

CITY OF PIPESTONE

ORDINANCE NO. 172, FOURTH SERIES

AN ORDINANCE OF THE CITY OF PIPESTONE REPEALING AND REPLACING SECTION 91.07 OF THE CITY CODE REGARDING THE REGULATION OF CITY RIGHTS-OF-WAY

The City Council of the City of Pipestone ordains:

Article I. Findings, Purpose and Intent. It is the purpose of this ordinance to establish reasonable regulations, requirements, and restrictions regarding the use of the rights-of-way in the City of Pipestone (“City”) in order to protect the health, safety and welfare of City residents, those traveling on City streets and the general public. It is also the purpose of this ordinance to protect the cumulative investment the public has made to construct, maintain, and improve the City’s streets by requiring those undertaking utility projects in and near the City’s rights-of-way to obtain a permit from the City and to be responsible for restoring the rights-of-way directly or indirectly impacted by the project to at least the same or better condition they were in prior to the project. Finally, this ordinance provides for the recovery by the City of its actual expenses incurred related to such projects.

Article II. Table of Contents. The table of contents for Chapter 91 of the City of Pipestone City Code (“City Code”) is hereby amended by adding the double-underlined language and deleting the ~~stricken~~ language as follows:

CHAPTER 91: STREETS AND SIDEWALKS

Section

- 91.01 Application
- 91.02 Scope and orders of police officer
- 91.03 Traffic and parking control
- 91.04 Ice and snow on public sidewalks
- 91.05 Regulation of grass, weeds, and trees in streets
- 91.06 Construction and reconstruction of roadway surfacing, curb, and gutter
- 91.07 ~~Street openings or excavations~~ Right-of-way management
- 91.08 Requirement of sewer and water main service lateral installation
- 91.09 Load limits
- 91.10 Curb and gutter, street, and sidewalk painting or coloring
- 91.11 Sidewalk maintenance and repair

- 91.99 Penalty

Article III. Right-of-Way Management. Section 91.07 of the City Code is hereby repealed in its entirety and replaced with the following language:

§ 91.07 RIGHT-OF-WAY MANAGEMENT.

(A) *Authority.* As the road authority for the streets in the City of Pipestone (“City”), the City Council has the authority and responsibility to provide for safe and efficient local roadways and to establish regulations governing the use and maintenance of City’s roadways and public rights-of-way. This Right-of-Way Management Ordinance (“Ordinance”) is adopted consistent with that authority, as well as the authority provided the City Council pursuant to 1997 Session Laws, Chapter 123, Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086, Minnesota Statutes, section 169.87 and the other laws governing applicable rights of the City and users of the right-of-way. This ordinance shall be interpreted consistent with those statutes as well as with Minnesota Rules, parts 7819.0050 – 7819.9950 to the extent applicable. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances and policies necessary to protect the health, safety and welfare of the public.

(B) *Election to Manage Rights-of-Way.* Pursuant to the authority granted the City under state and federal statutory, administrative and common law, the City hereby elects, pursuant to Minnesota Statutes, section 237.163, subdivision 2(b), to manage its rights-of-way within the City.

(C) *Definitions and Interpretation.*

(1) *Definitions.* For the purposes of this section, the terms defined in this subsection have the meanings given them. Any term not defined in this section shall have the meaning given it in Minnesota Statutes, section 237.162 or Minnesota Rule, part 7819.0100, to the extent defined therein.

(a) *Abandoned Facility.* “Abandoned Facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

(b) *Applicant.* “Applicant” means any person requesting permission to excavate or obstruct a right-of-way.

(c) *City.* “City” means the City of Pipestone, Pipestone County, Minnesota.

(d) *City Cost.* “City Cost” means the actual cost incurred by the City for public rights-of-way management; including but not limited to costs associated with registering Applicants; issuing, processing and verifying right-of-way permit applications; creating information and maintaining information on a geographical information system (GIS) mapping system; degradation costs; inspecting job sites and restoration projects; maintaining, supporting, protecting or moving user facilities during public right-of-way work; providing traffic control due to Applicant’s neglect or inadequate performance; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking right-of-way permits and performing all other tasks required by this Ordinance, including other costs the City may incur in managing the provisions of this Ordinance.

