

CHAPTER 96: RIGHT-OF-WAY MANAGEMENT, STREETS, ALLEYS, AND PUBLIC WAYS

Section

Right-of-Way Management

96.01	Findings, Purpose, and Intent
96.02	Election to Manage the Public Rights-of-Way
96.03	Definitions
96.04	Administration
96.05	Utility Coordination Committee
96.06	Registration and Right-of-Way Occupancy
96.07	Registration Information
96.08	Reporting Obligations
96.09	Permit Requirements
96.10	Permit Application
96.11	Issuance of a Permit; Conditions
96.12	Action on Small Wireless Facility Permit Applications
96.13	Permit Fees
96.14	Right-of-Way Patching and Restoration
96.15	Joint Applications
96.16	Supplementary Applications
96.17	Other Obligations
96.18	Denial or Revocation of the Permit
96.19	Installation Requirements
96.20	Inspection
96.21	Work Done Without a Permit
96.22	Supplementary Notification
96.23	Revocation of Permits
96.24	Mapping Data
96.25	Undergrounding
96.26	Location and Relocation of Facilities
96.27	Pre-Excavation Facilities Location
96.28	Damage to Other Facilities
96.29	Right-of-Way Vacation
96.30	Indemnification and Liability
96.31	Abandoned and Unusable Facilities
96.32	Appeal
96.33	Reservation of Regulatory and Police Powers
96.34	Severability

Sidewalk Construction and Maintenance

96.40	Property Owner's Responsibility
96.41	Inspections by the Public Works Director

- 96.42 Repair by the Public Works Director
- 96.43 Owner Liability for Cost
- 96.44 Assessment or Certification of Cost
- 96.45 Street Grade Markers

Removal of Accumulations of Snow and Ice from Sidewalks

- 96.50 Snow and Ice Accumulation
- 96.51 Depositing of Snow
- 96.52 Non-Removal Penalty
- 96.53 Non-Compliance
- 96.54 Deviations and Exceptions

Encroachments

- 96.60 Encroachments
- 96.61 Maintenance
- 96.62 Obstructing Streets
- 96.63 Allowable Obstructions
- 96.64 Violations

Landscaping of Municipal Boulevards

- 96.70 Boulevards to be Seeded or Sodded
- 96.71 Landscaping Plan
- 96.72 Landscaping Properly Maintained

Vacations of Public Streets, Alleys, Ways, Easements, and Grounds

- 96.80 Purpose
- 96.81 Definitions
- 96.82 Commencing a Vacation
- 96.83 Public Hearing and Notice Requirements
- 96.84 Standards for Granting a Vacation
- 96.85 Adoption of an Ordinance or Resolution Granting or Denying a Vacation

RIGHT-OF-WAY MANAGEMENT

§ 96.01 FINDINGS, PURPOSE, AND INTENT.

(A) *Findings, purpose.* The purpose of this Subchapter is to provide for the health, safety, and welfare of the City's citizens, to ensure the integrity of its streets, to ensure the appropriate use of the City's rights-of-way, and to keep the City's rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City has enacted this Subchapter relating to right-of-way permits and administration. This Chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the City's 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 Subchapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(B) *Intent.* This Chapter is to be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Session Laws, Chapter 94 amending the Act and the other laws governing applicable rights of the City and users of the right-of-way. This Subchapter is also to be interpreted consistent with Minnesota Rules Subchapter 7819.0050 – 7819.9950 where possible. To the extent that any provision of this Subchapter 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.

§ 96.02 ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.

Pursuant to the authority granted to the City under state and federal statutory, administrative, and common law, the City hereby elects, pursuant to Minnesota Statutes Section 237.163, subdivision 2 (b), to manage rights-of-way within its jurisdiction.

§ 96.03 DEFINITIONS.

For the purposes of this Subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED FACILITY. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

APPLICANT. Any person requesting permission to excavate or obstruct a right-of-way.

CITY. The city of Lake City, Minnesota. For purposes of this Subchapter, the “City” also means the City’s elected officials, officers, employees, and agents.

COLLOCATE or COLLOCATION. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the City or other governmental unit. *See* Minn. Stat. § 237.162, subd. 10.

COMMISSION. The State Public Utilities Commission.

CONGESTED RIGHT-OF-WAY. A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes Section 216D.04, subdivision 2, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at the permittee’s option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minnesota Statutes Section 15.73, subdivision 3;
- (4) Letter of credit, in a form acceptable to the City;
- (5) Self-insurance, in a form acceptable to the City; or
- (6) A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

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

DEGRADATION COST. The cost to achieve a level of restoration as determined by the City subject to Minnesota Rules Part 7819.1100, at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules Parts 7819.9900 to 7819.9950.

