

ORDINANCE NO. 337

CITY OF MAPLE PLAIN

**AN ORDINANCE AMENDING MAPLE PLAIN CITY CODE CHAPTER 7, ARTICLE 4
REGARDING RIGHT-OF-WAY PERMITS**

THE CITY COUNCIL OF THE CITY OF MAPLE PLAIN DOES ORDAIN:

SECTION 1. AMENDMENT. The Maple Plain City Code Section 7, Article 4 is hereby replaced in its entirety as follows:

Section 7-72. – Purpose.

The purpose of this article is to protect and enhance the public health, safety, and welfare by governing the construction, installation, operation, repair, maintenance, removal, and relocation of facilities and equipment used for the transmission of facilities or related services on, over, in, under, or along the public ground of the City.

Section 7-73. – Definitions.

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

Applicant means any person requesting permission to excavate, obstruct, or otherwise place facilities in a right-of-way.

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

Company means a natural or corporate person, business association, or other business entity including partnership and sole proprietorship, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks to, or is required to, construct, install, operate, repair, maintain, remove, relocate, or expand facilities in the City.

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.

Director means the Director of Public Works, City Administrator, or the other agent as the City Council may designate from time to time.

Facilities means communication, electric, gas, oil, or similar transmission lines or equipment or any kind, including, but not limited to, lines or equipment for the transmission of audio, video, data, gas, electricity, oil, or other similar transmission services, including, but not limited to, trunk lines, service connections, lines, cables, physical connections, switching equipment, wires, optic fibers, or other optic cables laser equipment, circuits, wireless communications equipment of all kinds, poles, towers and any necessary appurtenances owned or leased or operated by a company on, over, in, under, or across public ground.

Obstruct or obstruction means to place or the placement of any object in a public right-of-way, or to remove or the removal of an existing structure, or any portion thereof, from a public right-of-way that interferes with free use of the public right-of-way.

Public ground means roads, streets, alleys, sidewalks, public ways, utility easements, public easements, and public rights-of-way in the City.

Small wireless facility means a wireless facility that meets both of the following qualifications:

- (1) Each antenna is located inside an enclosure of no more than six cubic feet in volume or 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
- (2) 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 transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume.

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

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

Section 7-74. —~~Permit procedure.~~ Registration.

- (a) ~~*Permit Registration required.* Except in the case of emergency work as set out in subsection (e) of this section, a company may not construct, install, repair, remove, or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the City. The City shall require a separate permit of a company for each location where construction,~~

~~installation, or other disturbance of the public ground is to occur, or for each convenient subdivision or construction, installation or other related work for which the City in its sole discretion determines a permit is required. Each permit shall state specifically the location of any facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the City, and to protect the right-of-way and its current use. In addition, a permittee shall comply with all the requirements of local, state, and federal laws, including, but not limited to, Minn. Stats. Ch. 216D (Gopher One Call Excavation Notice System) and Minn. R. ch. 7560. 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 by lease, sublease or assignment, must register with the City. No person shall construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof located in any right-of-way without first being registered with the City. Registration will consist of providing application information to and as required by the city, paying an annual registration fee, and posting a performance and restoration surety. The performance and restoration surety required in this section shall be in an amount determined in the City's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this article, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this article or any other applicable laws, regulations or standards. During periods of construction, repair or restoration of rights-of-way or equipment in rights-of-way, the performance and restoration surety shall be in an amount as determined by the City, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this article. 60 days after completion of the work, the performance and restoration surety may be reduced in the sole determination of the City.~~

~~(b) — *Small wireless facility permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the public ground, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.~~

~~(b) *Registration information.* The information to be provided to the City at the time of registration shall include, but not be limited to:~~

- ~~(1) The registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.~~
- ~~(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or~~

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

(3) A certificate of insurance of self-insurance:

- a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the City;
- b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (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;
- c. Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
- d. Requiring that the City be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and
- e. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
- f. The City may require a copy of the actual insurance policies.
- g. If the person is a corporation, a copy of the certificate is required to be filed under state law as recorded and certified to by the secretary of state.
- h. 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.

~~(e) — *Application.* The company shall apply for a permit on such forms as the City may designate from time to time. In the event the City requests it, the company shall promptly submit a survey to the Director at the company's expense. If the Director determines that City Planning Commission review and/or City Council review is appropriate, such review shall be sought.~~

(c) *Notice of changes.* The registrant shall keep all of the information listed in subsection (b) of this section current at all times by providing to the City

information as to changes within 15 days following the date on which the registrant has knowledge of any change.