(e) *Collocate or Collocation*. “Collocate” or “Collocation” has the meaning given in Minnesota Statutes, section 237.162, subdivision 10.

(f) *Construction Performance Bond*. “Construction Performance Bond” means 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 Minnesota Statutes, section 15.73.
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
7. Other forms of construction bond, for a time specified and in a form acceptable to the City.

City franchised cable television operators are exempt from the Construction Performance Bond and held to the security standards as agreed upon in the cable franchise agreement they hold with the city.

(g) *Degradation*. “Degradation” means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

(h) *Degradation Cost*. “Degradation Cost” means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules, parts 7819.9900 to 7819.9950.

(i) *Degradation Fee*. “Degradation Fee” means the estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

(j) *Delay Penalty*. “Delay Penalty” is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

(k) *Department*. “Department” means the Public Utilities Department of the City.

(l) *Department Inspector*. “Department Inspector” means any person authorized by the City to carry out inspections related to the provisions of this Ordinance.

(m) *Director*. “Director” means the director of the Public Utilities Department of the City, or the director of the Public Works Department in the event the Public Utilities director is unable to carry out the duties of the Director.

(n) *Emergency*. “Emergency” means a condition that: (1) poses a danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

(o) *Equipment*. “Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

(p) *Excavate*. “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way. The term shall include, but is not limited to, horizontal directional drilling and the creation, construction, or modification of any curb cut or driveway approach located within a right-of-way.

(q) *Excavation Permit*. “Excavation Permit” means the permit which, pursuant to this Section, 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*. “Excavation Permit Fee” means money paid to the City by an Applicant to cover the costs as provided in this Section.

(s) *Facility or Facilities*. “Facility” or “Facilities” means any tangible asset in the right-of-way required to provide utility service, but shall not include boulevard plantings or gardens.

(t) *Local Representative*. “Local Representative” means a local person or persons, or designee of such person or persons, authorized by an Applicant to accept service and to make decisions for that Registrant regarding all matters within the scope of this Ordinance.

(u) *Management Costs*. “Management Costs” has the meaning given in Minnesota Statutes, section 237.162, subdivision 9.

(v) *Micro Wireless Facility*. “Micro wireless facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 14.

(w) *Obstruct*. “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

(x) *Obstruction Permit*. “Obstruction Permit” means the permit which, pursuant to this Section, 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.

(y) *Obstruction Permit Fee*. “Obstruction Permit Fee” means money paid to the City by a permittee to cover the costs as provided in this Section.

(z) *Patch or Patching*. “Patch” or “Patching” means a method of pavement replacement or roadway repair 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 on streets the City Council has scheduled to be overlaid within five years.

(aa) *Permit*. “Permit” has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162, subd. 7.

(bb) *Permittee*. “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Section.

(cc) *Person*. “Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

(dd) *Registrant*. “Registrant” means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment or facilities in the right-of-way.

(ee) *Restore or Restoration*. “Restore” or “Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

(ff) *Restoration Cost*. “Restoration Cost” means the amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

(gg) *Right-of-Way*. “Right-of-Way” means the area on, below, or above a public road, highway, street, cartway, bicycle lane or public sidewalk in which the City has an interest, including other publicly dedicated right-of-ways for travel purposes and utility easements of the City. The term includes the full width of the City’s easement or other interest. 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.

(hh) *Right-of-Way Permit*. “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

(ii) *Right-of-Way User*. “Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or

intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

(jj) *Service or Utility Service*. “Service” or “Utility Service” includes the following: (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6, (2) services of a telecommunications right-of-way user, including transporting of voice or data information or wireless internet services, (3) services of a cable communications systems as defined in Minnesota Statutes, Chapter 238, (4) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A, (5) the services provided by a corporation organized for the purposes set forth in Minnesota Statutes, section 301B.01 and (5) water, and sewer, including service laterals, steam, cooling or heating services.

(kk) *Service Lateral*. “Service Lateral” means 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.

(ll) *Small Wireless Facility*. “Small wireless facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 11.

(mm) *Temporary Surface*. “Temporary Surface” means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation which is temporary in nature.

(nn) *Trench*. “Trench” means an excavation in the traveled surface of a road, with the excavation having a length equal to or greater than the width of the traveled surface.

