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MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KEN ONDICH, PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: INTRODUCTION OF ORDINANCE #342 - RIGHT OF WAY ORDINANCE AMENDMENTS FOR SMALL WIRELESS FACILITIES
DATE: SEPTEMBER 14, 2023

As the City Council may be aware, 2017 Session Law amendments (MS 237.162 and 237.163) were approved that allowed the deployment of “small wireless facilities” in public right of way. The attached memo from Kennedy & Graven dated 7/19/17 and League publication dated 8/1/17 provide the details of the amendments.

The City’s current right of way management ordinance (Section 93.45 of the City Code) follows an older version of the League of Minnesota Cities model ordinance and was written a number of years ago. State law at the time this was written allowed telecommunication right of way users to install their facilities in a city’s right of way and also on whose facilities they are allowed to attach, subject to any local right of way permitting that might have been adopted. With the amendments approved by the state in 2017, the definition of a telecommunications right of way user has now been amended to include “wireless service” providers which was certainly not a technology considered when the city’s ordinance was originally approved.

Since the amendments were approved, the League of Minnesota Cities developed a model ordinance for cities to consider. City Staff reviewed the model ordinance and compared it to the City’s existing right of way ordinance and has incorporated suggested changes with the City Attorney’s assistance.

On March 28, 2018 the Planning Commission reviewed the draft ordinance and suggested that small cell wireless facilities should be conditional uses in both single family and historic zoning districts (staff did not suggest this) and that the City should require screening standards for small cell infrastructure. The topic did not receive any discussion until the City Council discussed and adopted small cell facility aesthetic standards by an April 15, 2019 deadline that was imposed by an FCC order. On April 15, 2019 the City Council adopted the “Small Cell Wireless Facility Design Guidelines Policy” which addressed the Planning Commission’s previously noted aesthetic concerns.

The reason the ordinance did not move forward after this time was ongoing lawsuits with the FCC regarding small cell facilities and then the Covid-19 pandemic hit which shifted staff’s priorities. Staff followed up with the City attorney recently and the drafted ordinance is now ready for introduction.

Attached is the amending ordinance that staff and the City attorney developed for consideration.

Staff Recommendation

Staff recommends that the City Council conduct a first reading and approve the introduction of the ordinance amendment.

Attachments:

1. Ordinance #342 Amending Chapter 93 Title Right-of-Way Construction Regulations – Draft 9/11/23
2. Small Cell Wireless Facility Design Guidelines Policy – Adopted 4/15/19
3. 2017 Memo from Kennedy & Graven and LMC regarding Small Wireless Facilities in ROW.

ORDINANCE NO. 342

CITY OF NEW PRAGUE

AN ORDINANCE AMENDING CHAPTER 93 OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS OF WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS.

THE CITY COUNCIL OF THE CITY OF NEW PRAGUE, SCOTT AND LESUEUR COUNTIES, MINNESOTA ORDAINS:

SECTION 1. Chapter 93 titled Right-of-Way Construction Regulations of the City of New Prague City code is amended by deleting the ~~stricken~~ material and adding the underlined material as follows:

RIGHT-OF-WAY CONSTRUCTION REGULATIONS-MANAGEMENT

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

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

§ 93.456 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

In accordance with the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to this chapter Minn. Stat. 237.163 subd. 2(b) to manage rights-of-ways within its jurisdiction.

§ 93.467 ~~DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.~~

~~Minn. Rules Chapter 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in Minn. Rules part 7819.0100 Subparts 1 through 23, as it may be amended from time to time, are the definitions of the terms used in the following provisions of this subchapter.~~

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.

(A) *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.

(B) *Applicant.* Any person requesting permission to excavate or obstruct a right-of-way.

(C) *City.* The city of New Prague, Minnesota. For purposes of § 93.73, city also means the City’s elected officials, officers, employees, and agents.

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

(E) *Commission.* The State Public Utilities Commission.

(F) *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 Minn. Stat. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

(G) *Construction Performance Bond.* Any of the following forms of security provided at permittee’s option:

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

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

(H) *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.

(I) *Degradation Cost.* Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

(J) *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.

(K) *Department.* The department of public works of the city.

(L) *Director.* The director of the department of public works of the city, or her or his designee.

(M) *Delay Penalty.* The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

(N) *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.

(O) *Equipment.* Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

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

(Q) *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.

(R) *Excavation Permit Fee.* Money paid to the city by an applicant to cover the costs as provided in Section 93.57.

(S) *Facility or Facilities.* Any tangible asset in the right-of-way required to provide Utility Service.

(T) *Five-Year Project Plan.* Shows projects adopted by the city for construction within the next five years.

(U) *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.

(V) *Hole.* An excavation in the pavement, with the excavation having a length less than the width of the pavement.

(W) *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.

(X) *Management Costs.* The actual costs the city incurs in managing its rights of way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 1.31 of this chapter.

(Y) *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.

(Z) *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.

(AA) *Obstruction Permit Fee.* Money paid to the city by a permittee to cover the costs as provided in Section 93.57.

(BB) *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.

(CC) *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.

(DD) *Permit.* Has the meaning given "right-of-way permit" in Minn. Stat. § 237.162.

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

(FF) *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.

(GG) *Probation.* The status of a person that has not complied with the conditions of this chapter.

(HH) *Probationary Period.* One year from the date that a person has been notified in writing that they have been put on probation.

(II) *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.

(JJ) *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.

(KK) *Restoration Cost.* The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

(LL) *Public Right-of-Way or Right-of-Way.* The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights of way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

(MM) *Right-of-Way Permit.* Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

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

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

(PP) *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.

(QQ) *Small Wireless Facility.* A wireless facility that meets both of the following qualifications:

(1) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

(2) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

(RR) *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.

(SS) *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.