~~(d) — *Application requirements.*~~

~~(1) *Generally.* The company shall apply for a permit or renewal of a permit a minimum of three weeks before the date proposed to start work and shall submit detailed plans for street or sidewalk use and pedestrian and driver safety on major projects. The provisions of this subsection or portions thereof may be waived by the City in the event of emergency work as provided in subsection (e) of this section.~~

~~(2) *Small wireless facility requirements.* In addition to the requirements of subsection (b) of this section, 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 or on public ground shall be subject to the following conditions:~~

- ~~a. 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.~~
- ~~b. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.~~
- ~~c. No wireless facility may extend more than ten feet above its wireless support structure.~~
- ~~d. 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.~~
- ~~e. 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.~~
- ~~f. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.~~

~~(e) — *Emergency work.* A company may open and disturb the surface of public ground without a permit only where an emergency exists requiring the immediate repair of its facilities. In that event, the company shall notify the City immediately of the need for emergency work, request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event may a company undertake an activity which will result in the closing of a street or alley without prior notification to the Director of West Hennepin Public Safety, Fire Chief, City Administrator or designee, and Public Works Director. City Council approval is required; the City Administrator or designee shall refer the application to the Planning Commission and/or City Council as appropriate.~~

~~(f) — *Approval or denial of application; action on small wireless facility permit applications.* Upon receipt of an application by a company for a permit, the City may approve or deny the application. If the City determines to deny the application, the City must notify the applicant, in writing, within three business days of the decision to deny a permit. Denial shall be accompanied by a written statement of the reasons for the denial and may be appealed to the City Council which shall issue detailed findings in the event the denial is sustained. An appeal of denial shall be heard at the next regularly scheduled Council meeting to which proper notice can be given and any findings issued within 30 days of the meeting. Upon a denial of an application (whether or not appealed), the applicant may address the reasons for the denial identified by the City and resubmit the application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within 30 days after submission.~~

~~(1) *Deadline for action.* The City shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit and any associated building permit application shall be deemed approved if the City fails to approve or deny the application within the review periods established in this section.~~

~~(2) *Consolidated applications.*~~

~~a. — An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the City, provided that all small wireless facilities in the application:~~

- ~~1. — Are located within a two-mile radius;~~
- ~~2. — Consist of substantially similar equipment; and~~
- ~~3. — Are to be placed on similar types of wireless support structures.~~

~~b. — In rendering a decision on a consolidated permit application, the City may approve some small wireless facilities and deny others but may not use~~

~~denial of one or more permits as a basis to deny all small wireless facilities in the application.~~

~~(3) *Tolling of deadline.* The 90-day deadline for action on a small wireless facility permit application may be tolled if:~~

- ~~a. The City received applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such instance, the City may extend the deadline for all such applications by 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. Upon submission of additional documents or information, the City shall have ten days to notify the applicant, in writing, of any still-missing information.~~
- ~~c. The City and a small wireless facility applicant agree, in writing, to toll the review period.~~

~~(g) *Issuance of Permit.* If the City Administrator or designee determines that the applicant has satisfied the requirements of this article, the Director may issue a permit to the company upon payment of the permit fee as specified in subsection (h) of this section.~~

~~(h) *Permit fee.* The company shall pay a fee for each permit issued in an amount provided in the fee schedule. The City Clerk shall maintain a table of permit fees as approved by the City Council. The permit fee shall be determined so as to fully reimburse the City for all costs incurred as a result of the construction, installation, or other work approved by the permit, including, but not limited to, administrative, management, engineering, and inspection costs, any other costs incurred in returning the public ground to its original condition and additional sum to reimburse the City for any diminution in the useful life or value of the public ground. To the extent that a company applies for a permit to occupy public ground indefinitely, the City Council shall set an indefinite occupancy fee requiring periodic payments to be made at the times as determined by the City, but in any event at least annually.~~

~~(a) *Small wireless facility permit fee.* For applications for a permit for small wireless facilities, the City shall impose a small wireless facility permit fee in an amount sufficient to recover:~~