(oo) *Telecommunication Right-of-Way User*. “Telecommunication Right-of-Way User” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information, or for providing wireless services. For purposes of this Ordinance, a cable communication system defined and regulated under Minnesota Statutes, Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, Chapter 308A, are not telecommunications right-of-way users for purposes of this Ordinance, except to the extent these entities are offering wireless services.

(pp) *Unusable Facilities*. “Unusable Facilities” means facilities in the right-of-way which have remained unused for one year and for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the facilities.

(qq) *Utility Pole*. “Utility Pole” has the meaning given in Minnesota Statutes, section 237.162, subdivision 12.

(rr) *Wireless Facility*. “Wireless facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 13.

(ss) *Wireless Service*. “Wireless Service” has the meaning given in Minnesota Statutes, section 237.162, subdivision 15.

(tt) *Wireline Backline Facility*. “Wireline Backline Facility” has the meaning given in Minnesota Statutes, section 237.162, subdivision 17.

(uu) *Wireless Support Structure*. “Wireless Support Structure” has the meaning given in Minnesota Statutes, section 237.162, subdivision 16.

(2) *Interpretation*. Every provision of this Ordinance shall be construed, if possible, to give effect to all its provisions and consistent with at least the minimum requirements imposed by any applicable law. Any references to state statutes or rules shall include any amendments made thereto and any successor statutes or rules. Such statutes and rules are incorporated herein to the extent necessary to give effect to the provisions of this Ordinance.

(D) *Administration*.

(1) *Director*. The Director is the principal City official responsible for the administration of the right-of-ways and the sidewalks, curbs, gutters, and other public facilities located with the right-of-ways. The Director is authorized to issue the permits provided for under this section, administer and enforce the regulations in this Section, and to take such other actions as may be required to manage and protect the right-of-ways. The Director may delegate any or all of the duties hereunder.

(2) *Legal compliance*. Nothing in this Section relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, “one call” notification system, or any other applicable federal, state, or local law, rule, regulation, or ordinance.

(E) *Registration*.

(1) *Required; exceptions*. Each right-of-way user who has, or who proposes to place, any equipment or facilities in the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Director prior to applying for a right-of-way permit and conducting any work in the right-of-way. Registration will consist of providing application information and paying a registration fee. Other right-of-way users may apply for a right-of-way permit as provided in this section without needing to register with the Director. Registration is not required of the City or of any person conducting work under contract with the City.

(2) *Required information.* The information provided to the Director at the time of registration shall include, but is not limited to, the following:

(a) Each Registrant's name, physical address, e-mail address, and telephone number;

(b) The name, physical address, e-mail address, and telephone number of a local representative of the Registrant. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;

(c) A certificate of insurance or self-insurance that does each of the following: (1) verifies 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 Director, (2) verifies 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 the placement and use of facilities in the right-of-way by the Registrant, its officers, agents, employees and permittees including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property, (3) names the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages, (4) requires that the Director be notified 30 days in advance of cancellation of the policy or material modification of a coverage term and (5) indicates 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 Section.

(3) *Notice of changes.* The Registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within 15 days following the date on which the Registrant has knowledge of any change.

(4) *Renewal.* Registrations expire on December 31st. A Registrant shall renew its registration annually and shall not be issued a right-of-way permit unless its registration is current at the time of application.

(F) *Permitting Requirements.*

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

(a) *Excavation Permit.* An excavation permit is required to excavate within a right-of-way related to the installation, repair, replacement, or removal of facilities.

(b) *Obstruction Permit.* An obstruction permit is required to obstruct a 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.

(c) *Small Wireless Facility Permit.* A small wireless facility permit is required by a Registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent and for the duration specified therein.

(2) *Exceptions.* A permit is not required for:

(a) Signs;

(b) Mailboxes; and

(c) Work performed by the City or by a City contractor.

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

(4) *Delay Penalty.* In accordance with Minnesota Rules, part 7819.1000, subpart 3, the City may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.

