
ORDINANCE NO. 31, 4th SERIES

AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE CHAPTER 96 ENTITLED "STREET AND SIDEWALKS" BY ADDING SECTION 96.20 RIGHT-OF-WAY MANAGEMENT AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 10.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.

THE CITY OF EAST GRAND FORKS ORDAINS:

Section 1. That Section 96.20 of the City Code is adopted and added to the city code to read as follows, to-wit:

Right-of-way Management

(A) Finding, 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 new section of Chapter 96 of this code relating to right-of-way permits and administration. This section 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 section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This section shall be interpreted consistently with Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050—7819.9950 and Minnesota Rules Chapter 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.

(B) Definitions.

The following words, terms, and phrases, as used herein, shall have the following meanings:

Abandoned facility means:

- (1) A facility no longer in service or physically disconnected from any other facility that is in use or still carries service; and

(2) That is deemed abandoned by the owner of the facility.

Applicant means any public right-of-way user required to obtain a permit under this section, including the City of East Grand Forks.

City means City of East Grand Forks, Minnesota.

City 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; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section (J) 6 of this section.

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

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 M.S. § 216D.04, subd. 3, as it may be amended from time to time, over a continuous length in excess of 500 feet.

Data Conversion Fee. The fee covering the city's cost of converting each submission of data required by this Article IV into the city's electronic format, which shall apply separately to each set of data required, including without limitation the permit application, scaled drawings and mapping data.

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

Degradation cost subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration as determined by the city at the time the permit is issued multiplied by a factor of 1.5.

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.

Director means the City of East Grand Forks Community Development Director and his/her designee.

Emergency means a condition that (1) immediately endangers the life or safety of persons; (2) cause an immediate threat of significant loss or injury to property; or (3) requires immediate repair or replacement to restore service to customers.

Equipment means anything tangible used to install, repair or maintain facilities in any public right-of-way.

Excavate or *excavation* means to dig into or in any way remove or physically disturb or penetrate any public right-of-way ground surface, or any portion thereof.

Excavation permit means a permit which is issued by the city authorizing the permittee to excavate in a public right-of-way as specifically described in the permit.

Facility or *facilities* means anything tangible, including equipment, which is required to provide utility services.

Hole means an excavation having a length that is equal to or less than the width of the public right-of-way for the section of the roadway where the work is occurring.

Local representative means a person or designee of such person authorized by a public right-of-way user to accept service and to act and make decisions regarding matters within the scope of this section on behalf of the public right-of-way user.

Obstruct or *obstruction* means to place or the placement of any object in a public right-of-way, or to remove or the removal of an existing structure, or any portion thereof, from a public right-of-way, for an aggregate period of eight (8) hours or more, excepting obstructions and projections as specifically permitted by other provisions in the East Grand Forks Code of Ordinances.

Obstruction permit means a permit, which is issued by the city authorizing the permittee to obstruct a public right-of-way as specifically described in the permit.

Patch or *patching* means a method of roadway surface replacement or restoration that consists of: (1) the compaction of the sub-base and aggregate base; and (2) the replacement, in kind, of the existing roadway surface as directed by the City Engineer.

Permittee means a person to whom an excavation or obstruction permit has been issued by the city under this section.

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.

Project or *project work* means any activity, including construction, reconstruction, installation, maintenance, relocation, or replacement of any facility or a public right-of-way in which the facility is located and restoration of the public right-of-way that is regulated under this article.

Public right-of-way or *public rights-of-way* or *right-of-way* means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, trail, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the city owned by or under control of the city, or dedicated or otherwise conveyed to the city for general public use,

including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining utility service facilities. No reference herein to a "public right-of-way" shall be deemed to be a representation or guarantee by the city that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining utility service facilities. A right-of-way does not include the airwaves above a right-of-way regarding cellular or other non-wire telecommunications or broadcast service.

Public right-of-way user means any person or entity which owns or controls a facility that is located, or is sought or intended to be located, in a public right-of-way including persons who have installation and maintenance responsibilities by contract, lease, sublease or assignment.

