way permit or small wireless facility permit to mitigate and remedy the breach.
- (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.
- (4) Revocation. Revocation of a right-of-way permit or small wireless facility permit shall be made in writing within three business days of the decision to revoke the permit and shall document the basis for the revocation.
- (5) Reimbursement of city costs. If a right-of-way permit or small wireless facility 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. 24.272. Installation requirements.

The excavation, backfilling, patching, and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in section 24.274 subdivision 2 of this ordinance.

Sec. 24.273. Inspection.

(1) *Notice of completion.* When the work under any right-of-way or small wireless facility permit is completed, the permit holder shall furnish a completion certificate and as-built drawings in accordance with Minnesota Rule 7819.1300.

(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.

(3) *Authority of director.*

- (a) At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.
- (b) The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. 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 section 24.269.

Sec. 24.274. Work done without a permit.

(1) *Emergency situations.* Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Registrant's notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. 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.

(2) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, excavates or obstructs or places a small wireless facility or wireless support structure in the 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. 24.275. Supplementary notification.

If the obstruction or excavation or the placement of a small wireless facility or wireless support structure in 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. 24.276. Mapping data.

(1) *Information required.* Each registrant, permittee shall provide mapping information required by the city in accordance with Minnesota Rules 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.

(2) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005 shall be a condition of any city approval necessary for:

(a) payments of contractors working on a public improvement project including those

under Minnesota Statutes Chapter 429; and

- (b) city approval under the development agreements or other subdivision or site plan approval under Minnesota Statutes Chapter 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.

Sec. 24.277. Location and relocation of facilities.

- (1) *Rule.* When directed by the city, a right-of-way user shall promptly and at his, her, or its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection 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. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation. 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.
- (2) *Relocation schedule notification procedures.* The director shall notify the registrant or permit holder at least three months in advance of the need to relocate existing facilities. The director shall provide a second notification to the registrant or permit holder one month before the date by which the relocation must be completed. To the extent technically feasible, all utilities must be relocated within one month or in a time frame determined by the director.
- (3) *Delay to city project.* If the registrant or permit holder fails to meet the relocation schedule due to circumstances within the owner's control, the city may charge the owner for all costs incurred by the city because the relocation is not completed in the scheduled timeframe.
- (4) *Joint trenching.* All facilities shall be placed in appropriate portions of the right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate and no safety hazards are created facilities shall be installed, constructed, or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in conformance with Minnesota Rules part 7819.5100 subpart 2, governing safety standards.

- (5) *Corridors.* The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that are 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. A typical crossing section of the location for utilities may be on file at the director's office. This section is not intended to establish "high density corridors."

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city may remain at that location until the city requires facilities relocation to the corridor pursuant to relocation authority granted under Minnesota Rules part 7819.3100 or other applicable law.

- (6) *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 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.
- (7) *Limitation of space.* To protect the 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. 24.278. Pre-excavation facilities location.

In additions to complying with the requirements of Minn. Stat. § 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than 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. 24.279. 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 damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

Sec. 24.280. Right-of-way vacation.

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

Sec. 24.281. 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. 24.282. Abandoned and unusable facilities.

- (1) Discontinued operations. A right-of-way user/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 obligations for its facilities in the right of way under this chapter, including removal and disposal of Hazardous Materials, have been lawfully assumed by another registrant.
- (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.
- (3) Non-Completion or Abandonment of Work. Work shall progress expeditiously to completion in accordance with any time limitation specified in the right-of-way permit or small wireless facility permit so as to avoid unnecessary inconvenience to the public. In the event that the permit holder fails to timely complete the work in accordance with the terms of the right-of-way permit or small wireless facility permit or ceases or abandons the work without due cause, the City may, after six (6) hours' notice in writing to the permit holder of its intention to do so, correct the work, fill any excavation, and repair the public right-of-way in a manner that it deems necessary to protect the safety and welfare of the public. The City shall make or contract for all temporary and permanent repairs, including but not limited to backfilling, compacting, and resurfacing, and the permit holder shall reimburse the City for all costs incurred for such work. If the permit holder fails to reimburse the City within thirty (30) days of billing, the City may do any or all of the following: (1) reimburse itself from the proceeds from any cash deposit, letter of credit, bond, or other security given by the permit holder;

(2) deny the permit holder any future right-of-way permits or small wireless facility permits;
and (3) impose a delay penalty.

Sec. 24.283. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or (5) disputes a determination of the director regarding Section 24.274 subdivision 2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 24.284. Exemptions.

The provisions of this division shall not be applicable to:

- (1) City employees acting within the course and scope of their employment and contractors acting within the course and scope of a contract with the city;
- (2) Persons who install mailboxes in the public right-of-way in accordance with requirements of the U.S. Postal Service;
- (3) Persons who temporarily place residential household refuse containers in the public right-of-way for the collection of solid waste or recyclables in accordance with the provisions of the City Code.

Section 2. This ordinance shall take effect fifteen days after its publication.

First Reading	April 1, 2019
Second Reading	April 15, 2019
Date of Publication	April 25, 2019
Date Ordinance takes effect	May 10, 2019

Reviewed for administration:

Adopted by the City Council April 15, 2019

Thomas K. Harmening, City Manager

Jake Spano, Mayor

Attest:

Approved as to form and execution:

Melissa Kennedy, City Clerk

Soren Mattick, City Attorney