(5) *Permit Display.* Permits issued under this Ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

(6) *Antenna Support Structures.* Except as otherwise provided, no permits will be issued for the erection of structures in the right-of-way for the sole purpose of supporting telecommunications antennas. Permits may be granted for the attachment of telecommunication antennas and ancillary wires and accessories to existing structures in the right-of-way, subject to the following conditions:

(a) The height of the antenna and related equipment may not extend more than six feet above the top of the previously existing support structure;

(b) No antennas may be permitted that have associated or ancillary on ground equipment in any residential district of the City;

(c) The permission of the owner must be demonstrated; and

(d) Design and location of facilities are subject to review and approval of the Director.

(G) *Permit Applications.* Application for a permit is made to the City. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

(1) Registration with the Director pursuant to this Ordinance;

(2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities;

(3) Payment of money due to the City for:

(a) Permit fees, estimated restoration costs and other management costs;

(b) Any outstanding amounts related to prior obstructions or excavations;

(c) Any undisputed loss, damage, or expense suffered by the City because of Applicant's prior excavations or obstructions of the right-of-ways or any emergency actions taken by the City; and

(d) Franchise fees or other charges, if applicable.

(4) *Bond.* When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

(H) *Issuance of Permit; Conditions.*

(1) *Permit Issuance.* If the City determines that the Applicant has satisfied the requirements of this Section, the City shall issue a permit.

(2) *Conditions.* The City may impose reasonable conditions upon the issuance of the permit and the performance of the Applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

(3) *Small Wireless Facility Conditions.* In addition to the conditions referenced in this Section, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

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

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

(c) No wireless facility may extend more than 10 feet above its wireless support structure;

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

(e) Where an Applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure; and

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

(4) *Small Wireless Facility Agreement.* A small wireless facility shall only be collocated on a 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 the payment of the following:

(a) Up to \$150.00 per year for rent to collocate on the City structure;

(b) \$25.00 per year for maintenance associated with the collocation; and

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

(i) \$73.00 per month per radio node less than or equal to 100 maximum watts;

(ii) \$182.00 per radio node over 100 maximum watts; or

(iii) The actual costs of electricity, if the actual costs exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the Applicant shall not be additionally required

to 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 the Applicant.

I. Action on Small Wireless Facility Permit Application.

(1) In addition to the other requirements of this Section, the provisions of this Section shall apply to applications for small wireless facility permits.

(2) *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.

(3) *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 the director, provided that all small wireless facilities in the application:

- (a) Are located within a two-mile radius;
- (b) Consist of substantially similar equipment; and
- (c) 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.

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

(a) 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;

(b) The Applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the Applicant within 30 days of receipt 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; or

(c) The City and a small wireless facility Applicant agree in writing to toll the review period.

J. Permit Fees.

(1) *Establishing Fees.* The City Council shall establish the following fees by resolution, or as part of its general fee schedule, and update the fees as it determines is appropriate:

(a) *Excavation Permit Fee.* The City shall establish an excavation permit fee in an amount sufficient to recover the City's management costs, and to the extent applicable, degradation costs.

(b) *Obstruction Permit Fee.* The City shall establish the obstruction permit fee and shall be in an amount sufficient to recover the City's management costs.

(c) *Small Wireless Facility Permit Fee.* The City shall establish the obstruction permit fee and shall be in an amount sufficient to recover the following costs:

(i) Management costs; and

(ii) Engineering, make-ready, and construction costs associated with the collocation of small wireless facilities.

(d) *Payment of Permit Fees.* No excavation permit, obstruction permit or small wireless facility permit shall be issued without payment of the applicable permit fees. The City may allow Applicant to pay such fees within thirty (30) days of billing.

(e) *Non-Refundable.* Permit fees that were paid for a permit that the City has revoked for a breach as provided in this Section are not refundable.

(f) *Use of Permit Fees.* All obstruction, excavation, and small wireless facility permit fees shall be used solely for City management, construction, maintenance and repair costs of the right-of-way.

K. Right-of-Way Repair and Restoration.

(1) *Timing.* The work to be done under the excavation permit, and the repair 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 due to unseasonal or other weather conditions which reasonably prohibit the work.

In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for ten (10) months following acceptance by the City.

(2) *Repair and Restoration.* Permittee shall repair its own work. The City may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

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

(b) *Permittee Restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules, part 7819.3000.