Restore or restoration means the process, including patching, by which a public right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before any project work.

Restoration cost means the amount of money paid to the city by a permittee to achieve the level of restoration 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 the excavation.

Right-of-way means the area on, below, or above a public roadway, highway, street, cart way, bicycle lane, and sidewalk in which a government unit has an interest, including other rights-of-way dedicated for travel purposes and utility easements of government units.

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 user. It also includes any underground facilities that are used in the removal of wastewater from a customer's premises.

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

- (1) Each antenna is located inside an enclosure of no more than six (6) 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 twenty-eight (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.

Telecommunications 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 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. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative

electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

Trench means an excavation in the roadway surface having a length that is equal to or more than the width of the roadway or sections of roadway where the work is occurring.

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

Utility service means services provided by: (1) a public utility as defined in Minnesota Statutes; (2) a telecommunication, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; (3) a corporation organized for the purposes set forth in Minnesota Statutes; (4) a district heating or cooling system; or (5) a cable communication system as defined in Minnesota Statutes.

Wireless facility means 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.

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

(C) Franchises.

The city may, in addition to the requirements of this section, require any public utility or cable operator who has or seeks to have facilities or equipment located in any public right-of-way to obtain a franchise as required by City Charter Chapter VIII Franchises, as provided by the East Grand Forks Code of Ordinances Chapter 50, and as allowed by law.

(D) Registration requirement.

- (1) *Registration.* As of the effective date of this article, any public right-of-way user, which owns or controls a public utility facility within any public right-of-way, or any portion thereof, shall register with the city. Registration shall be deemed completed upon the public right-of-way user submitting to the city a completed registration form furnished by the city and paying the registration fee. A right-of-way user is required to update its registration within sixty (60) days of any change of the information contained in a current registration statement.
- (2) *Transfer of ownership or interest.* Whenever any public right-of-way user transfers, sells, assigns or otherwise conveys ownership or interest in facilities or equipment to another person, the registered public right-of-way user shall notify the city of the date of the conveyance and the name of the transferee within thirty (30) days of the conveyance

(E) Reporting Obligations.

Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate coordination and reduction in the frequency of excavations and obstructions of rights-of-way. If by December 1 of any year the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the city as soon thereafter as it is developed.

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

- (1) To the extent known, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year; 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.

The Director will have available for inspection in the Director's office a composite list of all projects of which the Director has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Each registrant must notify the Director immediately of any change in its list of projects.

(F) Permit requirement.

- (1) *Permit required.* Except as otherwise provided in this Code, no person or public right-of-way user may obstruct, excavate, or install or place facilities in the right-of-way without first having obtained the appropriate permit from the city unless another reporting process is approved by the director or his/her designee.
 - (a) An excavation permit is required for any excavation.
 - (b) An obstruction permit is required to hinder free and open passage over the specified portion of 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) Pole attachment permit. A pole attachment permit is required by the registrant in order to attach a wireless telecommunication facility to a new or existing wireless support structure in the public right-of-way. A wireless telecommunication facility shall only be co-located on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit. Wireless telecommunication facilities that are larger than what is defined as a small wireless facility as defined above in this code are not permitted and therefore not eligible for a pole attachment permit.
 - (d) 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 specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
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Any public right-of-way user, which owns or controls a facility within any public right-of-way, or any portion thereof, on the effective date of this article, that subsequently excavates or otherwise obstructs any public right-of-way, or any portion thereof, shall first obtain a permit therefor as required under this article.

(2) *Permit applications.*

- (a) An application for a permit shall be on a form furnished by the city and completed and submitted to the city with the following information:
 - i. The applicant's name; Gopher One-Call registration certificate number; address; e-mail address; telephone number; and facsimile number.
 - ii. The local representative's name; address; e-mail address; telephone number; facsimile number; and current information regarding how to contact the local representative in an emergency.
 - iii. The name, address and telephone number of the person(s) or entities, other than the applicant, to perform the project work or any portion thereof.
 - iv. A certificate of insurance or self-insurance verifying the coverage as required in this article.
 - v. A detailed description and drawing to a scale as required by the city of the proposed project and project work, including identification of the obstructions to be placed, the size and depth of any excavation, the schedule for commencement and completion of the proposed project, and the location and size of any trees impacted in the designated work area.