DEGRADATION FEE. The estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

DEPARTMENT. The Department of Public Works of the City.

DIRECTOR. The Public Works Director of the City, or his or her designee.

DELAY PENALTY. The penalty imposed as a result of unreasonable delays in right-of-

way excavation, obstruction, patching, or restoration as established by permit.

EMERGENCY. A condition that:

- (1) Poses a danger to life or health, or of a significant loss of property; or
- (2) Requires immediate repair or replacement of facilities in order to restore service to a customer.

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

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

FACILITY or FACILITIES. Any tangible asset in the right-of-way required to provide utility service.

FIVE-YEAR PROJECT PLAN. Shows projects adopted by the City for construction within the next five years.

HIGH DENSITY CORRIDOR. A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

HOLE. An excavation in the pavement, with the excavation having a length of less than the width of the pavement.

LOCAL REPRESENTATIVE. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.

MANAGEMENT COSTS. The actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of 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 user 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 96.32 of this Subchapter.

OBSTRUCT. To place any tangible object in a right-of-way so as to hinder free and open

passage over that or any part of the right-of-way.

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

OBSTRUCTION PERMIT FEE. Money paid to the City by a permittee to cover the costs as provided in Section 96.10 of this Subchapter.

PATCH or PATCHING. A method of pavement replacement that is temporary in nature. A patch consists of:

- (1) The compaction of the subbase and aggregate base; and
- (2) The replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

A patch is considered full restoration only when the pavement is included in the City's five-year project plan.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

PERMIT. Has the meaning given "right-of-way permit" in Minnesota Statutes Section 237.162.

PERMITEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Subchapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PROBATION. The status of a person that has not complied with the conditions of this Subchapter.

PROBATIONARY PERIOD. One year from the date that a person has been notified in writing that he or she has been put on probation.

PUBLIC RIGHT-OF-WAY or RIGHT-OF-WAY. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

REGISTRANT. Any person who:

- (1) Has or seeks to have his or her equipment or facilities located in any right-of-way; or
- (2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or place his or her facilities or equipment in the right-of-way.

RESTORE or **RESTORATION**. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this Subchapter.

RIGHT-OF-WAY USER.

- (1) A telecommunications right-of-way user as defined by Minnesota Statutes Section 237.162, subdivision 4; or
- (2) A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

SERVICE or **UTILITY SERVICE**. Includes:

- (1) Those services provided by a public utility as defined in Minnesota Statutes Section 216B.02, subdivisions 4 and 6;
- (2) Services of a telecommunications right-of-way user, including transporting of voice or data information;
- (3) Services of a cable communications system as defined in Minnesota Statutes Section Chapter 238;
- (4) Natural gas or electric energy or telecommunications services provided by the City;
- (5) Services provided by a cooperative electric association organized under Minnesota Statutes Chapter 308A; and
- (6) Water and sewer, including service laterals, steam, cooling, or heating services.

SERVICE LATERAL. An underground facility that is used to transmit, distributed, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

SMALL WIRELESS FACILITY. A wireless facility that meets both of the following

qualifications:

- (1) Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
- (2) All other wireless equipment associated with the small wireless facility, provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment. *See* Minn. Stat. § 237.162, subd. 11.

SUPPLEMENTARY APPLICATION. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

TEMPORARY SURFACE. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the City's two-year plan, in which case it is considered full restoration.

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

TELECOMMUNICATIONS RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this Subchapter, a cable communication system defined and regulated under Minnesota Statutes Chapter 238, and telecommunication activities related to providing natural gas or electric energy services 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 Subchapter except to the extent such entity is offering wireless service.

TWO YEAR PROJECT PLAN. Shows projects adopted by the City for construction within the next two years.

UTILITY POLE. A pole that is used in whole or in part to facilitate telecommunications or electric service. *See* Minn. Stat. § 237.162, subd. 12.

WIRELESS FACILITY. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support

structures, or not otherwise immediately adjacent to and directly associated with a specific antenna. *See* Minn. Stat. § 237.162, subd. 13.

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

WIRELESS SUPPORT STRUCTURE. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City. *See* Minn. Stat. § 237.162, subd. 16.

§ 96.04 ADMINISTRATION.

The Director is the principal City official responsible for the administration of the rights-of-way, right-of-way permits, and the related provisions of the City Code. The Director may delegate any or all of the duties hereunder.

§ 96.05 UTILITY COORDINATION COMMITTEE.

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

§ 96.06 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

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

(B) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the City.

(C) *Exceptions.* Nothing in this Section is to be construed to repeal or amend the provisions of the City Code permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining any such boulevard plantings or gardens under this Chapter. Such work by non-right-of-way users is regulated by other City Code sections, unless provided otherwise. Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes Chapter 216D, the

Gopher One Call Law.