(TT) *Trench.* An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

(UU) *Telecommunications Right-of-Way User.* A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

(VV) *Two Year Project Plan.* Shows projects adopted by the city for construction within the next two years.

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

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

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

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

§ 93.458 ADMINISTRATION.

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

§ 93.459 UTILITY COORDINATION COMMITTEE.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and, by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

§ 93.4550 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.

(B) Registration Prior to Work.

No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

(C) Exceptions. 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 Minn. Stat. ch. 216D, Gopher One Call Law.

§ 93.4551 REGISTRATION INFORMATION.

(A) *Information Required.* The information provided to the city at the time of registration shall include, but not be limited to:

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

(2) The name, address, and email 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 or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the city;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (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 thirty (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.

(B) Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

§ 93.4552 REPORTING OBLIGATIONS.

(A) Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. 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.

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

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

(2) 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").

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

(D) 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.

(E) 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.

(F) 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.

§ 93.4753 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate permit from the city.

(1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in the 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 or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

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

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 Subpart 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be a fee as established from time to time by Council resolution, ~~as it may be amended from time to time.~~

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director.

Penalty, see § 10.99

§ 93.4854 PERMIT APPLICATIONS.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

~~(A) Submission of a completed permit application form, including all required attachments, sealed drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:-~~

~~(1) Each permittee'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 or self insurance:~~

~~(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self insurance acceptable to the Director;~~

~~(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 use and occupancy of the right of way by the registrant, its officers, agents, employees, and permittees, and 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 coverages;~~

~~(d) Requiring that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;~~

~~(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.~~

~~(4) The city may require a copy of the actual insurance policies.~~

~~(5) If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06, as it may be amended from time to time as recorded and certified to by the Secretary of State.~~

~~(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.~~

~~(B) Payment of money due the city for:~~

~~(1) Permit fees as established from time to time by Council resolution, as may be amended from time to time, estimated restoration costs and other management costs;~~

~~(2) Prior obstructions or excavations;~~

~~(3) Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the city; or~~

~~(4) Franchise fees or other charges as established from time to time by Council resolution, as may be amended from time to time, if applicable.~~

(C) Registration with the city pursuant to this chapter.

(D) 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.

(E) Payment of money due the city for:

(1) permit fees, estimated restoration costs, and other management costs;

(2) prior obstructions or excavations;

(3) 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;

(4) franchise fees or other charges, if applicable.

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

(G) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

§ 93.4955 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Director shall issue a permit.

(B) *Conditions.* The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

(C) *Small Wireless Facility Conditions.* In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other

installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

(1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

(2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

(3) No wireless facility may extend more than 10 feet above its wireless support structure.

(4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(5) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.

(6) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

(7) The City's Small Cell Wireless Facility Design Guidelines Policy shall be complied with.

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

(1) Up to \$150 per year for rent to collocate on the city structure.

(2) \$25 per year for maintenance associated with the collocation;

(3) A monthly fee for electrical service as follows:

(4) \$73 per radio node less than or equal to 100 maximum watts;

- (5) \$182 per radio node over 100 maximum watts; or
- (6) The actual costs of electricity, if the actual cost exceeds the foregoing.

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

§ 93.5056 ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

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

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

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

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

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

(1) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

(2) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

(3) The city and a small wireless facility applicant agree in writing to toll the review period.

§ 93.5057 PERMIT FEES.

Permit fees shall be in an amount established from time to time by Council resolution, as it may be amended from time to time.

(A) *Excavation permit fee.* The city shall ~~establish~~ impose an excavation permit fee ~~as established from time to time by Council resolution, as may be amended from time to time,~~ in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee.* The city shall ~~establish~~ impose the obstruction permit fee ~~as established from time to time by Council resolution, as may be amended from time to time, and shall be~~ in an amount sufficient to recover the city management costs.

(C) *Small Wireless Facility Permit Fee.* The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

- (1) management costs, and;
- (2) city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(~~C~~D) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

(~~D~~E) *Non-refundable.* Permit fees ~~as established from time to time by Council resolution, as may be amended from time to time,~~ that were paid for a permit that the Director has revoked for a breach as stated in § 93.5867 are not refundable.

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

(~~F~~G) *Consistent with Minnesota Rules.* All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000, as it may be amended from time to time.

§ 93.5158 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the city restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.

(3) *Degradation Fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. ~~The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.~~

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Director, shall correct all restoration work to the extent necessary, using the method required by the Director. The work shall be completed within five calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

(E) *Failure to restore.* If the permittee 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 Director at its option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

~~(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established from time to time by Council resolution, as may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.~~

§ 93.59 JOINT APPLICATIONS.

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

(B) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(C) *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

§ 93.5260 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

§ 93.61 OTHER OBLIGATIONS.

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

(B) *Prohibited Work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(C) *Interference with Right-of-Way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(D) *Trenchless excavation.* As 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.

§ 93.5362 DENIAL OR REVOCATION OF PERMIT.

(A) *Reasons for Denial.* The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

(B) *Procedural Requirements.* The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

§ 93.5463 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with M.S. §§ 237.162 and 237.163, as they may be amended from time to time. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in § 93.67 subd. 2 of this ordinance.

§ 93.5564 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.

(B) *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If proof has not been presented within the required time, the Director may revoke the permit pursuant to § 93.5867.

§ 93.5665 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each ~~person~~ registrant ~~with facilities in the right-of-way~~ shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The ~~owner~~ registrant of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the ~~owner~~ 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.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each ~~facility owner~~ 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 ~~person~~ registrant whose facilities occasioned the emergency.

(B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this 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.

§ 93.5766 SUPPLEMENTARY NOTIFICATION.

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

§ 93.5867 REVOCATION OF PERMITS.