~~(1) Management costs; and~~

~~(2) City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.~~

- (i) ~~*Duration of permit.* Except as provided in section 7-75(e) through (e), an indefinite permit shall continue without expiration so long as the company holding the permit is in compliance with this article and all other applicable law. The maximum period allowed for a temporary permit to perform installations, repairs, or other work shall be three months. Construction, installation or other opening, disturbance or obstruction of public ground beyond the period covered by each permit, including construction, installation, repair or other opening of public ground covered by a permanent permit, shall require obtaining a new permit with payment of applicable fees. Application for such permit shall be subject to the same review as the original application.~~
- (j) ~~*Security of completion of work.* Before beginning work, the company shall deposit with the City security in the form of a certified check in the sufficient amount as determined by the Director for the completion of the work. The security will be held until the work is completed plus a period of up to three months thereafter if necessary to guarantee that restoration work has been satisfactorily completed.~~
- (k) ~~*Inspection of work.* When the work is completed, the company shall request an inspection by the Director. The Director will determine if the work has been satisfactorily completed and notify the company of the inspection approval.~~
- (l) ~~*Small wireless facility agreement.*~~
- (1) ~~A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the City. The standard collocation agreement may require payment of the following:~~
- a. ~~An amount established by the City fee schedule per year for rent to collocate on the City structure.~~
- b. ~~An amount established by the City fee schedule per year for maintenance associated with the collocation.~~
- c. ~~A monthly fee for electrical service as follows:~~
1. ~~An amount established by the City fee schedule per radio node less than or equal to 100 maximum watts;~~
2. ~~An amount established by the City fee schedule per radio node over 100 maximum watts; or~~
3. ~~The actual cost of electricity, if the actual cost exceeds the foregoing.~~
- (2) ~~The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit; provided, however, that the applicant shall not be additionally required to obtain a license or franchise in~~

~~order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and applicant.~~

Section 7-75. – Restoration and relocation. Permit procedure.

- (a) ~~— *Restoration.* Upon completion of the work contemplated by a permit, the company shall restore the general area of the work, including the pavement and its foundations, to the same or better condition than existed prior to commencement of the work necessitating a permit. The work shall be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material and restore the public ground to the same condition, the City may put it in the same condition at the expense of the company. The company shall, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including, but not limited to, the City's administrative costs.~~
- (b) ~~— *Restoration; cost recovery.* To recover its costs, the City will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the City.~~
- (c) ~~— *Relocation initiated by company.* The company shall give the City written notice before relocating its facilities. A company-initiated relocation shall be at the company's expense and must be approved in advance by the City. The approval shall not be unreasonably withheld.~~
- (d) ~~— *Relocation required by City.* The company shall promptly, without due regard for seasonal working conditions, at the company's expense, permanently relocate its facilities in the event that the City in writing requires the relocation.~~
- (e) ~~— *Relocation where public ground vacated.* The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the City. If the vacation proceedings as initiated by the City, or the company, the company shall pay the relocation costs.~~
- (a) *Permit required.* Except in the case of emergency work as set out in subsection (e) of this section, no person may construct, install, repair, remove, or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a right-of-way permit from the City. Each permit shall state specifically the location of any facilities, and the nature of the work necessitating the permit. Permits shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.
- (1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and 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.

- (2) Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment 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.
 - (3) Small wireless facility permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the public ground, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- (b) Delay penalty. In accordance with Minn. Rule 7819.1000 subp. 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. The delay penalty shall be established from time to time by City Council resolution.
- (c) Application. Application for a permit shall be made to the City on such forms as the City may designate from time to time, and will be considered complete only upon compliance with the following requirements:
 - (1) Registration with the City pursuant to this section.
 - (2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities and all other information requested by the City Engineer.
 - (3) Payment of all money due to the City for:
 - a. Permit fees and costs due; and
 - b. Any loss, damage, or expense suffered by the City as a result of applicant's prior excavations or obstructions of the rights-of-ways or any emergency actions taken by the City.
- (d) Conditions. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

- (1) General conditions. An applicant shall apply for a permit or renewal of a permit a minimum of three weeks before the date proposed to start work and shall submit detailed plans for street or sidewalk use and pedestrian and driver safety on major projects. The provisions of this subsection or portions thereof may be waived by the City in the event of emergency work as provided in subsection (e) of this section.
- (2) Small wireless facility conditions. In addition to the conditions of subsection (d)(1) of this section, 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 or on public ground shall be subject to the following conditions:
 - a. 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.
 - b. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
 - c. No wireless facility may extend more than 10 feet above its wireless support structure.
 - d. 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.
 - e. 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.
 - f. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
 - g. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.
- (3) Small wireless facility agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after the applicant has

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

- a. Up to \$150 per year for rent to collocate on the city structure.
- b. \$25 per year for maintenance associated with the collocation;
- c. 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 costs of electricity, if the actual cost exceed the foregoing.