§ 96.07 REGISTRATION INFORMATION.

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

- (1) Each registrant's name, Gopher One-Call registration certificate number, address, and e-mail address, if applicable, and telephone and facsimile numbers;
- (2) The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;
- (3) A certificate of insurance or self-insurance:
 - (a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;
 - (b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - (c) Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (d) Requiring that the City be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - (e) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation, and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Subchapter;
 - (f) The City may require a copy of the actual insurance policies;

- (g) If the person is a corporation, a copy of the certificate is required to be filed under Minnesota Statutes Section 300.06 as recorded and certified to by the Secretary of State; and
- (h) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

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

§ 96.08 REPORTING OBLIGATIONS.

(A) *Operations.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the City. Such plan shall be submitted using a format designated by the City and contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:

- (1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this Section, a “next-year project”); and
- (2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this Section, a “five-year project”).

The term “project” in this Section shall include both next-year projects and five-year projects.

By January 1 of each year, the City will have available for inspection in the City's office a composite list of all projects of which the City has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

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

(B) *Additional next-year projects.* Notwithstanding the foregoing, the City will not deny an application for a right-of-way permit for failure to include a project in a plan submitted

to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

§ 96.09. PERMIT REQUIREMENTS.

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

- (1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid utility permit for the same project.
- (3) *Small wireless facility permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the 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. *See* Minn. Stat. § 237.163, subd. 13.

(B) *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.

(C) *Delay penalty.* In accordance with Minnesota Rule Part 7819.1000, subpart 3, the City will establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

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

§ 96.10 PERMIT APPLICATION

(A) *Content of permit.* Application for a permit is made to the City. Right-of-way permit applications must contain, and will be considered complete only upon compliance with

the requirements of the following provisions:

- (1) Registration with the City pursuant to Section 96.07 of this Subchapter;
- (2) Submission of a completed permit application form as provided by the City, including all required attachments, and five copies of 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 the City for:
 - (a) Permit fees, estimated restoration costs, and other management costs;
 - (b) Prior obstructions or excavations;
 - (c) Any undisputed loss, damage, or expense suffered by the City because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City; and
 - (d) Franchise fees or other charges, if applicable.
- (4) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing; and
- (5) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

§ 96.11 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this Chapter, the City must issue a permit.

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

(C) *Small wireless facility conditions.* In addition to paragraph (B) above, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the

following conditions:

- (1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- (2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety, and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- (3) No wireless facility may extend more than 10 feet above its wireless support structure.
- (4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- (5) Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure.
- (6) Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

See Minn. Stat. § 237.163, subd. 3b.

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

- (1) Rent to collocate on the City structure in an amount set forth in the City's fee schedule;
- (2) Reimbursement to the City for maintenance associated with the collocation in an amount set forth in the City's fee schedule; and
- (3) A monthly fee for electrical service in amounts set forth in the City's fee

schedule.

Said fees and charges shall not exceed the amounts set forth in Minnesota Statutes Section 237.163, subdivision 6 (g), as it may be amended from time to time.

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. *See* Minn. Stat. § 237.163, subd. 6(g).

§ 96.12 ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

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

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

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

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 90 day deadline for action on a small wireless facility permit application may be tolled if:

- (1) The City receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven day period. In such case, the City may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
- (2) The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within 30 days of receipt of the application. Upon submission of the additional documents or information, the City shall have 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.

See Minn. Stat. § 237.163, subd. 3c.

§ 96.13 PERMIT FEES.

(A) *Excavation permit fee.* The City shall impose an excavation permit fee in an amount sufficient to recover:

- (1) Management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction permit fee.* The City shall impose an obstruction permit fee in an amount sufficient to recover management costs.

(C) *Small wireless facility permit fee.* The City shall impose a small wireless facility permit fee in an amount sufficient to recover:

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

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

(E) *Non-refundable.* Permit fees paid for a permit that the City has revoked for a breach as stated in Section 96.23 of this Subchapter are not refundable.

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

§ 96.14 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing.* Work to be done under the excavation permit and the patching and restoration of the right-of-way as required herein must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 96.17.

(B) *Patch and restoration.* The permittee must patch 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.

(C) *Permittee restoration.* If the permittee restores the right-of-way itself, it must 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.

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

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

(F) *Standards.* The permittee must perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the City and comply with Minnesota Rules Part 7819.1100.

(G) *Duty to correct defects.* The permittee must correct defects in patching or restoration performed by the permittee or the permittee's agents. Upon notification from the City, the permittee must correct all restoration work to the extent necessary, using the method required by the City. Said work must be completed within five calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 96.17 of this Chapter.