(A) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to 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 permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 93.5564.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy that violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

(D) *Cause for Probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

(E) *Automatic Revocation.* If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

(F) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

§ 93.5968 MAPPING DATA; INFORMATION REQUIRED.

~~Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.~~

(A) *Information Required.* Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city's electronic mapping system, when practical or as a condition imposed by the director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

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

(1) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and

(2) city approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The director shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

§ 93.6069 LOCATION AND RELOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they

may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

- (B) *Corridors.* The city may assign ~~a specific area within the right-of-way, specific corridors within the right-of-way,~~ or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

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

(~~C~~D) *Limitation of space.* To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Director 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.

§ 93.6170 PRE-EXCAVATION FACILITIES LOCATION.

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

§ 93.6171 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 Director shall notify the local representative as early as is reasonably possible ~~and placed as required~~. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each ~~facility owner~~

registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. ~~Each facility owner~~ 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 ~~owner's~~ registrant's facilities.

§ 93.6272 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

§ 93.6373 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules 7819.1250, as it may be amended from time to time.

§ 93.6474 ABANDONED AND UNUSABLE FACILITIES; ~~REMOVAL OF~~ ~~ABANDONED FACILITIES.~~

~~Any person who has abandoned facilities in any right-of-way shall remove them 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 Director.~~

(A) *Discontinued Operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

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

§ 93.6575 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; or believes that the fees imposed are ~~invalid~~ not in conformity with Minn. Stat. § 237.163, subd. 6; or disputes a determination of the director regarding §93.68, subd.2 of this ordinance, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 93.6676 RESERVATION OF REGULATORY AND POLICE POWERS.

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

§ 93.77 SEVERABILITY.

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

§ 93.67 [RESERVED]

§ 93.68 [RESERVED]

§ 93.69 [RESERVED]

§ 93.708 RIGHT-OF-WAY ENCROACHMENTS.

(A) *Purpose.* The public welfare requires that the public rights-of-way within the city, including highways, roads, streets and alleys, be reserved for public uses. Public use of the full width of the rights-of-way is necessary to public safety and the proper and efficient maintenance of the rights-of-way. However, it is recognized that limited private use or encroachment onto the rights-of-way is not necessarily inconsistent with public use. It is the purpose of this section to provide for lawful private use of public rights-of-way not inconsistent with public use.

(B) *Permit to encroach.*

(1) *Permit required.* The right to use public rights-of-way within the city for any private use or purpose other than the primary purpose of public travel, whether the use constitutes a substantial or incidental use, may be acquired only through issuance of a permit pursuant to this section.

(2) *Application for permit.* Any person may apply to the City Administrator or his or her designated representative for a permit to construct, install or locate and maintain private property or improvements within a publicly-owned right-of-way. The application shall be in writing and must describe with specificity the private property or improvement and right-of-way involved and the nature and extent of the requested encroachment. The applicant shall further provide a handmade drawing (to scale) or survey drawing showing the location of the proposed encroachment within the right-of-way. The permit shall become effective upon an associated encroachment agreement being duly recorded at the offices of the County Recorder. The city shall be the party responsible for recording the encroachment agreement at the offices of the County Recorder.

(3) *Application fee.* Each application for a license required by the provisions of this section shall be accompanied by an application fee in an amount established by resolution of the City Council, which fee shall be retained by the city whether or not a license is issued.

(4) *Issuance of permit; conditions.* The City Administrator or his or her designated representative may grant the permit and draft an encroachment agreement if it is determined that the encroachment applied for is not inconsistent with safe and efficient public use of the public right-of-way. However, no permit will be issued until the landowner has agreed in writing to waive any right to recover from the city for damage occurring to the item of encroachment within the right-of-way. The landowner must also agree to hold the city harmless from any claim of damage or liability against the city arising out of the encroachment.

(5) *Revocation of permit.* The city reserves the right to revoke any permit and encroachment agreement granted under this section as may be required by the public interest.

(C) *Unlawful encroachments.* Any privately-owned property located within or encroaching upon public rights-of-way which has not been authorized in accordance with this section shall be unlawful and be subject to removal by the city at the owner's expense.

(D) *Exemptions from provisions.* The use of the public right-of-way for the placement of the following items shall be exempt from the permit requirements of this section:

(1) Mailboxes with the following conditions:

(a) The mailbox is positioned or clustered according to specific directions of the city and/or United States Postal Service;

(b) Mailboxes servicing a planned unit development (PUD) are positioned or clustered within the platted portion of the PUD;

(c) The location of the mailbox or mailboxes does not interfere with the city's maintenance of the right-of-way.

(2) Grass, ground cover, or flowers that do not extend more than two feet in height from the ground (trees and shrubs shall not be allowed).

(3) Sprinkler systems with an approved lawn sprinkler permit.

(Ord. 219, passed 4-16-07)

SECTION 2. This Ordinance shall take effect and be in force upon its publication, in accordance with Section 3.13 of the City Charter.

Introduced to the City Council of the City of New Prague, Minnesota, the ____ day of ____, 2023.

The required 10 days posted notice was completed on the City Website and City Hall Bulletin Board on or before September 19, 2023.

Passed by the City Council of the City of New Prague, Minnesota, the 2nd day of October, 2023 and to be published on the 12th day of October, 2023.

Duane J. Jirik, Mayor

Joshua M. Tetzlaff, City Administrator

CITY OF NEW PRAGUE

SMALL CELL WIRELESS FACILITY DESIGN GUIDELINES POLICY

(Adopted 4/15/2019)

I. PURPOSE AND COMPLIANCE

In implementing City Code, Chapter 93 and applicable law and regulations related to use and management of public right-of-ways, the City Council of the City of New Prague (the “City”) finds that in order to protect the public health, safety and welfare of its citizens and to reasonably manage and protect the public rights-of-way (the “ROW”) and its uses in the City, it is in the best interest of the City and its residents and businesses to establish a Small Wireless Facility Design Guidelines Policy (the “Guidelines”) to provide the aesthetic requirements and other specifications and reasonable conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.