(3) *Small wireless facility conditions.* In addition to any other lawful conditions required herein, 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 fifty (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 fifty (50) feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- (c) No wireless facility may extend more than ten (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.

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- (e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
 - (f) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
- (4) *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:
- (a) Up to one hundred fifty dollars (\$150.00) per year for rent to collocate on the city structure.
 - (b) Twenty-five dollars (\$25.00) per year for maintenance associated with the collocation;
 - (c) A monthly fee for electrical service as follows:
 - i Seventy-three dollars (\$73.00) per radio node less than or equal to one hundred (100) maximum watts;
 - ii One hundred eighty-two dollars (\$182.00) per radio node over one hundred (100) maximum watts; or
 - iii 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 to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

(G) Action on small wireless facility permit applications.

- (a) *Deadline for action.* The city shall approve or deny a small wireless facility permit application within ninety (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 fifteen (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.
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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.

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

- (1) The city receives applications from one or more applicant's seeking approval of permits for more than thirty (30) small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by thirty (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 thirty (30) days of receipt the application. Upon submission of additional documents or information, the city shall have ten (10) 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.

(H) Conditions of permit and registration.

All permits issued and all registrations made under this article shall be subject to the following requirements:

- (a) All permits issued under this article, or a copy of the permit shall be available for inspection immediately upon request by the director or his/her designee.
- (b) If the obstruction or excavation of the public right-of-way begins later or ends sooner than the dates specified in the permit, the permittee shall promptly notify the director.
- (c) Installation, placement, location, and relocation of equipment and facilities shall comply with all federal, state and local laws.
- (d) Public right-of-way restoration shall be in accordance with the restoration regulations set forth in this article.
- (e) Installation of all underground utilities shall be in accordance with the underground utilities regulations set forth in this article and all other applicable federal, state and local laws.
- (f) Precautions shall be taken as are necessary to avoid creating unsafe or unsanitary conditions and a permittee shall not obstruct a public right-of-way, except as expressly authorized by the permit, to unnecessarily hinder the natural free and clear passage of water through the gutters or other waterways. Personal vehicles of those doing work in the public 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.
- (g) Project operations and work shall be conducted in a manner to ensure the least obstruction to and interference with present and continued use of the public right-of-way.

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- (h) Precautions shall be taken as necessary, including appropriate signage, barricades, warning lights, fencing, etc., to ensure the safety of the general public, employees, invitees and those who require access to abutting property.
 - (i) The permittee shall notify adjacent property owners, as indicated on the permit, with a forty-eight-hour written notice prior to commencement of any project work that may disrupt the use of and access to the abutting property.
 - (j) The permittee involved in underground projects shall register with Gopher State One Call and comply with the requirements thereof.
 - (k) The permittee shall always comply with the Minnesota Manual Uniform Traffic Control Device for Traffic Control during any project work and shall protect and identify excavations and work operations with barricade flags in the daylight hours and by warning lights at dusk and night.
 - (l) The permittee shall comply with all conditions of the permit.
 - (m) When any trail or drive has been cut, the appropriate signage must be kept in place and maintained until restoration is complete.
 - (n) The permittee shall provide proper trench protection as required by O.S.H.A. to prevent any cave-in; injury to property or persons; or enlargement of the excavation.
 - (o) Excavations, trenches and jacking pits off the roadway surface area or adjacent to the roadway or curbing shall be protected, sheathed or braced as required by prudent construction and engineering standards and in compliance with all applicable laws. When unattended, all excavations, trenches and jacking pits shall be protected to prevent surface drainage from entering the excavations, trenches, and jacking pits.
 - (p) The permittee shall make a reasonable attempt to protect the root growth of significant trees and shrubbery located within the public right-of-way and adjacent thereto.
 - (q) The permittee shall coordinate project work and installation of facilities in co-locations involving other public right-of-way users.
 - (r) The permittee shall maintain access to all properties and cross streets during project work, including emergency vehicle access.
 - (s) The permittee shall physically locate property lines abutting the project work based on existing monuments. The permittee shall replace, with the services of a Minnesota-licensed surveyor, any property corners or monuments disturbed because of the project.
 - (t) No permittee, or any agent, subcontractor or employee thereof, shall use lugs (steel tracks) on any roadway surfaces without the prior approval of the director.
 - (u) The permittee shall remove daily all dirt or debris from sidewalks, trails, public and private roadway surfaces and curbs and gutters during project work unless receiving prior written permission from the city.
 - (v) The permittee shall obtain all other necessary permits, licenses and approvals, pay all required fees therefor and comply with all requirements of local, state and federal laws.
 - (w) The permittee shall not do any work outside the project area as specified in the permit.
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(x) The Permittee shall be required to submit a Stormwater Management Plan.