(H) *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 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

§ 96.15 JOINT APPLICATIONS.

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

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

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

§ 96.16 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

- (1) Make an application for a permit extension and pay any additional fees required thereby; and
- (2) Be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. A permittee may not begin work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, the permittee 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.

§ 96.17 OTHER OBLIGATIONS.

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

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

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

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including, but not limited to, Horizontal Directional Drilling, must follow all requirements set forth in Minnesota Statutes Chapter 216D and Minnesota Rules Chapter 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Director.

§ 96.18 DENIAL OR REVOCATION OF THE PERMIT.

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

(B) *Procedural requirements.* The denial or revocation of a permit must be made in writing and must document the basis for the denial or revocation. 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 will be imposed. The City must approve or deny the resubmitted application within 30 days after submission.

See Minn. Stat. § 237.163, subs. 4(c) and 5(f).

§ 96.19 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching, and restoration, and all other work performed in the right-of-way must be done in conformance with Minnesota Rules Parts 7819.1100, 7819.5000, and 7819.5100 and other applicable local requirements such as the City's standard specifications and details, insofar as they are not inconsistent with the Minnesota Statutes Sections 237.162 and 237.163. Installation of service laterals must be performed in accordance with Minnesota Rules Chapter 7560 and this Subchapter. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits or agreements referenced in this Chapter.

§ 96.20 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee must furnish a completion certificate in accordance with Minnesota Rules Part 7819.1300.

(B) *Site inspection.* The permittee must 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.

(C) *Authority of the Director.* 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. The Director may issue an order to the permittee to correct any work that does not conform to the terms of the permit or other applicable standards, conditions, or code. The order must state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Director. Within 10 days after issuance of the order,

the permittee must present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 96.23 of this Subchapter.

(D) *Standards during construction or installation.* The permit holder must comply with the following standards when engaging in the work:

- (1) Take such precautions as are necessary to avoid creating unsanitary conditions. Observe and comply with all laws, rules, and regulations of the State of Minnesota;
- (2) Conduct the operation and perform the work in a manner as to ensure the least obstruction and interference to traffic;
- (3) Take adequate precautions to ensure the safety of the general public and those who require access to abutting property;
- (4) If required by the Director, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to such adjoining properties;
- (5) In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford it restricted use of the area and comply with the Minnesota Manual on Uniform Traffic Control Devices' traffic safety signing requirements;
- (6) Exercise precaution at all times for the protection of persons, including employees and property;
- (7) Protect and identify excavations and work operations with barricade flags, and if required, by flagmen in the daytime, and by warning lights at night;
- (8) Provide proper trench protection as required by the Occupational Health and Safety Administration when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation;
- (9) Protect the root growth of trees and shrubbery;
- (10) Installation of pipe (utility conductors) under Portland cement concrete, asphalt concrete, or other high-type bituminous pavements must be done by jacking, auguring, or tunneling as directed by the City Engineer unless otherwise authorized. High density polyethylene sleeving or sleeving material for telecommunications installations are acceptable casings;

- (11) When removing pavement of Portland cement concrete, asphalt concrete, or high-type built-up bituminous surfacing, the pavement must be removed on each side of the trench or excavation a distance of two feet beyond the trench width and length, in order to provide a shoulder and solid foundation for the surface restoration.

§ 96.21 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.* A registrant must immediately notify the Director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant must 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 Subchapter for the actions it took in response to the emergency.

(B) *City action.* If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(C) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and, as a penalty, pay double the normal fee for said permit, pay double all other fees required by the City Code, deposit with the City the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Subchapter.

§ 96.22 SUPPLEMENTARY NOTIFICATION.

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

§ 96.23 REVOCATION OF PERMITS.

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

- (1) The violation of any material provision of the right-of-way permit;

- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 96.20 of this Subchapter.

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

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

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

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

(F) *Reimbursement of City costs.* If a permit is revoked, the permittee must 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.

§ 96.24 MAPPING DATA.

(A) *Information required.* Each registrant and permittee must provide mapping information in a form required by the City in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100. Within 90 days following completion of any work pursuant to a permit, the permittee must provide the Director accurate maps and drawings certifying the “as-built” location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings must include the horizontal location and the approximate vertical location of all facilities and equipment and must be provided consistent with the City’s electronic mapping system when practical or as a condition imposed by the Director. Failure to provide maps and drawings pursuant to this Section shall be grounds for the City revoking the permit holder’s registration.

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

- (1) Payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429; and
- (2) City approval under development agreements or other subdivision or site plan approval under Minnesota Statutes Chapter 462. The Director shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

§ 96.25 UNDERGROUNDING.