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

(3) *Standards.* The permittee shall perform excavation, backfilling, repair and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rules, part 7819.1100.

(4) *Guarantees.* The permittee guarantees its work and shall maintain it for ten (10) months following its completion. During this 10-month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) 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 other weather conditions which reasonably prohibit the work.

(5) *Failure to Restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event, the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may immediately exercise its rights under the construction performance bond.

L. *Joint Applications.*

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

(2) *With City Projects.* Registrants who join in a scheduled obstruction or excavation performed by the Director, whether or not it is a joint application by two or more Registrants or a single application, are not required to pay the obstruction portion of the permit fee for that part of the work which falls within the City project construction limits. The obstruction portion of the fee will be required for work which occurs outside of the City project construction limits and for work within such construction limits which is not completed by the City project completion date.

(3) *Shared Fees.* Registrants who apply for permits for the same obstruction or excavation, which the Director does not perform, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

M. Supplementary Applications.

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

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

N. Additional Obligations.

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

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

(3) *Interference with Right-of-Way.* A permittee shall not so obstruct a right-of-way in a way that interferes with the natural free and clear passage of water through the gutters or other waterways. 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 and are located such that they do not create a safety hazard. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(4) *Trenchless Excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D, Minnesota

Rules, Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

(5) *Indemnification and Liability.* By accepting a permit under this Ordinance, permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rules, part 7819.1250.

O. Denial of Permit.

(1) *Failure to Meet Requirements.* The City may deny a permit for failure to meet the requirements and conditions of this Ordinance if the City determines that the denial is necessary to protect the health, safety, and welfare, or if the City determines such denial is necessary to protect the right-of-way and its current use.

(2) *Procedural Requirements.* The denial or revocation of a permit must be made in writing and must document the basis for the denial. The City must notify 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.

P. Installation Requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, parts 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, Chapter 7560 and this Ordinance.

Q. Inspection.

(1) *Notice of Completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.

(2) *Site Inspection.* Permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(3) *Authority of Director.* The Director is authorized to issue the following orders and to take such actions as may be needed to administer and enforce this Ordinance.

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

(b) *Correction Order.* The Director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions,

or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit as provided herein.

R. Work Done Without a Permit.

(1) *Emergency Situations.* Each right-of-way user shall immediately notify the City of any event regarding its facilities that it considers to be an emergency. The right-of-way user 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 (2) business days after the occurrence of the emergency, the right-of-way user 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 Ordinance for the actions it took in response to the emergency.

(2) *Non-Emergency Situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, deposit with the City the fees necessary to correct any damage to the right-of-way, including reasonable attorney's fees, and comply with all of the requirements of this Ordinance.

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

T. Revocation of Permits.

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

- (a) The violation of any material provision of the right-of-way permit;
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

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

(2) *Written Notice of Breach.* If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. 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.

(3) *Response to Notice of Breach.* Within 72 hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to contact the City, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

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

U. *Miscellaneous Provisions.*

(1) *Mapping Data.*

(a) *Information Required.* Except as provided in the Section, each Registrant shall provide to the Director information indicating the horizontal and vertical location, relative to the boundaries of the right-of-way, of all facilities which it owns or over which it has control and which is located in any right-of-way ("Mapping Data"). Mapping Data shall be provided with the specificity and in the format requested by the Director for inclusion in the mapping system used by the Director.

Within six (6) months after the acquisition, installation, or construction of additional facilities or any relocation, abandonment, or disuse of existing facilities, each Registrant shall supplement the Mapping Data required herein.

Each Registrant shall, within six (6) months after the date of passage of this Ordinance, submit a plan to the Director specifying in detail the steps it will take to comply with the requirements of this Section. Said plan shall provide for the submission of all Mapping Data for the City as early as may be reasonable and practical, but not later than five (5) years after the date of passage of this Ordinance.

Notwithstanding the foregoing, Mapping Data shall be submitted by all Registrants for all facilities which is to be installed or constructed after the date of passage of this Ordinance at the time any permits are sought under this Ordinance.

After six (6) months after the passage of this Ordinance, a new Registrant, or a Registrant which has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its facilities at the time any permits are sought under these ordinances.