(I) County or state rights-of-way.

Any public right-of-way user who is required to obtain any county or state permit for excavation or obstruction in any Polk County or Minnesota Department of Transportation right-of-way must provide notification of permitting to the city within one week of obtaining the permit but no less than forty-eight (48) hours before the excavation would begin.

(J) Installation of underground facilities within public rights-of-way.

Where directed by the city, newly installed, re-installed, located or re-located or newly constructed or re-constructed facilities in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the following exceptions: above-ground installation, construction, modification or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals.

The permittee shall comply with the following requirements when installing underground facilities:

- (a) Underground facilities shall, where reasonably possible, be installed outside the paved or surface area. If unable to install outside the surfaced area, the installation shall be as close to the edge of the roadway surface as possible to allow access thereto without unnecessarily disturbing paved areas of the roadway.
- (b) Public right-of-way alignment and grade shall be maintained.
- (c) Fiber facilities shall be buried in a proper conduit and at a depth of no less than three (3) feet deep and no more than four (4) feet [deep]; copper facilities below concrete or bituminous paved roadway surfaces shall be buried no less than three (3) feet deep and no more than four (4) feet deep, and all other copper facilities shall be buried no less than thirty (30) inches deep and no more than four (4) feet deep.
- (d) When required, the permittee shall excavate an observation hole over a city utility to ensure that a city utility is not damaged.
- (e) If the project work involves an open cut, the permittee shall install visual tracers twelve (12) inches over buried facilities. If other construction methods are used, substitute location methods may be used upon approval by the city.
- (f) During plowing or trenching of facilities, a warning tape shall be placed at a depth of twelve (12) inches above copper cables with over two hundred (200) pairs and fiber facilities and a locating wire or conductive shield shall be installed above buried telecommunication facilities, except for di-electric cables.
- (g) The operator shall install a locating wire or have an equally effective means of marking the location of each nonconductive underground facility within a public right-of-way installed after December 31, 2020. Other means include as-built drawings with proper

dimensions, or GPS coordinates (foot minimum accuracy horizontal and .1/10th of a foot vertical coordinates) such that the entire service lateral can be easily and accurately located in the right-of-way. At the permittee's request, for a fee, and with approval of the city, the city can take responsibility and use one of the above methods for marking the utility locations.