The objective of these Guidelines is to strike a balance between preserving and protecting the character of the City through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the City effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

These Guidelines apply to requests to locate small wireless facilities in the ROW and ongoing use of the ROW for such purposes. These Guidelines are established pursuant to City Code, Chapter 93 and applicable law. These Guidelines are administered through the permitting process contained therein as conducted by the City of New Prague Public Works Department and Utilities Department.

Placement or modification of a small wireless facilities and/or wireless support structures shall comply with these Guidelines at the time the permit for installation or modification is approved and as amended from time to time. Wireless service providers and permittees are required to comply with City Code, Chapter 93 and applicable law and regulations.

II. DEFINITIONS

The definitions contained in Minn. Stat. § 237.162 are incorporated into this policy by reference as though fully set forth herein.

III. APPLICATION REQUIREMENTS

Prior to placing, installing, modifying, relocating or removing a small wireless facility or wireless support structure in the ROW, or to collocating a wireless facility on an existing wireless support structure in the ROW, the operator shall apply for and receive a permit from the City. In addition to the application requirements established in City Code, Chapter 93 and applicable law and regulations, the information identified in this Section III must be included for the application to be

considered complete, except that where such information is already in the City's possession from previous applications, or where the applicant previously filed information and specifications for standard materials that are being utilized in the new application, such information shall be referenced but need not be resubmitted. The City may require additional information as reasonably necessary to evaluate the application and the impact of the proposed installation(s) on the public health, safety and welfare or on use or management of the ROW.

A. PROOF OF AGENT DESIGNATION (IF APPLICABLE):

If the applicant is serving as an agent of a small wireless operator, the applicant must provide written documentation of the agent designation signed by the operator.

B. MAP

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the small wireless facility is proposed to be attached, or from which a small wireless facility is proposed to be removed.

C. PHOTO SIMULATIONS

For all applications to locate small wireless facilities in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

D. CONSOLIDATED APPLICATIONS

An applicant seeking to construct, modify, collocate or replace more than one small wireless facility or more than one wireless support structure within the City may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of small wireless facilities or substantially the same type of wireless support structures. (Note: The City may treat each request individually during application review and processing and when issuing a determination or applying these guidelines.)

E. SITE AND OTHER PLANS AND STRUCTURAL CALCULATIONS

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing curb, driveways, sidewalks, light poles and any other poles or appurtenances.

F. FULL DESCRIPTION OF NUMBER AND DIMENSIONS OF FACILITIES AND/OR STRUCTURES TO BE INSTALLED

The applicant must include a full description of the number and dimensions of all small wireless facilities proposed to be installed and the wireless support structure, either new or

existing, to be utilized for each small wireless facility. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

G. OWNER'S AUTHORIZATION

For any application to attach a small wireless facility to a wireless support structure that is not owned by the City, the applicant must submit evidence sufficient to show that either: (1) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application.

IV. AESTHETIC REQUIREMENTS FOR SMALL WIRELESS FACILITIES

A. ANTENNAS

1. Each small wireless antenna shall be located entirely within a shroud or canister type enclosure.
2. The diameter of the antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.
3. All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the wireless support structure, or mounted to the side of the wireless support structure such that the vertical centerline of the antenna enclosure shall be parallel with the wireless support structure with the height of the side mounted antenna being at a location on the wireless support structure noted in the application and approved by the City, but at least 10 feet above ground level at its lowest point.
4. Tree "topping" or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the ROW must be noted in the application and must be approved by the City.

B. CABLES AND WIRES

All cables, wires and connectors related to the small wireless facility must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed on the wireless support structure.

C. COLORS

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.

D. EQUIPMENT ENCLOSURES/CONCEALMENT

1. Equipment enclosures, including electric meters, shall be as small as possible, but in no event larger than 28 cubic feet in volume. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the City. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
2. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the City.
3. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two years of installation.

E. SIGNAGE/LOGOS/LIGHTS/DECALS/COOLING FANS

1. Signage: The small wireless facility permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (e.g. radio-frequency (RF) ground notification signs) or the City. If no cabinet exists, the signage shall be placed at the base of the pole.
2. Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a street light pole.
3. Logos/Decals: The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the City. Small wireless facilities and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The small wireless facility operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
4. Cooling Fans: In residential areas, the small wireless facility operator/permittee shall use a passive cooling system. In the event that a fan is needed, the small wireless facility operator/permittee shall use a cooling fan with a low noise profile.

V. LOCATION REQUIREMENTS

A. MOST PREFERABLE LOCATIONS

The following are the most preferred areas for new small wireless facilities in the order of preference (1 being most preferable):

1. *Industrial Districts* if not adjacent to a park, residential district or historic district.
2. *Highway Rights of Way* areas if not adjacent to a park or residential district.
3. *Retail and Commercial Districts* if not adjacent to a park or residential district.

B. COLLOCATION PREFERENCE

It is the City's strong preference that whenever an applicant proposes to place a new small

wireless facility that the applicant collocate the same on existing wireless support structures.

C. LEAST PREFERABLE LOCATIONS

The following are the least preferred areas for new small wireless facilities in the order of preference.

1. *Downtown Central Business District (B-1)*
2. *Residential Districts*
3. *Parks*

D. CONSIDERATION OF ALTERNATE LOCATIONS

The City reserves the right to propose an alternate location for a small wireless facility and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location or within a distance that is equivalent to the width of the ROW in or on which the small wireless facility and/or wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

E. GUIDELINES ON PLACEMENT

The City desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent City poles, and of the surrounding area adjacent to their location, except that wooden poles shall not be considered.