(b) *Telecommunication Equipment.* Information on existing facilities and facilities of telecommunications right-of-way users need only be supplied in the form maintained by the telecommunications right-of-way user.

(c) *Trade Secret Information.* At the request of any Registrant, any information requested by the Director, which qualifies as a "trade-secret" under Minnesota Statutes, section 13.37(b) shall be treated as trade secret information as detailed therein. With respect to the provision of mapping data, the City may consider unique circumstances from time to time required to obtain mapping data.

(2) *Location and Relocation of Facilities.*

(a) *Undergrounding.* Unless otherwise permitted by Minnesota Statutes, Section, 216B.36, new construction, the installation of new facilities and the replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes, except that the Director may approve above ground location and installation that the Director has determined cannot reasonably be placed underground due to expense, nature, or function if there are no unreasonable safety, maintenance, or aesthetic concerns or conflicts with the current use of right-of-way.

(b) *Corridors.* The Director may assign 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 Director expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

The City may not require the relocation of existing underground facilities except in the event the City institutes a street improvement project, lawfully imitated and conducted by the City on its own behalf, which necessarily results in a substantial change of elevation and grade for a particular location. In such event, all affected utilities shall be relocated in a manner which minimizes the technical and financial impact to each utility. The City may establish a high density corridor for telecommunications facilities in a manner consistent with the rules and regulations of the Minnesota Public Utilities Commission.

(c) *Limitation of Space.* To protect health and safety, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of Registrants or persons to occupy and use the right-of-way. In making such decisions, the 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.

(d) *Relocation of Equipment.* A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities and facilities in the right-of-way whenever the director requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation.

The Director may make such request to prevent interference by the Registrant's equipment or facilities with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

(e) *Pre-Excavation Equipment Location.* In addition to complying with the requirements of Minnesota Statutes, sections 216D.01 through 216D.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each Registrant who has facilities in the area to be excavated shall mark the horizontal and approximate 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.

(3) *Damage to Other Equipment.* When the Director 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. The costs associated therewith will be billed to that Registrant and must be paid within thirty (30) days from the date of billing.

Each Registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each Registrant shall be responsible for the cost of repairing any damage to the facilities of another Registrant caused during the City's response to an emergency occasioned by that Registrant's facilities.

(4) *Right-of-Way Vacation.*

(a) *Reservation of Right.* If the City vacates a right-of-way which contains the facilities of a Registrant, and if the vacation does not require the relocation of Registrant or permittee facilities, the City shall reserve, to and for itself and all Registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

(b) *Relocation of Facilities.* If the vacation requires the relocation of Registrant or permittee facilities; and (a) if the vacation proceedings are initiated by the Registrant or permittee, the Registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the Registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the Registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the Registrant or permittee, such other person or persons must pay the relocation costs.

(5) *Indemnification and Liability.*

(a) *Limitation Liability.* By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (a) for injuries to persons, damage to property, or loss of service claims by parties other than the Registrant or the City, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by Registrants or activities of Registrants.

(b) *Indemnification.* By registering with the City, a Registrant agrees, or by accepting a permit under this Ordinance, a permittee is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said facilities by the Registrant or on the Registrant's behalf, including, but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the City; and the Registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. To the extent of any inconsistency between this Section and any franchise, the provisions of the franchise shall control.

(6) *Abandoned and Unusable Facilities.*

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

(b) *Abandoned Facilities.* Facilities of a Registrant who fails to comply with this Section, and which for two (2) years remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to (i) abating the nuisance (ii) taking possession of the facilities and restoring it to a useable condition, or (iii) requiring removal of the facilities by the Registrant, or the Registrant's successor in interest.

(c) *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.

(7) *Appeals.* An Applicant or Registrant that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are not in conformity with Minnesota Statutes, sections 237.163, subdivision 6; or (4) disputes a determination of the Director regarding compliance with this Ordinance or of permit conditions may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the Applicant or Registrant has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Article IV. Severability. If any portion of this Ordinance 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 Ordinance precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

Article V. Effective Date. This Ordinance shall become effective the day after its legal publication.

Adopted this ____ day of _____, 2026.

Dan Delaney, Mayor

ATTEST: _____
Megan DeWitte, City Clerk

Date of Publication _____

Effective Date _____