- (h) Prior to backfilling, all water and wastewater service laterals must be inspected by the city, to ensure compliance with MN Rules 7560.0100 to 7560.0375.
- (i) Restoration of areas disturbed by facilities will include returning the right-of-way to the same condition that existed before excavation as per MN Rules 7819.1100 Subject to this standard, plates 1 to 13, shown in parts 7819.9900 to 7819.9950, indicate maximum limits of restoration methods and area requirements the local government unit can impose when a right-of-way user excavates in the public right-of-way. The local government unit and right-of-way user may agree to a lesser requirement. The right-of-way user is responsible for all its work done in the public right-of-way, whether by employees, agents, or independent contractors. All levels of restoration include compaction of the materials placed in the excavation of the sub-grade and aggregate base, plus pavement replacement, in kind. If required by the local government unit, all work must be performed according to the local government unit's specifications and drawings.
- (j) If reasonably possible, facilities should be located to avoid interference with existing and potential future traffic signals and signs.
- (k) Unless approved by the city, all above ground appurtenances shall be located no closer than ten (10) feet to city hydrants, waterline valves, manholes, lift stations, catch basins; not in front of or within visual sight lines of any city sign, monument or amenity for facilities or parks; and no closer than two (2) feet from sidewalks, driveways, and trails.
- (l) Underground facilities shall not be installed between a hydrant and an auxiliary valve.
- (m) Where utility easements exist beyond the roadway surface area of the public right-of-way and space is available therein, underground facilities shall not be installed within five (5) feet of hydrants, waterline valves, lift stations, manholes or catch basins. In those areas in which no utility easement exists, placement of an underground facility shall be between the edge of pavement and no closer than three (3) feet to an existing city utility appurtenance, unless approved by the city.
- (n) The location and installation of telecommunications facilities shall comply with the National Electric Safety Code, as incorporated by reference in Minnesota Statutes.

Above-ground installation, construction or placement of facilities shall be allowed in residential, commercial and industrial areas where the Council, following consideration and recommendation by the Planning Commission, finds that:

A.

- (1) Underground placement would place an undue financial burden upon the landowner, ratepayers or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights.

(2) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement.

(3) Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under this section would be advanced by underground placement of facilities on the project in question, or the city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

B Temporary service. Above-ground installation, construction or placement of temporary service lines shall only be allowed:

(1) During construction, (repair, replacement or maintenance) of any project for a period not to exceed three months unless permittee has obtained written permission from the city;

(2) During an emergency in order to safeguard lives or property within the city; or

(3) For a period of not more than seven months when soil conditions make excavation impractical.

C Appeal. Within 30 days after a decision by the Director requiring the undergrounding of utilities, equipment or facilities, any person requesting a waiver based upon one of the foregoing exceptions may appeal to the City Council for a determination. Any such appeal must be in writing and filed in the office of the Director. If no timely appeal is made, the decision of the Director shall become final.

(K) Supplemental permit or permit extension.

(1) *Limitation on area.* No permittee shall obstruct or excavate an area greater than that specified in the permit without first obtaining a new permit or permit extension therefor by the city.

(2) *Limitation on dates.* No permittee shall begin its work before the permit start date or, except as provided herein, continue working after the completion date.

(L) Denial or revocation of permits.

(1) *Reasons for denial.* The city may deny a permit for failure to meet the requirements and conditions of this chapter or for any of the following reasons:

(a) The applicant has failed to fully comply with the application requirements herein.

(b) The proposed project violates a provision of this Code.

(c) If the denial is necessary to protect the health, safety, and welfare or if necessary to protect the public right-of-way and its current use.

(2) *Procedural requirements.* In addition to those procedural hearing rights outlined in this section, 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 (3) 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 thirty (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 thirty (30) days after submission.

- (3) *Grounds for revocation.* The city may revoke a permit issued hereunder on the following grounds:
- (a) A material provision or condition of the permit or city Code was substantially breached.
 - (b) A material misrepresentation in the application for a permit.
 - (c) The permittee failed to maintain the required bonds or other security and insurance.
 - (d) The permittee failed to complete the project work within the time specified in the permit unless the failure to complete work is due to reasons beyond the permittee's control.
 - (e) The permittee failed in a timely manner to correct work that does not conform to applicable standards, conditions, federal, state or local laws.
 - (f) An evasion or attempt to evade any material provision of the public right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city.
- (4) *Notice of revocation.* If the director determines that grounds for revocation exists, the director shall provide written notice to the permittee. If the permittee's violation is related to non-complying project work, the director shall notify the permittee of the actions necessary to remedy such violation within a reasonable period or be subject to potential revocation of the permit. The director may impose additional or revised conditions on the permit to mitigate or remedy the violation.
- (5) *Right to hearing by city council.* If the permittee fails to remedy the violation for which the director gave the permittee notice, a revocation of permit hearing shall be held before the city council at the next city council meeting, providing at least seven (7) days exist before the meeting. Permittee shall be provided written notice prior to the hearing date, specifically stating the date, time, and purpose of the hearing. The purpose for the hearing shall be to determine whether any of the grounds for revocation as set forth herein exist against the permittee. No suspension or revocation shall take effect until the permittee has been afforded a hearing as provided in this subparagraph.
- (6) *Revocation costs.* If a permit is revoked, the permittee shall reimburse the city for its reasonable costs (including restoration costs) incurred in connection with the revocation.