Small wireless facilities are strongly discouraged from locating within the central business district, as defined by the City's zoning ordinance.

The following additional guidelines on placement shall apply:

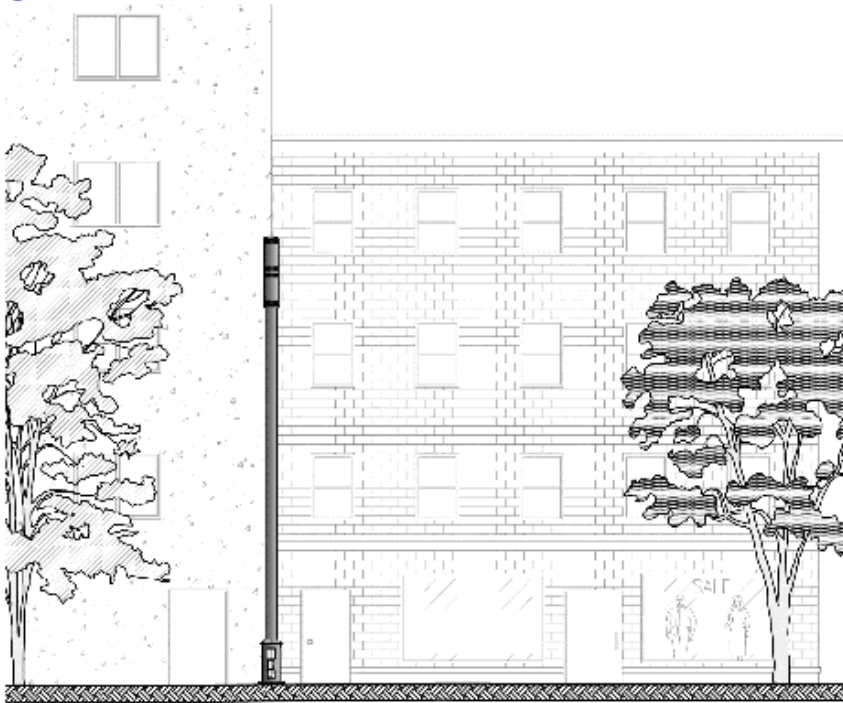
1. Small wireless facilities and wireless support structures shall be located no closer than 150 feet away, radially, from another small wireless facility and wireless support structure.
2. A combination wireless support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary.
3. Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.
4. Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.
5. Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the City Code, Chapter 93, applicable law and regulations, or these Guidelines.

6. Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.
7. Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.
8. Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.
9. Small wireless facilities and wireless support structures shall be located equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
10. Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.
11. Small wireless facilities and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
12. Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.
13. New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure.
14. To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the City where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

Figure 1 – Example of Acceptable Location Between Residential Homes:



Figure 2 – Example of Acceptable Location Between Commercial Buildings



VI. LIMITATIONS

While the City fully intends to apply the guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In these case, City staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

VII. EFFECTIVE DATE OF POLICY

This Policy will be effective as of the 15th of April, 2019. Modifications of the Policy will be effective on the date said modifications are approved by the City Council.



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MEMORANDUM

TO: Clients
FROM: Bob Vose, Jim Strommen, and Andrew Biggerstaff
DATE: July 19, 2017
RE: Right-of-Way ("ROW") Ordinance Amendments; Small Wireless Facilities

Attached to this memorandum are the proposed amendments to the League of Cities Model ("ROW") Ordinance that is likely to be substantially similar to your city's ROW ordinance – but not identical. Therefore, each city must conform the changes we provide to its ROW ordinance.

The ROW Ordinance amendments incorporate verbatim or slightly modified language from Minnesota Statutes, Sections 237.162 and 237.163 ("Act") as expanded in the 2017 Legislative Session to allow the deployment of "small wireless facilities" in the ROW. We have also included the Session law changes to the Act, and reference the statutory cite in the ROW Ordinance amendments.

As you know, state law gives "telecommunications right of way users" the right to install facilities in the ROW and use the ROW for the delivery of their services. This right is subject to local governmental authority to manage the ROW by permitting. Local governments must affirmatively elect to manage the ROW by adopting a ROW ordinance, and we assume that your city has previously opted to utilize the Act, as required under Section 237.163, subd. 2 (b). Under such ROW ordinances, use of the ROW may be conditioned or denied if necessary to protect public health, safety, or welfare, and that broad protection remains applicable to small wireless facilities. Moreover, many of the Minnesota Rules governing utility ROW use found in Minn. R. ch. 7819 will apply to small wireless facilities.

It is important to note that the 2017 Session Law amendments were the product of negotiations between wireless and cable industry representatives, representatives of municipalities and organizations including the League – much of it at the end of the Session. So while our recommended changes attempt to "track" the resulting statutory amendments closely to avoid future disputes, in some cases, the statutory amendments are ambiguous or unclear. Thus, some of our recommended changes reflect our interpretation regarding the scope of municipal authority the legislature has granted vis-à-vis "small wireless facilities." For questions, please contact Bob Vose (612-337-9275), Jim Strommen (612-337-9233) or Andrew Biggerstaff (612-337-9276).

Summary of Statutory Amendments Re: Small Wireless Facility Deployment in the Right-of-Way

1. Governed by Minnesota ROW Law

The term “telecommunications right-of-way user” has now been amended to include persons deploying facilities to provide “wireless service,” a newly defined term. This and other changes generally entitle wireless providers to use ROW.