(A) *Purpose.* The purpose of this Section is to promote the health, safety, and general welfare of the public and is intended to foster: (1) safe travel over the right-of-way; (2) non-travel related safety around homes and buildings where overhead feeds are connected; and (3) orderly development in the City. Location and relocation, installation, and reinstallation of facilities in the right-of-way or in or on other public grounds must be made in accordance with this Section. This Section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including, but not limited to, Minnesota Statutes Sections 161.45, 237.162, 237.163, 301B.01, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, 47 U.S.C. Section 253.

(B) *Undergrounding of facilities.* If the City finds that one or more of the purposes set forth in paragraph A of this section would be promoted, the City may require newly installed or constructed facilities in the public right-of-way or in other public property held in common for

public use to be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers, and service connection pedestals are allowed. The requirements of this section apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation, or comprehensive planning as may now or in the future be allowed by law.

(C) *Undergrounding of permanent replacement, relocated, or reconstructed facilities.* If the City finds that one or more of the purposes set forth in paragraph A of this section would be promoted, the City may require a permanent replacement, relocation, or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, “reconstruction” means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation, or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the City in connection with: (1) the present or future use by the City or other local government unit of the right-of-way or other public ground for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

(D) *Exceptions to undergrounding.* The following exceptions to the strict application of this Section will be allowed upon the conditions stated:

- (1) *Transmission lines.* Above-ground installation, construction, or placement of those facilities commonly referred to as “high voltage transmission lines” shall be allowed unless the City Council requires undergrounding of the facilities after providing the right-of-way user notice and an opportunity to be heard. This provision is not to be construed as waiving the requirements of any other ordinance or regulation of the City as it may apply to any such proposed project.
- (2) *Technical/economic feasibility; promotion of policy.* Above-ground installation, construction, or placement of facilities will be allowed in residential, commercial, and industrial areas where the City Council, following consideration and recommendation by the Planning Commission, finds that:
 - (a) 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; or
 - (b) Underground placement is impractical or not technically feasible due to topographical, subsoil, or other existing conditions which adversely affect underground facilities placement.

- (3) The right-of-way user clearly and convincingly demonstrates that none of the purposes under paragraph (A) of 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.

(E) *Temporary service.* Above-ground installation, construction, or placement of temporary service lines will only be allowed:

- (1) During new construction of any project for a period not to exceed three months;
- (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.

(F) *Retirement of overhead facilities.* The City Council may determine whether it is in the public interest that all facilities within the City, or facilities within certain districts designated by the City, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to section 96.25, paragraph (B) of this Chapter (new facilities) and Section 96.25, paragraph (C) of this Subchapter (replacement facilities). The decision by the City Council to underground must be preceded by a public hearing, after two weeks published notice and 30 days written notice to the utilities affected. At the hearing, the City Council must consider items 1 through 4 of paragraph (H) of this Section and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan as provided in paragraph (I) of this section.

(G) *Public hearings.* A hearing must be open to the public and may be continued from time to time. At each hearing, any person interested must be given an opportunity to be heard. The subject of the public hearings will be the issue of whether facilities in the right-of-way in the City, or located within a certain district, are to be located underground by a date certain. Hearings are not necessary for the undergrounding required under paragraph B of this section.

(H) *Public hearing issues.* The issues to be addressed at the public hearing include, but are not limited to:

- (1) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way;
- (2) The feasibility and cost of undergrounding all facilities by a date certain as determined by the City and the affected utilities;

- (3) The tariff requirements, procedure, and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers with the City; and
- (4) Alternative financing options available if the City deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

(I) *Undergrounding plan.* If the City Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public grounds, it must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

- (1) Timetable for the undergrounding;
- (2) Designation of districts for the undergrounding unless the undergrounding plan is City-wide;
- (3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions;
- (4) Procedures for the undergrounding process, including, but not limited to, coordination with City projects and provisions to ensure compliance with non-discrimination requirements under the law;
- (5) A financing plan for funding of the incremental costs, if the City determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility; and
- (6) Penalties or other remedies for failure to comply with the undergrounding.

(J) *Developer responsibility.* Owners, platters, or developers are responsible for complying with the requirements of this section, and prior to final approval of any plat or development plan by the City, must submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with those users for installation of the facilities have been made.

§ 96.26 LOCATION AND RELOCATION OF FACILITIES.

(A) *Rules.* Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules Parts 7819.3100, 7819.5000, and 7819.5100, to the extent the Rules do not limit authority otherwise available to cities.

(B) *Undergrounding.* Unless otherwise agreed in a franchise or other agreement between the applicable right-of-way user and the City, facilities in the right-of-way must be

located or relocated and maintained underground in accordance with Section 96.25 of this Chapter.