(e) *Emergency work.* A company may open and disturb the surface of public ground without a permit only where an emergency exists requiring the immediate repair of its facilities. In that event, the company shall notify the City immediately of the need for emergency work, request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event may a company undertake an activity which will result in the closing of a street or alley without prior notification to the Director of West Hennepin Public Safety, Fire Chief, City Administrator or designee, and Public Works Director. City Council approval is required; the City Administrator or designee shall refer the application to the Planning Commission and/or City Council as appropriate.

(f) *Approval or denial of application; action on small wireless facility permit applications.* If the City determines to deny the application, the City must notify the applicant, in writing, within three business days of the decision to deny a permit. Denial shall be accompanied by a written statement of the reasons for the denial and may be appealed to the City Council which shall issue detailed findings in the event the denial is sustained. An appeal of denial shall be heard at the next regularly scheduled Council meeting to which proper notice can be given and any findings issued within 30 days of the meeting. Upon a denial of an application (whether or not appealed), the applicant may address the reasons for the denial identified by the City and resubmit the application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within 30 days after submission.

(1) *Deadline for action.* The City shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established by state law. The small wireless facility permit and any

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

(2) Consolidated applications.

- c. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the City, provided that all small wireless facilities in the application:
 - 4. Are located within a two-mile radius;
 - 5. Consist of substantially similar equipment; and
 - 6. Are to be placed on similar types of wireless support structures.
- d. In rendering a decision on a consolidated permit application, the City may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

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

- d. The City received applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such instance, the City may extend the deadline for all such applications by 30 days by informing the affected applicants, in writing, of such extension.
- e. The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within 30 days of receipt of the application. Upon submission of additional documents or information, the City shall have 10 days to notify the applicant, in writing, of any still-missing information.
- f. The City and a small wireless facility applicant agree, in writing, to toll the review period.

(g) Issuance of Permit. If the City Administrator or designee determines that the applicant has satisfied the requirements of this article, the Director may issue a permit to the company upon payment of the permit fee as specified in subsection (h) of this section.

(h) Permit fee. An applicant shall pay a fee for each permit issued in an amount provided in the fee schedule. The City Clerk shall maintain a table of permit fees as approved by the City Council. The permit fee shall be determined so as to fully

reimburse the City for all costs incurred as a result of the construction, installation, or other work approved by the permit, including, but not limited to, administrative, management, engineering, and inspection costs, any other costs incurred in returning the public ground to its original condition and additional sum to reimburse the City for any diminution in the useful life or value of the public ground.

- (i) *Small wireless facility permit fee.* For applications for a permit for small wireless facilities, the City shall impose a small wireless facility permit fee in an amount sufficient to recover:
 - (1) Management costs; and
 - (2) City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- (j) *Duration of permit.* Except as provided in section 7-76(c) through (e), an indefinite permit shall continue without expiration so long as the company holding the permit is in compliance with this article and all other applicable law. The maximum period allowed for a temporary permit to perform installations, repairs, or other work shall be three months. Construction, installation or other opening, disturbance or obstruction of public ground beyond the period covered by each permit, including construction, installation, repair or other opening of public ground covered by a permanent permit, shall require obtaining a new permit with payment of applicable fees. Application for such permit shall be subject to the same review as the original application.
- (k) *Permit limitation.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. The work under a right-of-way permit must be completed within the dates specified in the permit. A right-of-way permit is valid only for the date 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.
- (l) *Notice of completion.* When the work under any permit under this Article is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300 or other as built documentation as deemed necessary by the City Engineer
- (m) *Inspection of work.* When the work is completed, the company shall request an inspection by the Director. The Director will determine if the work has been satisfactorily completed and notify the company of the inspection approval.

Section 7-76. – ~~Company default.~~ Restoration, relocation, and vacation.