(M) Permit fees.

- (1) All permit fees shall be submitted to the city with the application. Permit fees shall be set to recover the city management costs and, where applicable, restoration costs. The permit fees shall be established by city council resolution. No permit fee shall be refundable. No permit fees shall be required for any obstruction or excavation permit issued to the city, although the city shall be allocated its full portion of the city management costs in calculating the permit fees. Except where an extension permit has been granted, the permittee shall, as a delay penalty, be required to obtain a new permit and pay the associated fee for failure to complete the project work under the initial permit within the required time period. Applicants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

There shall be a single permit and permit fee for joint excavation and obstruction permit applications. Applicants must agree among themselves as to the portion each will pay.

- (2) The city shall impose a small wireless permit fee in an amount sufficient to recover;
 - (3) Management costs; and
 - (4) City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

(N) Public right-of-way restoration.

- (1) *Timing.* All project work under a permit shall be completed within the dates specified in the permit, unless the project work could not be completed due to circumstances beyond permittee's control, including seasonal weather prohibitions or inclement weather.
- (2) *Restoration costs.* The permittee shall restore the public right-of-way and assume all costs therefor unless otherwise agreed upon. The right-of-way user shall remain responsible for replacing and compacting the sub-grade and aggregate base material in the excavation. The city, at its option, may choose to perform its own surface restoration including any paving. If the city performs the surface restoration pursuant to this paragraph, the permittee shall pay to the city all costs thereof within thirty (30) days of billing. If following such restoration, the roadway surface, boulevard, sidewalk, curb or related infrastructure settles due to permittee's improper back-filling; the permittee shall, at its option either correct the defect or pay to the city all costs associated with correcting the defective work within thirty (30) days of billing. If the permittee restores the public right-of-way, the city may require, and the permittee shall provide at the time of application for the permit, a city specified type of security to cover the cost of repair and restoration. If within twelve (12) months after completion of restoration of the right-of-way, the director determines the right-of-way has been properly restored, the posted security will be released. In lieu of right-of-way restoration, the right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and anchor-base material and the degradation fee must not include the cost to accomplish these responsibilities.
- (3) *Standards.* All restoration shall be in accordance with the standards and materials specified by the city. The city shall establish written procedures and standards for public right-of-way restoration, which shall comply with public utility commission standards. The city shall have the authority to prescribe additional restoration procedures and standards on a case-by-case basis based on the following considerations:
 - (a) The number, size, depth and duration of the excavation, disruption or damage to the public right-of-way;
 - (b) The traffic volume carried by the public right-of-way;
 - (c) The character of the neighborhood surrounding the public right-of-way;
 - (d) The pre-project condition of the public right-of-way;
 - (e) The effect on the remaining life expectancy of the public right-of-way due to the project;

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- (f) The costs of the restoration method in relation to the prevention of an accelerated depreciation of the public right-of-way that could result due to the project work in the public right-of-way; and
 - (g) The likelihood that the particular restoration method would be effective in slowing the depreciation of the public right-of-way.
- (4) *Duty to correct defects.* The permittee shall guarantee the restoration of the public right-of-way for twelve (12) months following its completion. During the twelve-month period, the permittee shall, upon written notification from the city, correct all non-complying restoration work, using the method required by the city. The correction work shall be completed within ten (10) calendar days of the receipt of the notice from the city, not including days during which work cannot be done due to circumstances beyond the control of the permittee.
 - (5) *As built drawings.* When requested, the permittee shall submit to the city "as-built" drawings in a format usable by the city within 6 months of completion of the project.