(C) *Corridors.* The City may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities must designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

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

(E) *Limitation of space.* To protect the public health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the City will strive to the extent possible to accommodate all existing and potential users of the right-of-way, but will 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 that have been determined to be in the public interest.

§ 96.27 PRE-EXCAVATION FACILITIES LOCATION.

In addition to complying with the requirements of Minnesota Statutes Sections 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated must mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface must notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

§ 96.28 DAMAGE TO OTHER FACILITIES.

When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City must 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 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.

§ 96.29 RIGHT-OF-WAY VACATION.

(A) *Reservation of right.* If the City vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules Part 7819.3200.

§ 96.30 INDEMNIFICATION AND LIABILITY.

By registering with the City, or by accepting a permit under this Subchapter, a registrant or permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rule Part 7819.1250.

§ 96.31 ABANDONED AND UNUSABLE FACILITIES.

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

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

§ 96.32 APPEAL.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statutes Section 237.163, subdivision 6; or (5) disputes a determination of the Director regarding Section 96.24 (B) of this Subchapter may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council must act on a timely written request at its next regularly scheduled meeting provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

§ 96.33 RESERVATION OF REGULATORY AND POLICE POWERS.

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

§ 96.34 SEVERABILITY.

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

SIDEWALK CONSTRUCTION AND MAINTENANCE

§ 96.40 PROPERTY OWNER'S RESPONSIBILITY.

The owner or occupant of any property that is adjacent to a City sidewalk must keep the sidewalk in repair and safe for pedestrians. Repairs shall be made in accordance with the City's standard specifications on file with the Public Works Department.

§ 96.41 INSPECTIONS BY THE PUBLIC WORKS DIRECTOR.

The Public Works Director shall make such inspections as are necessary to determine that City sidewalks are kept in repair and safe for pedestrians. If the Public Works Director finds that any sidewalk abutting on private property is unsafe and in need of repairs, he or she shall physically mark the portion or portions of the sidewalk that need repair and cause a sidewalk repair notice to be sent by U.S. Mail upon the record owner of the property and the occupant if the owner does not reside on the property or cannot be found. The notice shall advise the owner or occupant that it is his or her responsibility to repair the marked sidewalk panels and shall order the owner or occupant to respond in writing to the Public Works Director within 30 days with his or her intended option for repair of the marked sidewalk. If a property owner or occupant elects to undertake the sidewalk repair without City involvement, the repairs must be completed within 60 days of the date contained in the notice. The notice shall also state that if the owner or occupant fails to respond to the Public Works Director within 30 days or fails to make the needed repairs within the time given, the Public Works Director will do so on behalf of the City at the owner's expense. Finally, the notice shall state that the cost of any sidewalk repair work performed by the City will be billed to the owner and will be made a special assessment against the property if not paid.

§ 96.42 REPAIR BY THE PUBLIC WORKS DIRECTOR.

If the owner or occupant fails to respond to the Public Works Director within the 30 days or fails to make the needed repairs within 60 days from the date on the notice, the Public Works Director shall repair the sidewalk and make it safe for pedestrians or order the work done by contract in accordance with the law.

§ 96.43 OWNER LIABILITY FOR COST.

The owner of the property on which or adjacent to the sidewalk where repair has taken place shall be responsible for the costs of the repair. As soon as the repairs have been completed and the cost determined, a bill will be provided to the owner or occupant and thereupon the amount shall be immediately due and payable.

§ 96.44 ASSESSEMENT OR CERTIFICATION OF COST.

If the cost of the repairs is not paid by the property owner, the City may assess the costs against the property benefited as a special assessment under Minnesota Statutes Chapter 429.

§ 96.45 STREET GRADE MARKERS.

Stakes, markers and iron pins placed at the corners of blocks or along the line of streets within the City for the purpose of establishing the line or grade of sidewalks therein are declared to be public property.

REMOVAL OF ACCUMULATIONS OF SNOW AND ICE FROM SIDEWALKS

§ 96.50 SNOW AND ICE ACCUMULATION.

Removal of ice and snow from public sidewalks is necessary for routine travel, public safety, and emergency services. Snow must be removed before it has accumulated to a depth of more than two inches, and ice is not permitted to remain on the sidewalk.

It shall be unlawful for the owner or occupant of any non-commercial property in front of which, or adjacent to which, a public sidewalk has been constructed to allow any accumulation of snow or ice to remain upon the sidewalk longer than 48 hours after the conclusion of the qualifying event. The occupant or owner must clear the entire width of the sidewalk in front of his or her property from snow and ice within 48 hours after the conclusion of the qualifying event and to keep the sidewalk clear of snow and ice.