- Wireless providers may deploy a “small wireless facility” or a “wireless support structure” in the ROW. These are both newly defined terms.
 - In order to be “small,” the proposed deployment must meet statutorily-limited size requirements- each antenna must be no more than six cubic feet, and all associated equipment, excluding certain types of equipment (back-up generator, for example), must either be concealed or less than 28 cubic feet.
 - In order to be an authorized support structure, any proposed new pole cannot exceed the tallest of 50 feet or 10 feet above an existing pole that is being replaced unless the LGU allows a greater height.
- LGUs may deny permits for new small cell facilities or wireless support structures based on reasonable health, welfare and safety concerns.
- One of the wireless industry’s primary goals was to require that poles or similar structures owned by the LGU in the ROW (light poles, for example) be made available for the attachment of small wireless facilities. The new amendments, however, do not make all LGU-improvements in the ROW a part of the ROW available for private use. The law instead expressly allows an LGU to determine whether a particular pole or other structure in the ROW was designed to support proposed wireless equipment or is capable of doing so. The LGU may deny a wireless provider access to a particular facility based on this determination or other public health, safety or welfare concerns.
- An LGU may also condition a permit on health, welfare and safety concerns, on “reasonable accommodations for decorative wireless support structures or signs,” or upon “any reasonable restocking, replacement, or relocation requirements” for a new wireless support structure in the ROW.
- LGUs may also impose separation requirements (distance minimums) between new poles or other wireless support structures.
- Municipal electric utility poles and facilities are exempt from the bill. About 125 cities have municipal utilities.

2. Zoning

- Another primary industry goal was to require that small wireless facilities be made a Permitted use in all ROWs regardless of the underlying zoning district in which the ROW is located. The statutory amendments make small wireless facilities and associated wireless support structures a permitted use in all ROWs, but LGUs may make such facilities or structures a special or conditional use in ROW located “in a district or area zoned for single-family residential use or within a historic district.”
- LGUs are prohibited from adopting a moratorium on the processing and issuance of small wireless facility permits. This provision is effective immediately except that it becomes effective on January 1, 2018 for any LGU that had not enacted a ROW ordinance as of May 18, 2017.

3. Application Process

- LGUs may require permits for placement of new wireless structures or collocation of small wireless facilities in the ROW.
- An LGU has 90 days to issue or deny a permit. The failure to timely act results in the permit being “deemed approved” and “the permit is automatically issued.” The deadline can be extended for 30 days if:
 - the LGU receives applications for 30 or more sites within a 7 day period, or:
 - The application is incomplete and the LGU delineates the missing information within 30 days of receipt.

Written notice of any extension must be provided to the applicant.

- Applicants may file up to 15 permit applications simultaneously as long as the requested sites are within a 2 mile radius, consist of substantially similar equipment, and are to be placed on similar structures. LGUs may approve or deny applications individually or collectively.
- A denial must be in writing and state the basis for denial. The LGU must notify the applicant in writing within 3 business days of the decision. The applicant may cure the deficiencies noted and reapply. If such re-application is made within 30 days of denial no additional fee may be imposed and a further decision must be made within 30 days of receipt.
- LGUs may not require wireless providers to supply information provided in an earlier application for a small wireless facility if such info is specifically referenced in the current application. LGUs also may not require information “not reasonably necessary to review a permit application for compliance with generally applicable and reasonable health, safety, and welfare regulations” or demonstrate compliance

with applicable FCC regulations “governing radio frequency exposure,” or otherwise demonstrate compliance with the new law.

4. Rent and Fees

- The wireless industry’s most important goal was to obtain the right to use LGU-owned facilities in the ROW for little or no rent. The legislature did not agree, however, and the new amendments allow the imposition of rent of up to \$150 annually, plus \$25 for maintenance, for each site. Additional fees may be imposed if the wireless provider uses LGU-purchased electricity rather than separately metering. This payment arrangement would presumably be reflected in an attachment agreement governing the provider’s attachments to the LGU’s facilities.
- LGUs remain entitled to recover ROW management costs, a defined term, from wireless providers using the ROW via permit fees. However, “unreasonable fees of a third-party contractor” cannot be recovered. Such fees barred as unreasonable include “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 a local government unit.”

5. NO PUC Rules or Dispute Resolution

- The PUC has promulgated rules governing underground installation of telecommunications and other utility infrastructure in the ROW. The PUC is authorized to administratively adjudicate disputes arising out of an LGU’s interpretation or application of these rules.

The new amendments do not explicitly authorize the PUC to promulgate new rules regarding installation of wireless facilities in the ROW including, particularly, how attachments to LGU facilities must be made. Thus, we do not believe that the PUC will have any adjudicative role regarding wireless installations in ROW, as it does involving the ROW users established in the original Act.

- LGUs are authorized to require separate agreements with wireless providers governing attachments to the LGU’s poles or other facilities. The new law provides:

No later than six months after the effective date of this act or three months after receiving a small wireless facility permit application from a wireless service provider, a local government unit that has elected to set forth terms and conditions of collocation in a standard small wireless facility collocation agreement shall develop and make available an agreement that complies with the requirements of this section and section 237.162. A standard small wireless facility collocation agreement shall be substantially complete....

We understand that the League is working on a template agreement which will be made readily available on the League’s website.