- (a) ~~Notice.~~ If the company is in default in the performance of the work or occupancy authorized by permit, including, but not limited to, restoration requirements or permanent occupancy fee payments for more than 30 days after receiving written notice from the City of the default the City may terminate the rights of the company under the permit, subject to the City's absolute right to revoke at any time in the exercise of the City's public safety powers. The notice of default shall be in writing and specify the provisions of the permit and or this section under which the default is claimed and state the grounds of the claim. The notice shall be served on the company by personally delivering it to an officer thereof to its principal place of business in the state or by certified mail to that address within three business days of the decision to revoke.
- (b) ~~City action on default.~~ If the company is in default in the performance of the work or occupancy authorized by permit, the City may, after notice to the company as specified in subsection (a) of this section and failure of the company to sure in default, take such action as may be reasonably necessary to abate the condition caused by the default. The company shall reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under section 7-74 will be applied by the City first toward payment for such reimbursement.
- (a) Restoration. Upon completion of the work contemplated by a permit, the company shall restore the general area of the work, including the pavement and its foundations, to the same or better condition than existed prior to commencement of the work necessitating a permit. The work shall be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material and restore the public ground to the same condition, the City may put it in the same condition at the expense of the company. The company shall, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including, but not limited to, the City's administrative costs.
- (b) Restoration; cost recovery. To recover its costs, the City will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the City.
- (c) Relocation initiated by company. The company shall give the City written notice before relocating its facilities. A company-initiated relocation shall be at the company's expense and must be approved in advance by the City. The approval shall not be unreasonably withheld.

- (d) Relocation required by City. The company shall promptly, without due regard for seasonal working conditions, at the company's expense, permanently relocate its facilities in the event that the City in writing requires the relocation.
- (e) Relocation where public ground vacated. The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the City. If the vacation proceedings as initiated by the City, or the company, the company shall pay the relocation costs.
- (f) Vacation. If the City vacates a right-of-way that contains the facilities of a company, the company's rights in the vacated right-of-way are governed by Minn. R. 7819.3200.

Section 7-77. – Indemnification. Company default.

- ~~(a) — Scope.~~ The company shall indemnify, keep, and hold the City, its elected officials, officers, employees and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, and removal, relocation, or operation of the facilities affecting public ground, unless the injury or damage is the result of the gross negligence of the City, its elected officials, employees, officers, or agents. The City will notify the company of claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.
- ~~(b) — Claim defense.~~ If a claim or action is brought against the City under circumstances where indemnification applies, the company, at its sole expense, shall defend the period wherein the company is not prejudiced in the defense of the claim or action by lack of the notice. The company shall have complete control of the claim or action, but it may not settle without the consent of the City, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. In defending any action on behalf of the City, the company is entitled to assert every defense or immunity that the City could assert in its own behalf.
- ~~(c) — Insurance.~~ The company shall provide liability and indemnity insurance listing the City as a coinsured as may be required by the City.
- (a) Notice. If the company is in default in the performance of the work or occupancy authorized by permit, including, but not limited to, restoration requirements after receiving written notice from the City of the default, the City may terminate the rights of the company under the permit, subject to the City's absolute right to revoke at any time in the exercise of the City's public safety powers. The notice of default shall be in writing and specify the provisions of the permit and or this section under which the default is claimed and state the grounds of the claim. The notice shall be served on the company by personally delivering it to an officer

thereof to its principal place of business in the state or by certified mail to that address within three business days of the decision to revoke.

- (b) *City action on default.* If the company is in default in the performance of the work or occupancy authorized by permit, the City may, after notice to the company as specified in subsection (a) of this section and failure of the company to sure in default, take such action as may be reasonably necessary to abate the condition caused by the default. The company shall reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under section 7-75 will be applied by the City first toward payment for such reimbursement.

Section 7-78. – ~~Right of way vegetation.~~ Idemnification.

~~Any vegetation outside of maintained grass shall not be planted within any City right of way, without a right of way permit approved by the City Administrator.~~

- (a) *Scope.* The company shall indemnify, keep, and hold the City, its elected officials, officers, employees and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, and removal, relocation, or operation of the facilities affecting public ground, unless the injury or damage is the result of the gross negligence of the City, its elected officials, employees, officers, or agents. The City will notify the company of claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.
- (b) *Claim defense.* If a claim or action is brought against the City under circumstances where indemnification applies, the company, at its sole expense, shall defend the period wherein the company is not prejudiced in the defense of the claim or action by lack of the notice. The company shall have complete control of the claim or action, but it may not settle without the consent of the City, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. In defending any action on behalf of the City, the company is entitled to assert every defense or immunity that the City could assert in its own behalf.

Section 7-79. – ~~Other conditions.~~ Abandoned and unusable facilities.

- (a) ~~*Use of public ground.* Facilities shall be located, constructed, installed, maintained, or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and other use of public ground. The facilities are subject to additional conditions of the permit, including, but not limited to, the right of inspection by the City at reasonable times and places; the obligation to relocate the facilities pursuant to section 7-75 and compliance with all applicable~~

regulations imposed by the Minnesota Public Utilities Commission and all other applicable laws and regulations.