Owners and occupants of commercial properties adjacent to a public sidewalk must remove accumulations of snow and ice that has been deposited on the sidewalk Mondays through Saturdays on or before 10:00 a.m. or the time of opening of the business, whichever is earlier. If accumulation continues during the course of the day, snow and ice must be removed periodically throughout the day, and in any event, at least every four hours.

§ 96.51 DEPOSITING OF SNOW.

It shall be unlawful for any owner or occupant of any property to push or otherwise move the snow which has fallen upon the his or her property upon the sidewalks or the streets adjacent to the property.

§ 96.52 NON-REMOVAL PENALTY.

Accumulation of snow and ice upon any public sidewalk in violation of this Subchapter and constitutes a public nuisance. All persons who occupy or own property adjacent to a public sidewalk are required to abate such nuisance. It is also the responsibility of the occupant or owner to remove the snow from the corner crosswalks, driveway approaches, around trash cans, mailboxes, and newspaper tubes that are within the public right-of-way. Property owners and occupants are encouraged to “adopt” any fire hydrant located near their property by clearing snow around it in order to ensure that the Fire Department is able to access it.

It shall be unlawful for any person to place snow or ice removed from his or her property in a location on his or her property that is within the public right-of-way in such a quantity or manner as to cause a hazard to persons traveling on public streets or sidewalks.

From time to time, the City may determine that City sidewalks shall be closed for various reasons. The City shall advise the public by posting said determination and description of the sidewalk(s) in a conspicuous place at the City Hall. The City’s decision to close particular sidewalks within the City shall not alleviate or relieve the occupants and owners with abutting sidewalks from their obligations under this Subchapter.

§ 96.53 NON-COMPLIANCE.

(A) *Prima Facie Evidence of Non-Compliance.* Failure of the occupant or owner to remove snow and ice from the sidewalks in accordance with this Subchapter shall be deemed prima facie non-compliance with this Subchapter and shall constitute sufficient cause for the City to direct the removal of said snow or ice from the public sidewalk by the City or its contractor.

(B) *Penalty.* If snow and ice is not removed in accordance with this Subchapter, the City shall remove such snow and ice, using either City or contract forces, and shall bill the occupant or owner of said property. The necessary costs and expenses, shall be chargeable against the abutting property owner or occupant for non-compliance with this Subchapter. The bill shall be due and shall be paid in full within 30 days of the date of the invoice. If the bill is not paid, the City may specially assess the costs against the property in accordance with Minnesota Statutes Chapter 429.

§ 96.54 DEVIATIONS AND EXCEPTIONS.

It may be advisable from time-to-time that some public sidewalks within the City be permitted to deviate from strict compliance of the requirements of this Subchapter. City staff will recommend to the City Council, at least on an annual basis, the name or description of any such sidewalks that may reasonably be given exception or deviation for the upcoming snowfall season. The granting of an exception or deviation shall be based upon criteria including, but not limited to, sidewalks that are not connected to the “general network” of sidewalks within the City and those that, in the absence of snow and ice removal, do not pose a threat to public safety, health, or the general welfare. The City Council shall expressly confirm or deny all requests for deviations and exceptions to the compliance requirements.

ENCROACHMENTS

§ 96.60 ENCROACHMENTS ON STREETS.

No person shall erect or maintain any structure or thing on, over or under any street, alley, sidewalk or public way except by permit from the City. Persons desiring a permit shall make an application for a permit with the Public Works Director on a form provided by the City. The permit application must provide a detailed description of the encroachment and its location. Permits must be approved by the City Council. The City Council in its discretion may issue or deny the permit and may impose any conditions to such permit that it deems appropriate.

§ 96.61 MAINTENANCE.

Any encroachment on any street, alley, sidewalk, or public way shall be maintained by the owner so that it does not endanger the public or obstruct the street, alley, sidewalk, or public way.

§ 96.62 OBSTRUCTING STREETS.

No person shall obstruct or endanger the free passage or proper use of the public of any street, sidewalk, alley, or public way, except as may be permitted by this Subchapter.

§ 96.63 ALLOWABLE OBSTRUCTIONS.

Goods, wares, and merchandise may be placed on public sidewalks for reasonable times, provided that pedestrian traffic is not obstructed. The items must be kept within an area two-thirds of the width of the sidewalk measured from the curb edge. An encroachment permit is not required.

§ 96.64 VIOLATIONS.

Any encroachment maintained in violation of this Subchapter is declared a nuisance and may be abated by the City.

LANDSCAPING OF MUNICIPAL BOULEVARDS

§ 96.70 BOULEVARDS TO BE SEEDED OR SODDED.

All municipal boulevards in the City must be seeded or sodded with grass by the adjacent property owner or occupant.