(O) Inspection.

- (1) *Site inspection.* The permittee shall make the project work site available to the director, and all others authorized by law, for inspection at all reasonable times during the execution and upon completion of the project work.
- (2) *Inspection findings and requirements.*
 - (a) The director may order the immediate cessation of any project work, which poses a serious immediate threat to the life, health, safety, or welfare of the public.
 - (b) The director may order the permittee to correct any project work to comply with the terms of the permit or other applicable standards, conditions or laws. The order shall state the violation, the terms of correcting the violation and that failure to correct the violation within the stated time limits shall be cause for revocation of the permit. If the violation is not corrected within the stated time limits, the director may initiate revocation of the permit.
- (3) *Notice of completion.* The permittee shall sign a certificate of project completion stating the completion date, identification of the installer and designer of record and certifying that the project work was completed in accordance with the requirements herein.

(P) Permissible work without a permit.

- (1) *Emergency exception.* All persons with facilities in the public right-of-way shall include the city in its list of those to be notified immediately of any event regarding its facilities that may be considered as an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency, but shall apply for the necessary permits, pay the fees associated therewith and fulfill all requirements as set forth in this article within two (2) business days after the occurrence of the emergency. These permitting requirements shall not apply if the repair is made within the hole of the permitted excavator.

If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility affected, or potentially affected, by the emergency. The city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be assumed and paid by the owner of the facility, which occasioned the emergency.

(Q) Mapping data.

- (1) *Information required.* All permittees shall provide mapping information in accordance with Minnesota Rules and as follows:
 - (a) The location of underground and above ground appurtenances of the public right-of-way user's mains, cables, conduits, switches and related equipment and facilities, identified by:
 - i. Offsets from property lines, distances from the centerline of the public right-of-way and curb lines and/or other reference points as requested by the city; or
 - ii. GPS coordinates derived from the coordinate system being used by the city.
 - (b) The type, quantity and size of the equipment;
 - (c) A dimensional description of above-ground appurtenances;
 - (d) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and
 - (e) The location of any facilities that were abandoned in conformance with Minnesota Statutes.
- (2) *Submittal requirements.*
 - (a) Submittal of mapping data is required unless waived by the city. Unless waived, the public right-of-way user shall submit detailed mapping data in accordance with this subdivision for all facilities located within the public right-of-way.
 - (b) At the request of any public right-of-way user, information required by the city, which qualifies as "trade secret" data under the Minnesota Data Practices Act, shall be protected accordingly.

(R) General public right-of-way regulations.

- (1) *Corridors.* The city may assign specific corridors within the public right-of-way, or portion thereof, as may be necessary for each type of facility. All permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facility at issue.
- (2) *Relocation of facilities.* A public right-of-way user shall promptly, and at its own expense, with due regard to seasonal working conditions, permanently remove and relocate any facility in the public right-of-way when it is necessary to prevent interference and not merely for the convenience of the city, in connection with: (1) a present or future city use of the public right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience

of travel over the public right-of-way. The public right-of-way user shall restore any public rights-of-way in accordance with this article. A right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated and in favor of a non-governmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

- (3) *Damage to other facilities.* Public right-of-way users shall be subject to all restoration requirements provided in this article. Every public right-of-way user shall be responsible for the cost of repairing any facility it damages. This provision is intended to include costs for damages to boulevard amenities placed by adjacent property owners, (e.g. sprinkler systems, etc.). Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another occasioned by an emergency related to that owner's facilities.

(S) Trees in the public right-of-way.

- (1) *Location.* Trees shall be in the public right-of-way in locations approved by the director. No trees shall be placed within twenty (20) feet of an intersection, within three (3) feet of a curbline, or when no curbline exists within ten (10) feet of the edge of the traveled surface of the roadway.
- (2) *Permit.* No permit shall be required for the planting of trees within the public right-of-way.