Steps Required to Implement New Law

The work our clients will need to do to accommodate the new small cell wireless law depends, in part, on the terms of the local ROW ordinance, zoning provisions, ROW application process, and standard practices. But it is apparent that a number of steps will need to be taken. These likely include:

1. Amendment of the ROW ordinance to include provisions specific to the installation of wireless facilities on existing poles or similar facilities, and addressing the potential installation of new “wireless support structures,” i.e. poles. (Amendments included with this document)
2. Amendment of the zoning ordinance or code to make small wireless a permitted use in all ROW but, potentially, a conditional use in ROW located in residential zones. (Such amendments are not included with this document)
3. Preparation of a template agreement governing attachment of wireless facilities to municipal poles or other infrastructure in the ROW. The rent and the maintenance fee requirements will be addressed in this template agreement. (The League is preparing a model template agreement)



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2017 Telecommunications Right-of-Way User Amendments Permitting Process for Small Wireless Facilities

Publication Date: August 1, 2017

(For information on related federal laws see LMC Information Memo “[Cell Towers, Small Cell Technologies, and Distributed Antenna Systems](#)”)

Introduction:

On May 30, 2017, Gov. Dayton signed into law a bill¹ amending Minnesota’s Telecommunications Right-of-Way User Law². The amendments cleared up any confusion about whether wireless providers are treated the same as other telecommunications right-of-way users under state law, but created a separate, streamlined permitting system for placement of small wireless facilities on city-owned structures in rights of way. Most of the bill provisions became effective on May 31, 2017, with the exception that the prohibition on moratoria does not take effect until January 1, 2018 for those cities that did not have a right-of-way ordinance in place on or before May 18, 2017, to give those cities an opportunity to enact an ordinance regulating their public rights-of-way. Also, the amendments allow cities to enter collocation agreements with telecommunications right-of-way users, if they choose, as long as the collocation agreement for small wireless facilities is made available in a substantially complete form no later than six months after the effective date of this act or three months after receiving a small wireless facility permit application from a wireless service provider.

Where can I read the new law?

Until revisions of the state statute occur to include bills passed this session, cities can find the amendments at [2017 Laws, Chapter 94](#).

Does the law require cities to do anything differently when regulating wireless providers attaching their equipment to city structures in the rights of way?

Yes, the amendments create a separate permit process for small wireless facilities. The below checklist was prepared to serve as a guide for cities to use when amending existing telecommunications ordinances, but does necessarily cover all nuances of the new law and should not replace working with city attorneys to draft or amend existing ordinances.

What is the purpose of Minnesota’s Telecommunication Right-of-Way User Law?

¹ Chapter 94, Article 9 of the 2017 Regular Session, effective May 31, 2017.

² Minn. Stat. §§ 237.162, 237.163.

In 1997, the Minnesota Legislature recognized the need for a state law providing local government units with the authority to regulate the use of public rights of way by telecommunications right-of-way users. The resulting Minnesota Telecommunications Right-of-Way User Law allows telecommunications right-of-way users to construct, maintain, and operate conduit, cable, switches (and now small wireless facilities), and related appurtenances and facilities along, across, upon, above, and under any public right of way, but subjects those users to local regulations by cities to manage their rights of way and to recover management costs.

Can a city manage its right of way without doing anything?

No, the city must adopt an enabling ordinance. A local government unit is not required to manage its rights of way, but most want to do so. As such, the local government authority must pass an ordinance exercising this authority. Many cities find that having a separate telecommunications right-of-way user ordinance (in addition to a general right-of-way ordinance) allows for better regulation of cell towers, small cell and other telecommunications equipment.

Did the amendments in the 2017 laws impact all telecommunications right-of-way users?

Some of the amendments impacted cities' regulations on all telecommunications right-of-way users, but the amendments also created a distinct set of regulations specifically for placement of small wireless facilities. With respect to the regulations that apply to all telecommunications right-of-way users, the law:

- ✓ Requires all telecommunications right-of-way users seeking to excavate or obstruct a public right of way to obtain a right-of-way permit to do so.
- ✓ Requires a telecommunications right-of-way user using, occupying, or seeking to use or occupy a public right of way for providing telecommunications services to register with the local government unit by providing the local government unit with specific information (set forth in the statute), and including authorization for periodic updates.
- ✓ Requires telecommunications right-of-way users to submit plans for construction and major maintenance, to provide reasonable notice of projects that may require excavation and obstruction of public rights of way.
- ✓ Provides for restoration by the telecommunication right-of-way user after excavation occurs, either in the form of doing the restoration work or reimbursing the local governmental unit for the cost of the restoration work.
- ✓ Allows recovery of right-of-way management costs through a fee for registration, a fee for each right-of-way permit or, when appropriate, a fee applicable to a telecommunications right-of-way user when that user causes the local government unit to incur costs because of actions or inactions of that user.

Can a city charge a fee for using the right of way?

Yes, because when cities manage rights of way, they incur costs. However, when cities charge right-of-way users, the fees must be calculated on a competitively neutral basis, and based on the actual costs incurred by the city in managing the public right of way. A fee for the cost of managing the right-of-way should reflect an allocation among all users of the public right-of-way, including the city itself.

Can a city charge rent if a right-of-way user places equipment in the right of way?

Yes. Nothing in the law prohibits a city from charging rent for the placement of technology or equipment by a telecommunications right-of-way user on a city owned structure. However, cities are limited in the amount

of rent they can charge for collocation of small wireless facilities on city-owned structures. Fee limitations are described in the statute.

If a city does not have an ordinance, can it pass a moratorium on processing any applications it receives until it can pass an ordinance?

Probably not. The law prohibits cities from establishing a moratorium with respect to filing, receiving, or processing applications for right-of-way or small wireless facility permits, or for issuing or approving right-of-way or small wireless facility permits. However, for cities that did not have an ordinance enabling it to manage its right-of-way before or on May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

Can a city still deny applications for siting of telecommunications equipment in its right of way?

Generally, yes, however, any denial or revocation of either a right-of-way permit or a small wireless facility permit must be done in writing and must document the basis for the denial, including the health, safety and welfare reasons for the denial. The local government unit must notify the telecommunications right-of-way user, in writing, within three business days of the decision to deny or revoke a permit. If the city denies a permit application, the telecommunications right-of-way user may cure the deficiencies identified by the local government unit and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of the denial, the city may not charge an additional filing or processing fee. The local government unit must approve or deny the revised application within 30 days after the submission of the revised application, or it is deemed granted.