- (b) ~~Location.~~ The facilities shall be placed in a location and in the manner as is designated in a permit by the City. The City may designate whether facilities shall be placed above ground or in subsurface conduits.
- (c) ~~Street improvements paving or resurfacing.~~ Upon request, the City will give the company notice of plans for street improvements where permanent paving or resurfacing is involved. The notice will contain:
 - (1) The nature and character of the improvements;
 - (2) The streets upon which the improvements are to be made
 - (3) The extent of the improvements and the approximate time when the City will start work; and
 - (4) If more than one street is involved, the sequence in which the work is to proceed.
- (d) ~~Company protection or facilities.~~ protection or facilities. The company shall take all reasonable measures to prevent its facilities from damage that could be inflicted on the facilities by persons, property or the elements. The company shall take all reasonable protective measures when the City performs work near the facilities.
- (e) ~~Guarding of obstruction or dangers.~~ If the company obstructs any public ground, the company shall keep such obstruction properly guarded at all times. From sunset to sunrise, all obstructions shall be guarded by a sufficient number of warning lights placed in such manner that they will give proper warning of such obstruction. The City may require any other restrictions or safety precautions as may be in the public interest.
- (f) ~~Prior service connections.~~ In cases where streets are at final width and grade and the City has installed to the property line abutting the streets prior to a permanent paving or resurfacing of the streets, and the facilities are located under the street a company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five-year period following the paving or resurfacing.
- (g) ~~Existing facilities.~~ This article applies to all facilities including those already existing on, over, in, under, across, or along any public ground in the City as of the effective date of the ordinance from which this article is derived except those that are otherwise governed by state law granting exclusive jurisdiction to the state.

- (a) A company that has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the company's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another company.
- (b) Facilities of a company which fails to comply with subsection (a) of this section and which, for two years, remain unused shall be deemed to be abandoned. Abandoned facilities are 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, taking possession of the facility and restoring it to a usable condition, or requiring removal of the facility by the company or by the company's surety.
- (c) Any company who has unusable facilities in any right-of-way shall remove it from the right-of-way during the next scheduled excavation, unless this requirement is waived by the City.

Section 7-80. – Right-of-way vegetation.

Any vegetation outside of maintained grass shall not be planted within any City right-of-way, without a right-of-way permit approved by the City Administrator.

Section 7-81. – Other obligations.

- (h) *Use of public ground.* Facilities shall be located, constructed, installed, maintained, or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and other use of public ground. The facilities are subject to additional conditions of the permit, including, but not limited to, the right of inspection by the City at reasonable times and places; the obligation to relocate the facilities pursuant to section 7-75 and compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission and all other applicable laws and regulations.
- (i) *Location.* The facilities shall be placed in a location and in the manner as is designated in a permit by the City. The City may designate whether facilities shall be placed above ground or in subsurface conduits.
- (j) *Street improvements paving or resurfacing.* Upon request, the City will give the company notice of plans for street improvements where permanent paving or resurfacing is involved. The notice will contain:
 - (1) The nature and character of the improvements;
 - (2) The streets upon which the improvements are to be made

- (3) The extent of the improvements and the approximate time when the City will start work; and
- (4) If more than one street is involved, the sequence in which the work is to proceed.
- (k) *Company protection or facilities.* protection or facilities. The company shall take all reasonable measures to prevent its facilities from damage that could be infected on the facilities by persons, property or the elements. The company shall take all reasonable protective measures when the City performs work near the facilities.
- (l) *Guarding of obstruction or dangers.* If the company obstructs any public ground, the company shall keep such obstruction properly guarded at all times. From sunset to sunrise, all obstructions shall be guarded by a sufficient number of warning lights placed in such manner that they will give proper warning of such obstruction. The City may require any other restrictions or safety precautions as may be in the public interest.
- (m) *Prior service connections.* In cases where streets are at final width and grade and the City has installed to the property line abutting the streets prior to a permanent paving or resurfacing of the streets, and the facilities are located under the street a company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five-year period following the paving or resurfacing.
- (n) *Existing facilities.* This article applies to all facilities including those already existing on, over, in, under, across, or along any public ground in the City as of the effective date of the ordinance from which this article is derived except those that are otherwise governed by state law granting exclusive jurisdiction to the state.
- (o) *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 company shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A company 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.
- (p) *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.

- (q) 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.
- (r) Trenchless excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the director.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publications as required by law.

Adopted by the City Council of the City of Maple Plain this ____ day of _____, 2025.

Julie Maas-Kusske, Mayor

ATTEST:

Jacob Kolander, City Administrator

Published in the _____ on _____, 2025.