(T) Public right-of-way vacation.

- (1) *Reservation of right.* If the city vacates a public right-of-way which contains the equipment or facilities of a public right-of-way user and the vacation does not require the relocation of the equipment or facilities, the city shall reserve, to and for itself and the public right-of-way user, the right to install, maintain and operate any equipment and facilities in the vacated public right-of-way and to enter upon such public right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.
- (2) *Relocation of facilities.* If the vacation requires the relocation of the public right-of-way user's equipment or facility; and the vacation proceedings are initiated by the public right-of-way user or the city, for a public project, the public right-of-way user shall pay the relocation costs. If the vacation proceedings are initiated by a person or persons other than the public right-of-way user, the initiating person or persons shall pay the relocation costs.

(U) Indemnification and liability.

- (1) *Limitation of liability.* Upon the issuance of a public right-of-way permit, the city does not assume any liability (i) for injuries to persons, damage to property or loss of service claims by parties other than the registrant or the city, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permittees or activities of registrants or permittees.
- (2) *Indemnification.* A registrant or permittee shall indemnify, keep and hold the city, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken by the

permittee in or near a public right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a public right-of-way permit. The foregoing does not indemnify the city for its own negligence or its own wrongful acts or omissions except for claims arising out of or alleging the city's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant, permittee or the city, and the registrant or permittee, 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 on its own behalf.

If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the city. Such consent will not be unreasonably withheld.

(V) Abandoned facilities.

- (1) *Removal of abandoned facilities.* A right-of-way user shall notify the city when facilities are to be abandoned. A right-of-way user that has abandoned facilities in the 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 the city waives this requirement.

(W) Appeal.

A public right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed by the city council upon written request. The city council shall act on a written request at its next regularly scheduled meeting. The decision by the city council shall be in writing and supported by written findings establishing the reasonableness of the decision.

(X) Insurance.

All certificate(s) of insurance or self-insurance required under this section shall provide the following: (1) that an insurance policy has been issued to the applicant by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the director; (2) verify that the applicant 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 public right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the public right-of-way by the permittee, 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) name the city as an additional insured on all liability policies to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages; (4) require that the director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; (5) indicate commercial general liability coverage, automobile liability coverage, and workers compensation in the minimum amounts listed below to protect

the city and the public and to carry out the purposes and policies of this chapter. An umbrella/excess policy may be used to supplement the required policy limits:

	Public Liability, Including Premises, Products and Complete Operations.
Commercial General Liability:	Bodily Injury and Property Damage Liability - \$\$3,000,000.00 each occurrence; \$5,000,000.00 annual aggregate.
Commercial Automobile Liability:	Automobile Liability -\$3,000,000.00 combined single limit including owned, non-owned and hired vehicles
Worker's Compensation and Employer's Liability:	Worker's Compensation insurance for all employees in accordance with the statutory requirements of the State of Minnesota. Employers Liability coverage with minimum limits as follows: a. \$500,000.00 - Bodily injury by Disease per employee b. \$500,000.00 - Bodily injury by Disease aggregate c. \$500,000.00 - Bodily injury by accident

The city may require a copy of the actual insurance policies. If the person is a corporation, a copy of the certificate required to be filed under M.S. § 300.06 as recorded and certified to by the Secretary of State. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency. A franchise agreement may exempt a permittee from this paragraph.

APPENDIX A: ENGINEERING STANDARDS FOR STREET RESTORATION

See plates 1-13

Section 2. City Code Chapter 1 entitled "Definitions and General Provisions Applicable to Entire City Code Including Penalty for Violation" and Section 10.99 entitled "Violation a Misdemeanor" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication and be given the Number 31, 4th Series.

Voting Aye: Larson, Vetter, Helms, Riopelle, Johnson, Olstad, and DeMers.
Voting Nay: None.
Absent: None.

The President declared the Ordinance passed.

ATTEST:

City Administrator

Council President

I hereby approve the foregoing Ordinance this 21st day of December, 2021.

Mayor