Can cities treat the siting of all cell equipment the same?

It depends. If the city plans to regulate cell sitings and require telecommunications right-of-way users to get permits, then the 2017 amendments to the law create a separate permit system for small wireless facility technology that places additional limitations on a city's ability to regulate those specific types of technology.

Does the new law mean our city cannot enter into a separate agreement with telecommunications right-of-way users who want to place equipment on city owned structures?

The amendments do not require cities to have separate agreements, and some cities may choose to put these provisions in their ordinance or permit instead. For cities that want a separate 'collocation agreement' in place, they must develop and make that collocation agreement available no later than six months after May 31, 2017 (the effective date of the act) or three months after receiving a small wireless facility permit application from a wireless service provider. "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 that is owned privately or by a local government unit. The template of the agreement must be made available in a substantially complete form. The parties to the separate small wireless facility collocation agreement always may incorporate additional mutually agreed upon terms and conditions. Also, the law now clearly classifies any small wireless facility collocation agreement between a local government unit and a wireless service provider as public data accessible to the public under Minnesota's Data Practices Law.

What type of equipment is subject to the special requirements on small cell technology?

The statute defines type of equipment, which include:

“Small wireless facility”:

(1) A wireless facility that meets both 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.

(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 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.

(2) A micro wireless facility.

“Wireless support structure” means 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 a local government unit.

“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 that is owned privately or by a local government unit.

What additional requirements must cities consider to comply with Minnesota’s Telecommunications Right-of-Way User Law, as amended?

The law sets forth specific requirements related to placement of small wireless facilities or installation of new wireless support structures. The below information highlights items cities will want to consider when drafting an ordinance or amending an existing ordinance. Again, cities should work with their city attorneys to ensure full compliance with the law.

NEW STATE LAW REQUIREMENTS

GOVERNING PLACEMENT OF SMALL WIRELESS FACILITIES IN RIGHTS OF WAY

If a city decides to regulate or require permits for placement of a new wireless support structure or collocation of a small wireless facility, then the city should be aware that:

- ☐ Small wireless facilities and wireless support structures are a permitted use, except that in districts zoned as single-family residential use or district identified as historic (either by federal law or ordinance), a local government unit can require a conditional use permit.

- ☐ Cities must not require an applicant for a small wireless facility permit to provide any information that the applicant previously had provided to the city in a different application for a small wireless permit (which the applicant must identify by specific reference number).
- ☐ Cities must not require an application to provide information that is not reasonably necessary to review a permit application for compliance with generally applicable and reasonable health, safety, and welfare regulations, or to demonstrate compliance with applicable Federal Communications Commission regulations governing radio frequency exposure, or other information required by this section.
- ☐ Permits for small cell facility collocation or placement of a new wireless support structure must specify that the term of a small wireless facility permit equals the length of time that small wireless facility is in use, unless the permit is revoked under this section.
- ☐ The total application fee for a small wireless facility permit must comply with the statutory requirement regarding costs related to the permit.
- ☐ The city must allow applicants for small wireless facility permits to file a consolidated permit application to collocate up to 15 small wireless facilities (or a greater number if agreed to by a local government unit), provided that all the small wireless facilities in the application are located within a two-mile radius, consist of substantially similar equipment, and are to be placed on similar types of wireless support structures.
- ☐ The city has 90 days after the date a small wireless facility permit application is filed to issue or deny the permit, or the permit is automatically issued.
- ☐ To toll the 90-day clock, the city must provide a written notice of incompleteness to the applicant within 30 days of receipt of the application, identifying all missing documents or information, and providing the applicant with a time to cure that complies with the statute³.
- ☐ If 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, the city may extend the 90-day deadline by an additional 30 days. If a city elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.
- ☐ A city cannot require placement of small wireless facilities on any specific wireless support structure other than the one proposed in the permit application.
- ☐ A city must not limit the placement of *small wireless facilities*, either by minimum separation distances between small wireless facilities or maximum height limitations, except that each wireless support structure installed in the right of way after the effective date of this act shall not exceed 50 feet above ground level (unless the local government unit agrees to a greater height).

³Minn. Stat. §237.163, Subd. 3c(b).

- ☐ A city can set forth in its ordinance separation requirements for placement of wireless support structures in relation to other wireless support structures.
- ☐ A city still may deny permit for health, safety, and welfare reasons or for noncompliance with decorative wireless support structures or signs.
- ☐ A city cannot require a person 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 routine maintenance of a small wireless facility; replace a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading; or install, place, maintain, operate, or replace micro wireless facilities suspended on cables strung between existing utility poles in compliance with national safety codes.
- ☐ A city cannot require an applicant to apply for or enter any individual license, franchise, or other agreement with the local government unit or any other entity, other than the optional standard small wireless facility collocation agreement.
- ☐ A city may require notice of any work that will obstruct a public right of way.

OPTIONAL PROVISIONS FOR SMALL WIRELESS FACILITIES

- ☐ A city is not required to have a separate agreement, but can choose to enter collocation agreements with applicants locating small wireless facilities onto city owned structures to address terms and conditions of the use of the structures. If a city chooses to do so, then it must make the agreement available to the public in a substantially complete format no later than six months after the effective date or three months after receiving a small wireless facility permit application from a wireless service provider.
- ☐ A city may elect to charge each small wireless facility attached to a wireless support structure owned by the local government unit a fee (rental fee), in addition to other fees or charges allowed under the law, consisting of: (1) up to \$150 per year for rent to occupy space on a wireless support structure; (2) up to \$25 per year for maintenance associated with the space occupied on a wireless support structure; and (3) an additional monthly fee for electricity used to operate a small wireless facility, if not purchased directly from a utility, at the rate set forth in the statute.⁴

⁴ Minn. Stat. 237.163, Subd. 6 (d).