§ 96.71 LANDSCAPING PLAN.

(A) Prior to any installing any landscaping other than seeding or sodding of a City boulevard, a person must submit to the Public Works Director for approval a landscaping plan showing the type of materials to be used and the location of the materials.

(B) In reviewing the landscaping plan, the Public Works Director shall consider criteria such as soil retention, esthetic values on the lot and adjacent property and the public's health, safety, and welfare.

§ 96.72 LANDSCAPING PROPERLY MAINTAINED.

The property owner or occupant shall be responsible for maintaining all grass and landscaping within a City boulevard.

VACATIONS OF PUBLIC STREETS, ALLEYS, WAYS, EASEMENTS, AND GROUNDS

§ 96.80 PURPOSE.

The purpose of this Subchapter is to adopt a process to be followed by the City with respect to the vacation of public streets, alleys, ways, easements, and grounds.

§ 96.81 DEFINITIONS.

For purposes of this Subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABUTTING. The land is touching, reaching, joining, bordering on, or contiguous with the area to be vacated.

AFFECTED PROPERTY OWNERS. Those property owners whose properties abut the area to be vacated or, if the area to be vacated is located within a plat, all owners or occupants of land that are also located within the plat.

DEAD-END STREET. A street where one end of the street does not connect with any other street. Dead-end streets do not include dead-end alleys or other types of dead-end public grounds or public ways.

§ 96.82 COMMENCING A VACATION.

A vacation of a public street, alley, way, easement, or grounds may be commenced as follows:

(A) By motion of the City Council; or

(B) By petition signed by a majority of the owners of property abutting the property to be vacated. If the request is for a street to be vacated and the street is a dead-end street, then the petition must be signed by all of the owners of land abutting both sides of the street. In all cases, the vacation petition must set forth the reasons for the vacation, a legal description of the area or areas to be vacated and the requestor must pay an application fee in an amount set forth in the City's fee schedule.

§ 96.83 PUBLIC HEARING AND NOTICE REQUIREMENTS.

(A) If the City Council decides to proceed with the vacation, it must schedule a public hearing on the vacation. The public hearing must include an opportunity for all affected landowners and the interested public to be heard by the City Council.

(B) The City must give notice of the public hearing by publishing the notice in the City's official newspaper at least two weeks prior to the hearing and by mailing notice to each affected property owner at least 10 days before the hearing. The notice must contain a copy of the vacation petition or the proposed resolution or ordinance as well as the time, date, and place

of the hearing.

(C) With the exception of a dead-end street, if the area to be vacated is a street and any part of the street terminates at, abuts upon, or is adjacent to any public water, the City must send written notice by certified mail to the Commissioner of Natural Resources at least 60 days before the public hearing. After notice is sent, at least 15 days prior to convening the public hearing, the City must consult with the Commissioner of Natural Resources to review the proposed vacation. With respect to a dead-end street, the petitioners who are requesting the vacation must notify the Commissioner of Natural Resources by certified mail at least 30 days before the public hearing.

§ 96.84 STANDARDS FOR GRANTING A VACATION.

(A) With the exception of dead-end streets, the City Council may vacate a street only upon a finding that the vacation is in the interest of the public, meaning that the public, including those persons other than those in the immediate vicinity of the vacation must benefit, in some manner from the vacation. These findings may include, but are not limited to, the area to be vacated is not essential for public transportation purposes, any public infrastructure in the area to be vacated is being relocated at the property owner's expense, and the vacation will not impede access, including emergency vehicle access to any of the surrounding properties. The City Council's ordinance or resolution must include findings of fact that explain the City's reasons for granting the vacation. In the event that the City Council denies the vacation, it will adopt a resolution that also includes findings of fact that explain the City's reasons for denying the vacation.

(B) If the area to be vacated lies within the area that is legally described in Section 12.06 of the City Charter, it may not be vacated without approval of a majority of the voters of the City of Lake City, voting at a general or special election to approve such vacation.

§ 96.85 ADOPTION OF AN ORDINANCE OR RESOLUTION GRANTING OR DENYING A VACATION.

(A) Street and alley vacations commenced by landowner petition must be approved by the City Council by ordinance and require the affirmative vote of at least five members of the Council. All other vacations may be approved by the City Council by resolution and require an affirmative vote of a simple majority of the quorum of the Council present at the meeting. A vacation commenced solely on the initiative of the City Council requires a four-fifths majority vote of the City Council in favor of the resolution or ordinance.

(B) If an ordinance or resolution granting a vacation is adopted by the City Council, the City Clerk shall prepare a notice of completion of the vacation proceedings and provide it to the County Auditor and County Recorder/Registrar of Titles.